

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

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Honorable Jorge L. Alonso
vs.)	
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
)

**DECLARATION OF LUKE O. BROOKS IN SUPPORT OF PLAINTIFFS'
MOTIONS IN LIMINE**

I, Luke O. Brooks, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP, Lead Counsel of record for plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Pursuant to Judge Alonso's Case Procedures regarding Pretrial Orders, on April 22, 2016, counsel for the parties met and conferred in an effort to narrow the evidentiary issues in the parties' Motions *in Limine*, but did not reach agreement on Motion *in Limine*, Nos. 1-9.

3. Attached are true and correct copies of the following exhibits:

- Exhibit 1: Relevant excerpts from the transcript of the Deposition of Allen Frank Ferrell, III taken Feb. 27, 2016;
- Exhibit 2: August 15, 2002 e-mail string re Multistate Working Group reply to HFC [Plaintiffs' Trial Ex. 550];
- Exhibit 3: Relevant excerpts from the Pretrial Conference transcript from the first trial;
- Exhibit 4: Relevant excerpts from the trial transcript from the first trial;
- Exhibit 5: AG Costs, Side Loans [Plaintiffs' Trial Ex. 681];
- Exhibit 6: July 1, 2002 Email string re Framework for the Discussion of Issues concerning Lending Practices of Household International, Inc. [Plaintiffs' Trial Ex. 516];
- Exhibit 7: Case Management Order in *Apple Inc. v. Samsung Electronics Co. Ltd*, No. 11-cv-1846 (N.D. Cal. Sept. 1, 2015);
- Exhibit 8: *In the Matter of Household Int'l Inc.*, File No. 3-11072, Before the Securities and Exchange Commission, Order Instituting Cease-And-Desist Proceedings, Making Findings, and Imposing Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (Mar. 19, 2003) [Plaintiffs' Trial Ex. 1303];
- Exhibit 9: Excerpts from the trial testimony of Mukesh Bajaj plaintiffs intend to offer at the retrial;
- Exhibit 10: Professional biography for Mukesh Bajaj from Navigant's webpage; and
- Exhibit 11: April 19, 2016 email from Daniel Drosman to Steve Farina and Ryan Stoll regarding Mukesh Bajaj.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 22nd day of April, 2016, at San Diego, California.

s/ Luke O. Brooks

LUKE O. BROOKS

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 22, 2016.

s/ Luke O. Brooks

LUKE O. BROOKS

ROBBINS GELLER RUDMAN
& DOWD LLP

655 West Broadway, Suite 1900

San Diego, CA 92101-8498

Telephone: 619/231-1058

619/231-7423 (fax)

E-mail: LukeB@rgrdlaw.com

Jaffe v. Household Int'l, Inc., No. 02-5893 (N.D. Ill.)
Service List

Counsel	E-mail address
<p>Stewart Theodore Kuser Giovanni Antonio Raimondi THE KUSPER LAW GROUP, LTD. 20 North Clark Street, Suite 3000 Chicago, IL 60602 (312) 204-7938</p> <p>Tim S. Leonard JACKSON WALKER L.L.P. 1401 McKinney Street, Ste. 1900 Houston, TX 77010 (713)752-4439</p>	<p>Stewart.Kuser@Kuserlaw.com Giovanni.Raimondi@Kuserlaw.com tleonard@jw.com</p>
Counsel for Defendant David A. Schoenholz	
<p>Dawn Marie Canty Gil M. Soffer KATTEN MUCHIN ROSENMAN LLP 525 West Monroe Street Chicago, Illinois 60661 (312)902-5253</p>	<p>dawn.canty@kattenlaw.com gil.soffer@kattenlaw.com</p>
Counsel for Defendant William F. Aldinger	
<p>David S. Rosenbloom C. Maeve Kendall McDERMOTT WILL & EMERY, LLP 227 West Monroe Street Chicago, IL 60606 (312) 984-2175</p>	<p>drosenbloom@mwe.com makendall@mwe.com</p>
Counsel for Defendant Gary Gilmer	
<p>R. Ryan Stoll Mark E. Rakoczy Andrew J. Fuchs Donna L. McDevitt Patrick Fitzgerald SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 155 North Wacker Drive Chicago, IL 60606 (312)407-0700</p>	<p>rstoll@skadden.com mrakoczy@skadden.com Andrew.Fuchs@skadden.com Donna.McDevitt@skadden.com Patrick.Fitzgerald@skadden.com pclement@bancroftpllc.com zhudson@bancroftpllc.com TKavaler@cahill.com Jhall@cahill.com dbutswinkas@wc.com sfarina@wc.com</p>

Counsel	E-mail address
<p>Paul D. Clement D. Zachary Hudson BANCROFT PLLC 1919 M Street NW, Ste. 470 Washington, DC 20036 (202)234-0090</p> <p>Thomas J. Kavalier Jason M. Hall CAHILL GORDON & REINDEL LLP 80 Pine Street New York, NY 10005 (212)701-3000</p> <p>Dane H. Butswinkas Steven M. Farina Leslie C. Mahaffey Amanda M. MacDonald WILLIAMS & CONNOLLY LLP 725 Twelfth Street NW Washington DC 20005 202-434-5000</p> <p>Luke DeGrand Tracey L. Wolfe DEGRAND & WOLFE, P.C. 20 South Clark Street Suite 2620 Chicago, Illinois 60603 (312) 236-9200 (312) 236-9201 (fax)</p>	<p>lmahaffey@wc.com amacdonald@wc.com twolfe@degrandwolfe.com ldegrand@degrandwolfe.com</p>
<p>Counsel for Defendant Household International Inc.</p>	

Counsel	E-mail address
<p>Michael J. Dowd Spencer A. Burkholz Daniel S. Drosman Luke O. Brooks Hillary B. Stakem ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 (619)231-1058 619/231-7423 (fax)</p> <p>Jason C. Davis ROBBINS GELLER RUDMAN & DOWD LLP Post Montgomery Center One Montgomery Street, Suite 1800 San Francisco, CA 94104 (415)288-4545 (415)288-4534 (fax)</p> <p>Maureen E. Mueller ROBBINS GELLER RUDMAN & DOWD LLP 120 East Palmetto Park Road, Suite 500 Boca Raton, FL 33432 (561)750-3000 (561)750-3364 (fax)</p>	<p>miked@rgrdlaw.com spenceb@rgrdlaw.com dand@rgrdlaw.com lukeb@rgrdlaw.com hstakem@rgrdlaw.com jdavis@rgrdlaw.com mmueller@rgrdlaw.com</p>
<p>Lead Counsel for Plaintiffs</p>	
<p>Marvin A. Miller Lori A. Fanning MILLER LAW LLC 115 S. LaSalle Street, Suite 2910 Chicago, IL 60603 (312)332-3400 (312)676-2676 (fax)</p>	<p>Mmiller@millerlawllc.com Lfanning@millerlawllc.com</p>
<p>Liaison Counsel for Plaintiffs</p>	

EXHIBIT 1

Frank Ferrell, III

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 No. 1:02-CV-05893
 4 -----
 5 LAWRENCE E. JAFFE PENSION PLAN, on behalf
 6 of itself and all others similarly situated,
 7 Plaintiffs,
 8 vs.
 9 HOUSEHOLD INTERNATIONAL, INC., et al.,
 10 Defendants.
 11 -----
 12 VIDEOTAPED DEPOSITION OF
 13 FRANK ALLEN FERRELL, III
 14 Saturday, February 27, 2016 9:02 a.m.
 15 Skadden Arps LLP
 16 500 Boylston Street, Boston, MA 02116
 17
 18
 19
 20
 21 Reported by:
 22 Janet Sambataro, RMR, CRR, CLR
 23 Job No. 10022056
 24
 25

Page 2

1
 2
 3
 4
 5 February 27, 2016
 6 9:02 a.m.
 7
 8
 9
 10 Videotaped deposition of FRANK ALLEN
 11 FERRELL, III, held at the offices of Skadden Arps
 12 LLP, 500 Boylston Street, Boston, Massachusetts,
 13 pursuant to Agreement before Janet Sambataro, a
 14 Registered Merit Reporter, Certified Realtime
 15 Reporter, Certified LiveNote Reporter, and a
 16 Notary Public within and for the Commonwealth of
 17 Massachusetts.
 18
 19
 20
 21
 22
 23
 24
 25

Page 3

1 APPEARANCES:
 2
 3
 4 ROBBINS, GELLER, RUDMAN & DOWD LLP
 5 (By Luke O. Brooks, Esquire)
 6 Post Montgomery Center
 7 One Montgomery Street
 8 San Francisco, California 94104
 9 415.288.4534
 10 lukeb@rgrdlaw.com
 11 Counsel for the Plaintiffs
 12
 13 - and -
 14
 15 ROBBINS, GELLER, RUDMAN & DOWD LLP
 16 (By Michael J. Dowd, Esquire)
 17 655 W. Broadway
 18 San Diego, California 92101
 19 619.231.1058
 20 miked@rgrdlaw.com
 21 Counsel for the Plaintiffs
 22
 23
 24 - Continued -
 25

Page 4

1 APPEARANCES: (Continued)
 2
 3 SKADDEN ARPS SLATE MEAGHER & FLOM, LLP
 4 (By Patrick Fitzgerald, Esquire, and
 5 Andrew J. Fuchs, Esquire)
 6 155 N. Wacker Drive
 7 Chicago, Illinois 60606
 8 312.407.0700
 9 patrick.fitzgerald@skadden.com
 10 andrew.fuchs@skadden.com
 11 Counsel for the Defendant, Household
 12 International, Inc.
 13
 14 - and -
 15
 16 WILLIAMS & CONNOLLY
 17 (By Steven M. Farina, Esquire, and
 18 Leslie Cooper Mahaffey, Esquire)
 19 725 Twelfth Street, N.W.
 20 Washington, D.C. 20005
 21 202.434.5526
 22 sfarina@wc.com
 23 lmahaffey@wc.com
 24 Counsel for the Defendant, Household International,
 25 Inc.

Frank Ferrell, III

Page 5

1 APPEARANCES: (Continued)

2

3 MCDERMOTT, WILL & EMERY LLP

4 (By David S. Rosenbloom, Esquire) (Via Telephone)

5 227 West Monroe Street

6 Chicago, Illinois 60606-5096

7 312.372.2000

8 drosenbloom@mwe.com

9 Counsel for the Defendant, Gary Gilmer

10

11

12 KATTEN MUCHIN ROSENMAN LLP

13 (By Dawn M. Canty, Esquire) (Via Telephone)

14 525 West Monroe Street

15 Chicago, IL 60661-3693.

16 312.902.5200

17 dawn.canty@kattenlaw.com

18 Counsel for the Defendant, William F. Aldinger

19

20

21 ALSO PRESENT:

22 Mark LoSacco, HSBC (Via Videoconference)

23 Shawn Budd, Videographer

24

25

Page 7

1 E H I B I T S

2 Number	Description	Page
3 E hibit 7	Cornell and Morgan article in	
4	the UCLA Law Review	
5	June 1990	208
6 E hibit 8	Article entitled The Loss	
7	Causation Requirement for	
8	Rule 10b-5 Causes of Action:	
9	The Implications of Dura	
10	Pharmaceuticals, Inc. v.	
11	Broudo	215
12 E hibit 9	Excerpt from Household	
13	International, Inc. Form 10-K	
14	for year ending	
15	December 31, 2001	221
16 E hibit 10	Sur-Rebuttal Report of	
17	Daniel R. Fischel	232
18 E hibit 11	CIBC World Markets Industry	
19	Update entitled Specialty	
20	Finance - Third- quarter 2002	
21	Preview	240
22 E hibit 12	A.G. Edwards report entitled	
23	Specialty Finance quarterly	
24	Fourth quarter 2001	249
25	- Continued -	

Page 6

1 I N D E

2 WITNESS	DIRECT	CROSS
3 FRANK ALLEN FERRELL, III		
4 By Mr. Brooks	10	
5 By Mr. Fitzgerald		304
6		
7 E H I B I T S		
8 Number	Description	Page
9 E hibit 1	Expert Report of Professor	
10	Allen Ferrell	11
11 E hibit 2	Expert Rebuttal Report of	
12	Professor Allen Ferrell	
13	with exhibits	11
14 E hibit 3	United States Court of Appeals	
15	for the Seventh Circuit Opinion,	
16	No. 13-3532	68
17 E hibit 4	Cumulative Residual Price Change	
18	on Fraud Related Event Dates	
19	Identified in Company Investor	
20	Relations Reports	155
21 E hibit 5	Report of Daniel R. Fischel,	
22	dated August 15, 2007	165
23 E hibit 6	Exhibits to Professor Fischel's	
24	August 15, 2007 report	173
25	- Continued -	

Page 8

1 E H I B I T S

2 Number	Description	Page
3 E hibit 13	E hibit 2a, E hibit 8a and 8B	255
4 E hibit 14	Second Rebuttal Report of	
5	Daniel R. Fischel	260
6		
7		
8 PREVIOUSLY MARKED E HIBITS		
9 Number	Description	Page
10 E hibit 820	Document Bates-stamped	
11	HHS 03237027 through -7042	251
12 E hibit 198	Document Bates-stamped	
13	HHS 02075630 through -5650	277
14 E hibit 199	Document Bates-stamped	
15	HHS 02075738 through -5763	281
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Frank Ferrell, III

Page 9

1 PROCEEDINGS
 2 THE VIDEOGRAPHER: Okay. We are on the
 3 record. This is the video operator speaking,
 4 Shawn Budd with Aptus Court Reporting.
 5 Today's date is February 27th, 2016, and
 6 the time is 9:02 a.m. We are here in Boston,
 7 Massachusetts to take the video deposition of
 8 Allen Ferrell in the matter of Lawrence E. Jaffe
 9 Pension Plan versus Household International, Inc.
 10 Would counsel please introduce
 11 themselves.
 12 MR. BROOKS: Luke Brooks from Robbins
 13 Geller Rudman & Dowd for the plaintiffs.
 14 MR. DOWD: Mike Dowd from Robbins
 15 Geller.
 16 MR. FIT GERALD: Pat Fitzgerald from
 17 Skadden Arps for defendant, Household.
 18 MR. FUCHS: Andrew Fuchs for Household.
 19 MR. FARINA: Steve Farina, Williams &
 20 Connolly, for Household.
 21 MS. MAHAFFEY: Leslie Mahaffey from
 22 Williams & Connolly, for Household.
 23 THE VIDEOGRAPHER: Will the court
 24 reporter please swear in the witness.
 25 MR. BROOKS: We have people on the

Page 11

1 full name for the record, please.
 2 A. Frank Allen Ferrell, III.
 3 . And how would you like to be addressed
 4 in this deposition
 5 A. Professor Ferrell is fine.
 6 . What is your current business address
 7 A. My home address is
 8 41 Bloomfield Street, Lexington, MA 02421. My
 9 office is Harvard Law School, Griswold 303,
 10 1525 Massachusetts Ave., Cambridge, MA 02138.
 11 . And we've introduced, off the record,
 12 Exhibits 1 and 2. Exhibit 1 is the Expert Report
 13 of Professor Allen Ferrell and Exhibit 2 is the
 14 Expert Rebuttal Report of Professor Allen Ferrell
 15 with the exhibits.
 16 Do you have those in front of you Correct
 17 (Expert Report of Professor
 18 Allen Ferrell marked Exhibit 1.)
 19 (Expert Rebuttal Report of
 20 Professor Allen Ferrell with exhibits marked
 21 Exhibit 2.)
 22 A. Yes.
 23 BY MR. BROOKS:
 24 . So according to Exhibit A of your
 25 report, you've been deposed 15 times in the last

Page 10

1 phone.
 2 MR. FIT GERALD: Will people on the
 3 phone take themselves off mute for a moment and
 4 identify themselves, that would be great.
 5 MR. ROSENBLOOM: David Rosenbloom,
 6 McDermott Will & Emery.
 7 COURT REPORTER: I can't hear. David
 8 Rosenbloom
 9 MR. FIT GERALD: Yes.
 10 MR. FUCHS: Anyone else
 11 MS. CANTY: Dawn Canty.
 12 MR. FIT GERALD: I think it's Dawn
 13 Canty for defendant, Bill Aldinger.
 14 MR. ROSENBLOOM: And David Rosenbloom
 15 for defendant, Gary Gilmer.
 16 (Reporter clarification.)
 17 THE VIDEOGRAPHER: And will the court
 18 reporter please swear in the witness.
 19 FRANK ALLEN FERRELL, III,
 20 having been duly sworn, after presenting
 21 identification in the form of a driver's license,
 22 deposes and says as follows:
 23 DIRECT EXAMINATION
 24 BY MR. BROOKS:
 25 . Good morning. Would you state your

Page 12

1 four years. Does that sound about right
 2 A. Which -- which report are you referring
 3 to
 4 . The original report.
 5 MR. FIT GERALD: While he's looking
 6 through that, Mark LoSacco, L-O-S-A-C-C-O from
 7 HSBC, may patch in at certain times, but I don't
 8 know if he's on now. But you asked for counsel.
 9 But we should be aware of that.
 10 A. So there appears to be 17, but that
 11 would include testimony at arbitration.
 12 BY MR. BROOKS:
 13 . We can skip discussing how a deposition
 14 works. Is that fair to say
 15 A. Sure.
 16 . Okay. You understand you're under
 17 oath. Right
 18 A. Yes.
 19 . Subject to the penalty of perjury
 20 A. Yes.
 21 . And you're going to testify truthfully
 22 today
 23 A. Yes.
 24 . Have you ever been retained by
 25 plaintiffs' counsel in a securities fraud class

Frank Ferrell, III

<p style="text-align: right;">Page 49</p> <p>1 Correct</p> <p>2 A. That s correct. It also includes</p> <p>3 production from Fischel. But I don t remember</p> <p>4 whether that production included -- I m not</p> <p>5 saying that production included transcripts.</p> <p>6 But -- but, again, it s the same answer that I</p> <p>7 gave earlier.</p> <p>8 . Do you know who Joe Vozar is</p> <p>9 A. I don t have a specific recollection.</p> <p>10 I do know that Professor Fischel cites to various</p> <p>11 statements by Household officials at different</p> <p>12 times. So I did review that. But I haven t</p> <p>13 memorized the positions of everybody in</p> <p>14 Household.</p> <p>15 . You didn t read the deposition or trial</p> <p>16 testimony of plaintiff s e pert, Harris Devor,</p> <p>17 did you</p> <p>18 A. I don t have a specific recollection of</p> <p>19 that.</p> <p>20 . And you didn t read the trial testimony</p> <p>21 or deposition testimony of plaintiff s e pert</p> <p>22 Catherine Ghiglieri</p> <p>23 A. Again, I don t have a specific</p> <p>24 recollection of that, but I would incorporate my</p> <p>25 earlier answer in terms of the process by which I</p>	<p style="text-align: right;">Page 50</p> <p>1 reviewed these types of materials.</p> <p>2 . If a person is not mentioned in</p> <p>3 Fischel s reports, you didn t read their</p> <p>4 testimony</p> <p>5 A. Not quite what I said. If it s not</p> <p>6 relied upon or pointed to as a basis in</p> <p>7 Professor Fischel s various reports, and it s not</p> <p>8 otherwise listed on these two Appendi Bs, then I</p> <p>9 believe it s accurate that I did not otherwise</p> <p>10 review it.</p> <p>11 . Did anyone on your behalf speak to any</p> <p>12 current or former Household employees about this</p> <p>13 case</p> <p>14 MR. FIT GERALD: Ob ect to form.</p> <p>15 A. Not that I --</p> <p>16 MR. FIT GERALD: Go ahead.</p> <p>17 THE WITNESS: Sorry.</p> <p>18 A. Not to my knowledge.</p> <p>19 BY MR. BROOKS:</p> <p>20 . So other than the information that s</p> <p>21 listed in Appendi B to both reports, you didn t</p> <p>22 rely on information from current or former</p> <p>23 Household employees to form your opinion. Is</p> <p>24 that fair to say</p> <p>25 A. Yes. It s fair to say -- ust to be</p>
<p style="text-align: right;">Page 51</p> <p>1 clear, it s fair to say that I m not relying upon</p> <p>2 conversations I had or conversations that</p> <p>3 somebody on my behalf had with Household</p> <p>4 officials.</p> <p>5 . In fact, you re not aware of any such</p> <p>6 conversations</p> <p>7 A. That s right. Ergo, I would not be</p> <p>8 relying on it. Yes.</p> <p>9 . What did you do to learn about the</p> <p>10 details of defendants fraud, if anything</p> <p>11 A. Well, I spent a significant amount of</p> <p>12 time reading the -- I read the Corrected Amended</p> <p>13 Consolidated Class Action Complaint for violation</p> <p>14 of the federal securities law. I read the ury</p> <p>15 verdict form, where the ury specifically found</p> <p>16 17 misrepresentations, also re ected a number of</p> <p>17 other misrepresentations. So my understanding is</p> <p>18 that s the finding that has not been vacated, at</p> <p>19 least -- I m not providing legal opinion, but</p> <p>20 that s my understanding.</p> <p>21 And I did read some of the court orders to</p> <p>22 get an understanding of the conte t. And I did</p> <p>23 review a number of materials from the initial</p> <p>24 litigation, if I can call it that.</p> <p>25 . Did you read the District Court s most</p>	<p style="text-align: right;">Page 52</p> <p>1 recent opinion denying defendants motion to</p> <p>2 e clude Professor Fischel</p> <p>3 A. I did.</p> <p>4 . You didn t review plaintiff s trial</p> <p>5 brief. Is that correct</p> <p>6 A. I don t believe so.</p> <p>7 . Did you review the opening statements</p> <p>8 at the trial</p> <p>9 A. I don t believe so.</p> <p>10 . What about the closing arguments</p> <p>11 A. I don t believe so.</p> <p>12 . You didn t have all the trial e hibits,</p> <p>13 did you</p> <p>14 A. I did receive a lot of trial e hibits,</p> <p>15 but I don t -- I m not representing it was all</p> <p>16 the trial e hibits. And, again, I would</p> <p>17 reiterate, I did review the ury verdict form</p> <p>18 that represents the finding of the ury, as I</p> <p>19 understand it.</p> <p>20 . So you understand that the ury found</p> <p>21 defendants made material false and misleading</p> <p>22 statements and omissions about three categories.</p> <p>23 Right</p> <p>24 A. Yes.</p> <p>25 . And what were those categories</p>

Frank Ferrell, III

<p style="text-align: right;">Page 57</p> <p>1 statement. Right</p> <p>2 MR. FIT GERALD: Ob ection to form.</p> <p>3 A. My memory -- you ll have to show me the</p> <p>4 ury verdict form to refresh my recollection, but</p> <p>5 my memory of the ury verdict form is they</p> <p>6 identified the material misstatements and</p> <p>7 omissions.</p> <p>8 BY MR. BROOKS:</p> <p>9 . And you don t remember one way or</p> <p>10 another whether they identified if material</p> <p>11 misstatements or omissions dealt with predatory</p> <p>12 lending, reaging, or the restatement</p> <p>13 A. I do remember that. So my memory, not</p> <p>14 having the ury verdict form in front of me, is</p> <p>15 that s consistent with my memory.</p> <p>16 . And what you re saying is other than</p> <p>17 what s on the ury verdict form, you have no idea</p> <p>18 what that predatory lending bo means. Correct</p> <p>19 MR. FIT GERALD: Ob ection to form.</p> <p>20 A. Again, I think you re asking me a legal</p> <p>21 opinion. My understanding of the ury verdict</p> <p>22 form, but I m not providing a legal opinion, is</p> <p>23 that it was identifying the nature of the</p> <p>24 material or what category the material</p> <p>25 misrepresentation fell into, according to the</p>	<p style="text-align: right;">Page 58</p> <p>1 ury.</p> <p>2 BY MR. BROOKS:</p> <p>3 . You didn t look for details about the</p> <p>4 fraud from any source, other than the ury</p> <p>5 verdict form</p> <p>6 MR. FIT GERALD: Ob ection to form.</p> <p>7 A. I don t understand the question. My</p> <p>8 understanding, but I m not giving a legal</p> <p>9 opinion, is that the actionable -- not the</p> <p>10 actionable -- the material misstatements and</p> <p>11 omissions that forms the basis for liability in</p> <p>12 this case are the material misstatements and</p> <p>13 omissions as find -- found by the ury on the</p> <p>14 ury verdict form.</p> <p>15 My understanding, without giving a legal</p> <p>16 opinion, is that there s not other fraud beyond</p> <p>17 that that would form a basis for liability.</p> <p>18 Without providing a legal opinion, I m ust</p> <p>19 giving you my understanding of what constitutes</p> <p>20 the fraud.</p> <p>21 BY MR. BROOKS:</p> <p>22 . So can you tell me what reaging was</p> <p>23 MR. FIT GERALD: If we re going to move</p> <p>24 to reaging, do you want to take a break We ve</p> <p>25 been going about an hour.</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. BROOKS: Let s ust get through a</p> <p>2 couple more questions.</p> <p>3 MR. FIT GERALD: Okay.</p> <p>4 BY MR. BROOKS:</p> <p>5 . Can you tell me what reaging was</p> <p>6 A. So, again, the complaint and</p> <p>7 Professor Fischel discusses this, so my memory of</p> <p>8 their discussion, the complaint, and the -- and</p> <p>9 Professor Fischel s discussion of reaging</p> <p>10 involved whether a certain -- how certain</p> <p>11 accounts were treated in terms of delinquencies</p> <p>12 and the timing thereof. So at a very general</p> <p>13 level.</p> <p>14 But, again, the specific answer would be the</p> <p>15 reaging fraud or the fraud relating to reaging as</p> <p>16 found by the ury. So the specific material</p> <p>17 misrepresentations and omissions relating to</p> <p>18 reaging, as found by the ury.</p> <p>19 . So reaging was a practice that</p> <p>20 Household engaged in. Do you understand that</p> <p>21 A. That s my --</p> <p>22 MR. FIT GERALD: Ob ection to form.</p> <p>23 A. That s my general understanding.</p> <p>24 BY MR. BROOKS:</p> <p>25 . And how did it work</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Well, again, my understanding is that</p> <p>2 the ury found certain statements concerning</p> <p>3 reaging constituted fraud. And --</p> <p>4 . I m asking --</p> <p>5 A. -- so that s what -- that s what I m</p> <p>6 focused on in terms of thinking about damages and</p> <p>7 loss causation.</p> <p>8 . Do you understand how reaging worked</p> <p>9 Yes or no</p> <p>10 A. I --</p> <p>11 MR. FIT GERALD: Just ob ection to</p> <p>12 scope. He s being offered on a damages case, and</p> <p>13 ob ection, asked and answered.</p> <p>14 A. I did review the complaint and</p> <p>15 Professor Fischel s description of that. I</p> <p>16 reviewed Household s 10-Ks and 10- s, where they</p> <p>17 talk about treatment of certain accounts and how</p> <p>18 those are going to be reported. But again, for</p> <p>19 purposes of my analysis, I was focused on the</p> <p>20 fraud and how to properly and scientifically</p> <p>21 think about damages and loss causation in that</p> <p>22 conte t.</p> <p>23 BY MR. BROOKS:</p> <p>24 . What financial metrics did reaging</p> <p>25 impact at Household</p>

Frank Ferrell, III

<p style="text-align: right;">Page 61</p> <p>1 MR. FIT GERALD: Same objection. 2 A. So, again, my understanding is the 3 ury -- you know, if you want to put the ury 4 verdict form in front of me to remind me of the 5 specific material misrepresentations about 6 reaging, that would be helpful. But my memory 7 from the complaint and Professor Fischel is that 8 it involved whether an account was delinquent or 9 not or whether it was going to be caught up in 10 some sense. But that's a very general 11 understanding. Again, what's important for me 12 and my scope is what constitutes the fraud. 13 BY MR. BROOKS: 14 . You understand that reaging impacted 15 Household's two plus delinquency statistics. 16 Right 17 MR. FIT GERALD: Objection to scope. 18 If you're going to ask him about the findings and 19 the fraud, we should probably put the exhibit in 20 front of him. 21 MR. BROOKS: I'm just asking about 22 reaging. 23 BY MR. BROOKS: 24 . You understand that reaging impacted 25 Household's two plus delinquency statistics.</p>	<p style="text-align: right;">Page 62</p> <p>1 Right 2 MR. FIT GERALD: Same objection to 3 scope. 4 A. You know, my -- that's consistent with 5 my general memory, but I would want to -- you 6 know, I would need to confirm that. So -- but 7 that's generally consistent with my memory. But, 8 again, what's relevant for my purposes is what 9 actually constitutes the fraud. 10 MR. BROOKS: Okay. We can take a 11 break. 12 MR. FIT GERALD: Great. 13 THE VIDEOGRAPHER: The time is two 14 minutes after 10:00. We're off the record. 15 (A recess was taken.) 16 THE VIDEOGRAPHER: We are back on the 17 record. The time is 10:18. 18 THE WITNESS: Can I make a clarify -- 19 there's something I remembered in response to an 20 earlier question, if I could, which you had asked 21 me if there was other people at the meeting when 22 I met with counsel, and I should have added, I 23 just remembered, is that personnel from 24 Cornerstone were at those meetings, as well. So 25 I wanted to add that to my earlier answer.</p>
<p style="text-align: right;">Page 63</p> <p>1 BY MR. BROOKS: 2 . Who from Cornerstone was at the meeting 3 or meetings 4 A. So Kristin Feitzinger was there. I 5 mangled that. Also present was Nick Yavorsky, 6 Yavorsky. I'm just trying to remember if there's 7 anybody else. Those are the two -- those are the 8 two names that come to mind. 9 . Are they senior people from 10 Cornerstone 11 A. Yes. I believe so. I would say 12 Kristin Feitzinger, Feitzinger is certainly a 13 senior person. As I understand it, she's a 14 principal at Cornerstone. 15 . You divided them between senior and 16 junior -- 17 A. Yes. 18 . -- people for compensation, so that's 19 why I asked it that way. 20 A. Sure. 21 . Who else from Cornerstone 22 A. Well, just to be clear, I don't -- I 23 know that my understanding is that Kristin is -- 24 is senior, is my understanding. 25 . And what are her credentials</p>	<p style="text-align: right;">Page 64</p> <p>1 A. She went to Stanford. She has a 2 master's from Stanford. I believe she also has 3 an MBA from Stanford. 4 . What's her master's in 5 A. I don't know. You asked about her 6 credentials. I also know that she's been 7 working -- has done work for the last 20 some 8 years in the -- in the area of damages and event 9 studies and that general area. 10 . Sorry. What about Nick Yavorsky What 11 are his credentials 12 A. So, again, my understanding is for the 13 last seven, eight years, he's been working in 14 this area. This area being damages, event study, 15 loss causation, economics, in that. And I 16 believe he has an MBA. I'm blanking on the name 17 of the school now. 18 . Where are they based 19 A. Los Angeles. 20 . Who else from Cornerstone has worked on 21 this engagement with you 22 A. So to my knowledge, in terms of people 23 that I've interacted with, in addition to those 24 two people, I would add Jamie Lee and Katie 25 Galli.</p>

Frank Ferrell, III

<p style="text-align: right;">Page 97</p> <p>1 know -- and so one would have to deal with the 2 confounding information. So all I m saying is 3 Professor Fischel hasn t done it. And to 4 ascertain damages, one would have to make an 5 assumption or articulate an approach to do the 6 disentanglement. 7 BY MR. BROOKS: 8 . You haven t done it for those days that 9 you claim are confounded, but use in your 4.19 10 calculation. Correct 11 A. I have not -- 12 MR. FIT GERALD: Ob ect to the form. 13 A. I have not done it. My ob was to 14 assess Professor Fischel. Professor Fischel says 15 he s reliably estimated damages. And this is one 16 way in which he hasn t done so. 17 BY MR. BROOKS: 18 . And one of the suggestions in your 19 academic writing for dealing with confounded 20 information is to remove the dates from the 21 analysis. Right 22 A. So I want to be very careful here. My 23 article is very clear on this. I say, as a 24 general matter -- you know, I m not talking about 25 a particular case, as a general matter, one</p>	<p style="text-align: right;">Page 98</p> <p>1 potential tool, depending on the facts and 2 circumstances of the case, is to remove the date. 3 So, for e ample, if you have seven corrective 4 disclosures in a hypothetical case, there s five 5 with statistically significant declines and 6 they re not confounded. The other two are. One 7 approach, depending on the facts and 8 circumstances, would be to drop those dates. 9 I m not saying, and I m not saying in this 10 case, that the automatic or the appropriate 11 approach is to necessarily or unthinkingly drop 12 the dates. 13 . Dropping the dates that you claim are 14 confounded from your model would result in 15 negative inflation from the fraud. Correct 16 MR. FIT GERALD: Ob ection to form. 17 A. No. I would not call that inflation. 18 Because I m not opining that on those four 19 dates -- I m not -- I m not -- not offering the 20 opinion that on those four dates there isn t 21 corrective information. I m not opining on that 22 issue. So I would not draw the conclusion that 23 there s negative inflation. I don t say that and 24 I don t believe it. And it s simply not the 25 case.</p>
<p style="text-align: right;">Page 99</p> <p>1 BY MR. BROOKS: 2 . Well, if you remove those four dates 3 from your model, the calculation would be that 4 the inflation was negative. Right 5 MR. FIT GERALD: Ob ection. Only to 6 form. 7 A. No. Because you are -- you know, I m 8 not -- first of all, I don t agree with 9 automatically dropping dates. I don t say that 10 in my article. And I agree that a negative 11 inflation number throughout the class period 12 doesn t make sense and I don t say that. And I m 13 not saying that. And the suggestion otherwise is 14 false. 15 BY MR. BROOKS: 16 . But if you remove the residual declines 17 on those four days from your model, the model 18 would spit out a negative inflation number, 19 wouldn t it 20 MR. FIT GERALD: Ob ection to form. 21 A. Well -- 22 BY MR. BROOKS: 23 . It s mathematics. Right 24 MR. FIT GERALD: Let him answer the 25 question. Ob ection to form.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Well, you have to understand what -- 2 you know, in order to make an inference from 3 what -- in order to make an inference about 4 inflation, you have to understand what you re 5 doing. So if you re dropping -- so I say -- let 6 me back up. 7 In my article cited by the Seventh Circuit, 8 I say that if you drop confounding days, you are 9 losing something valuable, which is potentially 10 corrective information that has an impact. So if 11 you were to drop confounding information -- 12 confounding days, you re losing something, 13 potentially. And so I would not draw the 14 inference that a negative number means negative 15 inflation. That s a non sequitur. 16 BY MR. BROOKS: 17 . The model is designed to estimate 18 inflation in the stock, correct 19 A. The -- well, the purpose of my model is 20 to assess Professor Fischel. And it s presented 21 in that light, in light of what does a properly 22 specified model generate. And on the confounding 23 issue, I m merely pointing out that 24 Professor Fischel has not done the ob of a 25 damages e perts, which is to reliably estimate</p>

Frank Ferrell, III

<p style="text-align: right;">Page 101</p> <p>1 damages. It's not my job to do that. My job was 2 to assess whether Professor Fischel has done so. 3 . So if you turn to Exhibit 8 to your 4 rebuttal report. 5 A. Yes. 6 . This is maximum alleged inflation using 7 a specific disclosure model. Right 8 A. Correct. 9 . And why is this presented as a maximum 10 A. So this is using -- I just want to 11 double-check this. So if you go to Page 1 of 12 Exhibit 8, you'll see on November 14th, 2001, 13 four dollars and 19 dollars -- sorry, 4.19 of 14 inflation as of that date. So this is utilizing 15 the full residual price declines associated with 16 the six days. So in that sense, it's the 17 maximum, because it's including the entire 18 residual on the four confounding days and 19 treating it as solely a price reaction to 20 corrective information. 21 . Now, I noticed on this chart that it 22 doesn't go back to the beginning of the class 23 period that the jury found. 24 A. Correct. 25 . Why is that</p>	<p style="text-align: right;">Page 102</p> <p>1 A. Well, so this is the disclosure period. 2 So the first disclosure is November 15th, and so 3 I'm analyzing the disclosure period here. I 4 point out in my report, and I'll just go to the 5 language in the report, that to go back, one 6 would need to allocate that inflation, the 4.19, 7 to the various material misrepresentations and 8 omissions, accepting the jury verdict as 9 reflective of the jury verdict form. 10 . And you haven't attempted to do that. 11 Correct. 12 A. I want to get the exact language in my 13 report. I believe it's towards the end. So give 14 me one second. 15 Okay. So that -- I'm referring to 16 Paragraph 100. I'll tell you what Paragraph 100 17 says. It's on Page 46. My understanding is that 18 one would need to allocate the inflation, in my 19 Exhibit -- Exhibit A would be 4.19 to the 20 different alleged misrepresentations or, 21 accepting the jury verdict, the 17 misstatements 22 that the jury found. 23 . Why is it your understanding that one 24 would need to allocate 25 MR. FIT GERALD: Objection. You can</p>
<p style="text-align: right;">Page 103</p> <p>1 answer. 2 A. So my understanding of the damages and 3 inflation exercise is that there's different 4 misstatements occurring at different points in 5 time. So the 17 are spaced over time, and there 6 could be different inflation for different 7 misrepresentations because they're occurring at 8 different points. So the level of inflation 9 could potentially be different as of the first 10 misrepresentation relative to the last 11 misrepresentation, because -- you know, because 12 there's 17 by that point versus one. And the 13 nature of the misrepresentation varies. 14 BY MR. BROOKS: 15 . And you haven't looked at the nature of 16 the misrepresentation to determine what's 17 appropriate. Is that right 18 MR. FIT GERALD: Objection to form. 19 A. That's correct. But I want to read the 20 exact -- correct, with this understanding, which 21 is it's an exercise, it's an allocation exercise, 22 my understanding it is the plaintiff's burden to 23 perform. So, again, my role was to assess Dr. -- 24 Professor Fischel's analysis, and this is another 25 way in which he's failed to do his job. It's not</p>	<p style="text-align: right;">Page 104</p> <p>1 my job. 2 BY MR. BROOKS: 3 . Well, Professor Fischel has taken his 4 inflation estimation back to March 23, the first 5 day of the -- the first false statement in the 6 case. You understand that. Right 7 A. Correct. 8 . And you had that information. Right 9 A. Correct. 10 . And you're not saying, one way or 11 another, whether he was incorrect in assigning 12 the full amount of inflation, starting March 28, 13 2001. Is that correct 14 MR. FIT GERALD: Objection to form. 15 A. I wouldn't -- no, it's not correct. 16 What I'm saying in Paragraph 100 is he hasn't 17 done any analysis to support that allocation, the 18 allocation being that each misrepresentation date 19 is associated with the same quantum of inflation. 20 BY MR. BROOKS: 21 . Do you agree that plaintiffs proved at 22 the first trial that Household's share price 23 declined after the truth about defendant's fraud 24 came out 25 MR. FIT GERALD: Objection to scope of</p>

Page 105

1 what he s testifying to.
 2 A. It s outside my scope. I haven t
 3 analyzed that. What I do know, without -- I was
 4 not asked to opine on whether there was fraud or
 5 not. I do know that there s a ury verdict that
 6 reflects 17 misstatements, as identified by the
 7 ury. And also I would add, a number of
 8 misrepresentation dates that were re ected by the
 9 ury.
 10 BY MR. BROOKS:
 11 . So you don t dispute that plaintiffs
 12 proved at the first trial that Household s share
 13 price declined after the truth about defendants
 14 fraud came out, do you
 15 MR. FIT GERALD: Same objection.
 16 A. That s outside my scope.
 17 BY MR. BROOKS:
 18 . You don t dispute it
 19 A. My -- well, my --
 20 . It s outside your scope, so you don t
 21 dispute it. Right
 22 MR. FIT GERALD: Ob ection.
 23 A. I don t have an opinion on that,
 24 because it s outside my scope. My scope was to
 25 provide my own independent opinion using standard

Page 107

1 omissions, as found by the ury, were a
 2 substantial factor in causing investors who
 3 purchased Household s stock between March 23rd,
 4 2001 and October 11th, 2002 losses. Correct
 5 MR. FIT GERALD: Ob ection to the form.
 6 A. I don t know what you mean by
 7 substantial factor. I quantify the inflation
 8 using the specific disclosure model. And that s
 9 my opinion.
 10 BY MR. BROOKS:
 11 . And that s the quantification reflected
 12 in E hibit 3a. Correct
 13 A. Well, it s reflected in my report.
 14 . Sorry. E hibit A
 15 A. E hibit A. But also -- I mean, I have
 16 other analyses in my report. 4.19 is the
 17 ma imum, ignoring confounding information, using
 18 a standard, appropriate methodology with a
 19 well-specified model.
 20 . Do you have an opinion as to whether
 21 there was loss causation in this case
 22 A. Well, Professor Fischel -- I m ust
 23 opining on what Professor Fischel has done. Has
 24 Professor Fischel established loss causation with
 25 respect to the inflation that he finds And the

Page 106

1 rigorous methodology to assess what
 2 Professor Fischel is offering in his report,
 3 second supplemental rebuttal and surreply.
 4 BY MR. BROOKS:
 5 . You can t dispute it if you don t have
 6 an opinion about it. Right, sir
 7 MR. FIT GERALD: Ob ection.
 8 A. I have opinions about what
 9 Professor Fischel is doing.
 10 BY MR. BROOKS:
 11 . Do you have an opinion as to whether
 12 defendants materially false and misleading
 13 statements and omissions found by the ury were a
 14 substantial factor in causing investors who
 15 purchased Household s stock between March 23rd
 16 2001 and October 11th, 2002 losses
 17 A. You know, that s a very imprecise
 18 question. I quantify inflation under -- in my
 19 specific disclosure model. And I ll ust refer
 20 back to that. So if you ignore the confounding
 21 information, it s 4.19 and that would be the
 22 ma imum inflation under that assumption as
 23 reflected in my E hibit 8.
 24 . So you don t dispute that defendants
 25 materially false and misleading statements and

Page 108

1 answer to that is no.
 2 . You haven t developed an opinion as to
 3 loss causation as to any other inflation. Is
 4 that your testimony
 5 MR. FIT GERALD: Ob ection to form.
 6 A. My testimony is I was asked to assess
 7 Professor Fischel s analysis. And in the course
 8 of that, I do provide a specific disclosure model
 9 that is appropriate and scientifically rigorous.
 10 BY MR. BROOKS:
 11 . And in assessing whether
 12 Professor Fischel established loss causation with
 13 respect to the inflation that he finds, what
 14 definition of loss causation did you use
 15 A. So Professor Fischel opines that -- I m
 16 going to forget the e act figures, 23, 24 is
 17 caused by what he calls leakage. And, therefore,
 18 according to him, it constitutes recoverable
 19 damages, damages for which, according to him,
 20 there s loss causation. And I have any number of
 21 reasons for why that opinion is wrong and
 22 fundamentally wrong.
 23 . So my question was: In assessing
 24 whether Professor Fischel established loss
 25 causation with respect to the inflation that he

Frank Ferrell, III

<p style="text-align: right;">Page 161</p> <p>1 date that s not confounded with the caveat that 2 there s a November 9th disclosure. 3 BY MR. BROOKS: 4 . If it was not fraud-related, it would 5 not be a specific disclosure date. Right 6 MR. FIT GERALD: Ob ection to form. 7 A. So I m assuming in the report that this 8 is corrective information, but -- but -- let me 9 put it this way: In my report, this is not a 10 confounded day. The issue that I raise with this 11 date is the November 9th. And there s nothing 12 else I have to say about November 9th -- 13 November 15th. 14 BY MR. BROOKS: 15 . Why are you so reluctant to say whether 16 this is fraud-related information or not 17 MR. FIT GERALD: Ob ection to form. 18 A. Because I wasn t asked to opine on what 19 the fraud was. I was -- I m assuming the -- the 20 misrepresentations in the ury verdict, without 21 opining on it. So that was my hesitation, is not 22 to be viewed as providing an opinion on what -- 23 on what the fraud actually is, if there is any, 24 rather than ust noting -- merely noting what s 25 on the ury verdict, without providing an opinion</p>	<p style="text-align: right;">Page 162</p> <p>1 on that. 2 BY MR. BROOKS: 3 . Do you agree that in order to determine 4 whether something is fraud-related or not, one 5 has to understand the fraud 6 A. I agree with that. 7 . Skipping down to December 3rd, 2001, 8 this is an entry discussing articles published 9 by Barron s and Business Week that alleged 10 Household s strong results were in part driven by 11 aggressive chargeoff policies. Do you agree 12 that this is a fraud-related disclosure 13 MR. FIT GERALD: What day are we on 14 12 3 01 15 MR. BROOKS: Yeah. 16 A. You know -- 17 MR. FIT GERALD: Thank you. 18 A. -- I don t have the investor relations 19 report. You know, I -- I feel uncomfortable 20 commenting on a sentence that s been cut and 21 pasted from a larger report without knowing the 22 conte t. So I m ust not going to provide an 23 opinion on the investor relation report without 24 being given an opportunity to read the whole 25 thing, what the basis is for this in the report.</p>
<p style="text-align: right;">Page 163</p> <p>1 I do talk about December 3rd in my report, 2 and I ll be happy to talk about what I do say 3 about December 3rd. 4 BY MR. BROOKS: 5 . Well, yeah. I mean, I m asking you 6 about the disclosures, as summarized here. 7 Right So you understand that there were 8 disclosures on December 3rd, 2001, don t you 9 A. I have in my report a discussion of 10 December 3rd. That s correct. 11 . And a discussion of disclosures on 12 December 3rd 13 A. I believe so. 14 . And were those -- 15 A. You know, hold on a second. So there s 16 a lot of dates here. I mean, I do have in my 17 E hbit 3a, December 3rd. So let me -- let me 18 restate my answer. 19 So I do have December 3rd in my E hbit 3a. 20 And I ust don t remember if I have a specific 21 discussion of that. I have to -- let me flip 22 through my report. 23 I certainly reviewed Professor Fischel s 24 claimed disclosures on that date. But I m 25 flipping through my report to see, beyond my</p>	<p style="text-align: right;">Page 164</p> <p>1 E hbit 3a, if I have a discussion of that. So 2 I m looking at my initial report. 3 It looks like my first specific disclosure 4 date is December 12th. And I m looking at my 5 rebuttal. And I m looking at Page 32 of my 6 rebuttal. Oh, so I do have December -- are we 7 talking about December 12 So it s on page -- 8 . We re not talking about December 12. 9 A. I m sorry. December 3rd. So I won t 10 eat up any more time. I m ust flipping through 11 it. I can t readily find December 3rd, but I do 12 have, on E hbit 3a, the statistical significance 13 on that date. And I did review Professor 14 Fischel s discussion and citations on this date. 15 . Did you review the Barron s and 16 Business Week articles 17 A. I believe so. 18 . And -- 19 A. My memory is certainly the Barron s 20 is discussed in Fischel. I reviewed a lot of 21 articles. I -- I -- I probably reviewed it. I 22 certainly reviewed it if it s discussed in 23 Professor Fischel, but I certainly reviewed this 24 date. 25 MR. FARINA: The lunch is here if you</p>

Page 225

1 reading from 10-K. We generally compete with
 2 banks, thrifts, insurance companies, credit
 3 unions, mortgage lenders and brokers, finance
 4 companies, securities brokers and dealers and
 5 other domestic and foreign financial institutions
 6 in the United States, Canada and the United
 7 Kingdom. So that s what it says. And I
 8 wouldn t change the wording of it.
 9 MR. FIT GERALD: I think you referred
 10 to E hibit 8. I think you meant E hibit 9.
 11 Otherwise, I don t want to interrupt.
 12 A. Oh, yeah. I thought you were directing
 13 me to the 10-K.
 14 . The 10-K, for the record, is E hibit 9.
 15 The article is E hibit 8.
 16 A. Okay.
 17 . You were discussing the 10-K in your
 18 last answer
 19 A. Correct. There might have been some
 20 confusion. I thought you were -- my
 21 understanding of the question was you were
 22 characterizing the 10-K.
 23 MR. FIT GERALD: I only interrupted,
 24 you referred to the wrong e hibit number it. You
 25 were reading from a document that was E hibit 9.

Page 227

1 do use S&P 500 financials, which as we discussed,
 2 includes these institutions. But it s important
 3 to include the consumer finance companies as
 4 well. And it s a better specified model.
 5 . And specifically, the consumer finance
 6 companies that CSFB selected. Right
 7 A. Correct.
 8 . What was your process for landing on
 9 that particular group of consumer finance
 10 companies
 11 A. Sure. So the process was, it was very
 12 important to me to use a third-party
 13 identification of comparables contemporaneous
 14 with the time period. Not to use -- not to be
 15 accused of constructing something for the
 16 purposes of litigation, but to use a third-party
 17 identifying of comparables during the relevant --
 18 contemporaneous with the -- with the time period
 19 at issue. So that was criteria one. Criterion
 20 one. The second criterion is consistent with the
 21 academic literature, and I ll e plain that in a
 22 minute, I went to the Institutional Investor
 23 magazine, which ranks analysts. I identified the
 24 star analyst, according to Institutional
 25 Investor magazine, for 2001. I m going to

Page 226

1 A. Okay.
 2 MR. FIT GERALD: You said you were
 3 reading from E hibit 8. And Mr. Brooks and I
 4 both understood that. We ust wanted the record
 5 to be clear.
 6 THE WITNESS: Okay. Sorry.
 7 MR. BROOKS: No.
 8 . So you re saying that when Household
 9 tells the market we generally compete with these
 10 lines of business, they re not saying that
 11 they re comparable to these lines of business.
 12 Is that your testimony is this is
 13 MR. FIT GERALD: Ob ection.
 14 . That s how I m quote mischaracterizing
 15 the document
 16 MR. FIT GERALD: Ob ection to form.
 17 A. Well, it doesn t say lines of business.
 18 It says different institutions they generally
 19 compete with. So that s -- that s what the
 20 document says.
 21 . Well, looking at the list in
 22 Household s 10-K, is there any one of these
 23 e amples that you think is not a comparable, in
 24 terms of their line of business
 25 A. I think that it s fine, and, in fact, I

Page 228

1 mispronounce the gentleman s name, but it s the
 2 person who produced or whose name is on the CSFB
 3 report. So was identified for 2001 as the star
 4 analyst, and I went to his report, where he
 5 identifies those firms. And the final thing I
 6 would note, which was important to my thinking,
 7 is that the academic literature regularly uses
 8 this source, the Institutional Investor
 9 magazine, to identify star analysts. And so I
 10 felt that was an ob ejective way to identify
 11 comparables.
 12 . Where in your report can I see that
 13 academic literature
 14 A. I don t cite the academic literature.
 15 It s ust something I m familiar with as general
 16 background information.
 17 . What literature are you referring to
 18 A. So I don t have article citations off
 19 the top of my head but there s a number of
 20 articles that cite, that use Institutional
 21 Investor magazine or this publication to
 22 identify the star analysts and do various types
 23 of analyses.
 24 So some papers look at, do the star analysts
 25 do a good ob predicting future, you know, the

Frank Ferrell, III

<p style="text-align: right;">Page 229</p> <p>1 future accounting returns or the future 2 performance of the firm at issue, in some sense. 3 So there s a number papers or -- that use that -- 4 that ranking for analytical purposes. 5 . So you relied on Institutional 6 Investor magazine. Why didn t you include it in 7 the documents that you relied on 8 A. I believe it is there. My memory is 9 it s there, in some form or another. I m sorry. 10 I m in the wrong document. That s -- my memory 11 is it was there, but I could be mistaken. 12 . Well, let s turn to -- 13 A. So it would be in the rebuttal. Oh, 14 no. Maybe it would be in the -- I think we have 15 to look at both. 16 . Why don t you take a look at Appendi B 17 to your original report. I don t see anything 18 about Institutional Investor magazine. Do you 19 agree that it s not there 20 A. Are you now -- 21 . My question was why don t you look at 22 Appendi B to your original report. I don t see 23 anything about Institutional Investor magazine. 24 Do you agree it s not there in the original 25 report, Professor</p>	<p style="text-align: right;">Page 230</p> <p>1 A. So I m not finding it here. My memory 2 was -- I thought it was contained somewhere here 3 in some form, but I m not seeing it right here, 4 right now. 5 . It s not in the rebuttal report, 6 either, is it 7 A. I m not finding it right now. 8 . Do you think that you cited the 9 academic articles that refer e perts to 10 Institutional Investor magazine in your 11 reports 12 A. No. I did not cite the academic 13 articles. So my testimony on that was that it s 14 ust my general background information. So I 15 would want to spend more time to confirm that 16 it s not here. So there s references to produced 17 files and so forth. But it is correct that, 18 sitting here right now, I don t -- I don t 19 readily -- I don t see it. 20 . So is it your testimony that the 21 academic literature refers to star analysts 22 selection of peer indices for e perts, in cases 23 like this one, to adopt a peer inde 24 A. That is not my testimony. 25 . Okay. What does the academic</p>
<p style="text-align: right;">Page 231</p> <p>1 literature that you can t tell us about 2 specifically -- withdrawn. 3 What does the academic literature that you 4 relied on but didn t disclose to us say that you 5 were relying on in going to Institutional 6 Investor magazine 7 MR. FIT GERALD: Ob ection to form. 8 A. Yeah. So I -- so I m not saying I 9 relied upon it. I m saying it s part of my 10 background knowledge. It s a publication that 11 ranks analysts. And I did use that to identify 12 this particular analyst. 13 So -- but in terms of the academic 14 literature, there s articles -- I don t have them 15 memorized, off the top of my head -- that use 16 that ranking to identify star analysts for 17 various purposes. 18 BY MR. BROOKS: 19 . None of those purposes are for 20 identifying a peer group. Correct 21 A. That, I don t know. I m not -- I m not 22 making that representation. 23 . Why did you try to identify the 24 star analyst 25 A. Because presumably the star analyst is</p>	<p style="text-align: right;">Page 232</p> <p>1 the best analyst, at least according to that 2 ranking. There s a number of analysts. And so 3 you would want some ob ective criteria -- 4 criterion to identify one of those analysts. 5 . Was this your idea or Cornerstone s 6 idea 7 A. It was my idea. 8 . What e ctly is the CSFB Specialty 9 Finance Inde 10 A. Well, it s a group of nine firms 11 identified, I believe, in a March 2001 12 publication -- let me ust make sure I m not 13 getting the date wrong -- that -- you know, that 14 are listed in that document, in the CSFB report. 15 . Is it a traded inde 16 A. Not to my knowledge. 17 (Sur-Rebuttal Report of Daniel 18 R. Fischel marked E hibit 10.) 19 MR. BROOKS: I m going to mark as 20 E hibit 10 Fischel s surrebuttal report. 21 THE WITNESS: Okay. 22 BY MR. BROOKS: 23 . E hibit 1 to this report -- 24 A. To the surreply. 25 . To the surrebuttal report. That s the</p>

Frank Ferrell, III

<p style="text-align: right;">Page 289</p> <p>1 I don t understand how Professor Fischel 2 would conclude that fraud, according to him, is 3 increasing the systemic risk, and, therefore, 4 affecting the beta. So it s very unclear to me 5 and puzzling what the theory is for why 6 firm-specific alleged corrective information 7 would manifest itself in a changed beta, which is 8 what the structural break is showing. 9 BY MR. BROOKS: 10 . Anything else 11 A. That s my general response. But I 12 would incorporate the analyses in my reports. 13 . You ve identified si general 14 categories of what you opine are company-specific 15 non-fraud negative news released during the 16 leakage period that may have impacted Household s 17 stock price. Right 18 MR. FIT GERALD: Ob ection to form. 19 A. I don t think I break it out into the 20 si categories, unless I m misremembering. I m 21 not saying that s inaccurate. I m ust saying 22 that s not how I bucketed the information. 23 Again, I m not saying it s an inaccurate, you 24 know, bucketing but it s not one that I deploy 25 in my report.</p>	<p style="text-align: right;">Page 290</p> <p>1 BY MR. BROOKS: 2 . You don t dispute that bucketing You 3 don t think it would be misleading Is that what 4 you re saying 5 A. I would need to review all the 6 non-fraud information that I point to and match 7 it up. 8 I would emphasize the most -- a very 9 important category would be subprime and nonprime 10 and the concerns that the market had during this 11 period in connection with Household s business. 12 . You re saying that -- 13 A. And I would also add the barring cost, 14 the reliance of Household on the commercial paper 15 market. 16 . So the concerns that the market had 17 about subprime and nonprime and the borrowing 18 costs are the two most significant factors. Is 19 that your opinion 20 MR. FIT GERALD: Ob ection to form. 21 A. I would say that was -- you know, 22 that s -- you know, sitting here, those are two 23 themes that come out of the market commentary. 24 But I would ust simply point to my reports, 25 where I identify on specific days non-fraud</p>
<p style="text-align: right;">Page 291</p> <p>1 information. And so that would be the most 2 complete characterization. 3 Those are ust two important themes that 4 come out of -- or two market concerns that are 5 reflected in the market commentary during this -- 6 during this period. 7 BY MR. BROOKS: 8 . So you haven t done anything to 9 quantify the dollar impact of any of these 10 concerns that you claim are company-specific, 11 non-fraud. Right 12 MR. FIT GERALD: Ob ection to form. 13 A. No. I have my E hibit 3a and 3b. 14 . E hibits 3a and 3b quantify the dollar 15 impact of the company-specific non-fraud 16 information 17 A. Oh, I misunderstood you. So those 18 e hibits are showing -- okay. So for the dates 19 in E hibit 3a and 3b, they re showing dates that 20 are statistically significant. And so for those 21 days, you would want to ask the question whether 22 there s, you know, non-fraud information or 23 corrective information. 24 . My question is whether you ve done 25 anything to quantify the impact of what you re</p>	<p style="text-align: right;">Page 292</p> <p>1 calling company-specific non-fraud information on 2 Household s stock during the disclosure period. 3 MR. FIT GERALD: Ob ection to form. 4 A. So an important piece of terminology, 5 company-specific I would define as residuals in a 6 model. And the residuals that I have in my 7 E hibit 3a and 3b, I do have residuals -- 8 statistically significant residuals in that. And 9 I do discuss, for e ample, on August 7th, on 10 September 16th, and on October 8th, whether those 11 residuals are e plainable by non-fraud 12 information. 13 BY MR. BROOKS: 14 . Is it your opinion that Household s 15 worsening credit quality was a company-specific 16 non-fraud factor that was impacting Household s 17 stock during the disclosure period 18 A. So I would refer to my specific 19 discussions of the -- you know, as a partial 20 answer to that, of the residuals in E hibit 3b. 21 So those would be days which are company-specific 22 in the sense that I m using the term and the 23 nature of the non-fraud information I identify on 24 those days. 25 I can t remember every day off the top of my</p>

Frank Ferrell, III

<p style="text-align: right;">Page 293</p> <p>1 head, but I would go to that as e amples of 2 company-specific, in the sense of a statistically 3 significant residual, that s e plainable by 4 non-fraud information. 5 . So why don t you turn to Paragraph 62 6 of your original report. 7 (Witness complies.) 8 A. Okay. I m there. Is this the 9 January 28th I ust want to make sure I m at 10 the right place. 11 . January 28th. Right. 12 A. Okay. 13 . This is one of those dates that was 14 statistically significant under Professor 15 Fischel s analysis. Right 16 A. Correct. 17 . And you found that there were 18 company-specific, non-fraud disclosures that 19 contributed to the decline. Right 20 A. I have to review to refresh my 21 recollection. 22 Okay. Could you repeat the question. 23 . You found that there were firm-specific 24 non-fraud disclosures on this date that 25 contributed to the decline. Correct</p>	<p style="text-align: right;">Page 294</p> <p>1 A. That s not -- that s actually not 2 accurate. So in this report, my initial report, 3 I said may have. In the second report, I 4 quantify it. 5 So I want to be very clear here. So for 6 firm-specific non-fraud in this report, the 7 initial report is firm-specific, non-fraud in the 8 conte t of Fischel s regression. So he has a 9 statistically significant residual on this date. 10 And the question is, in his residual, given his 11 model, is there firm-specific, non-fraud 12 information. 13 Now, when you properly control, you have a 14 properly specified model, it s not statistically 15 significant, proving or establishing that what I 16 identified as firm-specific, non-fraud 17 information in the conte t of Fischel s model is 18 accurate. 19 . Doesn t the fact that it s not 20 statistically significant show that, under your 21 model, it was industry factors that caused the 22 decline 23 A. Yes. But, again, what -- this is a 24 very important point. What I m saying is, in 25 Professor Fischel s model, there s a</p>
<p style="text-align: right;">Page 295</p> <p>1 statistically significant residual on this day. 2 Okay. And in this initial report, I m pointing 3 out, on this date, that, in his model, in his 4 residual, there s non-fraud, firm-specific 5 information that s in his residual. And then I 6 discuss that. 7 In a properly specified model, when you -- 8 which controls for some credit card issues, 9 subprime, as reflected in the CSFB, it s no 10 longer statistically significant. So that proves 11 that in his residual, there was non-fraud 12 information that s removed -- that s being 13 removed by the corrective model. 14 . What it proves is that the information, 15 at least if you re right, was not 16 company-specific. Right Because when there s 17 no statistically significant decline, that means 18 that it was not company-specific information that 19 caused the decline. Isn t that right 20 MR. FIT GERALD: Ob ection to form. 21 A. This is missing a very important point, 22 which is company-specific, as I define it, and as 23 is relevant in this case, you know, in assessing 24 Professor Fischel s reports, means the residual 25 in a model.</p>	<p style="text-align: right;">Page 296</p> <p>1 So the -- so it s the -- there s a 2 firm-specific effect in his model on 3 January 28th. You re right, in my model there s 4 no longer a firm-specific effect, and that is 5 proof that what he is labeling a firm-specific 6 effect that s fraud -- that s caused by fraud or 7 fraud information is, in fact, ust capturing 8 industry information in a better specified model. 9 BY MR. BROOKS: 10 . Using your -- 11 A. I have a discussion of this in the 12 report that I can find, if that would be helpful. 13 . Including your inde that you claim has 14 a tighter peer group, but leaving all the other 15 specifications the same, Professor Fischel found 16 that it didn t impact his statistically 17 significant -- 18 MR. FIT GERALD: Ob ection to form. 19 BY MR. BROOKS: 20 . -- dates. Isn t that right 21 A. So are you saying that when he includes 22 my peer inde in his estimation window that 23 January 28th remains statistically significant 24 . Isn t that what he s found 25 A. I don t recall that specifically. I</p>

EXHIBIT 2

HOUSEHOLD ^o/₂₂ Kathleen K. Curtin
08/15/2002 09:28 AM

To: Lisa M. Sodeika/US/Household@HFN, Megan E Hayden/US/Household@HFN, James B Kauffman/US/Household@HFN, Mark F. Leopold/US/Household@HFN, Kenneth H. Robin/US/Household@HFN, Thomas M. Detelich/US/Household@HFN, Robin L. Allcock/US/Household@HFN, cmurphy@mwe.com, ddunne@hewm.com, gboudreaux@boudreauxleonard.com, nhartigan@mwe.com, gretchen@nwstrategies.net, clipsett@wilmer.com

cc:
Subject: Multistate Working Group Reply to HFC

— Forwarded by Kathleen K. Curtin/US/Household on 08/15/2002 09:24 AM —



"Huey, David (ATG)"
<DavidH3@ATG.WA.GOV>
08/14/2002 04:17 PM

To: "Kathleen K. Curtin (E-mail)" <kkcurtin@household.com>
cc: "O'Heame, Carla (ATG)" <CarlaO@ATG.WA.GOV>, "Alvin. Narin (E-mail)" <alvin.narin@banking.state.ny.us>, "Apolidori (E-mail)" <apolidori@fin.state.id.us>, "Barbara. Kent (E-mail)" <Barbara.Kent@banking.state.ny.us>, "blanchardje@ag.state.mi.us" (E-mail)" <blanchardje@ag.state.mi.us>, "Bruce Benjamin (E-mail)" <benjamin.bruce@oag.state.ny.us>, "Chuck Cross (E-mail)" <CCross@DFI.WA.GOV>, "Dan Gallatin (E-mail)" <Dan.Gallatin@state.mn.us>, "David Borsykowsky (E-mail)" <dborsykowsky@alg.state.vt.us>, "ebony_calloway@oag.state.fl.us" (E-mail)" <ebony_calloway@oag.state.fl.us>, "Herschel Elkins (E-mail)" <elkinsh@hdcdojnet.state.ca.us>, "Jacobcar (E-mail)" <jacobcar@law.dol.tps.state.nj.us>, "James Daross (E-mail)" <james.daross@oag.state.tx.us>, "James Jeffries (E-mail)" <jeffriesjd@doj.state.wi.us>, "Judith Whiting (E-mail)" <Judith.whiting@ago.state.ma.us>, "Kathleen Keest (E-mail)" <kkeest@ag.state.ia.us>, "Ken. Bielemeier (E-mail)" <ken.bielemeier@banking.state.ny.us>, "Larry. Brya (E-mail)" <byral@michigan.gov>, "Lisa Landau (E-mail)" <lisa.landau@oag.state.ny.us>, "Lorrie Adeyemi (E-mail)" <lorrie.adeyemi@po.state.ct.us>, "M Ziegler (E-mail)" <Mziegler@ag.state.oh.us>, "Mark Fleischer (E-mail)" <mark.fleischer@oag.state.ny.us>, "mlarsen@fin.state.id.us" (E-mail)" <mlarsen@fin.state.id.us>, "regina.hart@dc.gov" (E-mail)" <regina.hart@dc.gov>, "Richard Tynia (E-mail)" <tynia.richard@oag.state.ny.us>, "Rick Word (E-mail)" <rword@ago.state.nm.us>, "Robyn. Smith (E-mail)" <Robyn.Smith@doj.ca.gov>, "Sandra Kane

Case # 02-C-5893
Jaffe v. Household
Plaintiffs' Exhibit
P0550

CONFIDENTIAL

SODEIKA
DEP. EXH. # *66*
Date: *6-6-06* *AD*

HHS 02933754



(E-mail)" <sandra.kane@AG.STATE.AZ.US>,
"Scott Borchert (E-mail)"
<Scott.Borchert@state.mn.us>, "Swojciechowski
(E-mail)" <swojciechowski@atg.state.il.us>,
"Timothy Winslow (E-mail)"
<Timothy.Winslow@dfi.com.state.oh.us>, "Tom
James (E-mail)" <TJAMES@atg.state.il.us>,
"Wendy Weinberg (E-mail)"
<Wendy.Weinberg@dc.gov>, "Youngsha
(E-mail)" <youngsha@law.dol.lps.state.nj.us>

Subject: Multistate Working Group Reply to HFC

Attached is my letter to you and the Reply of the Multistate Working Group to HFC's Response of July 17. Please note that Attachment B to the Reply, a copy of the HUD letter to Washington DFI, is not being sent electronically.

<<Reply cover letter 8-14-02.doc>> <<Reply to HFC 8-14-02.doc>>

Dave Huey
Assistant Attorney General
Consumer Protection Division
Washington Attorney General's Office
1019 Pacific Avenue, 3rd Fl.
Tacoma, WA 98402-4411
253-593-5057



- Reply cover letter 8-14-02.doc



- Reply to HFC 8-14-02.doc

CONFIDENTIAL

HHS 02933755

CONFIDENTIAL FOR SETTLEMENT DISCUSSION PURPOSES ONLY

August 14, 2002

Kathleen Curtin
Vice President, General Counsel
HFC/Beneficial
2700 Sanders Road
Prospect Heights, IL 60070

Via E-mail: kkcurtin@household.com
and Federal Express Mail to K.Curtin

Re: Household Finance Corporation

Dear Kay:

Thank you for your letter of July 17, and for the responses to the data request.

At our meeting on July 9, Household stated on several occasions that "everything was on the table," in terms of trying to reach a settlement on concerns raised by the states. At the same time, however, Mr. Robin also prefaced Household's response with the observation that problems can arise if the states do not understand what your company does and why it does it, with respect to some of the questioned practices. He expressed a hope that, after hearing Household's explanations, the states might reconsider their joint position. The letter of July 17 appears to be primarily an elaboration of those explanations.

Household's hope that the states would reconsider their position that some of Household's practices are problematic is understandable. However, we believe that your company may have underestimated our understanding of how its practices are actually implemented where it counts – at the interface with your customers. The explanations and rationales Household articulated on July 9 and in the July 17 letter have not given us any reason to reconsider our position that the practices we earlier identified present serious problems under a variety of consumer protection and regulatory laws. Further, the responses provided no information which has led us to change our position that those identified practices warrant changes in the future, and relief for Household's customers who suffered from them in the past.

CONFIDENTIAL

HHS 02933756

Kathleen Curtin
Vice President, General Counsel
HGC/Beneficial
August 14, 2002
Page 2

CONFIDENTIAL FOR SETTLEMENT DISCUSSION PURPOSES ONLY

We continue to believe that the framework for injunctive and restitutionary remedies we outlined on July 9 is an appropriate one.

In the attached response, we will spell out in greater detail than the written outline given you on July 9 some of what we have learned about your practices and how we believe they fare under the law. However, we do not believe that an extended legal debate would be of much use to either Household or the states, given the stated goal of reaching a resolution by September 30, 2002. We cannot assure the confidentiality of these negotiations beyond that date, as some jurisdictions have been withholding action as it is, and cannot justify further delay absent substantial progress toward resolution.

Consequently, the ultimate conclusion of this letter is that the states reiterate that they believe the positions articulated on July 9 represent an appropriate framework for relief. We certainly understand that negotiation is a process, and are certainly willing to engage with Household in that process. But Household has given us no reason to remove any item from our list of concerns at the outset.

We had hoped that the July 17 letter would have been more responsive to the proposed framework for settlement, rather than purely defensive. Indeed, the letter seems to indicate a continued denial concerning what we have found to be nationwide common practices. While Household might like to maintain the belief that these are isolated instances with "rogue" offices and loan officers, the coast-to-coast usage of common forms and sales techniques belie any such position.

In only a few instances did Household make reference, usually indirectly, to our proposals for injunctive relief, by listing a few prospective changes in practice. In no case did Household provide any specific response to our proposed restitutionary remedies. In short, the letter failed to indicate any meaningful movement on Household's part.

In our reply, we note in each section some of our very rough estimates of the value of restitution for certain of the proposed remedies, based on the volume of information Household provided. Undoubtedly you have made such calculations of your own. As we explained when we made the request, the information sought was intended just to give us some ballpark figures. Should Household be serious about engaging in meaningful negotiations with the states, more precise calculations about the value of each component of restitution or reformation would, of

Kathleen Curtin
Vice President, General Counsel
HGC/Beneficial
August 14, 2002
Page 3

CONFIDENTIAL FOR SETTLEMENT DISCUSSION PURPOSES ONLY

course, form an integral part of the negotiations. These figures are, to put it mildly, large. Yet we note that several of the most insidiously deceptive sales practices which attracted regulatory attention to Household practices at the outset relate to products and practices initiated by Household in 1999. Industry figures indicate that since 1999, Household's originations have nearly doubled.¹ Almost assuredly, the misleading sales practices the states have identified have contributed to that growth. Ultimately, the value of restitution and reformation must be viewed against that backdrop.

We understand that you anticipate providing us with an additional response regarding restitution by August 16. Once we have reviewed that additional response, we will contact you regarding the course of further negotiations.

Thank you for your consideration in this matter.

Very truly yours,

DAVID W. HUEY
Assistant Attorney General
On Behalf of the Multi-State
Working Group

DWH:co
Enclosure
Cc: Multi-State Group (regular mail)

¹ According to various editions of *Inside B & C Lending*, Household's originations are on track nearly to double from 1999 to the end of 2002. Originations in 1999 were reported at \$12.4 billion, and, based on 2002's first quarter performance, are on track for an estimated 2002 figure of \$22.8 billion. See *Inside B & C Lending*, 3/19/01; 2/11/02; 5/20/02.

items

CONFIDENTIAL

HHS 02933758

EXHIBIT 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) March 16, 2009

Defendants.) 2:20 o'clock p.m.

9 VOLUME 3
10 TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE
 BEFORE THE HONORABLE RONALD A. GUZMAN

11
12 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &
 ROBBINS LLP

14 BY: MR. SPENCER A. BURKHOLZ
 MR. MICHAEL J. DOWD
15 MR. DANIEL S. DROSMAN
 MS. MAUREEN E. MUELLER
16 655 West Broadway
 Suite 1900
17 San Diego, California 92101
 (619) 231-1058

18 COUGHLIN STOIA GELLER RUDMAN &
19 ROBBINS LLP

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

24

25

1 APPEARANCES: (Continued)

2 For the Plaintiff: MILLER LAW LLC
BY: MR. MARVIN ALAN MILLER
3 115 South LaSalle Street
Suite 2910
4 Chicago, Illinois 60603
(312) 332-3400

5 For the Defendants: CAHILL, GORDON & REINDEL LLP
6 BY: MR. THOMAS J. KAVALER
MS. PATRICIA FARREN
7 MR. DAVID R. OWEN
MS. JANET A. BEER
8 MR. JASON M. HALL
MR. JOSHUA M. NEWVILLE
9 MS. KIM A. SMITH
MS. SUSAN BUCKLEY
10 80 Pine Street
New York, New York 10005
11 (212) 701-3000

12

13

14

15

16

17

18

19

20

21

22 Court Reporter: NANCY C. LaBELLA, CSR, RMR, CRR
Official Court Reporter
23 219 South Dearborn Street
Room 1222
24 Chicago, Illinois 60604
(312) 435-6890
25 Nancy_LaBella@ilnd.uscourts.gov

1 THE CLERK: 02 C 593, Jaffe vs. Household

2 International.

3 THE COURT: Good afternoon, everyone.

4 What do you suggest we proceed to next?

5 MR. DOWD: Your Honor, it depends what the Court's

6 pleasure is. I mean, if you want, I guess we've gotten

7 through, it appears to me, the plaintiffs' motions in limine

8 and I think we're at the defendants' motions in limine at this

9 point.

10 THE COURT: I think we can probably go beyond those.

11 They are being worked on right now. And, then, when and if I

12 need further discussion on them, we will bring them up.

13 I was startled to find out this weekend that I do not

14 have the deposition transcripts. I have designations in the

15 Final Pretrial Order, but the actual transcripts I do not

16 have, which prevented me from working on the objections.

17 Is that your understanding?

18 MR. DOWD: I'll let Mr. Brooks on my side address

19 that.

20 THE COURT: Sure.

21 MR. BROOKS: Yeah, it is our understanding, your

22 Honor. We understood from, I think -- we had a mutual

23 understanding -- that the portions that had been designated

24 would be submitted to the Court.

25 We can get the depositions that have been designated

1 to the Court this afternoon, if you'd like.

2 THE COURT: Well, the portions that have been
3 designated, I do not have. All I have is a grid -- a table --
4 in the Final Pretrial Order.

5 MR. BROOKS: I believe we submitted the portions --
6 Was it last Thursday or was it earlier, Josh?

7 MR. NEWVILLE: Josh Newville for the defendants.

8 We submitted the three deposition transcripts we had
9 designated from on Tuesday morning.

10 THE COURT: Tuesday morning?

11 MR. NEWVILLE: Yeah.

12 THE COURT: Well, I have to tell you I have
13 scoured -- we managed to lose them, then, I guess, because I
14 have scoured -- my chambers and I have not been able to find
15 either yours or theirs.

16 And I assume that they were color coded?

17 MR. NEWVILLE: Yes.

18 MR. BROOKS: That's right, your Honor.

19 And I believe that we sent over a disk earlier today
20 containing those, as well.

21 We brought physical copies either early last week or
22 late the week before.

23 THE COURT: Well, we can sure check the disk.

24 The disk was the disk with the Final Pretrial Order?

25 MR. BROOKS: It was a disk that we submitted today.

1 We -- so, we -- e-mailed, pursuant to your request last

2 Friday, everything in the Final Pretrial Order --

3 THE COURT: The Final Pretrial Order --

4 MR. BROOKS: -- except for those, because they were

5 so large. And, then, we submitted the disk today.

6 We didn't have any understanding that the Court

7 hadn't gotten our color codes.

8 THE COURT: Okay.

9 Well, let us see what we have on disk.

10 (Brief pause.)

11 THE COURT: Okay.

12 We do have the Final Pretrial Order. And I take it

13 the files -- the other files -- included there are the

14 deposition designations of Charles Cross, Helen Markell,

15 Dennis Hueman, Kenneth Walker and Todd May, Paul Makowski and

16 Walter, it looks like, Lewis.

17 Would that be correct?

18 MR. BROOKS: Lew Walter.

19 THE COURT: Lew Walter?

20 MR. BROOKS: Lewellyn Walter.

21 THE COURT: Okay. All right.

22 Well, we can work off of that.

23 MR. BROOKS: If you'd like the hard copy, Judge, I

24 have one here that we just brought for the hearing.

25 I'm looking at the date of the revised designations.

1 I guess we sent them over on the 9th; but, if the

2 Court wants another copy, we have them here.

3 THE COURT: Well, maybe I can work --

4 MR. BROOKS: So you do you not have to print them out

5 and organize them. They're all --

6 THE COURT: We will not print them out, but I may be

7 able to work with it electronically.

8 Let us see what happens if we open one of these up.

9 (Brief pause.)

10 THE COURT: It seems to be coming up.

11 (Brief pause.)

12 THE COURT: The question is how quickly we would be

13 able to navigate.

14 Well, let us try it.

15 (Brief pause.)

16 THE COURT: Why do we not pull up the deposition

17 transcript of Mr. Makowski; and, if I am reading this screen

18 correctly, the first challenged designation is on Page 3.

19 Is that correct?

20 MR. BROOKS: For Mr. Makowski, your Honor?

21 THE COURT: Yes.

22 MR. BROOKS: It would be probably Page 3, the third

23 page of the PDF.

24 THE COURT: Yes.

25 MR. BROOKS: Page 8 of the deposition.

1 THE COURT: Page 3, the videographer's statement.

2 MR. BROOKS: Correct.

3 THE COURT: Okay.

4 Well, let us go through these. Maybe we can get it
5 done this way, rather than with a hard copy.

6 MR. BROOKS: Okay.

7 THE COURT: All right?

8 Okay. What is the problem with the videographer's
9 statement?

10 MR. BROOKS: Well, we just do you not think it's
11 necessary, your Honor. We assume that when we put the
12 depositions on, someone will say, "This is the deposition of,"
13 so and so; and, to play it on video, to us, just seems
14 redundant.

15 This is one of their counter-designations to our
16 designations.

17 THE COURT: Okay.

18 Is it redundant? Do you need this?

19 MR. NEWVILLE: Your Honor, we just thought there
20 should be some description of when and where the deposition
21 took place, in order to provide context for the deposition.

22 It can be done a number of ways. We thought one
23 would be to read the introductory statement for the
24 deposition.

25 THE COURT: Okay.

1 I think we can probably take care of that in court
2 before the designations are played. That has the added safety
3 of making sure that what is said is appropriate and not some
4 inadvertent misstatement or something objectionable from a
5 third party that may not realize what they are doing.

6 So, we will, I guess, sustain the objection to that,
7 if we can call it that.

8 The next is Page 4, Line 15.

9 MR. BROOKS: I guess, again, Judge, the same thing
10 would apply. You know, it's just all part of the introductory
11 material.

12 We thought we'd have a quick introduction and start
13 from there, but we can withdraw this objection, your Honor.

14 THE COURT: Okay. That objection is withdrawn. That
15 should be read.

16 Line 24, there is an objection to that, as well.

17 MR. BROOKS: We'll withdraw that, too, your Honor.

18 THE COURT: Very well.

19 That objection is withdrawn, so that the questions
20 regarding name and present employment will be read into the
21 record and the answers.

22 The next objection is Page 6.

23 MR. BROOKS: I believe that's defendants' objection,
24 Judge.

25 THE COURT: Uh-huh.

1 MR. NEWVILLE: This is Page 14, Lines 10 through 13.

2 THE COURT: I have Page 6, Lines 10 through 13.

3 MR. BROOKS: Your Honor, the cuts that we gave you --
4 just so everybody's clear -- contain only the pages that have
5 objections to them.

6 THE COURT: So, that is why I have Page 6 --

7 MR. BROOKS: Correct.

8 THE COURT: -- and the pagination in the actual
9 transcript will be 14?

10 MR. BROOKS: That's right, your Honor.

11 THE COURT: All right.

12 You will forgive me. All I have before me is the
13 electronic designations.

14 MR. BROOKS: We'll let you know what page we're
15 talking about. If it's my objection, I'll let you know. And,
16 if not, I suppose Josh will let you know.

17 THE COURT: Okay.

18 MR. NEWVILLE: In any event, we do not have an
19 objection to this testimony. The only objection was the
20 failure to designate the introductory material before this.

21 THE COURT: Okay.

22 So, that objection is withdrawn, as well?

23 MR. NEWVILLE: Yes. We do not have an objection to
24 that.

25 THE COURT: Okay.

1 The next objection is, I guess, what I have as Page 8
2 for me.

3 MR. BROOKS: It looks like this --

4 THE COURT: You folks have "26" --

5 MR. BROOKS: Correct.

6 THE COURT: -- is that correct?

7 All right.

8 MR. BROOKS: Your Honor, we just object to this.
9 This is a counter-designation by defendants and we do not
10 believe that it's necessary to the information that it has
11 been designated against.

12 THE COURT: I am not sure what that means.

13 MR. BROOKS: It's irrelevant to the designation that
14 we've designated, your Honor. And, so, that's our objection.

15 MR. NEWVILLE: Your Honor, the designated testimony,
16 which is on the next page, concerns an e-mail; and, in
17 fairness, the testimony by the witness is stating that he
18 doesn't remember the e-mails at all, should be read.

19 THE COURT: I will allow the designation.

20 What is next?

21 MR. NEWVILLE: The next section where we've objected
22 to is Page 27 of the deposition transcript, Lines 18 through
23 22.

24 I'm not quite sure which page it is on your --

25 THE COURT: It does not matter. I have it. Go

1 ahead.

2 Why are you objecting to this?

3 MR. NEWVILLE: The objection is lack of personal
4 knowledge under 602.

5 We've also asserted an objection under 403 on the
6 grounds that this is an e-mail that the witness did not
7 remember and counsel for the plaintiffs is just reading an
8 e-mail and making a characterization of it into the record.

9 THE COURT: Okay.

10 Your response?

11 MR. BROOKS: My response, your Honor, is that this is
12 an e-mail, I believe, to the witness; and, despite the fact
13 that he didn't have any recollection of it at his deposition,
14 we were entitled to question him on the contents of the
15 e-mail; and, as we get further into it, to have testimony
16 about, you know, what the e-mail said and what his reaction
17 was it to it.

18 THE COURT: Okay.

19 Your objection, again, is, what?

20 MR. NEWVILLE: The objection is lack of personal
21 knowledge as to what Mr. Schoenholz meant when he wrote the
22 e-mail; and, also, improper questioning.

23 Basically, it's just testimony by counsel for the
24 plaintiffs reading and characterizing the e-mail.

25 THE COURT: Is the e-mail in evidence?

1 MR. BROOKS: It's on our exhibit list, your Honor.

2 THE COURT: That is not what I asked you.

3 Is there an objection to this e-mail?

4 (Brief pause.)

5 MR. NEWVILLE: We do not have an objection to this
6 exhibit.

7 THE COURT: Well, if I remember correctly, according
8 to our standing order in this district, if an exhibit is not
9 objected to in the Final Pretrial Order, it's considered
10 admitted in evidence. So, we are talking now about an
11 exhibit -- this e-mail -- by the way, is there a designation
12 in this transcript as to what the exhibit is?

13 MR. BROOKS: There is, your Honor. It's Exhibit No.
14 2.

15 THE COURT: Okay.

16 MR. BROOKS: Exhibit No. 2 to the Makowski
17 deposition.

18 THE COURT: And this exhibit is in evidence, which
19 means that, for the most part, anyone can testify -- anyone
20 can publish the contents of the exhibit to the jury and anyone
21 can be asked to comment upon or explain the contents.

22 The witness' answer that he does not recall does not
23 make the question objectionable. It just means he does not
24 recall. That is his best answer.

25 So, the objection is overruled.

1 Next?

2 MR. NEWVILLE: I believe that leads into the
3 objected-to testimony on the next page, which is Page 28 of
4 the transcript, Lines 5 through 12.

5 The objection here is relevance. What a witness does
6 or does not recall as to a hypothetical question by
7 plaintiffs, years after the events at issue, we contend, is
8 not relevant to the issues in this case.

9 MR. BROOKS: One of their defenses on the re-aging,
10 your Honor, is that the re-ages increase the cash flow.

11 And NPV here, as Mr. Makowski discussed in his
12 deposition, is "Net Present Value" and it relates to cash
13 flow. And the question is does he, the Chief Credit Risk
14 Officer at the company, recall any testing before they went
15 out and made false and misleading statements, we would say,
16 about the reasons for their re-aging, as to whether it
17 actually did increase cash flow.

18 Of course, he couldn't remember any testing. And,
19 so, we would like to get that testimony in.

20 THE COURT: It sounds relevant to me.

21 Why are you objecting, again?

22 MR. NEWVILLE: Your Honor, I believe that -- I
23 believe the difference here is we have not designated
24 affirmative testimony, to my understanding, from Mr. Makowski
25 based on, you know, whether Household had analyzed the

1 economic and net present value.

2 THE COURT: And?

3 MR. NEWVILLE: And his -- therefore, his -- lack of
4 recollection years after the fact about what happened is not a
5 relevant issue in the case.

6 THE COURT: Because you did not designate his
7 testimony?

8 MR. NEWVILLE: Your Honor, we haven't put at issue
9 Mr. Makowski's knowledge or recollection regarding any
10 analysis of the net present value. That's our response.

11 THE COURT: Okay. I think I understand that.

12 Go ahead.

13 MR. BROOKS: Well, although they may not have put it
14 at issue, Household went out and told the market that they --

15 THE COURT: They are Household; are they not?

16 MR. BROOKS: They are Household.

17 THE COURT: Okay.

18 MR. BROOKS: But I don't know if they're going to
19 introduce this evidence and I'm not sure exactly what
20 Mr. Newville is referring to when he said they haven't put it
21 at issue. But it's at issue at the April 9th Financial
22 Relations Conference. Mr. Schoenholz stood up and said, "We
23 do this to increase cash flow." It's one of the defenses in
24 the case.

25 THE COURT: Well, he may be saying that they are no

1 longer arguing that.

2 Are you arguing that the re-aging is not done to

3 increase cash flow?

4 MR. NEWVILLE: Are we arguing that re-aging --

5 THE COURT: Are you taking back the argument that the

6 re-aging is done in order to increase cash flow?

7 MR. NEWVILLE: No, we're not taking back that

8 argument.

9 THE COURT: So, if that is your argument, then --

10 that question is at issue in this case, correct?

11 So, the question then becomes: Why is this witness

12 not a proper witness to ask that question of? Because this

13 relates to that, right? It relates to whether your client

14 actually did this analysis, correct?

15 MR. NEWVILLE: Yes, your Honor.

16 THE COURT: So, is this witness an appropriate

17 witness to ask that question of?

18 MR. NEWVILLE: Yes, we'd agree that he is.

19 THE COURT: Okay.

20 Then I will overrule the objection.

21 Go on to the next one.

22 MR. BROOKS: The next I have, your Honor, is on Page

23 36, starting at Line 18, going through Page 37, 16.

24 And there are defendants' objections to some of the

25 testimony.

1 MR. NEWVILLE: Right. Our objection to --

2 THE COURT: Give me just a second. Let me just read

3 this, again.

4 (Brief pause.)

5 THE COURT: Okay. Go ahead.

6 MR. NEWVILLE: Your Honor, defendants will withdraw

7 the objection to Page 36, Lines 22 through Line 1.

8 We have an objection on Page 37, Lines 6 through 16,

9 based on the question. It's a compound question.

10 MR. BROOKS: It's only one question that I see, your

11 Honor, and that is: "Was this question about two payments or

12 one payment re-age ever answered?"

13 And his answer was, "I don't recall."

14 THE COURT: And your objection is that the question

15 is compound?

16 MR. NEWVILLE: The objection is the question is

17 compound and confusing; and, that counsel has loaded a

18 question with a variety of assumptions; asked the witness

19 whether he recalls this ever being done; and, the witness --

20 you know, the witness -- doesn't recall. So, we believe it's

21 a confusing and compound question.

22 MR. BROOKS: The assumptions, for what it's worth,

23 your Honor -- that Mr. Newville is characterizing -- are, of

24 course, contained within the e-mail, which is Exhibit 5, we

25 would fully intend to show to the jury as we're showing this

1 testimony.

2 THE COURT: What does the e-mail say?

3 He is entitled to read or summarize accurately the
4 content of the document and ask the witness if that is what he
5 did or said. If the content of the e-mail, itself, is
6 confusing, but the e-mail is in evidence and has been tied to
7 the deponent, then it is not a problem.

8 What does the e-mail say?

9 I mean, are you objecting because you think the
10 question improperly characterizes the content of the e-mail or
11 do you think that the e-mail, itself, is confusing?

12 MR. NEWVILLE: Our objection is that the question is
13 confusing. The e-mail, itself --

14 THE COURT: Does the e-mail ask, "What would be the
15 impact on customer management and on financial reporting if we
16 went to a two-payment re-age policy for all customers, or at
17 least for separate -- for repeat -- re-age customers that have
18 been 90 days?"

19 MR. NEWVILLE: Yes, your Honor. The question --

20 THE COURT: It says that?

21 MR. NEWVILLE: The question accurately summarizes the
22 e-mail.

23 THE COURT: So, this witness actually wrote that?

24 MR. NEWVILLE: This witness wrote the e-mail.

25 THE COURT: Okay.

1 The objection is overruled. He can ask the question.

2 What is next?

3 MR. BROOKS: Your Honor, the next is on Page 39,
4 Lines 17 through 23, and we objected to this as, again, it
5 does not relate to the testimony that we have designated; and,
6 also, it just starts out with, "One way they could become
7 aware of this is if they had been re-aged previously,
8 correct?"

9 It just starts out as a non sequitur, Judge.

10 MR. NEWVILLE: Your Honor, I think we can short-
11 circuit this. Defendants will withdraw their designation of
12 Lines -- of Page 39, Lines -- 17 through 23.

13 THE COURT: Very well.

14 Now, I think we started in at Line 24?

15 MR. NEWVILLE: Line 24, the objection is similar to
16 the objection we had to the prior testimony in this exhibit;
17 and, with your Honor's guidance as to the last question,
18 defendants will withdraw the objection to this testimony.

19 THE COURT: Very well.

20 Next?

21 MR. BROOKS: The next, your Honor, is testimony
22 designated by the defendants starting with Exhibit No. 7 on
23 Page 42. And our objection is that the counter-designations
24 are unnecessary and unrelated to our designations.

25 MR. NEWVILLE: We believe that the witness' testimony

1 that he has no recollection about a document that counsel is
2 asking him about is a legitimate fairness designation to the
3 testimony.

4 THE COURT: So, this is in response to the question
5 asked about the e-mail, to which he answered, "I don't
6 recall"?

7 MR. NEWVILLE: This is a -- the designated testimony
8 by plaintiffs is on the two pages after this designation.

9 THE COURT: Well, what is it?

10 Well, better yet, why do we not go to -- let us go to
11 -- the designated portion of the plaintiffs'.

12 That is at what page?

13 MR. NEWVILLE: Page 44 in the transcript.

14 THE COURT: Starting at 13?

15 MR. NEWVILLE: The objected-to portion starts at Line
16 13, your Honor.

17 THE COURT: Okay.

18 MR. NEWVILLE: This particular exhibit is on
19 plaintiffs' exhibit list. Defendants have asserted a variety
20 of objections to the exhibit; and, based on our investigation,
21 this exhibit did not come from the witness' files. And the
22 pages of the exhibit that counsel is asking the witness were
23 not on a copy of the document that --

24 THE COURT: What is Exhibit No. 7?

25 MR. BROOKS: Exhibit No. 7, your Honor -- if I'm

1 recalling correctly -- is a -- are some typewritten notes that

2 refer to Mr. Makowski. And they are -- and the notes discuss,

3 again --

4 THE COURT: Wait, they are typewritten notes?

5 MR. BROOKS: Correct.

6 THE COURT: Typed by, whom?

7 MR. BROOKS: We do not know, Judge.

8 MR. NEWVILLE: This document came from the files of

9 Dan Pantelis.

10 THE COURT: And who is Dan Pantelis in this case?

11 MR. NEWVILLE: He's another employee in the corporate

12 headquarters of the company.

13 MR. BROOKS: He reports directly to Mr. Makowski,

14 your Honor.

15 THE COURT: All right.

16 So, you have his notes and you are asking this

17 witness to -- well, first of all, Exhibit No. 7 is being

18 objected to; is that correct?

19 MR. BROOKS: That's correct, your Honor.

20 MR. NEWVILLE: Yes.

21 THE COURT: Okay.

22 What is the objection to Exhibit No. 7?

23 MR. NEWVILLE: The objections are hearsay; lacks

24 authentication --

25 THE COURT: I am sorry, hearsay and what else?

1 MR. NEWVILLE: Hearsay and that the exhibit lacks
2 authentication.

3 THE COURT: Lacks authentication? Okay.

4 How did you get the exhibit?

5 MR. BROOKS: It was produced by defendants, your
6 Honor.

7 THE COURT: Why does it lack authentication if you
8 produced it?

9 MR. NEWVILLE: The authentication objection refers to
10 the handwriting on the document.

11 MR. BROOKS: And I don't believe any of the questions
12 that we asked relate to the handwritten notes, Judge.

13 THE COURT: Well, let me ask you this: Is there a
14 question as to whether this exhibit was created by an employee
15 of Household?

16 MR. NEWVILLE: There's no question on that.

17 THE COURT: So, the issue is which employee?

18 MR. NEWVILLE: The issue is this was a document
19 created by another employee. It wasn't created by this
20 particular witness.

21 The objection to the testimony on Lines 13 through
22 Page 45, Line 6 --

23 THE COURT: I am still back on the exhibit. I am
24 trying to understand.

25 So, you are offering this exhibit in evidence. What

1 foundation did you lay?

2 MR. BROOKS: With this witness, your Honor?

3 THE COURT: With any witness.

4 Or what foundation do you expect to lay?

5 MR. BROOKS: Well, we are calling Mr. Pantelis as a
6 witness in this case, Judge.

7 THE COURT: Okay.

8 And has he been asked about this in the deposition?

9 MR. BROOKS: He has not.

10 THE COURT: Is it your belief that this is his
11 handwriting -- that this is his note?

12 MR. BROOKS: Judge, I believe, since it was produced
13 from his files, that it likely was his note.

14 THE COURT: It is produced from his files and there
15 is no argument that it was produced by someone within the
16 corporation. So, why is this not an admission?

17 MR. NEWVILLE: Your Honor, the actual document,
18 itself?

19 THE COURT: Uh-huh.

20 MR. NEWVILLE: I believe that if it's within the
21 scope of Mr. Pantelis' job responsibilities and if he created
22 the document, it would be an admission.

23 THE COURT: It is within the scope; is it not?

24 MR. NEWVILLE: Excuse me, your Honor?

25 THE COURT: It is within the scope; is it not?

1 Is there a question about that?

2 MR. NEWVILLE: No, I don't think there's a question
3 about that.

4 THE COURT: All right. So, it is within the scope.

5 What else did you say needed to be established?

6 You said you believe if it is within the scope and
7 what else?

8 MR. NEWVILLE: Your Honor, if it's actually a
9 statement by Mr. Pantelis produced from his files.

10 THE COURT: If they establish a foundation that it is
11 his --

12 MR. NEWVILLE: Right.

13 THE COURT: -- handwriting?

14 Okay. All right.

15 Well, let us assume they do and exhibit No. 7 comes
16 in. Then the question is, of this witness: "Do you know if
17 the first step reads, 'Create score cards to predict NPV of
18 re-ages? Do you recall whether this was ever done?"

19 Answer: "No."

20 What is the objection to that question and that
21 answer?

22 MR. NEWVILLE: The objection is that the -- that
23 counsel for the plaintiffs is simply reading a document into
24 the record that they do not have reason to believe
25 Mr. Makowski had involvement with; and, he doesn't know the

1 answer.

2 You know, if there were -- you know, this is
3 information that if there's no reason to believe the witness
4 knew, then we submit that it would be improper to ask the
5 witness questions about it on the stand.

6 Here, we know. He's testified that he doesn't know.

7 THE COURT: So, what is this witness' relationship to
8 this note?

9 MR. BROOKS: His name appears in the note, your
10 Honor. And, again, he's -- Mr. Pantelis is -- a direct report
11 to Mr. Makowski.

12 Again, this is along the lines of testing the net
13 present value of re-ages. It was something that --

14 THE COURT: And this witness has what relationship to
15 the note, again? His name appears on it?

16 MR. BROOKS: Correct.

17 THE COURT: Okay.

18 Anything else?

19 I mean, does it have to do with what he does in the
20 company?

21 MR. BROOKS: Absolutely, your Honor.

22 THE COURT: How?

23 MR. BROOKS: Mr. Makowski was the head of Credit
24 Risk; and, as we saw, I think, discussing Exhibit No. 5 to his
25 deposition, he was writing e-mails, and we believe at a late

1 stage in the class period involved in trying to test the net

2 present value of re-ages for the first time.

3 And, again, Judge, our position is -- and the company

4 has said it publicly -- that re-ages increase cash flow. And

5 our position that that -- is that that -- was a false

6 statement and that it had never been tested at the company

7 before.

8 And these documents that we're looking at, we

9 believe, evidence that fact.

10 MR. NEWVILLE: I think the issue is that those

11 questions weren't being asked in a vacuum. The questions were

12 tied directly to this particular document.

13 MR. BROOKS: Sure.

14 And Mr. Pantelis, whose files the document came from,

15 is someone who is working under the direct supervision of

16 Mr. Makowski. And he's got some notes with Mr. Makowski's

17 name in them, and the title of the note is, "Re-Age Thoughts."

18 And they're talking about what they're going to do or what has

19 been done.

20 THE COURT: I will overrule the objection.

21 Now, we go back to the counter-designation, which

22 is -- I forget where it is.

23 MR. BROOKS: It's on Page --

24 MR. NEWVILLE: Page 42, Lines 1 through 2; Line 6;

25 Lines 8 through 14.

1 MR. BROOKS: And continuing on, your Honor.

2 Is that wrong, Josh?

3 MR. NEWVILLE: Yeah, it continues along.

4 MR. BROOKS: Okay.

5 (Brief pause.)

6 THE COURT: And your objection to these questions is?

7 MR. BROOKS: Our objection, your Honor, is that

8 they're confusing and unrelated to --

9 THE COURT: What is confusing?

10 MR. BROOKS: Well, it confuses the issue -- strike

11 that.

12 You know, what, your Honor? We can withdraw these

13 objections. We'll play them. It's fine.

14 THE COURT: Okay. The objection is withdrawn. Those

15 designations come in.

16 Okay. What is next?

17 MR. BROOKS: The next is on Page 57, starting at Line

18 11, running through 58, Line 1.

19 And, again, they're defendants' objections.

20 The objections -- as they're written in the G-1

21 exhibit -- are "Irrelevant," "Overly broad and confusing,"

22 "Leading" and "Calls for speculation."

23 MR. NEWVILLE: Your Honor, we believe that this

24 question is --

25 THE COURT: Start out with the first question. That

1 is Lines 11 through 14, correct?

2 MR. NEWVILLE: Correct.

3 THE COURT: All right.

4 What is your objection to that question?

5 MR. NEWVILLE: The objection is the relevance of the
6 question and that it's overly broad and confusing.

7 The witness --

8 THE COURT: Wait right there. That is good enough.

9 What is the relevance?

10 MR. BROOKS: Again, Judge, this is a presentation
11 that Mr. Makowski is giving -- and, again, if I can recall off
12 the top of my head -- to senior management.

13 In the presentation, there's a discussion of testing
14 for cash flow. This is a little bit later than the prior
15 documents that we had talked about. And, so, the relevance
16 would be the same.

17 MR. NEWVILLE: Your Honor, based --

18 THE COURT: Wait.

19 Why is this not relevant?

20 MR. NEWVILLE: Your Honor, based on Mr. Brooks'
21 representations, we concede that it is relevant to the case.

22 THE COURT: Okay.

23 What was your other objection?

24 MR. NEWVILLE: The other objection was that it's an
25 overbroad and confusing question.

1 THE COURT: Really? What is confusing about it?

2 This is one of the few I think I understand.

3 What do you find confusing about this question?

4 MR. NEWVILLE: Your Honor, it's a matter within your
5 discretion, I understand.

6 We will, in the interest of time, withdraw --

7 THE COURT: No, if there is something you feel is
8 going to confuse the jury, it is a different issue altogether
9 as to whether I understand it.

10 If you feel this is a confusing aspect to the
11 question, I am seriously asking you to explain it to me.

12 MR. NEWVILLE: The issue is the plaintiffs have used
13 these sorts of questions to twist a witness' lack of
14 recollection many years after the fact -- and, in cases such
15 as this, years after the witness had retired from Household --
16 into affirmative evidence that a particular act or event never
17 took place.

18 THE COURT: Well, let me ask you this: If the
19 witness actually remembered and the answer was in the
20 affirmative, would you be allowed to ask this question?

21 Would you be allowed to ask this witness, "Did
22 Household take any steps to identify whether the cash flow
23 really was improved or impacted?"

24 And if the witness remembered and he said, "Yes,"
25 would you be able -- allowed -- to ask that?

1 MR. NEWVILLE: Yes, your Honor.

2 THE COURT: Because it would help to show that it
3 really happened, right?

4 MR. NEWVILLE: That's right.

5 THE COURT: And this is a person who would have been
6 involved in that -- would have had knowledge of that likely --
7 correct?

8 MR. NEWVILLE: Correct.

9 THE COURT: So, why is it not fair to show that he
10 has no recollection of such a thing happening?

11 Is that not relevant? Does it not tend to show that
12 it is less likely that it happened?

13 MR. NEWVILLE: Yes, your Honor.

14 We concede that it's -- that the issue, itself is --
15 relevant, but that the framing of the question is --

16 THE COURT: Why does it confuse -- I mean, first it
17 assumes that the person asking the question actually knows
18 that the witness is going to say, "I don't remember" or "I
19 don't know."

20 And, second, the fact that he says, "I don't know,"
21 or "I don't remember" actually adds to -- has some probative
22 value to the things at issue in this case.

23 So, unless there's something that I'm not
24 understanding here -- such as this witness is actually the
25 janitor and it would be unfair to ask the janitor whether any

1 of this had happened; and, thereby, create an inference --
2 unless it's something like that, I think the objection would
3 be overruled.

4 Is there anything like that?

5 MR. NEWVILLE: No, nothing like that.

6 THE COURT: Okay.

7 MR. NEWVILLE: We'll stand on our prior statements.

8 THE COURT: Okay.

9 The next one -- the next question -- is Line 19: "Is
10 it fair to say that at the time you made this presentation,
11 you were not aware of any studies that Household had done to
12 identify situations whether the re-age really improves the
13 cash flow?"

14 "Object to form."

15 Okay. What is inappropriate with the form?

16 MR. NEWVILLE: Your Honor, I believe this question is
17 slightly different than the previous one. It's asking him
18 to -- he doesn't recall one way or the other what he knew at
19 that point in time. And we believe it's confusing to offer
20 this testimony in order to infer that the answer to that is a
21 "No."

22 THE COURT: Well, I will sustain the objection
23 because, in my opinion, contrary to what you just said, this
24 actually is the same question. It is redundant.

25 I mean, he just answered this question; did he not?

1 He said he does not know if they did any studies. Now, you
2 are asking him, "Is it fair to say you are not aware if any
3 studies were done?"

4 Is there a different question? Am I missing
5 something?

6 MR. BROOKS: Well, the first question, your Honor,
7 asks him whether there were any steps taken. The second
8 question is more specific as to --

9 THE COURT: "Did Household take any steps to identify
10 those situations where the re-age really improves the cash
11 flow?"

12 The second question is: "Is it fair to say you are
13 not aware of any studies?"

14 So, it's the difference between "steps" and
15 "studies"?

16 MR. BROOKS: That would be the difference between the
17 two questions, your Honor.

18 THE COURT: Is there a difference between those two
19 things, in your mind?

20 MR. BROOKS: I think that there is a difference,
21 Judge, but we're willing to concede that they're fairly
22 similar.

23 THE COURT: Yes.

24 I will sustain the objection to that. It is
25 redundant. You folks only have so many hours.

1 Okay. What is next?

2 MR. BROOKS: Next, your Honor, is Page 61, Lines 19
3 through Page 62, Line 3.

4 And, again, our objection is that this is not related
5 to the questions that we designated. This is testimony that
6 relates to a part of the document that's different than the
7 questions about whether they should test for cash flow.

8 This refers to specific data that's presented in the
9 presentation to senior management and it doesn't relate -- it
10 relates to the presentation. It doesn't relate to any of the
11 questions we asked before.

12 You know, what, your Honor? It does relate to the
13 ones after. So, we'll withdraw our objection. It's fine.

14 THE COURT: I cannot imagine you would object to
15 this: "Were you confident of the data at the time you made
16 the presentation?"

17 "No."

18 You are objecting to that?

19 MR. BROOKS: We're withdrawing the objection, Judge.

20 THE COURT: Okay.

21 All right. The objection is withdrawn.

22 What is next?

23 MR. NEWVILLE: The next is on the next page, Page 62,
24 Lines 16 through 21.

25 The objection is that the question calls for

1 speculation, is leading and overly broad as to Consumer

2 Lending -- the entire Consumer Lending -- Division.

3 MR. BROOKS: If you look at the testimony that

4 precedes that, your Honor. The witness has said, when I

5 asked, "Who disagreed with you?"

6 "The Consumer Lending business and the Retail Service

7 business voiced differences."

8 The question questions are -- the next question,

9 which I don't object to, is: "What differences does Consumer

10 Lending voice?"

11 Then there's an answer.

12 Then there's a next question about Consumer Lending.

13 Given that context, it's hardly overbroad to pose a

14 question as Consumer Lending, especially because it's in the

15 witness' answer.

16 MR. NEWVILLE: What Mr. Brooks has omitted is the

17 fact that the question asks about how Consumer Lending felt.

18 I believe that's different from a question asking about what

19 he was told.

20 THE COURT: And your objection to the question,

21 again, is, what?

22 MR. NEWVILLE: I believe that it calls for

23 speculation. I believe it's a leading question and --

24 THE COURT: Are they allowed to lead?

25 MR. NEWVILLE: -- Mr. Makowski is a former employee

1 at the time. However, based on your ruling, in response to
2 plaintiffs' second motion in limine, they'd be allowed to
3 lead.

4 THE COURT: Okay.

5 So, leading is out.

6 What was the other objection?

7 MR. NEWVILLE: The other objection is an overly broad
8 question and speculative.

9 THE COURT: What does that mean, an "overly broad
10 question"? What rule is that?

11 MR. NEWVILLE: I don't believe Mr. Makowski can
12 testify, who wasn't an employee in the Consumer Lending
13 division, about the feelings of the Consumer Lending Division.

14 THE COURT: So, you mean it calls for speculation?

15 MR. NEWVILLE: Yes.

16 MR. BROOKS: Well, again, your Honor, in the context
17 here, Consumer Learning is voicing concerns and we think it
18 will be clear -- we do think it's clear -- your Honor, that
19 it's the Consumer Lending/Credit Risk people who are doing
20 this. All the other documents show that. So, I don't think
21 that it's overly broad or -- I'm not sure what his last
22 characterization was.

23 THE COURT: Well, it is not overly broad because I am
24 not sure I know what that means; and, certainly, this is not
25 it.

1 What he is saying is that there is no way for this
2 person to know what Consumer Lending believed or felt, absent
3 some foundation on your part as to how he would know.

4 MR. BROOKS: Well, the next question and answer, your
5 Honor -- which is, "Who communicated to you the policy changes
6 would have an adverse effect on Consumer Lending's business?"

7 "Walt Rybak, he is the Credit Risk Chief of Consumer
8 Lending."

9 And then it goes on to talk about, you know, what the
10 basis was for that.

11 THE COURT: It sounds like a foundation to me.

12 MR. NEWVILLE: We believe --

13 THE COURT: The objection is overruled.

14 Let us go on. What is next?

15 MR. NEWVILLE: Page 74.

16 THE COURT: Page 63, was there Lines 2 through 8?

17 Is it 63?

18 Yes, 63.

19 MR. NEWVILLE: Oh.

20 Your Honor, we will withdraw the objection to 63, 2
21 through 8.

22 THE COURT: Okay. The objection is withdrawn.

23 MR. NEWVILLE: Page 74, Lines 18 through 20, is the
24 next that I have on our list.

25 The objection to this testimony is that Mr. Makowski

1 can't testify as to what's in Mr. Schoenholz's head.

2 MR. BROOKS: And I asked him about his understanding
3 of what Mr. Schoenholz was referring to.

4 THE COURT: Well, when you say "to be referring to"
5 here, what does that refer to?

6 MR. BROOKS: Well, it refers to Exhibit 15, which is
7 an e-mail --

8 THE COURT: Where does Exhibit 15 show up?

9 MR. BROOKS: It shows up on Page 73 in some testimony
10 that's not objected to.

11 THE COURT: Who are these e-mails from and to?

12 MR. BROOKS: The e-mail, I believe, was written by
13 Mr. Makowski and -- again, off the top of my head, Judge -- to
14 various business units and the credit people in various
15 business units. But I'm not a hundred percent sure on that.

16 I do -- I am pretty sure that it was written by
17 Mr. Makowski.

18 MR. NEWVILLE: I'm looking at the e-mail that's an
19 exhibit and it's an e-mail from Mr. Schoenholz to Makowski and
20 others, and our objection is that Mr. Makowski can't testify
21 as to what Mr. Schoenholz meant.

22 MR. BROOKS: Having looked at our exhibit list,
23 Judge, I believe Mr. Newville is correct. The e-mail is to
24 Mr. Makowski. It's from Mr. Schoenholz. And the question is:
25 "What did you, Mr. Makowski, as Chief of Credit Risk,

1 understand Mr. Schoenholz to be saying in this e-mail?"

2 And I don't believe that that's testifying as to Dave
3 Schoenholz's state of mind. I think it goes to Mr. Makowski's
4 state of mind.

5 THE COURT: So, how would you classify it if he is
6 not testifying as to anything he sees or hears or touches or
7 feels?

8 MR. BROOKS: He is --

9 THE COURT: How would you classify this testimony.

10 MR. BROOKS: I would say he's testifying as to an
11 e-mail he saw.

12 THE COURT: Well, yeah, but what kind of testimony is
13 it?

14 MR. BROOKS: It's the effect of that e-mail on his
15 understanding of how --

16 THE COURT: Would you say it is possibly a lay
17 opinion?

18 (No response.)

19 THE COURT: He is giving an opinion as to what this
20 Schoenholz means, right?

21 MR. BROOKS: No, Judge. I think he's --

22 THE COURT: No?

23 MR. BROOKS: -- saying, "Schoenholz is telling me --
24 "

25 THE COURT: "He's telling me X, Y and Z;" and, to me,

1 it means -- you are asking him what it means, right? You are
2 asking him what it meant when he wrote that -- what he meant
3 when he wrote that -- right?

4 MR. BROOKS: I'm asking what his understanding was
5 and --

6 THE COURT: Okay.

7 MR. BROOKS: -- sure, your Honor. It is --
8 Mr. Schoenholz is writing an e-mail and the context is, "In
9 the middle of 2002, we claim that it decided to change their
10 re-age policies to tighten them. And they tested what the
11 impact would be."

12 And Mr. Schoenholz is writing an e-mail saying,
13 "After discussions with Mr. Gilmer, we're not going to go
14 through with the changes because the financial impact is too
15 variable."

16 And Makowski, who is the head of Credit Risk, was
17 intimately involved in designing these programs for the
18 changes. And, so, you know, his understanding of what
19 Mr. Schoenholz is telling him, I believe, is relevant and
20 admissible.

21 THE COURT: Okay.

22 Anything else?

23 MR. NEWVILLE: No, your Honor.

24 THE COURT: I think he is entitled to opine as to
25 what Mr. Schoenholz meant when he said that, by virtue of the

1 very things that counsel just said here. All of those
2 circumstances indicate it is a lay opinion; he has got a good
3 basis for giving it; he is involved in the conversation; it
4 was the subject matter that he was involved with in the
5 corporation; and, he was part of the dialogue. So, I will
6 allow him to testify as to that.

7 The objection is overruled.

8 Next?

9 MR. BROOKS: Next is, your Honor, Page 93. And I
10 apologize to the Court because this designation -- which, I
11 guess, is a counter-designation by defendants -- doesn't
12 include the exhibit that's being discussed in the deposition.
13 And it doesn't appear, your Honor, that unless we were talking
14 about this for 19 pages, that the exhibit that's discussed in
15 this counter-designation is any exhibit that's discussed in a
16 designation that we've set forward.

17 And, so, again, that would be our objection, that
18 this is somewhat of a non sequitur in the middle of
19 Mr. Makowski's testimony.

20 MR. NEWVILLE: Your Honor, we've designated this as
21 an additional counter-designation within the scope of
22 plaintiffs' --

23 THE COURT: It is an additional counter-designation?

24 MR. NEWVILLE: Yes, your Honor.

25 THE COURT: Is that different from a counter-

1 designation or --

2 MR. NEWVILLE: It is a counter-designation within the
3 scope of plaintiffs' direct examination.

4 However, we do not consider it to be a fairness
5 designation to a particular piece of testimony that plaintiffs
6 have designated. Therefore, it would be more within the realm
7 of a cross-examination within the scope.

8 THE COURT: So, if you are talking about a different
9 exhibit in this question -- you are talking about a different
10 exhibit in this question -- than what was covered in the
11 questioning by plaintiffs?

12 When you say "Looking at the second slide," what
13 exhibit does that refer to?

14 MR. NEWVILLE: Makowski Exhibit 19.

15 THE COURT: And is that the exhibit that was being
16 asked -- that was being asked -- about by the plaintiffs or is
17 it a different exhibit?

18 MR. NEWVILLE: It's an exhibit that was being asked
19 about by the plaintiffs; not in the prior designation we just
20 referred to, but in this testimony.

21 THE COURT: Okay.

22 Now, if this is read to the jury, are they going to
23 understand all that?

24 Is there any other designation that is going to let
25 the jury understand that when you ask or when the video shows

1 the question looking at the second slide, that's going to tell
2 the jury what you are referring to -- what you are talking
3 about?

4 MR. NEWVILLE: Your Honor, the exhibit that's at
5 issue for this testimony, we believe, plaintiffs will
6 introduce as part of their case.

7 In addition, the testimony --

8 THE COURT: Yes, but will the jury know that this
9 question refers to that exhibit from these designations? Will
10 the jury know that?

11 MR. NEWVILLE: From the designations?

12 THE COURT: Yes.

13 MR. NEWVILLE: I think they will.

14 THE COURT: Well, what if they do you not? Then what
15 are we doing by presenting this to them? How are we going
16 to -- how are you going to -- make that connection so that the
17 testimony is useful, rather than confusing?

18 MR. NEWVILLE: We believe the testimony stands on its
19 own.

20 MR. BROOKS: What we have, your Honor, is us talking
21 about one presentation for Mr. Makowski, a different exhibit,
22 and, then, moving right into looking at the second slide, with
23 no clue as to what we're looking at.

24 THE COURT: Is this second slide from the same
25 exhibit that you were showing?

1 MR. BROOKS: No.

2 THE COURT: How is that going to work? I just do not
3 understand how that can add to the jury's understanding of the
4 case. If you are asking this witness a question about a slide
5 referring to an exhibit and the jury is not going to know what
6 exhibit you are referring to, how would they be able to judge
7 that testimony?

8 MR. NEWVILLE: Because the witness is describing how
9 accounts must meet performance criteria to be eligible for
10 re-aging, restructuring.

11 Those words stand on their own and are
12 understandable. We believe they're in fairly plain English
13 and the jury should be able to understand what the witness is
14 referring to, even if they can't pinpoint what particular page
15 in a prior presentation is at issue.

16 THE COURT: Your response?

17 MR. BROOKS: Well, I think it's incredibly confusing,
18 Judge, and especially -- and, your Honor, maybe this is a good
19 point to raise an issue that we have as to when these
20 so-called additional counter-designations will be played.

21 We do not object to playing defendants' counter-
22 designations, that are actually related to the testimony and
23 that are there for context and fairness, in our presentation
24 to the jury. We do object to them adding a bunch of
25 additional counter-designations which, essentially, are

1 defendants' own designations of the testimony,
2 re-characterized as counter-designations in the middle of what
3 we're presenting.

4 And, in this particular deposition, it only arises, I
5 think, in a couple different places; but, in some of the
6 others, it takes up a big chunk of the presentation. And we
7 do not want to put the jury through -- we would like to limit
8 as much of the deposition presentation as we can. And we
9 would like to show what we're showing.

10 And, again, where the Court allows them to put in the
11 fairness designations for completeness and context, we have no
12 issue with that. But where they're adding their own
13 designations, your Honor, we'd ask that they be played
14 separately, with the understanding that they're being
15 presented by the defendants and not the plaintiffs.

16 THE COURT: That sounds fair to me.

17 What do you think?

18 MR. NEWVILLE: Your Honor, we agree that fairness
19 designations should be read contemporaneously with the other
20 designations.

21 The additional counter-designations that he's
22 referring to --

23 THE COURT: Well, I cannot -- I am not going to get
24 into what those are because they are not in front of me right
25 now. I cannot rule.

1 This one is in front of me and it appears to me that
2 if you are going to offer this, you are going to have to offer
3 it as your own designation because it refers to an exhibit
4 that is not what they were talking about in their designation.

5 And it seems to me that without some segue for the
6 jury to understand what exhibit you are referring to, it is
7 just going to be confusing to them, in spite of your argument
8 that the language is clear.

9 MR. NEWVILLE: Your Honor, we would request that
10 defendants be allowed to present this type of designation
11 immediately after the conclusion of plaintiffs' presentation
12 of their entire set of deposition designations, in order to
13 just have one witness be presented at one time, rather than
14 jumping back and forth to what here will be a handful of
15 statements.

16 THE COURT: Well, I think that is the appropriate way
17 to do it. I still have -- you are going to have to show me
18 that there is going to be some evidence before the jury that
19 is going to allow them to understand what you are referring to
20 when you start out your question looking at the second slide.

21 You know, it does not say, "Looking at the second
22 slide of Plaintiffs' Exhibit 35," or it does not have any
23 designation by which -- I guess unless you can reach a
24 stipulation with opposing counsel as to what the exhibit is,
25 and that the exhibit will actually be in evidence, so that the

1 jury can contemplate it. If you do that, then, I guess, it
2 can come in as its own designation.

3 It appears to be relevant. Otherwise --

4 MR. NEWVILLE: Your Honor --

5 THE COURT: -- at this point, I'll sustain the
6 objection. Okay?

7 Next?

8 MR. NEWVILLE: I believe the next is on Page 98,
9 Lines 12 through 13.

10 MR. BROOKS: We'll withdraw that, your Honor.

11 THE COURT: 98, 12 to 13 is withdrawn.

12 The next designation?

13 MR. NEWVILLE: The next is --

14 THE COURT: I am sorry, where it ended -- 98, Lines
15 12 through 13 -- the objection is withdrawn. The designation
16 comes in.

17 Go ahead.

18 MR. NEWVILLE: Yes.

19 The next objection is our objection to the testimony
20 on Page 99, Lines 12 through 100, Line 17.

21 Our objection, Lines 12 through 13, is that the --
22 that counsel for the plaintiffs has inaccurately described the
23 document that's at issue and has characterized it. This is
24 testimony by counsel characterizing a particular document.

25 THE COURT: Did you object to that at the deposition?

1 MR. NEWVILLE: No, your Honor.

2 THE COURT: Is that not an objection as to form?

3 MR. NEWVILLE: Yes, your Honor.

4 THE COURT: Waived.

5 MR. NEWVILLE: We'll also submit that the FRC
6 presentation is the best evidence of its own contents, under
7 Rule of Evidence 1002.

8 THE COURT: Is the best evidence of its own contents?

9 So, that means you cannot ask questions about it?

10 (Laughter.)

11 MR. NEWVILLE: No, your Honor, you can ask questions
12 about it, but we believe that the plaintiffs have improperly
13 characterized the document.

14 MR. BROOKS: Your Honor, to say that the FRC
15 presentation is the best evidence of the particular evidence
16 we're talking about -- which is a certification signed by
17 Mr. Makowski that indicates, as you can see in the question
18 from 18 to 25, that the statistics provided during the FRC
19 were, in fact, incorrect -- I don't think is a valid
20 objection.

21 We're not talking about the FRC here. We're talking
22 about a document that the witness has prepared with his
23 signature, that indicates that the --

24 THE COURT: Well, his objection is that you are
25 characterizing the FRC presentation.

1 You are saying inaccuracies in its FRC presentation.

2 And he is right. You are characterizing it. And if
3 he had said, "Objection, assumes facts not in evidence;
4 characterizes the evidence incorrectly," then you would have
5 had an opportunity to rephrase your question.

6 I think it goes to the form of the question and it
7 should have been made then.

8 But if it had been made then, I think it would have
9 been sustained.

10 Okay. What is next?

11 MR. NEWVILLE: We'll withdraw the objection to Page
12 99, Line 18 --

13 THE COURT: That is withdrawn.

14 MR. NEWVILLE: -- through --

15 THE COURT: Go ahead.

16 MR. NEWVILLE: -- through Page 100, 8.

17 THE COURT: Through Page 100, Line 8?

18 MR. NEWVILLE: Yes.

19 THE COURT: And that leaves, what?

20 MR. NEWVILLE: 100, Lines 9 through 13. We're
21 objecting on the grounds that it's speculation by the witness.

22 THE COURT: Okay.

23 As to the question on Lines 9 and 10, what is your
24 response to the objection?

25 MR. BROOKS: My response, again, is that Mr. Makowski

1 is Mr. Pantelis' boss. And I asked, "Who prepared this?"

2 And he said, "Dan Pantelis would have, but I'm only
3 inferring that from what I know of his responsibilities."

4 I don't think that's speculation at all.

5 THE COURT: What is it?

6 MR. BROOKS: If the Court -- based on the Court's
7 earlier characterization of this kind of information as lay
8 opinion testimony, I suppose it might be that. I think it's
9 just the witness' response to the question.

10 He understands --

11 THE COURT: Well, every answer is the witness'
12 response to the question. Every answer does not come into
13 evidence because of that, right?

14 So, what is the legal basis?

15 As I understand it, you are allowed to testify as to
16 things you can see, hear, feel, smell, taste, right? Those
17 are facts.

18 What is the other form of testimony that you can give
19 besides factual testimony?

20 MR. BROOKS: I suppose this is lay opinion testimony,
21 your Honor.

22 THE COURT: Well, it is opinion testimony, right? I
23 mean, factual testimony, opinion testimony.

24 Is this factual testimony? Is it something he can
25 feel, taste, smell, touch, hear?

1 MR. BROOKS: No. It's an inference drawn from his
2 understanding of Mr. Pantelis' position and the document.

3 THE COURT: Okay.

4 So, why should he not be allowed to opine as to who
5 would have put these statistics on Pages 44, 45, et cetera?

6 MR. NEWVILLE: Your Honor, he's testified that he's
7 only inferring based on what he sees there in the document.

8 THE COURT: And what else?

9 MR. NEWVILLE: And knowing his responsibilities.

10 THE COURT: Whoops.

11 I will overrule the objection. I think he is allowed
12 to testify based upon -- as to his understanding based upon --
13 the facts and circumstances, that they are sufficient to give
14 him a reasonable basis for making that observation or opinion.

15 And he gives a reasonable basis here. He says he
16 knows the man's responsibilities; and, from that, he infers
17 that he is the one who did it.

18 I will overrule the objection.

19 MR. NEWVILLE: We'll withdraw our objection to Page
20 100, Lines 14 through 17.

21 THE COURT: The objection is withdrawn.

22 What is next?

23 MR. NEWVILLE: Page 135, Line 5 through 17.

24 Now, defendants will -- the objection we have is
25 directed towards Line 18 through 136, 1. It's improper

1 colloquy and it's a question that was withdrawn by Mr. Brooks
2 at the deposition.

3 THE COURT: I am sorry, so you are not objecting to
4 the question on Line 5?

5 MR. NEWVILLE: We'll withdraw the objection to Page
6 135, Lines 5 through 17.

7 Your Honor, could I consult with counsel for a
8 second?

9 THE COURT: Sure. Whenever you want.

10 (Counsel confer.)

11 THE COURT: Counsel?

12 MR. NEWVILLE: Your Honor, we have a motion in limine
13 that's directed towards these types of documents as part of
14 our omnibus motion in limine regarding the Wells Fargo
15 transaction.

16 THE COURT: What motion is that?

17 MR. NEWVILLE: Defendants' motion in limine, No. L --
18 letter "L."

19 THE COURT: I am sorry?

20 MR. NEWVILLE: Letter "L" in the Defendants' Omnibus
21 Motion in Limine.

22 THE COURT: What is it about? What is the motion?

23 MR. NEWVILLE: I'd like to defer to Mr. Kavalier on
24 this point.

25 THE COURT: Why?

1 MR. KAVALER: Your Honor, if I might?

2 THE COURT: Sure.

3 MR. KAVALER: I don't want to waste your time. This
4 begins at Page 93 of our opening brief -- omnibus brief -- on
5 the fourteen categories of evidence.

6 I believe your Honor said earlier you were working on
7 an order on those.

8 THE COURT: Yes.

9 Which category is it?

10 MR. KAVALER: It's category L, your Honor. It starts
11 at Page 9.

12 This is the Project Whiskey Due Diligence and related
13 documents which we say are inadmissible pursuant to Rule 403.
14 This is where there were interactions between Household and
15 Wells Fargo about the possibility of a transaction.

16 I'm happy to argue it, your Honor, but I don't want
17 to burden the Court if you've read it.

18 THE COURT: No, I see it here and we are working on
19 it. So, I think probably the best thing to do is to just
20 bypass this.

21 MR. KAVALER: Right.

22 I think what Mr. Newville means, your Honor, is our
23 motion in limine is meant to deal with this subject. The
24 motion in limine culls out various exhibits which will be
25 impacted by a ruling on the motion.

1 So, if you granted the motion, it would resolve this
2 objection in the deposition, as well.

3 THE COURT: All right.

4 MR. KAVALER: And that is what you are saying?

5 MR. NEWVILLE: Exactly.

6 MR. KAVALER: Thank you, your Honor.

7 MR. BROOKS: Just so we're clear, is that the only
8 objection to this particular testimony or is there something
9 we need to work through?

10 MR. NEWVILLE: The objection is based on Rule 403,
11 which is primarily the subject of the Project Whiskey motion,
12 as well.

13 THE COURT: All right.

14 So, there is nothing else for us to rule on with
15 regard to this objection.

16 Once we rule on that motion in limine, this objection
17 will either stand or fall; is that correct?

18 MR. NEWVILLE: Correct.

19 THE COURT: Okay.

20 What is next?

21 MR. BROOKS: I think -- and tell me differently,
22 Josh, if this isn't the case.

23 But all the way through, up to Page 140, your Honor,
24 we'll withdraw our objections on 136, 10 through 13, and --

25 THE COURT: I am sorry, you are losing me.

1 You said this --

2 MR. BROOKS: The Whiskey issue.

3 THE COURT: -- all the way through 140; and, then,
4 you jumped to, "We'll withdraw our objections to," and started
5 naming some lines. What are you --

6 MR. BROOKS: I apologize, your Honor.

7 The Whiskey issue and the document that they're
8 saying relates to Whiskey is discussed in this deposition;
9 and, the next exhibit that discussed it begins on 140 -- or at
10 least one that has an objection -- all I'm saying is as to the
11 objections that we have interspersed in here up to Page 140,
12 we'll withdraw them.

13 MR. NEWVILLE: Your Honor, I was back on Page 135.

14 MR. BROOKS: Right. And 135 is what we had just
15 discussed as it relates to Whiskey.

16 On 136, Lines 10 through 13, we had asserted an
17 objection, which we withdraw.

18 THE COURT: All right.

19 So, stop right there.

20 On Page 136, Lines 10 through 13, you are withdrawing
21 your objection to their designation?

22 MR. BROOKS: We are, your Honor.

23 THE COURT: Okay. That takes care of that.

24 What is next?

25 MR. NEWVILLE: Your Honor, I'm sorry, I was back on

1 Page 135, where we had an objection to inadmissible colloquy,

2 Lines 18, through 136, Line 1.

3 THE COURT: Well, let us go back there, then.

4 The Lines, again?

5 MR. NEWVILLE: 18, through 136, Line 1.

6 THE COURT: Is there any reason why Mr. Sloane's

7 statement is in here?

8 MR. BROOKS: I guess you'd have to ask defendants,

9 your Honor.

10 THE COURT: I am sorry?

11 MR. BROOKS: I guess you'd have to ask defendants,

12 your Honor.

13 The reason it's in here designated is for context.

14 If we want to take it out and just leave the --

15 THE COURT: Well, you are designating them. Why

16 should I ask them? Why are you designating it? You are

17 designating it --

18 MR. BROOKS: We designated Mr. Sloane's testimony --

19 or Mr. Sloane's --

20 THE COURT: Whoops.

21 MR. BROOKS: -- interjection --

22 THE COURT: That is the problem; is it not?

23 MR. BROOKS: -- for context, Judge, because the next

24 question flows off of the interruption in the deposition.

25 THE COURT: So, let us assume that all of this comes

1 in. What does it prove?

2 You ask: "Walk me through how they would get to
3 these numbers in our response."

4 Sloane says, "Oh, you've taken some liberties,"
5 blah-blah, blah-blah; and, then, you finish by saying, "I did
6 make some assumptions in my reading. Was my recitation
7 accurate, as far as you understand it?"

8 Answer: "Yes."

9 Does the jury know what you are talking about at that
10 point; do you think?

11 MR. BROOKS: Perhaps not, your Honor. And maybe I
12 would suggest withdrawing Lines 18 through 6; and, then,
13 continuing with the counter-designation on Line 10 through 13.

14 MR. NEWVILLE: Withdrawing Lines 18 through 136, 6?

15 MR. BROOKS: Correct.

16 THE COURT: Okay. Those are withdrawn.

17 Now, we are at Lines 10 through 13, Page 136; is that
18 correct?

19 MR. NEWVILLE: That's correct.

20 THE COURT: Okay.

21 MR. BROOKS: And we withdraw that objection, your
22 Honor.

23 THE COURT: The objection is withdrawn.

24 MR. NEWVILLE: You can't withdraw our objection.

25 MR. BROOKS: Oh, I'm sorry.

1 THE COURT: This is testimony designated by the
2 defendants, right -- 10 through 13?

3 MR. BROOKS: We're on 136.

4 MR. NEWVILLE: Okay. I thought we had passed that
5 already.

6 Sorry, Luke.

7 THE COURT: So, are you going to let him withdraw his
8 objecting or do you want to -- do you want him to assert his
9 objection?

10 (Laughter.)

11 MR. NEWVILLE: We'll let him withdraw the objection.

12 THE COURT: Well done.

13 MR. BROOKS: Much obliged.

14 We withdraw the objection on 6 through 9 of Page 137.

15 THE COURT: Okay.

16 The objection is withdrawn. That designation comes
17 in.

18 Next is an objection to plaintiffs' designations

19 Lines 10 through 15 of the same page.

20 What is the objection here?

21 MR. NEWVILLE: The objection is that the witness is

22 -- the question is asking for the witness' speculation as to

23 information available to Wells Fargo.

24 His current understanding of the e-mail he's being

25 asked about and asked to explain is not -- is not -- relevant

1 to the case. And --

2 THE COURT: So, the objection is relevance?

3 MR. NEWVILLE: The objection is speculation and
4 relevance.

5 THE COURT: Okay.

6 Your response?

7 MR. BROOKS: The context of this e-mail, your Honor,
8 is that following the failed Wells Fargo/Household deal, there
9 were inquiries from Household regarding what observations were
10 made.

11 Certain observations were made about the credit
12 quality and what charge-offs would have to be taken under
13 certain circumstances; and, again, Mr. Makowski, the Chief
14 Credit Officer, is reporting, I believe, to Mr. Schoenholz
15 about the results of those conversations he had with Wells
16 Fargo.

17 MR. NEWVILLE: Your Honor, I believe this testimony
18 would fall within the scope of our motion in limine.

19 THE COURT: Well, the motion in limine was to keep
20 out testimony, if I remember correctly, regarding Wells
21 Fargo's investigation of Household's to Wells Fargo's due
22 diligence investigation of Household's books and records; is
23 that correct?

24 MR. NEWVILLE: I believe that's part of it, your
25 Honor; but, I think, the issue that flows from that is their

1 opinions regarding Household's reserves, which we contend are
2 not properly admissible in this case.

3 THE COURT: Okay.

4 Well, why do we not take 15 minutes. It is 3:30 and
5 the court reporters need to pass the football. So, lest we
6 end up with Armageddon here, we will give them some time to do
7 that.

8 (Laughter.)

9 THE COURT: We will come back in 15 minutes.

10 (Brief recess.)

11 THE COURT: Where were we?

12 MR. NEWVILLE: I believe we were on about Page 140.

13 MR. BROOKS: The plaintiffs withdraw their objections
14 starting on 140, 25, and running through 141, 12.

15 THE COURT: All right. That designation comes in
16 without objection.

17 Next?

18 MR. NEWVILLE: Your Honor, I would just like to
19 clarify something here.

20 Our designations and our objections we understand are
21 subject to the rulings on the motions in limine. Therefore,
22 if there is a topic that's designated by either plaintiffs or
23 defendants that is no longer in the case as a result of your
24 rulings, then our understanding is that we don't waive an
25 objection by not asserting it in our boxes here.

1 THE COURT: Any issues that are duplicated in the
2 motion in limine you do not waive by not asserting it today.

3 If you have more than one objection to a designation
4 or a question, one objection goes to the subject matter, which
5 will be dealt with when we rule on the motions in limine, but
6 the other objection may be as to admissibility; it may be as
7 to form, et cetera. Those objections you need to make now so
8 we can rule on them. That way, if the subject matter doesn't
9 fall with the motion in limine rulings, we won't have to go
10 back and revisit.

11 Fair enough?

12 MR. NEWVILLE: Thank you.

13 THE COURT: Okay.

14 What do we have?

15 MR. NEWVILLE: We are at Page 142.

16 Defendants' objection is to Line 14 through Page 143,
17 Line 4.

18 These are -- the testimony here, our objection is
19 based on the Project Whiskey motion in limine.

20 THE COURT: Okay. And that's all? That's the only
21 objection you have to these designations?

22 MR. NEWVILLE: Yes, your Honor.

23 THE COURT: Okay.

24 MR. BROOKS: Your Honor, to the extent that
25 Mr. Newville just said that they are preserving their

1 objections, I would just note that, for example, on this
2 Exhibit No. 38, that is the subject of the testimony where he
3 has indicated that it is encompassed within the Project
4 Whiskey. They asserted that it was encompassed on their
5 exhibit list, Exhibit No. 38, after we had received the
6 exhibit list and responded to the objections and after we
7 responded to the motion in limine.

8 So I don't think we need to get in a huge debate
9 about whether it's in or it's out at this point, but I just
10 want to note that for the record.

11 We had a procedure whereby we were supposed to remove
12 objections, and their list came back with several notations
13 "subject to motion in limine." Now it's asserted for the
14 first time on March 6th, 2009.

15 And we believe that that was improper. And I guess
16 that will have to be sorted out if and when the motions --
17 depending how the motions in limine are ruled on.

18 THE COURT: So when ought the objection -- the, shall
19 we say, "Whiskey" objection, when ought that to have been
20 made?

21 MR. BROOKS: Well, the "Whiskey" objection should
22 have been made in their "Whiskey" motion in limine and on the
23 exhibit list. And as you have seen, to the extent that it was
24 made here, it should have been made here.

25 All I am saying, your Honor, is that to the extent

1 that they added new documents in coverage, you know, that are
2 covered by motions in limine or they assert are coverage
3 covered by motions in limine, we think it was improper for
4 them to have done that for the first time on March 6th.

5 THE COURT: Well, are you saying that this objection
6 is adding a new objection or a new document?

7 MR. BROOKS: I am saying that a new objection to this
8 document appeared on the exhibit list, and I don't have the
9 cross reference with the "Whiskey" motion in my hand. And I
10 am not sure if they -- what exactly they did on this.

11 I just wanted to note that for the record and for the
12 Court's awareness.

13 MR. NEWVILLE: Your Honor, I have the cross reference
14 to the "Whiskey" motion in my hand, and it indicates that this
15 document was made subject to that motion in limine on
16 January 30th.

17 THE COURT: Okay.

18 So we will skip that designation. It will be subject
19 to our ruling on the motion in limine.

20 What's next?

21 MR. BROOKS: The next, your Honor, is Page 151, I
22 believe, 21 through 23, which is defendants' objection.

23 MR. NEWVILLE: Your Honor, the objection here was
24 that plaintiffs are attempting to elevate the absence of
25 evidence or the absence of a recollection into affirmative

1 evidence that something didn't happen. But taking into
2 account your guidance on similar questions earlier in the
3 transcript, we will withdraw the objection.

4 THE COURT: Okay. It comes in without objection.

5 Next designation?

6 MR. NEWVILLE: Page 152. Our objection to Lines 6
7 and 7 is that it's a question that was withdrawn and not
8 asked.

9 MR. BROOKS: We will take that out of the
10 designation, your Honor.

11 THE COURT: Okay.

12 13 through 17?

13 MR. NEWVILLE: 13 through 17, the objection is based
14 on Rule 402 and 602, lack of personal knowledge and the
15 witness' recollection. Taking into account your guidance on
16 prior sections, we will withdraw the objection.

17 THE COURT: Okay. It comes in without objection.

18 Next?

19 MR. BROOKS: It's on Page 155, your Honor, starting
20 at Line 12, through Page 156, Line 4. Again, this is one of
21 defendants' objections.

22 MR. NEWVILLE: Your Honor, we will withdraw the
23 objection to 155, Lines 12 through 25 and 156, Lines 1 through
24 4.

25 THE COURT: That designation comes in without

1 objection.

2 Next?

3 MR. BROOKS: Your Honor, the plaintiffs would like to
4 withdraw their designations starting on Page 157, Line 19
5 through 158, 23.

6 We assume also that the counter-designations would be
7 withdrawn, and those are on 158, 24 through 159, 5.

8 We also withdraw the designation --

9 THE COURT: Hold on a second.

10 Is that correct?

11 MR. NEWVILLE: If they withdraw those designations,
12 yes, we withdraw the counter-designations.

13 THE COURT: Very well.

14 MR. BROOKS: We also withdraw the designation on 163,
15 10 through 14; 163, 25; and skipping the colloquy, all the way
16 through 165, 20.

17 THE COURT: 163, 10 through 14 is withdrawn. The
18 designation on 163, 25 through 164, 17 is withdrawn.

19 Next designation starts at Line 22, Page 164.

20 MR. BROOKS: We withdraw that, your Honor, all the
21 way through 165, Line 20.

22 THE COURT: That designation is withdrawn.

23 MR. BROOKS: We withdraw the designation beginning
24 174, 10 through 18.

25 We also withdraw 174, 25 -- 24 through 25, and all of

1 the designations on Page 175 starting at 3, ending at 25, as
2 well as 176, 2.

3 THE COURT: Okay. That designation is withdrawn.

4 There was what I presume is a counter-designation in
5 there by the defendants.

6 MR. NEWVILLE: We will withdraw the
7 counter-designation.

8 THE COURT: That's Lines 7 through 12 at Page 175.
9 That counter-designation is withdrawn.

10 MR. BROOKS: Finally, Judge, we withdraw 177, Lines 7
11 through 19.

12 THE COURT: 7 through 19, Page 177, designation is
13 withdrawn.

14 MR. BROOKS: The next one that comes up, your Honor,
15 is 183, Lines 22 through 184, 2. And that's defendants'
16 objection.

17 MR. NEWVILLE: 183, plaintiffs have designated
18 Lines 11 through 22.

19 MR. BROOKS: Correct. We are keeping those
20 designations. So we are just on your objection.

21 THE COURT: Okay. What I have here is Page 183,
22 Lines 21 and 22 are designated. And then -- I take it that's
23 then also Lines 1 and 2, Page 184? Okay.

24 What's the objection?

25 MR. NEWVILLE: The objection is that the question is

1 vague, ambiguous, and overbroad. And taking --

2 THE COURT: So we are taking just the question

3 beginning on Line 21 first?

4 MR. NEWVILLE: Yes, your Honor.

5 And taking into account your Honor's guidance, we

6 will withdraw the objection.

7 THE COURT: Very well. The objection is withdrawn.

8 The designation comes in.

9 What about Line 1, Page 184?

10 MR. NEWVILLE: Same objection. We will withdraw it,

11 your Honor.

12 THE COURT: Comes in without objection.

13 I believe that's the end of that deposition; is that

14 correct?

15 MR. BROOKS: It is, your Honor.

16 MR. NEWVILLE: I believe we may have one additional

17 counter-designation, if I can double-check.

18 THE COURT: Okay.

19 (Brief pause.)

20 MR. NEWVILLE: Your Honor, that's all we have on

21 this.

22 THE COURT: Very well. We are done with that.

23 Let's see what else we have on this disk.

24 MR. NEWVILLE: Your Honor, I would like to clarify a

25 comment that you made earlier about defendants -- about not

1 having transcripts of the deposition designations.

2 Do you know whether you have received the three

3 transcripts of defendants' witnesses?

4 THE COURT: I don't believe I have any right now.

5 What I am looking into is whether they were -- they

6 may have been taken upstairs by mistake to the Clerk's office

7 for filing. The Clerk's office, of course, will not file

8 them. So if they were taken up there, they will be sitting up

9 there now. We will have to go up there and check after we are

10 done here and see if we can find them and bring them down.

11 You indicated they were delivered to our chambers,

12 right?

13 MR. BROOKS: That's correct, your Honor. I believe

14 it was on --

15 THE COURT: If that happened, then the only thing

16 that could have happened is that somebody could have taken

17 them upstairs to the Clerk's office for filing erroneously,

18 and they will still be sitting up there because the Clerk's

19 office won't file deposition transcripts. Okay?

20 I will check on that tonight. If not, let's see, we

21 have Kenneth Walker.

22 MR. KAVALER: Your Honor, we would be happy to

23 deliver another set to solve the whole problem.

24 THE COURT: Let me find out first. I hate to kill

25 trees for no reason.

1 MR. KAVALER: Your Honor, we can have it delivered
2 momentarily.

3 THE COURT: I mean, if they were delivered, they have
4 to be somewhere. They have to be somewhere, so we will find
5 them.

6 Meanwhile, we are not losing any time because we are
7 able to proceed this way.

8 MR. KAVALER: Right. We can have them delivered in
9 the morning, if you want another set.

10 THE COURT: I appreciate it.

11 Okay. I guess with Mr. Walker, we start out with the
12 same issue regarding the announcement by the -- what do they
13 call themselves? -- videographer, the videographer.

14 Same ruling. Either the parties or the Court will
15 make the announcement. It's safer than letting the
16 videographer do it. You never know what videographers will
17 do.

18 Page 9; is that correct?

19 MR. NEWVILLE: Looks like -- I am looking at Page 10,
20 Lines 6 through 8, but there is no objection to that
21 designation.

22 THE COURT: I am looking at Page 9, 15 through 16,
23 20, and 24 through 25.

24 MR. BROOKS: Is that the PDF page again, your Honor?

25 THE COURT: No. That's the page number on here.

1 It's PDF Page 2 -- or 3 -- no, 2. I am sorry. It's neither

2 2 nor 3. It's 4.

3 It's, "Would you please state your full name for the

4 record." Somebody objected to that. I am not quite sure why.

5 It's fairly common.

6 MR. BROOKS: I don't think there is an objection

7 there, your Honor.

8 THE COURT: No?

9 MR. BROOKS: Pink indicates no objection.

10 THE COURT: Well, mine is green. But if you say it's

11 pink, then it's probably just me. We will assume it's pink.

12 I do note that the very same questions were objected

13 to at the last deposition we went through -- the name, the

14 present employment of the witness. So it would not be

15 entirely surprising if there is an objection to these

16 questions in this deposition as well.

17 But if you say there is no objection, that's fine.

18 MR. NEWVILLE: Your Honor, defendants have no

19 objection to this testimony.

20 THE COURT: That's good. It's good that the jurors

21 know who's testifying and it be part of the record under oath.

22 Next?

23 MR. NEWVILLE: I believe the next one that we have is

24 defendants' counter-designation on Page 18, Lines 6 through 8.

25 THE COURT: We must have a disjuncture of color

1 coding here.

2 I have on Page 14 of the transcript, Lines 10 through

3 13 coded orange. Isn't that like the national security code

4 is orange? That means dangerous or something, right?

5 Do you have that?

6 MR. BROOKS: We don't, your Honor.

7 THE COURT: Okay. Well, somebody --

8 MR. BROOKS: Are you sure it's Ken Walker?

9 THE COURT: Oh, good question. Maybe I hit the
10 wrong -- let's see.

11 Thank you. You are correct. Wrong deposition.

12 That's why. My error, folks.

13 Let's try this again. Kenneth Walker PDF. That's

14 right.

15 Well, here is the problem. The Kenneth Walker file
16 comes up with the Paul Makowski deposition. So I take my
17 apology back.

18 MR. BROOKS: We apologize, then, your Honor.

19 MR. NEWVILLE: Your Honor, we had nothing to do with
20 that.

21 THE COURT: Of course not. I am sure it was the
22 videographer.

23 (Laughter.)

24 MR. BROOKS: We have an extra copy for the Court if
25 you would like a hard copy, Judge.

1 THE COURT: Sure. That way we will save some time.

2 (Document tendered.)

3 THE COURT: That's what it is.

4 Wait. What if I click on the Makowski deposition?

5 No. Somebody just likes Mr. Makowski. Got his

6 deposition twice. That's all. Okay.

7 Can I write on this? Do I have to give it back to

8 you, or do I get to keep it?

9 MR. BROOKS: You can keep that one, Judge.

10 THE COURT: Okay.

11 Kenneth Walker, Lines 6 through 8, "Would you please

12 state your full name for the record, sir."

13 "Kenneth Allen Walker" is pink.

14 First one is Page 18, then?

15 MR. BROOKS: Correct, your Honor.

16 THE COURT: What's the objection?

17 MR. BROOKS: The objection here, it's a

18 counter-designation, and this is background information that's

19 well before the class period, your Honor. But since it's

20 defendants' time, if that's what they want to do, we will

21 withdraw the objection.

22 MR. NEWVILLE: Your Honor, it was our understanding

23 that a fairness counter-designation would necessarily count

24 against the time of the party who had offered the deposition,

25 the original deposition testimony.

1 Now, I submit that some of these designations --

2 THE COURT: That makes sense to me. That makes sense
3 to me. If it's -- if it's a completeness or fairness
4 designation, then the time will count against the party
5 offering the original designation. If it's extra beyond that,
6 then it's against the other party.

7 MR. BROOKS: In that case, your Honor, we maintain
8 our objection. His background and his duties from before the
9 class period are not relevant to the testimony that we have
10 designated here. So we would ask that we start with something
11 closer to the class period.

12 MR. NEWVILLE: Your Honor, defendants' position is
13 that simply jumping into the witness' position and job
14 responsibilities in 1998 is incomplete.

15 THE COURT: Well, I will sustain the objection as to
16 the fairness designation. I think the material is relevant if
17 you want to go deeper into this deponent's background, but
18 it's on your time. It's up to you.

19 Do you wish to retain the designation?

20 MR. NEWVILLE: Thank you, your Honor.

21 THE COURT: Do you wish to retain the designation?

22 MR. NEWVILLE: We wish to retain the designation.

23 THE COURT: Okay. Then, it will be allowed, but it
24 will be on your time.

25 MR. NEWVILLE: Does your Honor's ruling apply to the

1 counter-designations on Pages 18 and Page 19?

2 THE COURT: I don't know. Let's see.

3 Yes, they are all going into his background before

4 '98, which is where the plaintiffs commenced their

5 interrogation. So yes, it applies to those as well.

6 Next? Page 20?

7 MR. NEWVILLE: Your Honor, I believe we are on

8 Page 22.

9 THE COURT: The page number is cut off here, so I

10 can't really tell. Yes, okay. It looks like 22 and then 24.

11 That's Line 12, correct?

12 MR. NEWVILLE: Correct.

13 Defendants have objected to this testimony as

14 irrelevant.

15 Defendants will withdraw their objection based on

16 relevance.

17 THE COURT: Anything else left?

18 MR. NEWVILLE: No, your Honor.

19 THE COURT: Okay. Then the designations on Page 23,

20 is it, or 22? Lines 12 through 15 and 19 through 21 come in

21 without objection.

22 Next is Page 24.

23 MR. NEWVILLE: Defendants have designated Lines 11

24 through 12 as a fairness designation of the testimony

25 designated by plaintiffs.

1 MR. BROOKS: Your Honor, I think this just adds
2 confusion. It has the witness asking a question and defense
3 counsel answering the question in the middle of the
4 deposition, and the actual answer to the question posed begins
5 on Line 14 and goes through Line 16.

6 THE COURT: Let's see. The question is, And are we
7 talking about the time frame of February '98 to numeral 2 of
8 '99?

9 MR. NEWVILLE: Your Honor, that's the clarification
10 of the witness.

11 THE COURT: So that's the witness' testimony?

12 MR. NEWVILLE: Yes.

13 MR. BROOKS: We will withdraw the objection, your
14 Honor.

15 THE COURT: Objection is withdrawn.

16 Lines 11 and 12 come in without objection.

17 Objections to Lines 14 through 16? What's the basis
18 of the objection?

19 MR. NEWVILLE: The objection is withdrawn, your
20 Honor.

21 THE COURT: 14 through 16 come in without objection.

22 Next, I believe, is Page 25, Lines 20 through 24. I
23 assume it's 19 through 24 really.

24 MR. BROOKS: Really, it should be 19 through 23, your
25 Honor, with skipping the objection in there.

1 MR. NEWVILLE: We would object to them introducing
2 the counsel's objection on Line 21.

3 And defendants' objection to the question, "Was the
4 QAC department downsized?" is on the basis that it is
5 misleading and misrepresents the actual events at the company
6 at the time, as the witness testifies.

7 THE COURT: What actually did happen?

8 It says here there was a reduction. That's different
9 from downsizing?

10 MR. NEWVILLE: Your Honor, we believe it's fair to
11 have the witness testify as to his personal knowledge and
12 characterization instead of plaintiff's counsel.

13 MR. BROOKS: We are not trying to keep the testimony
14 out, your Honor. He has got his clarification right there.

15 THE COURT: I will overrule the objection.

16 Line 21 is stricken. That will not be read to the
17 jury.

18 Lines 19 and 20 and 22 and 23 come in over objection.

19 Next is Page 27, I believe.

20 MR. NEWVILLE: Your Honor, defendants' objection is
21 on the grounds of relevance, and defendants withdraw that
22 objection.

23 THE COURT: Then, Lines 14 through 17 of Page 27 come
24 in without objection.

25 Next, Page 92.

1 MR. NEWVILLE: The designations on Page 92 are
2 defendants' designations that we have categorized as
3 additional counter-designations, not particularly tied to a
4 designation of the plaintiffs.

5 MR. BROOKS: Similarly, I believe the designations is
6 the case going on to Page 93. And, your Honor, from 93, 13 to
7 22 is plaintiff's fairness counter-designation to this
8 additional information.

9 THE COURT: Are you objecting to 2, 3, and 5 through
10 7?

11 MR. BROOKS: As long as this is going to be presented
12 after the video. I mean, our objection would be that it
13 doesn't relate. And what I am hearing from Mr. Newville is
14 that it's not a fairness designation, and we don't care if
15 they show it as long as it's not part of our cut.

16 THE COURT: So there is no objection?

17 MR. BROOKS: Correct.

18 THE COURT: Okay. Is it the same for Lines 1 through
19 7 of Page 93 and 9 through 11 of Page 93?

20 MR. BROOKS: It is, your Honor.

21 THE COURT: Lines 13 through 22 of Page 93.

22 MR. BROOKS: Those are our counter-designations to
23 their additional designations, your Honor, for fairness and
24 completeness.

25 MR. NEWVILLE: Your Honor, we don't object.

1 THE COURT: No objection?

2 The objection is withdrawn. The designation Lines 13
3 through 22 on Page 93 comes in without objection.

4 Page 24, Line 11 through 15. Any objection?

5 MR. NEWVILLE: Your Honor, can I have a minute,
6 please?

7 THE COURT: Sure.

8 (Brief pause.)

9 MR. NEWVILLE: Objection is withdrawn, your Honor.

10 THE COURT: Okay.

11 Next, Page 126, Line 15.

12 MR. NEWVILLE: Your Honor, the objection is that this
13 is -- this question is prejudicial, and it is leading and
14 argumentative.

15 THE COURT: Response?

16 MR. BROOKS: Your Honor, I believe, as with the rest
17 of the Household witnesses as to the leading objection,
18 Mr. Walker was the head of QAC. He was represented by Cahill,
19 Gordon. And leading questions should be permitted.

20 MR. NEWVILLE: The leading objection is withdrawn.
21 It's argumentative.

22 MR. BROOKS: I don't believe that it's argumentative,
23 your Honor. This is in the context of discussing an e-mail
24 that talks about unauthorized HOLPs. And if that's the basis
25 for his assertion that this is argumentative, the fact that

1 the e-mail discusses it I think defeats that objection.

2 THE COURT: What is confusing about this -- or

3 argumentative? I am sorry. What's argumentative about it?

4 MR. NEWVILLE: Your Honor, it implies that there was

5 a practice or procedure of use of unauthorized HOLPs.

6 THE COURT: It doesn't say "practice" or "procedure"

7 anywhere, does it?

8 MR. NEWVILLE: No, your Honor, it doesn't.

9 THE COURT: So how does it imply that?

10 MR. NEWVILLE: Because the assumption packed into the

11 question is that Household branches were using unauthorized

12 HOLPs in their loan sales.

13 THE COURT: So you are saying that there is no basis

14 on the record for assuming that?

15 MR. BROOKS: The title of the e-mail -- excuse me.

16 THE COURT: Are you saying that there is no basis on

17 the record for assuming that the branches were using

18 unauthorized HOLPs?

19 MR. NEWVILLE: Your Honor, there is no basis in the

20 record for assuming that that was a practice of the branches

21 and a policy of the company.

22 THE COURT: Okay. Then, I will overrule the

23 objection.

24 The question doesn't ask -- or doesn't assume that it

25 was either a practice or a policy. It simply says, "When did

1 you first learn that the Household branches were using
2 unauthorized HOLPs?"

3 As long as that's not assuming a fact for which there
4 is no foundation in the record, the objection is overruled.
5 19 through 22?

6 MR. NEWVILLE: That's the answer to the same
7 question, your Honor.

8 THE COURT: Let me just back up a second. Let's back
9 up because, as I look at the questions and answers before
10 15 through 17, I think I better understand counsel's
11 objection.

12 On what do you base the assumption that is contained
13 in your question that Household branches were using
14 unauthorized HOLPs?

15 MR. BROOKS: It's in the document, your Honor. If
16 you look at Page 124 of the deposition, Line 15, the subject
17 of the e-mail that we are discussing is "Unauthorized HOLPs."

18 THE COURT: Sure. But what does it say? Does it say
19 there was one? There was two?

20 MR. NEWVILLE: Your Honor, the document says there
21 were two.

22 MR. BROOKS: And, your Honor, as the testimony
23 continues, the part they don't object to, the question on
24 Line 24 of Page 124, continuing on, says, "Do you recall
25 sending this e-mail?"

1 "Yes, I do.

2 "And do you recall finding the unauthorized HOLPs
3 that are referenced in the e-mail?

4 "Yes, I do.

5 "How did you find them?

6 "I found them on a fax machine."

7 And it goes on to continue.

8 So this testimony that they are objecting to here is
9 perfectly in context and explained by the prior testimony.
10 And it's not argumentative at all.

11 I am only using the witness' acknowledgment that he
12 recalls finding unauthorized HOLPs, as referenced in the
13 e-mail.

14 MR. NEWVILLE: Your Honor, I have a copy of the
15 e-mail right here.

16 THE COURT: It's not necessary.

17 I am going to sustain the objection.

18 I think the communication refers to two at one
19 branch. Every time you refer to the communication as
20 "branches we're using," counsel objects as to form. I think
21 I -- that's a close enough objection to make it clear.

22 I will sustain the objection as to those.

23 MR. BROOKS: That it's argumentative?

24 THE COURT: Well, the objection in the deposition is
25 as to form. That's preserved. And I think it's an improper

1 form because it assumes that branches, in the plural, were
2 using unauthorized HOLPs. And there is nothing in the record
3 to indicate there was more than a single incident at one
4 branch.

5 So I will sustain the objection.

6 MR. BROOKS: Your Honor, assuming the plaintiffs can
7 establish that more than one office used unauthorized HOLPs in
8 our case, would this objection be overruled? because, Judge,
9 there is a volume of information that we can present that more
10 than one branch office was using unauthorized HOLPs.

11 THE COURT: Interesting question.

12 What's your response?

13 MR. NEWVILLE: Assuming that even if there were more
14 than two -- let's assume there were 42.

15 THE COURT: Okay.

16 MR. NEWVILLE: That's an entirely inconsequential
17 percentage of the total number of loans that were at issue
18 during the relevant period.

19 THE COURT: And if that's so, you may win the issue
20 with the jury on that point. But that's not what we are
21 talking about here.

22 What we are talking about here is whether or not this
23 particular question is appropriate.

24 So if the record reflects that there were 42 at
25 various different branches, would that make this question,

1 then, an appropriate question; that is, a question that does
2 not assume improperly, without a foundation on the record,
3 that branches, in the plural, were using unauthorized HOLPs?

4 MR. NEWVILLE: Your Honor, the foundation -- that
5 foundation wasn't on the record at the deposition. So
6 therefore, the question that he is answering is a different
7 question than that.

8 And I would just like to note for the record, the
9 response to this particular e-mail from Mr. O'Han says, "Call
10 me to discuss. This is in direct conflict of what we are
11 trying to get done."

12 Obviously, these were not policies or practices at
13 the company.

14 MR. BROOKS: We don't think it's quite that obvious,
15 your Honor.

16 They were given the opportunity to examine him at his
17 deposition, if they wanted to, to clarify this testimony.

18 We are fairly confident -- or extremely confident we
19 are going to be able to prove that these HOLPs were being used
20 at more than one branch.

21 THE COURT: You folks keep sliding over into the
22 subject matter, the issue of the question, which is not what I
23 am interested in. I don't know who's going to win the point.
24 I don't know if it's, you know, in direct conflict with what
25 they were trying to get done. And at this point I don't care.

1 It's for the jury to decide at some point.

2 My question is, do I judge this question solely on
3 the basis of the transcript before me; or can I take into
4 account the entire record of the proceedings at the time of
5 the trial before this deposition is offered in determining
6 whether this question inappropriately assumes facts for which
7 there is no sufficient evidence on the record?

8 That's the question.

9 What's your answer?

10 MR. BROOKS: My answer is the latter, your Honor.

11 THE COURT: Okay. Why?

12 MR. BROOKS: I don't think that we are required to
13 introduce foundational testimony for every question we ask in
14 a deposition. If we can establish that foundation before we
15 introduce the evidence at trial, that should be sufficient.

16 The question is not, what did I establish in this
17 deposition, and do I have to ask every foundational question
18 in order to ask him the final question?

19 The question is, is there a foundation for the
20 question, for the question that we are asking the witness?

21 And in this case, I think that we are going to be
22 able to put that in. And if we can, this testimony should
23 also come in.

24 THE COURT: Counsel?

25 MR. NEWVILLE: Your Honor, our position is, that

1 doesn't cure the problem with the form of the question, which
2 is the argumentative nature of the question.

3 THE COURT: Okay. Well, I don't think it's
4 argumentative. I think it may assume facts not in evidence.
5 But I think that opposing counsel's explanation is well-taken.

6 So I think the ruling will stand.

7 However, if you manage to show, prior to the
8 introduction of this question and answer, on the record that
9 there was a basis for assuming that branches were using
10 unauthorized HOLPs, then the question can be asked and the
11 answer can be given.

12 The witness could, of course, have answered that he
13 did not understand that the branches were using unauthorized
14 HOLPs. And apparently he gave an answer which comes pretty
15 close to doing that by limiting his knowledge to these two on
16 that date.

17 So I think if you establish a record, the objection
18 will be overruled.

19 But right now the objection is sustained.

20 The deposition transcript doesn't contain any such
21 record.

22 MR. NEWVILLE: Your Honor, we assume that your ruling
23 applies to the entirety of the designation from Page 126,
24 Line 15 to 127, Line 2?

25 THE COURT: Yes.

1 Page 184 is next.

2 MR. NEWVILLE: Your Honor, this is the last of
3 defendants' counter-designations for this transcript. It's an
4 additional counter-designation.

5 We are not asserting it as a fairness designation.

6 THE COURT: What's the objection?

7 MR. BROOKS: With that explanation, your Honor, there
8 is no objection.

9 THE COURT: Okay. Lines 6 through 24 of Page 184 and
10 Lines 1 through 18 of Page 185 comes in without objection.

11 MR. BROOKS: I believe that's all of them, your
12 Honor.

13 THE COURT: I believe you are right. Okay.

14 Walter Lewis deposition?

15 It's 5 o'clock, isn't it?

16 Well, it seems to me we need to start sooner. So I
17 think tomorrow we have -- I think tomorrow we can probably
18 start at 10:30, okay? We will -- let's do that tomorrow. We
19 will start at 10:30 and hopefully get more done. We should
20 get through the deposition designations.

21 And I am hoping that tonight we can grind out the
22 remaining motions in limine so that we have rulings on the
23 expert -- all of the expert testimony, which will allow us
24 then to begin ruling on the objected-to exhibits, many of
25 which pertain to those issues.

1 So that's what we will try to do tomorrow.

2 MR. BROOKS: Thank you, your Honor.

3 MR. NEWVILLE: Thank you.

4 THE COURT: Thank you, folks.

5 We are adjourned for the day.

6 MR. DOWD: Thank you, your Honor.

7 MR. KAVALER: Your Honor, can I ask a question?

8 THE COURT: Sure. You want to go back on the record?

9 MR. KAVALER: Are you planning on sitting this Friday
10 since there's not a jury issue?

11 THE COURT: I am sorry?

12 MR. KAVALER: Are you planning to sit this Friday? I
13 assume the reason you don't sit on Fridays during trial is in
14 deference to the jury.

15 THE COURT: I am right now, yes.

16 MR. KAVALER: Thank you.

17 (An adjournment was taken at 5:08 p.m.)

18

19

20

21

22

23

24

25

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

3 LAWRENCE E. JAFFE PENSION PLAN,)
 on behalf of itself and all)
4 others similarly situated,)

5 Plaintiff,)

6 vs.) No. 02 C 5893

7 HOUSEHOLD INTERNATIONAL, INC.,)
 et al.,) Chicago, Illinois
8) March 17, 2009
 Defendants.) 10:30 a.m.

9 VOLUME 4
10 TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE
 BEFORE THE HONORABLE RONALD A. GUZMAN

11
12 APPEARANCES:

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

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

24

25

1 APPEARANCES: (Continued)

2 For the Plaintiff: MILLER LAW LLC
BY: MR. MARVIN ALAN MILLER
3 115 South LaSalle Street
Suite 2910
4 Chicago, Illinois 60603
(312) 332-3400

5 For the Defendants: CAHILL, GORDON & REINDEL LLP
6 BY: MR. THOMAS J. KAVALER
MS. PATRICIA FARREN
7 MR. DAVID R. OWEN
MS. JANET A. BEER
8 MR. JASON M. HALL
MR. JOSHUA M. NEWVILLE
9 MS. KIM A. SMITH
MS. SUSAN BUCKLEY
10 80 Pine Street
New York, New York 10005
11 (212) 701-3000

12

13

14

15

16

17

18

19

20

21

22 Court Reporter: NANCY C. LaBELLA, CSR, RMR, CRR
Official Court Reporter
23 219 South Dearborn Street
Room 1222
24 Chicago, Illinois 60604
(312) 435-6890
25 Nancy_LaBella@ilnd.uscourts.gov

1 THE CLERK: 02 C 5893, Jaffe v. Household.

2 THE COURT: Morning, everyone.

3 Unless there's some great objection or something that
4 needs to be taken up, I think we can move to the Lewellyn
5 Walter deposition.

6 MR. NEWVILLE: Good morning, your Honor.

7 MR. BROOKS: Good morning, your Honor. Luke Brooks
8 for the plaintiffs.

9 MR. NEWVILLE: Josh Newville for the defendants.

10 THE COURT: Okay. We start out with the -- by what
11 now we can call standard objection to the videographer's
12 statement.

13 MR. NEWVILLE: Withdrawn, your Honor.

14 THE COURT: Well, I think actually we've been
15 sustaining that objection.

16 MR. NEWVILLE: We'll withdraw the designation.

17 THE COURT: Okay. Designation is withdrawn.

18 MR. BROOKS: And we --

19 THE COURT: Next is the standard objection to the
20 designation in which the witness states and spells his last
21 name.

22 MR. BROOKS: We withdraw that, your Honor.

23 THE COURT: You'll withdraw the objection?

24 MR. BROOKS: Correct.

25 MR. NEWVILLE: On Page 9, your Honor, defendants have

1 designated the witness' statement that his memory is affected
2 by Parkinson's.

3 THE COURT: What's the objection there?

4 MR. BROOKS: We'll withdraw that, Judge, both on Page
5 9 and on Page 10.

6 THE COURT: You're withdrawing the objections to 7
7 through 16 on 10 as well?

8 MR. BROOKS: Correct.

9 THE COURT: Page 11.

10 MR. BROOKS: Again, your Honor, this is very early
11 background material that plaintiffs don't believe is necessary
12 for understanding the testimony; and so we would object as
13 unnecessary. And we have no objection if defendants want to
14 play it in their clip.

15 MR. NEWVILLE: Your Honor, we agree. We'll withdraw
16 it as defendants' designation. I don't believe the plaintiffs
17 have any objections to this testimony being offered by
18 defendants on its own.

19 THE COURT: Is that correct?

20 MR. BROOKS: That's correct.

21 THE COURT: Page 12. Same thing?

22 MR. NEWVILLE: Yes, your Honor.

23 MR. BROOKS: Same thing, your Honor.

24 THE COURT: 14.

25 MR. NEWVILLE: Your Honor, defendants have designated

1 this introductory material about the fact that Mr. Walter
2 still works for Household but is on leave. I believe it's a
3 legitimate fairness designation to his testimony.

4 MR. BROOKS: We'll withdraw the objection, your
5 Honor.

6 MR. NEWVILLE: Your Honor, the next objected to
7 section is on Page 28. It's plaintiffs' designation.
8 Defendants have objected to Lines 8 through 10 and 15 through
9 16, and we withdraw that objection. Defendants have also
10 counter-designated, for fairness, lines 13 through 14.

11 THE COURT: What's the objection to that?

12 MR. BROOKS: Well, as you can see here, your Honor,
13 the original question is interrupted by defense counsel. It's
14 repeating the same question over again. I just don't think
15 it's necessary; and it would be confusing, given that the
16 objection is not going to be shown on the video.

17 THE COURT: Well, who states line 13?

18 MR. BROOKS: That's me, your Honor.

19 THE COURT: I'm sorry?

20 MR. BROOKS: That would be me.

21 THE COURT: That's you. Okay. So the question on
22 Line 8 is, Was there a formal training program?

23 MR. BROOKS: We can withdraw it, Judge. That's fine.
24 It's a little bit confusing, but I don't have a major
25 objection to it.

1 THE COURT: Okay.

2 MR. BROOKS: The next one, your Honor, is on Page 36.

3 It is Lines 18 through 23 that defendants have objected to.

4 MR. NEWVILLE: Your Honor, we will withdraw the
5 objection to this testimony.

6 On page 37, defendants -- the -- there's a counter-
7 designation indicated. And for the record, defendants
8 withdraw the fairness counter-designation on Pages -- or on
9 Lines 9 through 22 of Page 37. Those were designated in
10 error.

11 MR. BROOKS: We would ask that the --

12 THE COURT: Lines 23, 24 and 25 are also designated
13 on my copy.

14 MR. NEWVILLE: Yes, your Honor.

15 THE COURT: Do those remain?

16 MR. NEWVILLE: Those remain as a fairness designation
17 to the following testimony designated by plaintiffs on Page
18 38.

19 MR. BROOKS: Your Honor, I don't think that those
20 lines substantially change the question, which was originally
21 asked on Lines 7 and 8. But if we're going to include 23
22 through 25, we certainly should include 16 through 18, which
23 is the beginning of -- if you want to call this the question
24 before I'm interrupted.

25 THE COURT: Well, you lost me. Let's see, we start

1 out --

2 MR. NEWVILLE: Your Honor, let me make this easy.

3 We'll withdraw the fairness designation.

4 THE COURT: I always like it when you make it easy.

5 MR. NEWVILLE: And move on to the next one.

6 THE COURT: You're withdrawing the entire 9 through

7 25?

8 MR. NEWVILLE: We'll withdraw the entire 9 through

9 25.

10 THE COURT: Look at that. I should get confused more

11 often.

12 Page 40 is next, I believe.

13 MR. NEWVILLE: Plaintiffs' designation on Page 40,

14 Line 25 through 41, Line 4, defendants withdraw their

15 objection to that testimony.

16 MR. BROOKS: And plaintiffs will withdraw the 41, 5

17 through 8 objection.

18 On Page 42, your Honor, Lines 14 through 23,

19 plaintiffs will withdraw their objection to that designation.

20 THE COURT: Okay.

21 MR. NEWVILLE: Your Honor, defendants have counter-

22 designated testimony on Page 48, Line 10 through Page -- 48,

23 Lines 10 through 25. We'll withdraw that as a fairness

24 designation and -- without prejudice to our right to introduce

25 it as our own designation.

1 THE COURT: Are you designating it on your own?

2 MR. NEWVILLE: Yes.

3 THE COURT: Do you have an objection to that
4 designation?

5 MR. BROOKS: Not to that, your Honor, as long as it's
6 not a fairness designation.

7 MR. NEWVILLE: Your Honor, defendants will withdraw
8 the fairness designation to the testimony counter-designated
9 on Page 50, Lines 3 --

10 THE COURT: Why don't you give me just a second,
11 please.

12 MR. NEWVILLE: Sure.

13 (Brief pause.)

14 THE COURT: Proceed. 50, Lines 3 through 13.

15 MR. NEWVILLE: Defendants withdraw the fairness
16 counter-designation. And I believe plaintiffs wouldn't have
17 an objection to defendants offering that as a -- as their own
18 designation.

19 MR. BROOKS: That's correct, your Honor. As
20 defendants' designation, just so the record is clear.

21 THE COURT: Okay.

22 MR. NEWVILLE: Defendants have counter-designated
23 testimony on Page 51 and 52. Defendants will withdraw the
24 fairness designation, and we'll offer that as -- as their own
25 designations.

1 MR. BROOKS: We have no objection to that, your
2 Honor.

3 THE COURT: Lines 18 through 20.

4 MR. NEWVILLE: Same, your Honor.

5 MR. BROOKS: Same, your Honor.

6 THE COURT: Page 52.

7 MR. NEWVILLE: The counter-designation on page 52,
8 Line 8 through 53, Line 5, defendants will withdraw that as a
9 fairness designation.

10 MR. BROOKS: As long as they're not offering it for
11 fairness, your Honor, we have no objection.

12 THE COURT: Lines 18 through 21, Page 53.

13 MR. NEWVILLE: Your Honor, there is a -- there's a
14 series of testimony starting on Page 53, Line 18 through Page
15 58, Line 9 which is not a fairness designation. It's been
16 counter-designated by defendants. And I believe plaintiffs
17 don't have any objection to it as a non-fairness counter-
18 designation.

19 MR. BROOKS: Correct, your Honor. Our only objection
20 was that it didn't relate to our designated testimony. So if
21 they're offering it on their own time, we don't have a problem
22 with that.

23 THE COURT: Okay. That takes us through Page 58.

24 66, I think, is next.

25 MR. NEWVILLE: Your Honor, defendants will withdraw

1 the designation on Page 66, Lines 18 through 67, 9 as a
2 fairness designation. I believe plaintiffs did not have an
3 objection to the testimony.

4 MR. BROOKS: That's correct.

5 THE COURT: Very well.

6 68.

7 MR. BROOKS: On 68, your Honor, there's a counter-
8 designation. And our objection is that the question is about
9 whether there -- the account executives had insurance
10 penetration quotas. And his response is they're expected to
11 deliver, to offer the insurance as optional. It's not
12 responsive to the question, your Honor.

13 MR. NEWVILLE: Your Honor, I believe that's an
14 objection to the form of the response and, unless made at the
15 deposition, it's waived.

16 THE COURT: What do you think?

17 MR. BROOKS: I guess I think Mr. Newville is probably
18 correct. We should have offered that objection to the form of
19 the response at the deposition.

20 THE COURT: Objection is overruled. It comes in over
21 objection.

22 Page 70.

23 MR. NEWVILLE: Page 70 is defendants' counter-
24 designation. The lines are Page 70, Line 5 through 13. It's
25 a counter-designation for fairness to the testimony designated

1 by plaintiffs on Pages 68 and 69 regarding quotas for
2 insurance penetration.

3 THE COURT: You're not including Lines 8 and 9 there,
4 are you?

5 MR. NEWVILLE: No, we're not.

6 THE COURT: Okay.

7 MR. BROOKS: Your Honor, this is entirely cumulative
8 to the prior testimony. It's also nonresponsive, but I'm not
9 going to continue to assert that, as we didn't assert it at
10 the deposition. But, again, his response is, We were taught
11 to offer the insurance to the customer and make it optional.
12 The jury is going to hear that once. They don't need to hear
13 it twice, especially when it's --

14 THE COURT: What about the last part of the answer?

15 MR. BROOKS: Well, your Honor, if defendants would
16 like to pick one of the two, I don't have a problem with that.
17 But I don't think just because --

18 THE COURT: So you still object?

19 MR. BROOKS: I still object, your Honor.

20 THE COURT: All right. The objection is sustained.
21 It's cumulative.

22 MR. NEWVILLE: Your Honor, if we may, we'll pick the
23 second designation rather than the first counter-designation.

24 THE COURT: Okay. So this is withdrawn, the first
25 one is withdrawn.

1 MR. NEWVILLE: The first one is withdrawn.

2 THE COURT: That's Page 68, Lines 12 through 17, the
3 designation is withdrawn.

4 MR. NEWVILLE: Correct.

5 THE COURT: Okay. 74.

6 MR. NEWVILLE: Your Honor, defendants have designated
7 testimony on Pages 74, 75, 76, which is not a fairness
8 designation. I believe plaintiffs don't have an objection to
9 it.

10 MR. BROOKS: Our only objection was that it was a
11 counter-designation, your Honor.

12 THE COURT: As a separate designation, it comes in
13 without objection. That's 74, Lines 14 through 16; 75, Lines
14 6 through 11 and 17 through 25; 76, Lines 1 through 22.

15 Page 77, next.

16 MR. NEWVILLE: Your Honor, the testimony on Page 77,
17 Line 15 through Page 78, Line 2 is a non-fairness
18 counter-designation by defendants. I believe plaintiffs have
19 objected to the designation of Lines 15 through 17.

20 THE COURT: The objection is?

21 MR. BROOKS: We withdraw it, your Honor.

22 THE COURT: Okay. 15 through 17 comes in without
23 objection.

24 What about 23 through 25?

25 MR. BROOKS: 23 through Page 78, 2, we also withdraw

1 our objection.

2 THE COURT: Page 78, Lines 11 and 12.

3 MR. NEWVILLE: Your Honor, defendants will withdraw
4 that fairness counter-designation.

5 THE COURT: Is it withdrawn altogether?

6 MR. NEWVILLE: Yes, your Honor.

7 THE COURT: Lines 16 and 18 through 25.

8 MR. NEWVILLE: Your Honor, defendants have counter-
9 designated that testimony for fairness to the question and
10 answer designated by plaintiffs on Page 78. Questions and
11 answers, I should say.

12 The reason that this is a legitimate fairness
13 designation, your Honor, is because the plaintiffs have
14 designated testimony earlier in the deposition in support of
15 the contention that no one at Household ever disapproved of
16 any of Mr. Walter's training methods. Combined with
17 plaintiffs' designation that this program is what he put
18 together to sell first mortgages, there's a misleading
19 impression that this is an approved -- an approved program for
20 the entirety of the class period.

21 MR. BROOKS: I'm not sure how -- we'll withdraw our
22 objection, your Honor. That's fine.

23 MR. NEWVILLE: Your Honor, I believe that would apply
24 to the designation on Page 79, Lines 1 through 3 as well.

25 MR. BROOKS: That's correct.

1 THE COURT: Page 83.

2 MR. NEWVILLE: The testimony that defendants have
3 designated on Page 83 and 84 is a non-fairness
4 counter-designation. I don't believe plaintiffs have any
5 other objections to it.

6 MR. BROOKS: That's correct, your Honor.

7 THE COURT: All right. That comes in without
8 objection.

9 MR. NEWVILLE: Your Honor, the same is true with
10 respect to the testimony on Page 88, Lines 1 through 8.

11 MR. BROOKS: We agree with that, your Honor.

12 THE COURT: Page 97, I believe, is next.

13 MR. NEWVILLE: Your Honor, the defendants asserted an
14 objection to the testimony on Page 96, which we withdraw.

15 THE COURT: I missed one. Yes. 5, 6, 7, the
16 objection is withdrawn?

17 MR. NEWVILLE: Yes, your Honor.

18 THE COURT: Now we get to 97.

19 MR. NEWVILLE: Your Honor, defendants' objection is
20 that this witness, who is -- he's asked about his
21 understanding of a document. His testimony doesn't have a
22 sufficient foundation. He has no personal knowledge regarding
23 the exhibit, and he's not competent to testify as to the
24 document.

25 MR. BROOKS: Your Honor, Mr. Walter admitted in his

1 deposition that he designed a training program to teach people
2 how to use the effective rate worksheet. And I'm showing him
3 what is an effective rate worksheet. It's not something that
4 he admitted or recalled recognizing; however, he did recognize
5 the form of it and that was the form of an effective rate
6 presentation. So he's perfectly competent, having designed
7 the training on this program, to testify that this is what it
8 was.

9 MR. NEWVILLE: Your Honor, Mr. Walter testified that
10 he was only testifying as to what he saw on the document. He
11 didn't recognize this document. He didn't identify it as his
12 training.

13 THE COURT: Well, the question is, Is this how you
14 calculate an effective or equivalent rate? That's the
15 question. Where does he say that he's competent to answer
16 that question?

17 MR. BROOKS: That he's competent to answer the
18 question, your Honor?

19 THE COURT: Yes.

20 MR. BROOKS: Where does he say that he designed the
21 effective rate program?

22 THE COURT: Sure.

23 MR. BROOKS: I can search through. I don't know if
24 defendants --

25 THE COURT: Do you agree that he testified that he

1 designed the effective rate program?

2 MR. NEWVILLE: He designed one of them. He said he
3 didn't recognize this as one of his.

4 MR. BROOKS: But he --

5 THE COURT: But if you design an effective rate
6 program, you should be able to calculate an effective rate,
7 right? Don't you think? I mean, if he designed the program,
8 isn't that evidence of the fact that he is competent to answer
9 this question as to whether this is the proper way to
10 calculate an effective or equivalent rate? What do you think?

11 MR. NEWVILLE: Your Honor, I believe that the -- I
12 believe that the witness is speculating as to this particular
13 document. And he's testified that he's looking at the
14 document and assuming that that's what it's for. I don't
15 think that's opinion testimony that's helpful to the jury's
16 understanding. The jury could look at this and conclude the
17 same thing.

18 MR. BROOKS: Your Honor, this is a program that was
19 used at Household. It's obviously one that is of high
20 relevance to this case. And Mr. Walter -- who defendants
21 concede designed a training program to teach account
22 executives and -- whether it was authorized or not, they
23 concede that he designed this program -- is perfectly capable
24 of looking at a document and determining whether he
25 understands that it's how you calculate an effective or

1 equivalent rate.

2 MR. NEWVILLE: Your Honor, I'd just like to add that
3 Mr. Walter's effective rate program that he designed was all
4 prior to the class period.

5 THE COURT: What's that got to do with anything? Why
6 does that matter?

7 MR. NEWVILLE: Your Honor, it reduces the relevance
8 of the testimony regarding that -- regarding the use of
9 effective rate during the class period.

10 THE COURT: Okay. Well, I see that in the
11 designations on Line 20 through 25, he indicates that he
12 doesn't recognize the form; but he does admit that he trained
13 account executive managers on how to calculate an effective
14 rate. So I think it's fair to ask him if this document is an
15 example of how to calculate an effective rate, which is what
16 the question asks. His answer is -- he could have said no.
17 He could have said I don't know. Instead he said it looks
18 like it.

19 I'll overrule the objection. It comes in over
20 objection.

21 MR. BROOKS: Next, your Honor, is, I believe, 99,
22 Line 11. And it's plaintiffs' designation, defendants'
23 objection.

24 MR. NEWVILLE: Your Honor, defendants withdraw their
25 objection to plaintiffs' designations on Page 99, 11 through

1 12, 14 through 15 and 22 through 23.

2 (Phone ringing.)

3 THE COURT: Turn off the phones, please.

4 The objection is withdrawn?

5 MR. NEWVILLE: Yes, your Honor.

6 The objection to the designated testimony on Page

7 100, Lines 1 through 12 is also withdrawn.

8 THE COURT: Lines 13 through 15 and 19 through 24.

9 MR. BROOKS: Your Honor, if these are offered for a

10 fairness designation, I would ask that they be moved to the

11 defendants' part of the video. We're not offering any

12 testimony regarding complaints on the effective rate. And I

13 don't believe Lew Walter -- well, I'll withdraw that last

14 part.

15 We're not offering any testimony on complaints. I'm

16 not sure if Lew Walter would have been someone who would have

17 received complaints.

18 THE COURT: Isn't part of your case that the

19 effective rate was a misleading and improper way to represent

20 the interest rate?

21 MR. BROOKS: Yes, it is, your Honor.

22 THE COURT: So wouldn't customer complaints go to

23 that issue?

24 MR. BROOKS: It's possible customer complaints would

25 be a part of analyzing that issue, but --

1 THE COURT: Let me ask you this way: If there had
2 been 10,000 complaints, would you be seeking to introduce that
3 into evidence to show that this was an improper way and
4 misleading way to calculate interest rates?

5 MR. BROOKS: We probably would, your Honor. And we
6 don't have an objection to them designating this testimony in
7 their own video clip.

8 THE COURT: Oh.

9 MR. BROOKS: My only objection is in this particular
10 deposition cut, we have not --

11 THE COURT: Is it touched on in this deposition?

12 MR. NEWVILLE: Your Honor, I believe it's a
13 legitimate fairness designation to the testimony designated on
14 Lines 9 through 12. If plaintiffs are going to introduce
15 testimony as to Mr. Walter's lack of recollection as to
16 whether the effective rate presentation was -- was used after
17 he stopped training on it, it's only fair that defendants
18 should be able to designate testimony regarding the lack of
19 recollection of any complaints regarding it.

20 THE COURT: Well, I'm not sure that follows; but I
21 think it's close enough. I'll overrule the objection.

22 MR. BROOKS: We withdraw our objection, your Honor,
23 to 100, Lines 19 through 24.

24 THE COURT: 4 through 12, Page 101.

25 MR. NEWVILLE: Your Honor, defendants withdraw their

1 objection.

2 Page 102, lines 5 through 6 and Lines 17 through 25,

3 defendants will withdraw their objection.

4 THE COURT: Okay. 103, Lines 1 and 2. Is that part

5 of it?

6 MR. NEWVILLE: That's part of it, your Honor.

7 Withdraw the objection.

8 THE COURT: Page 104.

9 MR. NEWVILLE: Your Honor, defendants object to the

10 testimony on Lines 22 of Page 104 through Page 105, Line 4.

11 The exhibit that plaintiffs are asking about in this section

12 was not designated by plaintiffs. The exhibit is an e-mail

13 that doesn't contain Mr. Walter's name anywhere on it.

14 Mr. Walter testified he doesn't know who the people are on the

15 e-mail. And it appears that plaintiffs' counsel is just

16 reading the text of the e-mail into the record that he likes

17 in order to attempt to elicit a response from the witness. In

18 fact, the part that counsel read into the record wasn't part

19 of the question.

20 THE COURT: You're talking about Lines 22 through 25

21 and 1 through 4?

22 MR. NEWVILLE: Yes, your Honor.

23 THE COURT: How about that? Is that a question?

24 MR. BROOKS: We'll withdraw the designation, your

25 Honor.

1 THE COURT: Through what line?

2 MR. BROOKS: Through Line 106 --

3 THE COURT: I'm sorry?

4 MR. BROOKS: 106, 21, Judge.

5 THE COURT: Okay. Page 107 is next, I believe.

6 MR. NEWVILLE: Your Honor, the objection is a similar

7 objection to the last -- the last section. My understanding

8 is this is not an e-mail that has anything to do with

9 Mr. Walter. He doesn't appear anywhere on the e-mail. And

10 counsel is reading text of the e-mail into the record. The

11 answer to -- the answer to the question is simply "correct,"

12 as in, you have correctly read this e-mail into the record. I

13 don't believe that's a legitimate designation by the

14 plaintiffs.

15 MR. BROOKS: Your Honor, I think the questions have

16 to be read in conjunction with the next question, going

17 through Line 22, where the witness is asked whether he's aware

18 that DTM Edson was training people to use the effective rate

19 comparison as reflected in the e-mail. Mr. Walter was part of

20 the training department at various times. He had various

21 titles, like corporate trainer or trainer for the northwest

22 division, I believe. And so the question is probative of

23 whether he knows that other trainers are out there doing the

24 same thing. And it tends to refute defendants' contention

25 that once they claimed Mr. Walter's presentation was no longer

1 used, other people were not being trained on this effective
2 rate or other trainers weren't using it.

3 MR. NEWVILLE: Your Honor, my response is that
4 it's -- it's quite a stretch to be -- it's quite a stretch to,
5 you know, simply take an e-mail that has nothing to do with
6 Mr. Walter and read it into the record in order to elicit a
7 response.

8 MR. BROOKS: It has something --

9 THE COURT: Well, is the e-mail in evidence? Is
10 there a foundation laid to put the e-mail in evidence?

11 MR. NEWVILLE: Your Honor, we had no objection to
12 that exhibit.

13 THE COURT: So this e-mail is in evidence. What is
14 the e-mail? Tell me what it is.

15 MR. BROOKS: The e-mail is an e-mail that
16 indicates --

17 THE COURT: From whom to whom?

18 MR. NEWVILLE: It's an e-mail from Michael G. Doyle
19 to Ned Hennigan.

20 THE COURT: And who are they?

21 MR. NEWVILLE: They're employees in the consumer
22 lending branch network.

23 MR. BROOKS: Mr. Hennigan is a regional general
24 manager. There were three of them in the country that oversaw
25 all of the branches in the network. Attached to the e-mail is

1 another effective rate worksheet. And the e-mail indicates
2 that DTM Edson had, I believe, stopped training or had been
3 training at some point --

4 THE COURT: DTM?

5 MR. BROOKS: District training manager. Kate Edson,
6 I believe it is.

7 THE COURT: I'll overrule the objection.

8 Next is actually, I think, Lines 20 and 21 on Page
9 107.

10 MR. BROOKS: We objected because of the attorney
11 colloquy, your Honor.

12 MR. NEWVILLE: Your Honor, we'll withdraw the
13 counter-designation.

14 THE COURT: Sure.

15 MR. BROOKS: The next one, Judge, is page 108. All
16 of the designated testimony there, I believe, is not offered
17 as a fairness designation. And if that's the case, we don't
18 have any objection.

19 MR. NEWVILLE: Defendants agree.

20 THE COURT: All right.

21 111.

22 MR. NEWVILLE: Your Honor, this is a similar set of
23 questions as to the other purported effective rate training
24 presentation earlier in the testimony. Our objection is the
25 same. Mr. Walter doesn't recall this document, and he simply

1 is testifying as to his opinion looking at the face of the
2 document.

3 Based on your Honor's prior ruling in a similar
4 situation, we'll withdraw the objection.

5 THE COURT: Okay. The objection is withdrawn.

6 That goes through Page 112, Lines 1 through 5; is
7 that correct? Or is that a different issue?

8 MR. NEWVILLE: Your Honor, it's the same objection;
9 and we'll withdraw it for the same reasons.

10 MR. BROOKS: The next appears to be 125, your Honor.

11 MR. NEWVILLE: Your Honor, defendants withdraw their
12 counter-designation.

13 THE COURT: Designation is withdrawn.

14 MR. NEWVILLE: Page 139, Lines 17 through 21. Again,
15 Mr. Walter is testifying as to a purported effective rate
16 presentation he doesn't recall. For the reasons that your
17 Honor stated in connection with similar testimony, defendants
18 withdraw their objection.

19 And defendants withdraw the objection to the
20 testimony on Page 140, Lines 8 through 15 for the same reason.

21 THE COURT: Can we go back to 139. I believe Lines 2
22 through 8 are designated as a defendants' designation.

23 MR. BROOKS: Again, your Honor, we object to the
24 colloquy. And I would just note that there's no --

25 MR. NEWVILLE: Your Honor, we'll agree with that.

1 We'll withdraw this counter-designation.

2 THE COURT: Page 140.

3 MR. NEWVILLE: Your Honor, we'll withdraw it for the
4 same reasons as the testimony on page 139.

5 THE COURT: Page 141.

6 MR. NEWVILLE: Defendants withdraw their objections
7 to Lines 4 through 8.

8 THE COURT: Page 148.

9 MR. NEWVILLE: Defendants withdraw their objection to
10 Lines 8 through 14.

11 THE COURT: Page 149.

12 MR. NEWVILLE: Defendants withdraw their objection to
13 Lines 7 through 13.

14 THE COURT: 150.

15 MR. NEWVILLE: Defendants withdraw their objection to
16 Lines 5 through 19.

17 THE COURT: 157, Line 25 through 158, Line 3.

18 MR. NEWVILLE: Your Honor, it's a fairness
19 designation. He's correcting his testimony above.

20 MR. BROOKS: I don't have a problem with it, your
21 Honor, if we designate Lines 22 and 23, which are the question
22 that he's answering.

23 MR. NEWVILLE: Agreed.

24 THE COURT: Okay. I think that takes care of
25 Lewellyn Walter's deposition.

1 Mr. Charles Cross. I would like to know why he is
2 being designated by deposition. Isn't he a paid expert?

3 MR. BROOKS: He's not a paid expert, your Honor.
4 He's a non-retained expert who was a percipient witness.

5 MR. KAVALER: Your Honor, he's the subject of a
6 pending motion in limine. Or his transcript is the subject of
7 a pending motion in limine.

8 THE COURT: What's the motion?

9 MR. KAVALER: I agree with what Mr. Brooks just said.
10 Mr. Cross was a regulator. He worked for Mr. Bley. He worked
11 under Mr. Bley in the Washington State Department. His
12 deposition was taken in a case called Luna, an underlying case
13 back in the day.

14 In this case, his deposition was taken again. One of
15 the things he said was the plaintiffs want him to be an expert
16 witness in this case. He will not be an expert. As a matter
17 of policy, he says, I don't give expert testimony for anybody
18 except for governments. I won't be an expert. Plaintiffs
19 have now designated his Luna deposition testimony, as well as
20 his deposition testimony in this case, and are claiming that
21 he is an expert witness, notwithstanding he was not put
22 through the usual Rule 26 procedures.

23 The motion in limine addresses the Luna transcript,
24 which we say should not come in under any circumstances.

25 THE COURT: So are two transcripts designated for

1 Mr. Cross?

2 MR. KAVALER: The plaintiffs want to read from two
3 separate transcripts, one a deposition taken in this case,
4 which I submit is subject to the usual deposition vetting
5 process that we're going through now.

6 The second, however, is the Luna deposition not taken
7 in this case. But as your Honor would imagine, in the
8 deposition taken in this case, there was a significant amount
9 of questioning about what went on in the Luna deposition. We
10 think that as a threshold matter, the Luna deposition should
11 not come in under any circumstances. That's the subject of
12 the motion in limine.

13 THE COURT: This is the deposition taken in this
14 case, correct?

15 MR. BROOKS: That's correct, your Honor.

16 MR. NEWVILLE: Yes.

17 MR. KAVALER: I'm merely pointing out he's the same
18 Mr. Cross who is the subject of that motion in limine. And
19 it's the same substantive testimony obviously at some point.
20 And, your Honor, we also have a pending Daubert motion
21 concerning Mr. Cross, if your Honor takes the view that he's
22 seriously proffered as a non-retained, non-paid expert.

23 MR. BROOKS: Your Honor, on the Luna point, we don't
24 intend to offer the deposition into evidence through anyone
25 except our expert, Ms. Ghiglieri, who wrote a report before

1 Mr. Cross was deposed in this case. And her report cites to
2 and in some cases quotes from the Luna deposition of
3 Mr. Cross. And that's the only way and the only testimony
4 that we would intend to use out of that deposition.

5 MR. KAVALER: To quote your Honor the other day,
6 there's the rub. That's the whole problem, your Honor, which
7 is explicated in our Daubert about Mrs. Ghiglieri and in our
8 14-point omnibus. This is a perfect example of what we're
9 talking about.

10 The Luna deposition of Mr. Cross should be, we
11 respectfully submit, inadmissible for any purpose. Assuming
12 arguendo, if that were your Honor's ruling, if it's not
13 admissible through the front door, it shouldn't be admissible
14 through the back door by having Mrs. Ghiglieri say she relied
15 upon it.

16 There are 14 separate categories in the omnibus which
17 seek to exclude specific categories of evidence. If your
18 Honor denies them, you deny them. If your Honor grants them,
19 however, then the next point is they shouldn't come in the
20 back door through an expert saying, well, I relied on them.
21 And here, if I understand Mr. Brooks correctly, he is
22 suggesting but not saying, had the deposition in this case of
23 Mr. Cross already taken place, she would have relied on that.
24 I pass what would have happened in that parallel universe.
25 But what she did is she relied upon the Luna deposition, which

1 we submit in the motion in limine is not admissible.

2 Today's proceedings deal with the Jaffe case
3 deposition of Mr. Cross. I think Mr. Brooks was simply
4 calling to your attention -- and I agree with him -- this is
5 not unrelated to the motion in limine regarding the Luna
6 deposition of the same person, Mr. Cross, who is not a
7 retained expert. He is apparently a new category created by
8 plaintiffs, an involuntary expert, pressed into service by
9 them over his express objection.

10 MR. BROOKS: Your Honor, if I could correct a few
11 things.

12 First, we are not using Ms. Ghiglieri to -- as a
13 piggyback to get Mr. Cross' testimony in. My statement that
14 we intend to introduce the written deposition in Luna as
15 opposed to the video deposition of Mr. Cross when we're
16 examining Ms. Ghiglieri is only to -- the only reason we're
17 even using Luna, Judge, is because Mr. Cross' deposition
18 wasn't taken in this case until after she wrote her report.
19 And the moment we show Ms. Ghiglieri testimony from Mr. Cross'
20 deposition in this case, Mr. Kavalier will stand up and say, I
21 object; you didn't rely on that in your report. That's why
22 we're using -- that's the only reason we oppose their motion,
23 which was on 403, your Honor, to exclude the Luna deposition
24 testimony.

25 As for Mr. Cross being an unwilling expert, we listed

1 him in our Sunstar witnesses as a potential expert, someone
2 who has specialized knowledge. The defendants don't dispute
3 that. We were happy, your Honor, to rely on the Luna
4 transcripts. Defense counsel moved in front of Judge Nolan
5 and over our objection to depose Mr. Cross in this case. And
6 we have the option of using that deposition testimony, just as
7 we could have used Mr. Cross' Luna testimony; and that's what
8 we're choosing to do.

9 MR. KAVALER: Your Honor, if I may?

10 THE COURT: I guess I'm a little -- I'm more than a
11 little bit confused. I'm very confused at this point.

12 Are you offering Mr. Cross' testimony in the prior
13 deposition in the Luna case as part of your case-in-chief?

14 MR. BROOKS: We -- it will be discussed with and
15 through Ms. Ghiglieri.

16 THE COURT: My question is: Are you offering the
17 testimony he gave there as a deposition to be read to the jury
18 as part of your case-in-chief?

19 MR. BROOKS: Not to be read to the jury, your Honor.
20 But we do intend to use it with Ms. Ghiglieri in her direct
21 examination.

22 THE COURT: You intend to use it? So you intend to
23 introduce it into evidence?

24 MR. BROOKS: We do, Judge.

25 THE COURT: So what's the difference between that and

1 reading it to the jury? Once it's in evidence, it can be read

2 to the jury, right?

3 MR. BROOKS: That's correct, your Honor.

4 THE COURT: Okay. And what's the basis for --

5 MR. BROOKS: Well, your Honor --

6 THE COURT: What's the basis for allowing that

7 deposition to be used in this case?

8 MR. BROOKS: It's a prior deposition. And defendants

9 don't dispute and didn't dispute in their motion to exclude

10 that deposition that they -- Household was defended at the

11 deposition, so there's no hearsay. It's clearly relevant to

12 the issues in this case, Judge.

13 THE COURT: Wait, wait. Household was defended at

14 that deposition, so it's not hearsay?

15 MR. BROOKS: Correct, your Honor, under the exception

16 that allows prior deposition testimony to be used provided the

17 party had an opportunity to object and examine at that prior

18 deposition. Household was the party to the prior deposition.

19 They had an opportunity to object and examine and, in fact,

20 did examine Mr. Cross.

21 THE COURT: That only comes into play if the witness

22 isn't available, right?

23 MR. DROSMAN: Your Honor, Daniel Drosman on behalf of

24 the plaintiffs.

25 If I could -- I dealt with the Ghiglieri Daubert

1 motion. And if I could just add that there's no reason that
2 an expert like Ms. Ghiglieri wouldn't rely on Mr. Cross' sworn
3 testimony.

4 THE COURT: Can you answer my question? I'm still
5 trying to get an answer to my question, which is how are you
6 going to use this deposition in this case?

7 MR. DROSMAN: It was one of the things that
8 Ms. Ghiglieri looked at when formulating her opinion, so
9 she --

10 THE COURT: I'm sure she looked at many things.
11 You're not going to introduce them all in evidence, are you?

12 MR. DROSMAN: No, your Honor.

13 THE COURT: Do you seek to introduce this deposition
14 actually into evidence?

15 MR. DROSMAN: No. I think the way we would --

16 THE COURT: So wait. Your answer is no?

17 MR. DROSMAN: We wouldn't seek to introduce it into
18 evidence. She would be asked about the substance of the
19 deposition such as it informed her opinions because it was one
20 of the things that she relied on in formulating her opinions
21 in this case. So she would be asked about that particular
22 deposition. We have no reason to admit it into evidence, your
23 Honor. But it is something that she relied on in formulating
24 her opinions in this case, and one would expect her to do
25 that. In fact, it's the sworn testimony of a regulator. Of

1 course she looked at this. Of course she read it and took it
2 into account when she was formulating her opinions.

3 THE COURT: And you -- so the defendant -- the
4 defense is objecting to the plaintiffs' expert having taken
5 this prior deposition into account in reaching her opinion?

6 MR. KAVALER: Yes, your Honor. It's a two-step
7 process. First of all, just for the Court's information, I'm
8 told this is Exhibit 289, Plaintiffs' Exhibit 289, if you're
9 looking for the Cross prior testimony.

10 Secondly, in the omnibus motion in limine -- this is
11 addressed at page 86 of our opening brief and 53 of our reply
12 brief -- and there, on a free-standing basis, we object to it
13 on grounds of Rule 403; that is, the prejudice outweighs the
14 probative. And on that we have the burden.

15 Now, if I understand both counsel this morning
16 correctly, there's no plan to introduce the document as an
17 exhibit, so that may obviate that problem if that's actually
18 what they said. I heard one of them say yes and one say no,
19 but let's assume Mr. Drosman's subsequent statement controls.

20 Then we go over to the Ghiglieri Daubert motion. And
21 the Ghiglieri Daubert motion -- we're under Rule 703. And
22 there, everything is reversed. The last sentence of 703 says,
23 your Honor, facts or data that are otherwise inadmissible
24 shall not be disclosed to the jury by the proponent of the
25 opinion or inference unless the Court determines that their

1 probative value in assisting the jury to evaluate the expert's
2 opinion substantially outweighs their prejudicial effect.

3 So there, it is they who have the burden; and it's a
4 greater burden because it is substantially outweighed. And
5 what we are saying on that prong in the Daubert motion against
6 Mrs. Ghiglieri is what Mrs. Ghiglieri does, your Honor, is she
7 takes a bunch of things which we say in the omnibus MIL are in
8 and of themselves individually inadmissible, such as, for
9 example, settlements, complaints and other litigations and
10 things of that nature, and she purports to bless them all by
11 saying I looked at them in coming to my opinion.

12 THE COURT: Doesn't the rule allow that?

13 MR. KAVALER: Well, not if the last sentence applies,
14 your Honor. The rule says that where the document itself is
15 individually inadmissible, such as, for example, a settlement
16 agreement that would be barred by Rule 408 -- in other words,
17 if they stood up and said, I want to introduce the next
18 exhibit, your Honor, it's a settlement agreement. And we
19 said, Objection, 408. And you said, Sustained, they shouldn't
20 be able to end run that by saying, okay, fine, Mrs. Ghiglieri,
21 did you consider this inadmissible settlement agreement, at
22 least without satisfying the burden imposed upon them by the
23 final sentence of Rule 703, which includes the word
24 substantially outweighs.

25 In other words, your Honor, we regard these two

1 things as mirror images. The omnibus motion in limine says
2 these things may not come in as direct proffers of evidence by
3 them to the jury. And 703 says in its final sentence, and you
4 can't solve that problem, plaintiffs, by showing them to
5 Mrs. Ghiglieri and having her simply read them or refer to
6 them or incorporate them unless you, plaintiffs, satisfy the
7 burden of showing that the probative value substantially
8 outweighs the prejudicial value. Again, the example I've been
9 using this morning, your Honor, of a settlement agreement, I
10 would think they can't carry their burden. Here, with
11 Mr. Cross, we're making precisely that argument.

12 THE COURT: Well, I'm not sure. I'm not sure what
13 argument is being made. I haven't at this point determined
14 whether they're actually going to be asking the witness to --
15 their expert to tell us or tell the jury what was said in this
16 deposition. Are you going to do that?

17 MR. DROSMAN: We're going to ask her why the
18 deposition and the statements under oath by Mr. Cross informed
19 her opinion that predatory lending or certain practices that
20 fall under the rubric of predatory lending --

21 THE COURT: Is she going to say because he testified
22 to X, Y and Z?

23 MR. DROSMAN: Precisely. It's one of the many things
24 that she took into account in formulating her opinions.

25 THE COURT: And you think that it comes in under

1 the -- first of all, is she going to testify that this is the
2 type of information that's reasonably relied upon by experts
3 in her field?

4 MR. DROSMAN: Absolutely. She's obviously a
5 20-plus-years regulator. This is what regulators do. They
6 talk to other regulators. They find out what other regulators
7 thought. She -- she'll testify to that -- that that's how
8 regulators go about formulating their opinions, one of the
9 ways. They evaluate a lot of things, but that's one of the
10 things they take into account.

11 THE COURT: And then you're going to object to that
12 because you feel that its probative value doesn't
13 substantially outweigh its --

14 MR. KAVALER: Among other things, your Honor.
15 Responding directly to what Mr. Drosman just said, in the
16 Daubert, we say to precisely that argument, that's triple
17 hearsay. She is going to say she relied on what Mr. Cross
18 says some number -- it turns out to be 19 customers said in
19 complaints, 19 out of thousands and thousands in Washington,
20 where he eventually testified it was an invalid statistically
21 insignificant study which anyone, he said, who knows anything
22 about statistics would know is meaningless and --

23 THE COURT: Different issue.

24 MR. KAVALER: Understood. You're asking me what
25 we're going to say. We're going to say two things. One is

1 the prejudice outweighs the probative because of what I'm just
2 saying now. And the other is, when he says that's what
3 regulators do, we suggest in our Daubert with support from our
4 experts, that's not what regulators do. Regulators regulate
5 in their state looking at their customers and whatnot. I
6 don't disagree they go to conventions and talk to other
7 regulators, but that's not part of their job. That's part of
8 their gossip.

9 And what she's doing is she's elevating this
10 gossip -- you know, she's going to say Mr. Cross said a
11 customer told him; and Mr. Cross will say in his very
12 deposition, in both the Luna and the Jaffe depositions, he
13 admits, it's a totally statistically invalid study. But,
14 nevertheless, it's now going to be escalated through the
15 imprimatur of Mrs. Ghiglieri into something substantive and
16 presented to this jury, confusingly we submit -- when I say
17 confusingly, as a shorthand for 403 where the prejudice
18 outweighs the probative value. We will be prejudiced by the
19 suggestion by their expert that this is some kind of reliable
20 thing, and the probative value will be very small.

21 What it will tell -- remember, your Honor, this is a
22 securities fraud case. The question is what the company told
23 the investors. The issue here is the central issue of whether
24 the company correctly or incorrectly said we're not a
25 predatory lender.

1 THE COURT: It's more than that. It's what the
2 company told the investors and was it true. And whether it
3 was true or not depends upon whether the company was engaging
4 in predatory practices because what they told the investors
5 was, we're not engaging in predatory practice.

6 MR. KAVALER: I would say --

7 THE COURT: I mean, that's why we're in this --

8 MR. DROSMAN: Your Honor, the only --

9 MR. KAVALER: What I --

10 THE COURT REPORTER: Counsel.

11 MR. DROSMAN: If I can just have a chance?

12 THE COURT: No. Let him speak, and then I'll let you
13 speak.

14 MR. KAVALER: Thank you, your Honor.

15 In response to what you just said, there are two
16 other elements to be borne in mind. One is whether whatever
17 was said was said by the speaker with scienter. That raises
18 the question of what the speaker understood the facts to be.
19 The speakers will testify that they understood the facts from
20 their level to be that the company did not as a matter of
21 practice or policy engage in predatory lending.

22 THE COURT: I understand that. We're kind of getting
23 away from the issue.

24 The Daubert -- if I can say the Daubert end of the
25 motion or the Daubert considerations of the motion, which

1 apparently are focusing on the plaintiffs' expert's reliance
2 upon these materials and her assertion that they're reasonably
3 relied upon by others in the field, we will take care of one
4 of these days.

5 The question for me is how does that bear upon this
6 deposition; and can we go through this deposition and rule on
7 the objections thereto without having to rule upon the
8 substantive -- the more substantive issues contained in the
9 Daubert motion and --

10 MR. KAVALER: I believe you can, your Honor. The
11 only reason I arose is because Mr. Brooks mentioned, I think
12 correctly, this is related to a point in our omnibus motion.
13 I believe this deposition, the deposition taken in Jaffe, can
14 be addressed by the Court like any other deposition taken in
15 Jaffe in the process we're going through today. Both counsel
16 thought your Honor should be informed of the fact that it's
17 the same Mr. Cross who is the subject of the Cross motion in
18 limine and the same Mr. Cross and the same Luna transcript
19 that is the subject in part of the Daubert motion. That's
20 all.

21 THE COURT: All right. And the motion in limine with
22 respect to Mr. Cross himself is --

23 MR. BROOKS: Well, there are two, your Honor.
24 There's one on the Cross Luna transcript and a Daubert motion
25 on Cross himself. We designated Mr. Cross as an expert

1 witness who has specialized knowledge. He's a regulator.
2 Defendants don't dispute it. And the only testimony that
3 we're going to be putting Mr. Cross on through is this
4 deposition testimony.

5 THE COURT: So wait. So the Daubert motion with
6 respect to Mr. Cross challenges his expertise?

7 MR. KAVALER: No, your Honor. The Daubert motion
8 with respect to Mr. Cross challenges his methodology.

9 THE COURT: Okay.

10 MR. BROOKS: There's a second problem, Judge, just as
11 a matter of going through many of the deposition designations
12 that defendants have designated in the deposition in this case
13 are questions and answers from the prior deposition, which is
14 an exhibit to this deposition. It gets very confusing, your
15 Honor; but I would submit that if they're on the one hand
16 saying we can't get that deposition in in any way, shape or
17 form, they can't be asking Mr. Cross questions about that
18 deposition during the deposition here because they're reading
19 from the transcript, which is an exhibit.

20 THE COURT: That doesn't follow at all. They can ask
21 him about any prior statement he's made that has relevance to
22 this case. It doesn't matter whether he made it at a
23 deposition, singing in his bathroom or talking to his
24 children.

25 MR. BROOKS: My only point, your Honor, is that in

1 order to do that, they would have to introduce this deposition

2 transcript that they're trying to keep out.

3 THE COURT: No, they don't. Why would they have to

4 do that?

5 MR. BROOKS: Well, because it's going to be

6 incredibly confusing for the jury.

7 THE COURT: Why would it be confusing for the jury?

8 MR. BROOKS: Because they're talking about pages and

9 lines of a document that nobody is going to see, quotes, half

10 quotes from a document the jury won't see. They're relying --

11 you know, I'm just raising it for the Court's consideration,

12 Judge. As we go through, you'll see how confusing it's going

13 to be for the jury to evaluate these questions and answers

14 without knowing or seeing that this -- there's this other

15 deposition that they're talking about.

16 THE COURT: Well, I mean, I haven't gone through the

17 deposition transcript. That's what I intended to do now. I

18 suspect it all depends on how the questions were asked at the

19 deposition and whether or not appropriate objections were made

20 as to form at the time. If at the deposition they began to

21 quote from a document that's not in evidence, that's an

22 objection you can make now, yes. We can rule on whether it's

23 a proper question.

24 If the problem was with the form of the question,

25 whether it assumed facts in a document that's not around, then

1 that objection should have been made then. But it seems to me
2 that those questions and answers we can take care of.

3 The asking of questions from a prior deposition
4 doesn't in any way implicate the admissibility of that prior
5 deposition or not. It just doesn't have anything to do with
6 it. They can ask questions from any source that they have,
7 from his prior statements, from his prior writings, from prior
8 answers to questions under oath, prior answers to questions
9 not under oath. They can ask questions from any source that
10 they wish. If they start introducing into the transcript --
11 into evidence before the jury the content of such documents,
12 then I guess you have an objection that you can raise or not
13 raise if you want to.

14 MR. BROOKS: Okay, your Honor. The second thing is,
15 in evaluating Mr. Cross' testimony, they have this Daubert
16 motion. I guess for some of the objections that they have,
17 it's going to be relevant whether he's admitted as an expert
18 to testify in this case or he's not admitted as an expert and
19 he's just going to be a percipient witness.

20 THE COURT: Well, I assume -- and it is just an
21 assumption and I'll try to take a look at this transcript
22 maybe before we actually get into it. We're getting close to
23 the noon hour anyhow. If we can assume that he will testify
24 as an expert, then we take all the questions through this
25 transcript and we rule on the objections and we have a ready,

1 set deposition transcript to be used depending on the ruling.

2 If the ruling comes down against Mr. Cross, then those
3 questions can be just simply deleted. If it comes out in his
4 favor, then those questions and the rulings will stand and go
5 into the record.

6 I'm trying to see if we can't work through the
7 transcript. And it appears to me that we don't have to rule
8 on any of the issues involving the use of the prior deposition
9 in another case to go through this transcript. If we assume
10 that we're going to allow Mr. Cross to testify as an expert,
11 that he will not be barred on the basis of the issues raised
12 in the Daubert motion, then I think we can probably go through
13 Mr. Cross' deposition as well and rule on those questions and
14 answers, assuming that any of the objections that are made
15 which are made regarding his expertise or are made based upon
16 his methodology have already been ruled upon and denied.

17 You said there was a second motion in limine with
18 regards to Mr. Cross?

19 MR. BROOKS: Just the two, your Honor, the Luna
20 transcript and the Daubert motion, which is not a motion in
21 limine technically. Just those two.

22 THE COURT: I think it probably is. I don't know why
23 it wouldn't be. Why would you raise it unless --

24 MR. BROOKS: I retract that, your Honor.

25 THE COURT: All right. Well, let me try to go

1 through this. We're at ten minutes to 12:00. We can break
2 for lunch now. Let me try to review this transcript and see
3 if I feel we can go through it and make rulings, and that way
4 we can get that done and out of the way and move on to other
5 things we have pending. It appears that we can do that by
6 severing out these issues.

7 Okay. Let's break for lunch, folks. Return at 1:00
8 o'clock.

9 MR. KAVALER: Thank you, your Honor.

10 MR. DROSMAN: Thank you.

11 MR. BROOKS: Thank you, your Honor.

12 (Recess taken.)

13

14

15

16

17

18

19

20

21

22

23

24

25

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

3 LAWRENCE E. JAFFE PENSION PLAN,)
 on behalf of itself and all)
4 others similarly situated,)

5 Plaintiff,)

6 vs.) No. 02 C 5893

7 HOUSEHOLD INTERNATIONAL, INC.,)
 et al.,) Chicago, Illinois
8) March 17, 2009
 Defendants.) 1:00 o'clock p.m.

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

11
12 APPEARANCES:

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

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

24

25

1 APPEARANCES: (Continued)

2 For the Plaintiff: MILLER LAW LLC
BY: MR. MARVIN ALAN MILLER
3 115 South LaSalle Street
Suite 2910
4 Chicago, Illinois 60603
(312) 332-3400

5 For the Defendants: CAHILL, GORDON & REINDEL LLP
6 BY: MR. THOMAS J. KAVALER
MS. PATRICIA FARREN
7 MR. DAVID R. OWEN
MS. JANET A. BEER
8 MR. JASON M. HALL
MR. JOSHUA M. NEWVILLE
9 MS. KIM A. SMITH
MS. SUSAN BUCKLEY
10 80 Pine Street
New York, New York 10005
11 (212) 701-3000

12

13

14

15

16

17

18

19

20

21

22 Court Reporter: NANCY C. LaBELLA, CSR, RMR, CRR
Official Court Reporter
23 219 South Dearborn Street
Room 1222
24 Chicago, Illinois 60604
(312) 435-6890
25 Nancy_LaBella@ilnd.uscourts.gov

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

2 International.

3 THE COURT: Let me see if I understand the dilemma

4 regarding the Luna deposition, and I will ask the parties to

5 correct me if I am wrong. But, as I understand it, there are

6 three possible ways that this deposition can be used in this

7 case. The first is as part of the testimony given by

8 plaintiffs' expert -- pronounced Ghiglieri?

9 MR. BROOKS: Ghiglieri, your Honor.

10 THE COURT: Okay.

11 The second, which I guess has been disavowed by the

12 plaintiffs now, is if it is offered as part of the plaintiffs'

13 case in chief as standalone evidence, which I think you folks

14 told me is not going to happen.

15 Is that correct?

16 MR. DROSMAN: That is correct, your Honor.

17 THE COURT: Okay.

18 And the third is if it somehow comes into evidence

19 during the cross-examination of Mr. Cross, himself; is that

20 right?

21 Are those the three ways that you contemplate this?

22 MR. KAVALER: I don't understand Mr. Cross to be

23 coming in under any circumstances, your Honor.

24 THE COURT: I am sorry?

25 MR. KAVALER: I apologize, your Honor.

1 I don't understand there are any circumstances under
2 question Mr. Cross will appear in this courtroom.

3 THE COURT: Oh, no. I meant in his deposition.

4 In other words, it was used during his deposition to
5 cross-examine him, correct?

6 MR. KAVALER: Correct.

7 THE COURT: Okay.

8 And that is the other involvement that this Jaffe
9 deposition has in this case, right?

10 MR. KAVALER: The Luna deposition, you mean?

11 THE COURT: Luna. That is what I meant. I am sorry.
12 The Luna deposition.

13 MR. KAVALER: Yes.

14 Conceivably, someone might refer to it in the --
15 well, even there, your Honor, I guess no one would do anything
16 other than what your Honor allowed them to do, because we are
17 dealing in the first instance with the Jaffe deposition, which
18 you're currently reviewing.

19 THE COURT: Right.

20 MR. KAVALER: If you say something is not admissible,
21 then it won't be referred to. So, I guess that's entirely
22 within your control.

23 THE COURT: Right.

24 But if the ruling is that portions of it are
25 admissible through the questioning or whatever, then it would

1 come in.

2 MR. KAVALER: It conceivably could.

3 THE COURT: All right.

4 It seems to me that if we proceed under the
5 assumption that the plaintiffs' expert is going to be allowed
6 to testify, and that she is going to be allowed to testify
7 fully as to everything she relied upon -- including this prior
8 deposition -- I think we can go ahead and rule on the
9 objections in the cross designations at this time.

10 MR. KAVALER: In the cross designations in the Jaffe
11 transcript?

12 THE COURT: Right.

13 MR. KAVALER: Yes, your Honor, I agree with that
14 completely.

15 THE COURT: Okay.

16 Then let us go ahead and try to do that and let us
17 see what happens -- see what kind of issues we run into.

18 MR. KAVALER: Very good.

19 Thank you, your Honor.

20 THE COURT: Okay.

21 So, to Page 8, the videographer's gratuitous
22 description is out.

23 I think Page 13 is the next contested designation.

24 MR. BROOKS: Yes, your Honor.

25 Defendants have designated this both as a

1 counter-designation and as an additional designation. We have
2 no objection to them putting this in with their tape of the
3 deposition.

4 MR. NEWVILLE: Your Honor, it's a fairness
5 designation as to the testimony the plaintiffs have designated
6 on Page 15, describing the makeup and reporting structure of
7 the Department of Financial Institutions.

8 THE COURT: How does -- I guess how does -- this
9 further the case, to find out that prior to 2000 Mr. Bley or
10 Bley headed the DFI?

11 MR. NEWVILLE: Your Honor, Mr. Bley is an expert
12 witness in this matter.

13 THE COURT: Well, their questions are, I guess, two
14 fairly simple questions; and, that is, to establish the
15 structure of the DFI.

16 And what you are introducing here is to attach some
17 credibility to Mr. Bley; is that right?

18 MR. NEWVILLE: Your Honor, it may attach some
19 credibility to Mr. Bley. The testimony also clarifies the
20 reporting structure that Mr. Cross has testified to.

21 THE COURT: No, I tend to agree with plaintiffs on
22 this one. I do not think that is clarification of what they
23 brought out. I think it is there, essentially, to let the
24 jury know that Mr. Bley was also a Director of that same DFI.

25 So, I will sustain the objection as to the type of

1 designation it is.

2 Are you still offering it as your own designation?

3 MR. NEWVILLE: Yes, your Honor.

4 THE COURT: Any objection to that?

5 MR. BROOKS: Well, your Honor, we have no objection

6 as long as defendants do you not intend to ask Mr. Bley the

7 same information when they put him on.

8 THE COURT: So, if they do intend to do that --

9 Do you intend to do that?

10 MR. NEWVILLE: I don't think we want to -- I don't

11 think we need to foreclose ourselves from doing that.

12 I think we intend to do that, your Honor.

13 THE COURT: See, I knew he would get it out.

14 Yeah, they are going to do that. So, why is that

15 objectionable?

16 MR. BROOKS: Well, it's cumulative, Judge. There's

17 no reason that the jury needs to hear twice that Mr. Bley was

18 the Director of the Washington DFI.

19 It's more appropriate for his examination, anyway.

20 THE COURT: Yes, it is cumulative, but I will allow

21 it. It is two questions, essentially.

22 I think it has more impact for them if your witness

23 is agreeing that their expert was his boss, as opposed to

24 their witness saying he was the boss. So, I think it serves

25 an enhancing function.

1 What is next?

2 MR. BROOKS: Page 17, your Honor, Lines 12 through
3 19. I believe this is a designation by defendants.

4 MR. NEWVILLE: It's not offered as a fairness
5 designation and it does not seem like there's an objection by
6 the plaintiffs.

7 MR. BROOKS: There is an objection, your Honor. It's
8 relevance. And the question is what does Mr. Cross' affinity
9 for his statistics classes have anything to do with this case?

10 Mr. Cross is not purporting to offer any statistical
11 opinion. He's made that very clear in his testimony, although
12 defendants have criticized him for that.

13 The fact that he doesn't like statistics, given that
14 he's not offering an opinion based on statistics and
15 statistical examination, it's completely irrelevant.

16 MR. NEWVILLE: Your Honor, the whole point behind the
17 validity of Mr. Cross' conclusions is that they are not
18 statistically significant. He has no background in
19 statistics.

20 Now, assuming that his testimony on this issue goes
21 forward notwithstanding our Daubert motion, we're entitled to
22 present this to the jury. It's relevant testimony.

23 MR. BROOKS: He specifically says in his deposition
24 that his analysis is not a statistical analysis; he's not
25 being presented as a statistical expert. And, so, whether he

1 likes statistics classes or not has no bearing on anything

2 that's relevant in this case.

3 THE COURT: The objection is overruled. It comes in.

4 Next?

5 MR. BROOKS: Next, your Honor, is Page 19, Lines 19

6 through 25.

7 THE COURT: Is there an objection to this?

8 MR. BROOKS: It's the exact same question as before,

9 except it's just read in the context of his prior deposition

10 testimony.

11 THE COURT: Okay.

12 So, your objection -- the legal basis for your

13 objection -- is, what?

14 MR. BROOKS: It's cumulative, your Honor.

15 THE COURT: The response?

16 MR. NEWVILLE: The response is that he -- your Honor,

17 we'll withdraw this designation in light of the prior

18 designation.

19 THE COURT: The designation is withdrawn.

20 Next is Page 20.

21 MR. BROOKS: Page 20, Lines 21 to 25, and continuing

22 on to the next page, again, the question is almost exactly the

23 same: "Is it accurate to say that you shy away from talking

24 about statistical analysis?"

25 This has been covered on Page 17. We do not need to

1 see it, again.

2 MR. NEWVILLE: Your Honor, there's two separate
3 issues. On Page 17, he talks about hating statistics and
4 shutting them out. On Page 20, he talks about that he shies
5 away from talking about statistical analysis. I think it's
6 two slightly separate issues.

7 THE COURT: Why is it important to know that he shies
8 away from talking about statistical analysis, as opposed to
9 knowing that he hates statistics?

10 MR. NEWVILLE: The issue is the witness' answer,
11 where he specifically testifies that he doesn't consider
12 himself to be a statistician and he doesn't feel comfortable
13 talking about the areas of statistical significance.

14 MR. BROOKS: Which, again, begs the question why
15 we're talking about statistics here, your Honor.

16 But I think once is enough to establish this position
17 that defendants are trying to establish here. Twice or three
18 times just isn't necessary.

19 THE COURT: Yes, I agree.

20 I mean, I think you have established he does not like
21 statistics; did not like studying statistics, I think he said;
22 doesn't hate them anymore, only because he doesn't deal with
23 them much.

24 You can argue all sorts of things about that. You do
25 not need to establish that he shies away from talking about

1 statistics, as well. That is cumulative.

2 What is the next question here?

3 MR. NEWVILLE: Your Honor, in light of that, we will
4 withdraw the counter-designation of Lines -- Page 21, Lines 7
5 through 21.

6 The designation of -- the counter-designation of --
7 Page 21, Lines 22 through 23; and, Line 25 through Page 22,
8 Line 20, refers to whether or not he holds himself out as an
9 expert in statistics.

10 MR. BROOKS: Again, your Honor, this is generally
11 just splitting hairs here. They want to keep talking about
12 statistics. He's not holding himself out as an expert.
13 They've gotten their point once. They do not need it twice.

14 MR. NEWVILLE: Your Honor, we --

15 THE COURT: Well, let me -- what is it that is still
16 at issue here?

17 You have withdrawn, what, and what are you still
18 asserting?

19 MR. NEWVILLE: We've withdrawn Page 21, Lines 7
20 through 21.

21 We're still asserting the testimony on Page 21, Line
22 22, through Page 22, Line 20.

23 Your Honor, I'd just like to note that this is not a
24 witness that we're offering in our direct case. This is
25 cross-examination. These sorts of questions are entitled to

1 some leeway.

2 THE COURT: I will overrule the objection to the
3 question on Line 22 of Page 21, and the answer which goes over
4 into Line 2 of Page 22.

5 What about the very next question?

6 MR. BROOKS: Again, Judge, this appears to be a
7 repeat of the question he asked before, simply referring to
8 Mr. Cross' prior deposition testimony. Our objection would be
9 cumulative.

10 MR. NEWVILLE: Your Honor, if we've got the prior
11 statement, we'll withdraw this designation, Page 22, Lines 3
12 through 20.

13 THE COURT: Okay.

14 Next is Page 22, Line 21, I believe.

15 MR. NEWVILLE: Your Honor, defendants' objection to
16 this testimony is based on the subject matter. It's the
17 Washington State DFI Draft Report, which is the subject of
18 motions in limine.

19 THE COURT: Okay.

20 So, for purposes of this exercise, we are assuming
21 that that objection is overruled. Our ruling on the Daubert
22 motions and the in limine motions will address that directly.

23 Next, Page 26.

24 MR. NEWVILLE: The same objection, based on the in
25 limines.

1 THE COURT: The same ruling.

2 Page 27?

3 MR. NEWVILLE: The objection to Page 27, Lines 14
4 through 19, is withdrawn.

5 THE COURT: That comes in without objection.

6 Next?

7 MR. BROOKS: The next, your Honor, is Page 32, Line
8 21, through 33, Line 7. And we'll withdraw our objection on
9 that, your Honor, assuming that this is an additional
10 designation as opposed to a counter-designation.

11 MR. NEWVILLE: That's correct.

12 THE COURT: Next, I think, we start at Page 36, Line
13 25.

14 MR. BROOKS: 36, Line 25, through 37, 11, we'll
15 withdraw our objections, your Honor.

16 And, again, we understand that this is a designation
17 by defendants.

18 MR. NEWVILLE: That's correct, it's not a fairness
19 designation.

20 MR. BROOKS: Page 37, Line 12 --

21 THE COURT: Just a minute, please.

22 (Brief pause.)

23 THE COURT: What's being referenced in the question;
24 and, beginning on Line 25, Page 36?

25 You reference page numbers, complaints on this page.

1 MR. NEWVILLE: I believe that's the Cross Exhibit 4.

2 THE COURT: I'm sorry?

3 MR. NEWVILLE: It's Exhibit 4 to the deposition.

4 THE COURT: When this is read to the jury, how are
5 they going to know you're referencing Exhibit 4? How are they
6 going to know what you're referencing?

7 MR. NEWVILLE: Your Honor, let me double-check
8 whether this appears on our exhibit list.

9 (Brief pause.)

10 MR. NEWVILLE: Your Honor, the exhibit doesn't appear
11 on our exhibit list.

12 Now, the issue here, I think, is whether the
13 testimony stands on its own. And keep in mind that this is
14 not our witness that we're offering. It's cross-examination.

15 The witness is testifying as to the total number of
16 loans and total complaints during the time period where he
17 looked at the issues that were set out in the -- in Mr. Cross'
18 report.

19 MR. BROOKS: Well, I would dispute the
20 characterization that the witness is testifying as to the
21 total number of loans. That is a statement by counsel for
22 defendants.

23 MR. NEWVILLE: Your Honor, this is cross-examination.
24 I believe the witness has adopted the statement.

25 THE COURT: Well, what I'm concerned with is what the

1 jury is going to make out of this.

2 And, ultimately, any evidence has to be helpful to

3 the jury in deciding the issues in this case or it's not

4 admissible.

5 MR. NEWVILLE: Your Honor, I've been told that --

6 THE COURT: And you can't confuse the jury.

7 Go ahead.

8 MR. NEWVILLE: Your Honor, I've been told that there

9 is a separate copy of this same letter that is on our exhibit

10 list that we're offering.

11 If we show the letter to the jury, I think that will

12 make the issue clear.

13 THE COURT: I don't know.

14 How are you going to establish that it's that letter

15 that you were referencing in these questions? I think we've

16 got Step 1 out of the way. We know now what exhibit it is.

17 And, apparently, it's an exhibit in somebody's list. So, it's

18 not barred that way.

19 (Brief pause.)

20 MR. NEWVILLE: Your Honor, I think the problem will

21 be solved if we withdraw the counter-designation of Lines

22 36 -- Page 36 -- Line 25, through Page 37, Line 7.

23 THE COURT: You're going to withdraw the whole

24 designation?

25 MR. NEWVILLE: We'll withdraw that portion of it up

1 until Page 37, Line 7. And you've got a free-standing
2 question starting on Line 8.

3 THE COURT: Okay. I think that will serve to take
4 the confusion out of that series of questions.

5 Is there any other objection that hasn't been voiced
6 regarding the designation beginning on Line 8, 37, through
7 Line 8 of Page 38?

8 MR. BROOKS: No, your Honor.

9 I would only note that in the questioning towards the
10 bottom of Page 37 on Line 21, they do refer to Exhibit 1,
11 which is the first day of Mr. Cross' deposition testimony.

12 THE COURT: Where is that? What line?

13 MR. BROOKS: Line 19, quoted on Lines 22 through 24.

14 THE COURT: Well, all right.

15 So, I mean, are you objecting to that?

16 MR. BROOKS: I'm not objecting, your Honor. I'm just
17 noting it.

18 And I won't note it going forward, but this is the
19 reason that I thought it would be confusing to introduce this
20 testimony without the document. That's all, Judge.

21 THE COURT: So, the reference is to Exhibit 1, Page
22 58, Line 17.

23 Exhibit 1 is, what?

24 MR. BROOKS: Exhibit 1 is part of Mr. Cross' Luna
25 deposition transcript.

1 MR. NEWVILLE: Your Honor, the witness has adopted
2 the statement in the Jaffe deposition.

3 THE COURT: Has adopted the statement?

4 MR. NEWVILLE: Right.

5 THE COURT: What?

6 MR. NEWVILLE: The statement --

7 THE COURT: What statement?

8 MR. NEWVILLE: If I understand counsel's objection,
9 he's objecting to the testimony --

10 THE COURT: Actually, he says he's not objecting.

11 MR. BROOKS: I'm not objecting.

12 THE COURT: He just wants me to see this.

13 MR. NEWVILLE: Okay.

14 MR. BROOKS: It's just confusing, your Honor.

15 But, again, if this is on their video, if they want
16 to present this confusing testimony, I suppose it's up to
17 them.

18 THE COURT: Just so I understand this, you're
19 referencing the Luna deposition in your questions of
20 Mr. Cross; is that correct?

21 MR. NEWVILLE: Yes, your Honor.

22 THE COURT: But you're objecting to the Luna
23 deposition coming into evidence?

24 MR. NEWVILLE: Yes, your Honor.

25 There's a foundational problem with the Luna

1 deposition coming into evidence.

2 We've laid that foundation here. He's adopted the
3 testimony -- the actual statement in his testimony -- here on
4 Page 37.

5 THE COURT: But once a portion of it is introduced
6 into evidence, what prevents the rest of it from coming into
7 evidence?

8 MR. NEWVILLE: Your Honor, we've laid the foundation
9 to put this portion of it into evidence as cross-examination
10 of this witness. The plaintiffs had their chance to do so.

11 THE COURT: Oh --

12 MR. NEWVILLE: They chose not to.

13 THE COURT: -- so your objection is to their use of
14 the Luna deposition is that it's foundational?

15 Not that it's inadmissible, but that there's been an
16 improper foundation for it or lacking foundation?

17 MR. KAVALER: Your Honor, if I might address the
18 confusion, which may be my fault.

19 Our position is hierarchical. Our first position is
20 Mr. Cross should not be allowed to testify. That's covered in
21 our Daubert motion as to Mr. Cross.

22 THE COURT: Right.

23 MR. KAVALER: Our second position is Mr. Cross'
24 deposition in the Luna matter should not come in for any
25 purpose. That's covered in our in limine. And to the extent

1 that they're seeking to get it in through the back door
2 through Mrs. Ghiglieri, that's covered in the Ghiglieri
3 Daubert.

4 Assuming we lose both of those, then we are here at
5 this deposition. So, just as your questioning of these
6 counsel is proceeding on the assumption that you will let it
7 in --

8 THE COURT: Okay.

9 MR. KAVALER: -- our position is proceeding on the
10 assumption that you will let it in.

11 If you exclude it -- if you exclude Mr. Cross from
12 testifying -- this issue will never arise.

13 THE COURT: And you would withdraw the designation?

14 MR. KAVALER: I'm sorry, your Honor?

15 THE COURT: If we did that, you would withdraw these
16 designations?

17 MR. KAVALER: If you struck Mr. Cross, this whole
18 exercise would become moot.

19 THE COURT: Well, no. If we excluded the Luna
20 deposition, you would then withdraw these designations?

21 MR. KAVALER: We would -- our position, your Honor,
22 is the reason we did what we did in this deposition is to make
23 the questioning and answers in this deposition of record in
24 this deposition.

25 In other words, our view is the exception to the

1 hearsay rule for a deposition applies -- has particular
2 application under the deposition rule -- to a deposition taken
3 in this case, with these counsel present, to protect their
4 interests.

5 Questions and answers asked in this deposition do not
6 suffer from a hearsay problem.

7 What we did in this deposition, we asked Mr. Cross to
8 adopt statements we knew he had previously made. So, if we
9 were presenting -- if that's where we wound up, we would not
10 be presenting the Luna deposition at all, we would be
11 presenting the testimony of Mr. Cross on the record in his
12 Jaffe deposition -- in this case -- on a free-standing basis.
13 That's our position.

14 THE COURT: Which is fine if, in presenting his
15 position in this case, you didn't reference the content of the
16 very deposition -- the Luna deposition -- that you're trying
17 to keep out.

18 MR. KAVALER: I understand what you are saying, your
19 Honor.

20 THE COURT: You can't do both. You can't reference
21 that content and then say, "Oh, because it's a statement in
22 this case, it's not hearsay," even though what we're
23 referencing is a hearsay document; and, then, take the
24 position that although you can reference it, they cannot.

25 MR. KAVALER: No, your Honor, we're not saying they

1 can't. They can reference his testimony in the Cross
2 deposition in Jaffe. Both sides can reference that. It
3 doesn't implicate the Luna transcript.

4 It's the same thing -- I believe, your Honor, I'm
5 saying the same thing your Honor said this morning. He can be
6 asked any question about a statement he once made singing in
7 the shower, talking to his children, you know, singing to the
8 birds, whatever.

9 THE COURT: Sure.

10 But in asking the question, you can't read into the
11 record -- by reference or otherwise -- the content of an
12 exhibit that's not in evidence, and that you're saying should
13 never be in evidence. Can you?

14 MR. KAVALER: I believe you can, your Honor, because
15 then he's giving current testimony in the deposition in this
16 case, subject to cross.

17 If he's asked, "Do you subscribe to the principle
18 that A equals B?"

19 The fact that he previously said it in some other
20 context --

21 THE COURT: That's fine.

22 But if he's asked, "Do you subscribe to the
23 principle -- as stated in Page 5 of the hearsay statement that
24 we're objecting to -- that A equals B," that's a different
25 question, which brings into the record the content of the

1 hearsay document itself.

2 MR. KAVALER: Well, let me say this, Judge:

3 Obviously, we'll abide by whatever ruling you make on the

4 subject. Our understanding, in taking the deposition -- and

5 our purpose and our methodology in taking the deposition --

6 was to create a free-standing Jaffe transcript of Mr. Cross'

7 testimony, so as to avoid what we thought would otherwise be

8 the opposite objection by the other side; that is, that we

9 were trying to promulgate hearsay.

10 We've solved the hearsay problem under the deposition

11 exception in this case.

12 I hear what your Honor is saying.

13 THE COURT: Yes.

14 I mean, that's -- it's a problem.

15 You can, as I said before, ask him any question

16 regarding any prior statement. But the way to do that is to

17 ask him the question -- is to ask him, for example, "Do you

18 agree that" -- and, then, state the substance of his prior

19 statement.

20 But if you ask him, "Do you agree with what's

21 included in this deposition transcript at Page 1" -- or at

22 Page 58, Line 17 -- you've now referenced this deposition

23 transcript into the record in this case. And that's -- you

24 know, that's -- essentially, referencing a hearsay document.

25 All right.

1 Well, I mean, we will make the ruling on that whether
2 the Luna deposition is going to be used either.

3 Well, I guess, through -- the only thing left now is
4 being used through the expert -- the plaintiffs' expert.

5 And, then, I guess we may have to come back and
6 determine, based on our ruling, whether there is now a new
7 objection to questions that reference the deposition. I think
8 that's all we can do at this point.

9 What I want to make sure, though -- which is a
10 slightly separate matter -- is that questions that reference a
11 document that some portion of the designated transcript is
12 there sufficient to establish for the jury what the document
13 being referenced is -- you know, for example, above here when
14 you say, "The total complaints on this page," which, I think,
15 you've testified appears accurate -- "are 59," there's nothing
16 there to designate this page of, what. What exhibit?

17 And, as such, it's going to be confusing to the jury,
18 misleading and really probably inadmissible for that purpose
19 alone.

20 The question on Line 19, which says, "Would you look
21 at Exhibit 1," assuming there's no controversy about Exhibit
22 1, is, of course, much better because we then have a way of
23 referencing to the jury what the actual exhibit is.

24 So, if Exhibit 1 is in evidence and otherwise
25 properly referred to, then that question is not going to be

1 confusing to the jury.

2 Okay. Then subject to that -- the unresolved
3 question about the Luna deposition -- the reference, Line 8,
4 Page 37, through Line 8, Page 38, is admitted.

5 Next?

6 MR. BROOKS: Your Honor, our objection to the
7 testimony on 42, 12 through 43, 15 was to the colloquy between
8 Mr. Baker and Mr. Sloane.

9 However, given what the Court just said, if the
10 Court's willing to have that in and thinks it will be
11 clarifying for the jury -- which is, essentially, Mr. Baker
12 asking, "What exhibit are you referring to?" and Mr. Sloane
13 clarifying -- we do not have a problem with it.

14 THE COURT: I'm not sure I understood what you said.

15 What lines are you objecting to here?

16 MR. BROOKS: 4 and 5 on Page 43, your Honor.

17 THE COURT: I'm sorry?

18 MR. BROOKS: 4 and 5 on Page 43, which is an attorney
19 colloquy.

20 THE COURT: I will overrule the objection and
21 consider Line 5 to be an amendment or a description of the
22 question.

23 You know, when you ask questions about a document,
24 especially at a deposition, where you know only portions of
25 what you ask may actually see the light of day at a trial, you

1 have to reference whatever exhibit or document you are asking
2 about in the very question. And failure to do that creates
3 this kind of confusion.

4 The objection to 4 and 5 is overruled. The jury may
5 consider the statement from Mr. Sloane, "Cross 1" -- Cross
6 numeral 1 -- as part of the question being asked.

7 What's next?

8 MR. BROOKS: Your Honor, Page 43, Line 16, through
9 45, Line 2.

10 THE COURT: Let's just stick with the question on
11 Line 16.

12 Your objection to that is as to form?

13 What objection as to form?

14 MR. BROOKS: We withdraw the objection, your Honor.

15 THE COURT: So, you're not objecting to the question
16 on Line 16?

17 MR. BROOKS: Correct, your Honor.

18 MR. NEWVILLE: Your Honor, this is --

19 THE COURT: Well, wait. What are you objecting to,
20 then?

21 MR. BROOKS: We are withdrawing our objection, your
22 Honor.

23 THE COURT: Your entire objection to 16 through --
24 Line 16, Page 43 to, what?

25 MR. BROOKS: Through Line 2 on Page 45.

1 And as I do not want to keep repeating it every time,
2 quotations from the deposition show up as they do in this
3 string of questions. I just want to make clear for the record
4 that we're removing our objections, subject to resolution of
5 this issue.

6 THE COURT: Okay.

7 Next is Line 24 on Page 45.

8 MR. BROOKS: Your Honor, we'd object to this question
9 as irrelevant and confusing -- as to the term "delegated that
10 authority" -- and the entire colloquy between Mr. Sloane and
11 himself there.

12 THE COURT: What am I looking at?

13 MR. BROOKS: Sorry, your Honor.

14 THE COURT: I don't see any colloquy.

15 MR. BROOKS: On Page 46, Lines 3 through 11.

16 THE COURT: That's colloquy?

17 MR. BROOKS: Sure. Mr. Sloane is asking questions
18 and answers.

19 THE COURT: Line -- oh, I see.

20 MR. NEWVILLE: Your Honor, this would be --

21 THE COURT: Line 3 reads, "Question."

22 I assume that's a question by Mr. Sloane?

23 MR. BROOKS: It's a question he's reading from the
24 other deposition.

25 The whole thing is incredibly confusing.

1 THE COURT: Well, I guess it is. Let's see. So --

2 all right.

3 The question starts out at Line 24: "Okay."

4 And that, I take it, is by Mr. Sloane; is that

5 correct?

6 MR. BROOKS: That's correct.

7 THE COURT: All right.

8 "Okay. And if you would look at Page 237, that is

9 Exhibit 2 -- Cross 2 -- Page 237. And if you look at Lines 9

10 to 15 -- " let me just stop there.

11 What is Cross Exhibit 2.

12 MR. BROOKS: It's the second day of Mr. Cross'

13 deposition.

14 THE COURT: Of the --

15 MR. BROOKS: In the Luna case, your Honor.

16 THE COURT: I'm sorry?

17 MR. BROOKS: In the Luna case, your Honor.

18 THE COURT: The Luna deposition? Okay.

19 The question was -- and this is referring back, I

20 think, to the prior testimony -- "Question: "Was there ever a

21 violation found against Household or any of its subsidiaries

22 by anyone who was delegated that authority?"

23 Answer: "No."

24 Those are true statements, correct?

25 "THE WITNESS: That would be a correct statement,

1 yeah."

2 I guess the next line is a question by Mr. Sloane,

3 although there's no designation as to what it is.

4 "Did you give that testimony?"

5 Answer: "I did."

6 So, what is your objection and to what part?

7 MR. BROOKS: We object, your Honor, to the questions

8 and answers regarding delegation of authority as --

9 THE COURT: Where? Show me what line.

10 MR. BROOKS: Okay.

11 Lines 3 through 6.

12 THE COURT: All right. Hold on.

13 And what's the basis for that objection?

14 MR. BROOKS: It's twofold, your Honor. First, we do

15 not see the relevance of the question.

16 Second, again, it's confusing because it's just

17 Mr. Sloane speaking on the record, reading from this other

18 deposition.

19 MR. NEWVILLE: Your Honor, this is impeachment.

20 THE COURT: Is there -- you indicated "delegating

21 authority." Is there a specific objection to the phrase "who

22 was delegated that authority"?

23 MR. BROOKS: The objection is to the relevance of the

24 question, your Honor.

25 THE COURT: Okay.

1 So, what's the relevance of this question? What are
2 you proving with this question and answer?

3 MR. NEWVILLE: I think it's fairly clear that there
4 was --

5 THE COURT: Forgive me for asking.

6 MR. NEWVILLE: This makes it -- sorry, your Honor.

7 It makes it less likely that the Washington DFI had
8 found a violation against Household or any of its
9 subsidiaries, by anyone who was delegated that authority.

10 Mr. Cross is an official of the Washington DFI. He
11 was the one that was responsible for making these statements.

12 Now, later on in the deposition --

13 THE COURT: So, fill me in on the background.

14 What exactly is at issue here with the Washington
15 DFI? Why is this testimony coming in?

16 MR. BROOKS: The Washington DFI, your Honor, was the
17 regulator -- Household's regulator -- in the state of
18 Washington.

19 Mr. Cross did an extensive investigation of
20 Household's lending practices and wrote a report. And the
21 report found apparent violations, which is a term of art that
22 regulators use. And because -- let me move back.

23 There's a report. It was an official report of the
24 Washington DFI. It was issued. Defendants characterize it as
25 a "draft report." Mr. Cross has testified that it wasn't a

1 draft report; that it was done with the authority of the State
2 of Washington and within the scope of his job.

3 THE COURT: Sure.

4 Okay. This states it's a preliminary report.

5 Mr. Cross says it's final and damming. What next?

6 You're offering his testimony based on that report?

7 MR. BROOKS: We are offering his testimony based on
8 that report.

9 THE COURT: And are you offering the report, itself,
10 into evidence?

11 MR. BROOKS: We are, your Honor.

12 THE COURT: All right.

13 Then their question is: "Isn't it true that nobody
14 was ever found to actually be in violation or that Household
15 was never found to actually be in violation by anyone?"

16 MR. BROOKS: That's not quite what they're asking,
17 your Honor, because the answer to that question is undoubtedly
18 "Yes."

19 The question that they're asking is, "In the state
20 procedural hierarchy, was there a hearing and a final
21 resolution?"

22 Of course the answer to that is "No" because
23 Household settled for \$484 million with the multi-state group,
24 of which Washington was a major component.

25 THE COURT: Okay.

1 And, so, your objection is that the question is

2 inappropriate, why?

3 MR. BROOKS: The question of whether or not there
4 were any violations found by someone delegated by the State of
5 Washington, with that authority, has no bearing on the
6 reliability of the report, the substance of the report or the
7 weight of the report.

8 That's our position and that's why we say that this
9 is an irrelevant question and an irrelevant line of inquiry.

10 THE COURT: Your response?

11 MR. KAVALER: Your Honor, if I might, we are now in
12 the heart of the Cross Daubert and we've also segued over into
13 the settlement MIL.

14 The point is this: When you read the Cross Daubert,
15 you will see one of our objections is Mr. Cross, exactly as
16 counsel described him, is a subordinate official in the State
17 Department. Under the State's regime, he has no authority to
18 do anything other than assemble documents and pass them up the
19 line. The authority to make a determination is vested in the
20 Director and not delegated to Mr. Cross.

21 This question goes to the question: "Did anyone who
22 has that authority on behalf of the State -- " namely, the
23 Director -- "ever make any charges?"

24 The question is: "Was there ever a violation found
25 against Household or any of its subsidiaries by anyone who was

1 delegated the authority?"

2 In other words, "Did the Director make such a
3 finding?"

4 Mr. Cross says: "No."

5 When you read the Cross Daubert, you will see that
6 one of the things we're saying is all of this goes to

7 Mr. Cross' -- let me be clear, your Honor. This is not an
8 ordinary course report. There are ordinary course reports.

9 Mr. Cross testified this is an extraordinary course report in
10 which he did not follow the normal procedures, in which he did
11 not take a random sample, in which he did not take a
12 specific -- I'm sorry, a statistically valid sample.

13 He testified he was not looking for a balanced
14 presentation. He was excluding good facts about Household.
15 He had no interest in coming to a conclusion whether Household
16 was a very good company -- which it may well have been -- with
17 a couple of problem cases. He only wanted to focus on the
18 problem cases.

19 And we make all those points in the methodology
20 portion of our Cross Daubert.

21 Again, if you grant that, we wouldn't be here having
22 this conversation.

23 If you deny that, however, and if Mr. Cross'
24 testimony is going to come in, we, at a minimum, your Honor,
25 it seems to me -- in the interest of fundamental fairness --

1 need to put before the jury all these facts which go against
2 the -- you will have ruled on the admissibility of the Cross
3 testimony. We will be attacking the weight of the Cross
4 testimony. And we will be doing so by showing that his
5 methodology was flawed, his conclusions do not follow, he had
6 a significant bias.

7 And when counsel says, "And it never went further
8 because Household settled the case," it seems to me we are
9 right in the teeth of Rule 408.

10 Of course, Household settled with the AGs. No
11 question about that. But that doesn't stand for the
12 proposition that Household was guilty of anything. The
13 settlement agreement expressly states -- this will come as no
14 surprise whatsoever to your Honor -- that Household is
15 settling without admitting or denying liability.

16 And the AGs accept that fact. There's no question
17 that the ultimate settlement does not result in anyone
18 vindicating Mr. Cross' preliminary biased, statistically
19 invalid, asymmetrical, unusual, out-of-the-ordinary-course
20 findings.

21 Everything I just said goes to whether you should let
22 it in. I think you shouldn't. But if you let it in, we
23 certainly are entitled to attack the weight of it. And this
24 is this is one of the key portions.

25 He was not -- he is not the State of Washington.

1 That's somebody at Mr. Bley's level.

2 THE COURT: Okay.

3 Do you want to say anything else?

4 MR. BROOKS: Your Honor, if we're going to argue the

5 Cross motion in limine or talk about whether this document is

6 admissible, I have plenty to add. But, on this particular

7 objection, I will stand on my prior argument.

8 THE COURT: All right.

9 Well, I think the objection as to relevance is

10 overruled. This statement is relevant. It goes to the

11 question of the probative value of Mr. Cross' testimony;

12 implicates, I guess, his authority; and, also, goes to the

13 question of -- goes to the issue of -- the weight to be given

14 the findings in the report, all of which is being offered in

15 evidence.

16 It seems to me that there was clearly an objection

17 here to be made as to form, but that objection was not made.

18 And the time for that has come and gone.

19 I mean, this question is -- I would say this series

20 of questions are bound to cause confusion. They're compound.

21 They ask him in one question to opine on a quotation that

22 contains several different aspects. But that's water over the

23 dam.

24 There is some relevance here. And we're proceeding

25 under the assumption that we're allowing all of these --

1 Mr. Cross to testify and we're allowing all these -- other
2 things in evidence.

3 So, I will overrule the objection.

4 MR. BROOKS: 47, your Honor, is following --

5 MR. NEWVILLE: Your Honor, defendants withdraw the
6 counter-designation 47, Lines 11 through 16.

7 THE COURT: The designation is withdrawn.

8 Next?

9 MR. BROOKS: Your Honor, Page 49, Lines 14 through
10 22, we withdraw the objection.

11 THE COURT: Line 23?

12 MR. BROOKS: Well, your Honor, if they're going to
13 get their conversation between Mr. Sloane and himself in on
14 Page 46, I don't think we need the testimony on Lines 23
15 through 50, Line 2, which establishes the same proposition.

16 MR. NEWVILLE: Your Honor, I believe it's a different
17 proposition. His statement from his prior testimony was
18 whether anyone had ever found a violation.

19 The statement on Page 49 through 50 is whether
20 Mr. Cross had any authority to issue any sort of -- issue any
21 sort of -- to commit the department to file charges.

22 THE COURT: How far are we going down on Page 50, all
23 the way to Line 25? Or is this just to Line 2?

24 MR. BROOKS: Just to Line 2, your Honor.

25 THE COURT: Okay.

1 The objection is overruled.

2 MR. BROOKS: Page 50, Lines 3 through Page 51 --

3 actually, Page 52 to Line 3 -- we'll withdraw those

4 objections, your Honor.

5 THE COURT: Page 55?

6 MR. BROOKS: Page 55, Lines 21 through Page 56, Line

7 2, we object to this testimony as irrelevant because it

8 assumes facts that are not in evidence.

9 Essentially, the question assumes that Household

10 Sales branches in Washington held staff meetings on a weekly

11 basis to confirm their employees' understanding of new

12 policies. It also assumes that Mr. Cross undertook some sort

13 of investigation as to that question.

14 I don't believe there's any evidence in the record as

15 to either of these assumptions.

16 MR. NEWVILLE: Your Honor, this is a comment about

17 Household's own practices. I believe we have a basis to ask

18 this sort of question and we should have the ability to make a

19 record at trial.

20 THE COURT: Not unless there's something in the

21 witness' testimony that would lead a jury to expect that he

22 would have such knowledge if, indeed, Household did not hold

23 such staff meetings.

24 Is there anything in the record that would indicate

25 that he would be expected to know something like this?

1 MR. NEWVILLE: Your Honor, he was investigating
2 Household throughout this period. That's the topic of --

3 THE COURT: He was investigating their practices with
4 respect to consumers, but is there anything in the record that
5 shows that he was investigating whether they held staff
6 meetings on a weekly basis or how often their staff talked to
7 their supervisors or to each other or anything like that?

8 MR. NEWVILLE: Your Honor, I believe it's in his
9 prior deposition, if you'd give me a chance to check.

10 THE COURT: Sure. Check.

11 (Brief pause.)

12 MR. NEWVILLE: Your Honor, defendants will withdraw
13 the counter-designation.

14 THE COURT: The designation is withdrawn.

15 Page 58?

16 MR. BROOKS: Page 58, your Honor, Lines 14 through
17 59, 4, plaintiffs have a similar objection.

18 There's reference in the question -- within the
19 question -- starting on Page -- on Line 17, Page 58, about the
20 statement that "Branch sales managers were required to conduct
21 daily and monthly audits." And he's asked whether he found it
22 was false.

23 There's no reference to where this statement comes
24 from; who made it or anything to that effect, Judge, in this
25 deposition transcript. And there's no foundation for the

1 question because it assumes facts that are not in evidence.

2 MR. NEWVILLE: Your Honor, this is a question that

3 Mr. Cross was asked and answered at his prior deposition.

4 THE COURT: Yes. So, what?

5 MR. NEWVILLE: Obviously, it's subject to your ruling

6 on the admissibility of that --

7 THE COURT: Yes.

8 MR. NEWVILLE: -- particular deposition.

9 THE COURT: The fact that it was asked in a prior

10 deposition doesn't mean it's an appropriate question either

11 then or now, does it?

12 MR. NEWVILLE: Your Honor, Mr. Cross' report -- his

13 findings in the report -- were that Household was engaged in a

14 practice of -- was engaged in dishonest and confusing

15 practices as to their borrowers.

16 THE COURT: You were going to say "predatory

17 lending"?

18 MR. NEWVILLE: I don't think he used that phrase.

19 THE COURT: Okay.

20 Go on.

21 Whoops.

22 All right. So, the report says they were engaged in

23 nasty practices. And you ask him: "Did you, in a previous

24 deposition, say that you didn't find any evidence to rebut the

25 statement that branch sales managers were required to conduct

1 daily and monthly audits?"

2 Who made that statement: "The branch sales managers
3 were required to conduct daily and monthly audits"? Is that
4 something that the questioner made up? Is he referring to
5 some document that Mr. Cross knew or read about or took into
6 consideration in reaching his conclusions or was part of his
7 report or he is otherwise reasonably deemed to have knowledge
8 of?

9 MR. NEWVILLE: Your Honor, I believe this was
10 referred to in Mr. Cross' report.

11 (Brief pause.)

12 MR. NEWVILLE: Your Honor, in the interest of saving
13 time, defendants will withdraw the designation on Page 58,
14 Lines 14 through 59, Line 17.

15 Your Honor, we'll withdraw defendants' counter-
16 designation on Page 59, 18 through 60, Line 6.

17 THE COURT: Next is Page 63.

18 MR. BROOKS: Your Honor, we withdraw 63, Line 25
19 through 64, 4.

20 THE COURT: So, the objection to that is withdrawn?

21 MR. BROOKS: Correct, your Honor.

22 We object to 64, Line 5 through 64, Line 24 -- that
23 series of questions -- as an improper and incomplete
24 hypothetical.

25 THE COURT: As, what?

1 MR. BROOKS: An improper and incomplete hypothetical
2 question.

3 THE COURT: An improper and incomplete hypothetical
4 question?

5 MR. BROOKS: Or series of hypothetical questions,
6 your Honor.

7 THE COURT: The objection is overruled.

8 MR. BROOKS: Line -- or Page 67, Line 2, through
9 68 -- 67 -- Line 9, we object to as improper character
10 evidence.

11 THE COURT: You object to as, what?

12 MR. BROOKS: Improper character evidence, your Honor.

13 THE COURT: Improper character evidence? What's
14 that?

15 MR. BROOKS: They're seeking to introduce testimony
16 as to the honesty, forthrightness and believability of some
17 former Household employees whose truthfulness is not at issue
18 in this case, Judge.

19 MR. NEWVILLE: Your Honor --

20 THE COURT: It's not relevant? It doesn't tend to
21 prove anything that's at issue in this case?

22 Well, let's start with the question on Line 2: "Now,
23 you dealt with various Household people in connection with
24 this investigation; did you not?"

25 Answer: "I did."

1 You object to that?

2 MR. BROOKS: No, your Honor.

3 THE COURT: Okay.

4 Then the question on Line 6: "Then you found Ken
5 Robin and Lisa Sudeika" -- S-u-d-e-i-k-a -- "and Jim Kauffman
6 to be very honest, forthright, believable people; is that
7 accurate?"

8 And your objection to that question is?

9 MR. BROOKS: Under 608, your Honor, that the
10 character of these witnesses for truthfulness has not been
11 attacked by opinion or reputation evidence in this case.

12 MR. NEWVILLE: Your Honor, not only does Mr. Cross
13 say that he doesn't trust -- didn't trust -- the response of
14 Household in response to the DFI report, plaintiffs' expert
15 Ghiglieri has put it at issue because she says that these
16 people are dishonest.

17 THE COURT: Anything else?

18 (No response.)

19 THE COURT: If that's the objection, then the
20 objection is overruled.

21 Page 68?

22 MR. BROOKS: Page 68, your Honor, we're back to the
23 topic of statistical significance.

24 MR. NEWVILLE: We'll withdraw the counter-designation
25 on Page 68, Lines 13 through 23.

1 THE COURT: 69?

2 MR. BROOKS: Page 69, Lines 13 through Page 70, Line
3 10, defendants seek to elicit expert testimony from Mr. Cross
4 who disavows any expertise as to statistical significance.
5 So, we object on those grounds, your Honor.

6 MR. NEWVILLE: Your Honor, this -- Mr. Cross'
7 statement that he found a practice of dishonest lending
8 practices at the company puts this at issue. We're entitled
9 to test his assertions there on cross-examination. This goes
10 to the weight of his assertions.

11 THE COURT: What is his assertion that you're testing
12 here?

13 MR. NEWVILLE: The assertion is that based on 19
14 complaints, he's concluded that there was a practice of
15 dishonest lending at the company.

16 MR. BROOKS: That's an inaccurate characterization of
17 his report, your Honor. But I don't think it matters for this
18 question.

19 In the prior questions, they've gone to great lengths
20 to establish that Mr. Cross is no expert on statistical
21 analysis. They've sought to introduce several questions on
22 the topic. And now they want to introduce opinion testimony
23 that anybody who is a statistician or new anything about
24 statistics would tell you that was a woefully inadequate
25 population to draw from. It's not proper, Judge.

1 MR. NEWVILLE: I think the witness' clarification
2 takes this out of the realm of expert testimony.

3 THE COURT: I agree with that. I think it's clear
4 that what the witness is saying is that he doesn't really
5 know. He's guessing it was a woefully inadequate population
6 to draw from, which could actually be totally wrong.

7 But it seems to me that the question goes to
8 attacking the basis for his conclusion; and, as such, on
9 cross-examination, you're not only allowed to attack what he
10 said, but you're allowed to attack him on the basis of the
11 things he didn't consider -- or things he has no expertise to
12 consider -- that might be important in determining the
13 probative value of his opinion. And that's what this question
14 does.

15 I will overrule the objection.

16 MR. NEWVILLE: Your Honor, defendants will withdraw
17 the designation on Page 70, Lines 16 through 20. And
18 defendants -- Page 70, Lines 16 through 20.

19 THE COURT: Okay.

20 MR. BROOKS: Again, your Honor, we have the same
21 objection as on the last question, which I know you overruled;
22 and, I would add the objection that this testimony and
23 questions are cumulative, specifically going from 71, 9
24 through 15.

25 THE COURT: Well, let's see here.

1 MR. BROOKS: Your Honor, I'll withdraw the objection.

2 THE COURT: You are withdrawing the objection to the
3 line on -- to the question starting on Line 9, Page 71? Is
4 that what you just said?

5 MR. BROOKS: Correct, your Honor, both of those
6 designations there.

7 MR. NEWVILLE: On Page 71.

8 THE COURT: Next is Page 74.

9 MR. NEWVILLE: Your Honor, the objection to Page 74
10 starting at Line 16 is based on our in limine motions and the
11 Daubert motion.

12 THE COURT: Okay.

13 MR. NEWVILLE: The section of this designation going
14 along through Page 75 and to Page 76, Line 23, that we have an
15 additional problem with, is the testimony on Page 76, Lines 1
16 through 8, where Mr. Cross compares the company to an armed
17 stick-up artist, claiming that -- analogizing the situation to
18 "whether he was walking down the street out front here a
19 thousand times, in front of that Tully's Coffee Shop; and, one
20 day, I could decide to go in and shoot somebody and take money
21 out of the till. That's one out of a thousand times, but I
22 think somebody would consider that to be something that would
23 need to be dealt with."

24 I believe that's unduly prejudicial.

25 MR. BROOKS: Your Honor, if they're going to raise

1 the issue of his lack of performing a traditional statistical
2 analysis and they're going to ask him questions -- this is
3 their question that they're asking -- about why he didn't do
4 that, then they're going to have to live with the response,
5 Judge.

6 And Mr. Cross raised an analogy to explain why he
7 didn't use statistical significance and why a regulator
8 doesn't rely on the theory that defendants have been putting
9 forth in this case about .0001 number of complaints, and why
10 the nature of the complaints and the growing level of
11 complaints in Washington was important, among many other
12 things, that he'd found in reaching his determination.

13 MR. NEWVILLE: Your Honor, I believe you've already
14 said that the issue in this case is not about whether
15 Household is robbing banks. I think that whether Household is
16 robbing --

17 THE COURT: I don't know if I said that, but I think
18 it's probably an accurate statement and I'll adopt it.

19 There is no allegation here that Household has robbed
20 banks.

21 (Laughter.)

22 MR. NEWVILLE: And there's similarly no allegation
23 that Household robbed Tully's Coffee Shop and shot someone.

24 I think this comparison is unduly prejudicial.

25 THE COURT: Well, where's the question to this answer

1 that you are objecting to? Where does the question start?

2 MR. BROOKS: It starts on Page 70- --

3 THE COURT: There was a question somewhere, wasn't
4 there?

5 MR. BROOKS: There was. On Page 74, Line 16.

6 THE COURT: 74, Line 16.

7 Who is asking this question?

8 MR. BROOKS: Mr. Sloane, counsel for defendants, your
9 Honor.

10 THE COURT: "In connection with your work, did you
11 make any effort to quantify how many complaints -- whether the
12 number of complaints in any particular practice -- practice
13 that you identified was statistically significant, in terms of
14 the overall loans -- number of loans that were made by
15 Household in any particular time period?"

16 Okay. There was no objection as to form or confusion
17 to that question.

18 So, the answer, then, is "Yes and no."

19 The question following the "Yes and no" answer was:
20 "Okay."

21 Answer: "Or no -- no and yes. I could try to
22 explain a little bit."

23 And I guess here's the real question, which is:

24 "Sure, please do."

25 Now, if you ask -- if a witness says he wants to

1 explain an answer such as I just read, and the questioner
2 says, "Sure, go ahead," do you really think he's in a position
3 to object to the answer that he gets as being unduly
4 prejudicial?

5 Doesn't he take that chance when he says to that
6 witness, "Yeah, go ahead. Say whatever you want."

7 MR. NEWVILLE: Your Honor --

8 THE COURT: I think so.

9 I don't think you can do that. I mean, you can say,
10 "No, thank you, I'll ask the questions," and go on to your
11 next question.

12 But if you say, "Go ahead and explain, essentially,
13 in your own words," and give him a blank slate, I think you're
14 stuck with what he says.

15 And, at any rate, you can't pick out eight lines out
16 of what's a page-and-a-half or two-page answer and say you're
17 objecting just to that, because that part of the answer
18 doesn't suit you while the rest of the answer does.

19 So, for those reasons, the objection there is
20 overruled.

21 You asked the question. You got what you asked for.

22 MR. BROOKS: Your Honor, Page 79, Line 23 through --

23 THE COURT: That was through Line 8; was it not?

24 Oh, I see.

25 No, it was just 1 through 8 that was being objected

1 to. We went down to 23 on Page 76.

2 All right. Give me just a second.

3 (Brief pause.)

4 THE COURT: Page 79, go ahead, sir.

5 MR. BROOKS: 79, Line 23 through 80, Line 2.

6 This is an additional designation by defendants.

7 We'll withdraw our objection, your Honor.

8 Page 80, Line 10 through Line 20, Mr. Sloane reads
9 into the record a portion of the deposition testimony and asks
10 the witness if it refreshes his recollection. And the witness
11 responds, "No."

12 So, I don't think that they're entitled -- given
13 that -- to get the portion that Mr. Sloane has read in into
14 this deposition transcript.

15 MR. NEWVILLE: Your Honor, after the witness says,
16 "No," it doesn't refresh his recollection, he agrees that, "I
17 think that if I said eight hours then, it was probably -- it
18 would be eight hours."

19 THE COURT: Yes, but that wasn't the question, was
20 it? The question was: "Does it refresh your recollection?"

21 Really, his answer should have stopped at "No."

22 Did you object to the rest of the answer or move to
23 strike it?

24 MR. BROOKS: We didn't, Judge.

25 THE COURT: Why not?

1 MR. BROOKS: I can't answer personally, your Honor,
2 since I wasn't defending this deposition.

3 THE COURT: Yes.

4 MR. BROOKS: But we didn't.

5 THE COURT: Lucky you.

6 Okay. I guess the objection at this point is
7 overruled. It's an objection that should have been made at
8 the time.

9 Well, no, I take it back. You know, it's an
10 objection that would have been made after the answer was
11 already in, and just would have been a motion to strike that
12 we could rule on later.

13 So, I will sustain the objection. The question and
14 the answer will be barred. The only purpose for asking a
15 leading question of a witness to refresh the witness'
16 recollection is to help him to testify. It's not to imply or
17 infer anything from the question itself.

18 In the deposition transcript, we have the added
19 advantage of knowing whether the question helped the witness
20 to remember or not. Here, it says it does not; and,
21 therefore, both the question and the answer are irrelevant to
22 the proceeding.

23 The objection will be sustained.

24 21?

25 MR. BROOKS: Line 21 -- Page 80, Line 21 -- through

1 Page 81, Line 15, we'll remove our objection, your Honor.

2 THE COURT: I hate to interrupt the fun, but we're

3 going to have a switch in court reporters now. So, it's

4 probably a good time to take a break.

5 I'm sure the toys will still be here for us to play

6 with when we come back.

7 (Laughter.)

8 THE COURT: 15 minutes.

9 (Brief recess.)

10 THE COURT: Okay. I think we're at -- all the way to

11 page 81, is that right?

12 Next, page 82. What's the objection here?

13 MR. BROOKS: Your Honor, the objection as to the

14 first question on page -- on line 22 is that it's vague and

15 ambiguous.

16 THE COURT: Vague and ambiguous?

17 MR. BROOKS: Correct, your Honor.

18 THE COURT: Okay. Your response to that?

19 MR. NEWVILLE: I believe it's clear. His testimony

20 is -- is important and relevant to Mr. Cross's conclusions and

21 the weight that should be given to not only the DFI report,

22 but the reliance on it that plaintiffs' expert Ghiglieri --

23 THE COURT: Okay. The objection is overruled.

24 What's the next question that's objected to here?

25 MR. BROOKS: The next question, your Honor, is this

1 very long question that starts on 83:10 and ends on 84:1, and
2 the objection in the record is that it's an incomplete
3 recitation of the prior deposition testimony that's being
4 read.

5 MR. NEWVILLE: Your Honor, we'll withdraw the
6 defendants' designation 83, line 10 through 84, line 3.

7 MR. BROOKS: Your Honor, 85, lines 9 through 23, our
8 objection is that it's cumulative to the prior question.

9 MR. NEWVILLE: Your Honor, they're separate
10 questions. The first question was at the time he got the
11 response. The second one is at the time they sent out the
12 expanded report.

13 THE COURT: Well, let's take a look at the question
14 at line 9.

15 "Would you look at page 246 of Exhibit 2, lines 15
16 through 25."

17 Then I guess you're quoting or Mr. Sloane is quoting
18 Exhibit 2, lines 15 through 25?

19 MR. NEWVILLE: Correct.

20 THE COURT: "Question: So as of the time that you
21 sent out this expanded report, you made your findings and
22 opinions, and you were not interested in revising them, were
23 you?"

24 There's an objection.

25 "THE WITNESS: Personally, no, I wasn't too

1 interested in that because I had done my job and was ready
2 to move to the next stage. As far as what the director was
3 interested, I would leave that to him to answer.

4 "Did you give that testimony, and was it accurate at
5 the time?

6 "Answer: Yes, and yes."

7 Okay. And the objection is what?

8 MR. BROOKS: The objection is that the question on --
9 the question embedded in the question that Mr. Sloane asks
10 that runs from line 11 to line 14 on page 85 is almost
11 verbatim the same question that we've designated on lines 16
12 through 19 of page 84.

13 MR. NEWVILLE: Your Honor, the testimony isn't
14 cumulative. This is impeachment testimony. The witness, we
15 contend, gave a what looks like an evasive answer to the
16 question designated by the plaintiffs. This should be
17 included for fairness.

18 THE COURT: No, I'll sustain the objection. If this
19 was meant to be an impeachment by a prior statement, there
20 isn't sufficient variance between one answer and the other to
21 make it impeachment. He's just saying the same thing in a
22 different way.

23 He says he wasn't interested in having the
24 conversation or the dialogue. The first answer he says, "Not
25 interested in having the conversation or dialogue that

1 Household kept insisting they wanted to have with us."

2 Here he says, "Personally, no, I wasn't too
3 interested in that because I had done my job and was ready to
4 move to the next stage."

5 Your objection's sustained.

6 MR. BROOKS: Your Honor, 85:24 through 86:10 is a
7 designation by the defendants not for fairness, so we withdraw
8 our objection.

9 THE COURT: Okay. Next?

10 MR. BROOKS: Similarly, 84:14 through 87:5.

11 MR. NEWVILLE: You mean 86:14?

12 MR. BROOKS: 86:14 -- thank you -- through 87:5, is
13 an additional designation by the defendants not for fairness.
14 We withdraw our objection.

15 THE COURT: Okay. Next?

16 MR. BROOKS: 87:3 through 88:17, we objected to on
17 the grounds of 403 as a waste of time and confusing.

18 THE COURT: I'm sorry, you said 87:3?

19 MR. BROOKS: Sorry, 87:25 through 88:17. It's all
20 one question.

21 THE COURT: What's the objection?

22 MR. BROOKS: The objection is confusing and waste of
23 time, your Honor.

24 THE COURT: So it's as to form?

25 MR. BROOKS: I suppose, Judge.

1 MR. NEWVILLE: The objection is waived if it's to
2 form.

3 THE COURT: Okay. Objection is overruled.

4 Next?

5 MR. BROOKS: We have the same objection as to
6 page 88, line 18 through 89, line 8. Counsel is essentially
7 testifying for the witness here.

8 MR. NEWVILLE: I don't believe counsel is testifying
9 for the witness. This is his prior testimony.

10 The issue here is that Mr. Cross agreed that he
11 excluded any information favorable to Household with respect
12 to these 19 complaints that are the subject of his report. He
13 agrees that it wasn't relevant to the argument of the point he
14 was trying to make.

15 The point he was trying to make was that consumers
16 were harmed. Again, this is a very relevant issue in this
17 case as to the weight that should be given the DFI report.

18 MR. BROOKS: I didn't argue that it was irrelevant,
19 your Honor. I argued that counsel is testifying for the
20 witness, just as he did here.

21 THE COURT: Well, he's reading the prior transcript,
22 and I guess somewhere down there, he asks him if he gave that
23 testimony.

24 I'll overrule the objection.

25 MR. BROOKS: 89:23 through 96, it's designated by

1 defendants both as a fairness designation and an additional
2 designation. We have no objection to the additional
3 designation of this testimony.

4 MR. NEWVILLE: We'll agree to that.

5 THE COURT: Okay. Next?

6 MR. BROOKS: Your Honor, 93:10, skipping over the
7 objection, through 94:24, we'll waive our objection subject to
8 the same caveat that this should be presented in defendants'
9 presentation of the video deposition testimony.

10 THE COURT: Are you in agreement with that?

11 MR. NEWVILLE: One second, your Honor.

12 (Pause.)

13 MR. NEWVILLE: We can agree to that.

14 THE COURT: Okay. There being no objection, it comes
15 in. That's through page 94, line 24?

16 MR. BROOKS: Correct.

17 THE COURT: Okay. Next?

18 MR. BROOKS: Your Honor, this is a designation that
19 we've designated once in our opening and once as a counter to
20 their counter-designations.

21 MR. NEWVILLE: If it's on their time, we don't
22 object.

23 MR. BROOKS: It's on our time, Judge.

24 THE COURT: Okay. Then that's 99, line 23 through
25 page 100, line 8?

1 MR. BROOKS: Correct.

2 THE COURT: Next is line 14, page 100.

3 MR. NEWVILLE: The objection to this -- this is a
4 designation by plaintiffs. The objection is based upon the
5 Daubert and in limine motions.

6 THE COURT: All right. The Daubert objection won't
7 be ruled upon now. It will be taken care of by the ruling on
8 the Daubert motion in limine.

9 Page 102 is next.

10 MR. BROOKS: Your Honor, before we move on, just so
11 we're clear, we're proceeding on the assumption that this
12 evidence is coming in, and I just don't want my silence to be
13 construed as every time he says this is on the Daubert that
14 I'm conceding that this is expert testimony as opposed to
15 percipient because Mr. Cross's testimony is a mix of the two.

16 THE COURT: Well, the only objection being raised
17 here is Daubert. So if we overrule the Daubert objection,
18 then this testimony comes in.

19 What you're saying, I take it, is that even if we
20 uphold the Daubert objection, that some of this testimony you
21 feel comes in anyhow because it's not opinion testimony?

22 MR. BROOKS: Correct, your Honor.

23 THE COURT: Okay. Well, then you'd better tell us
24 which of this testimony you feel comes in regardless of the
25 ruling on the Daubert motion.

1 MR. BROOKS: Your Honor, the subject of this

2 testimony is whether the --

3 THE COURT: Which question are we talking about here?

4 MR. BROOKS: We're talking here about 100, line 14

5 through 101, line 14.

6 And the subject of this testimony, your Honor, is

7 whether the report is a final report, and Mr. Cross is

8 testifying that it is. It's within his area of ex- -- excuse

9 me -- it's within his area of knowledge.

10 THE COURT: Go on.

11 MR. BROOKS: It's within his area of knowledge, your

12 Honor, and so it's not opinion testimony.

13 Even if it is opinion testimony, Judge, it's lay

14 opinion testimony. It's something he's a percipient witness

15 to.

16 THE COURT: Okay. Response?

17 MR. NEWVILLE: Your Honor, he's testifying as to

18 practice of the FDIC, federal regulatory agency --

19 THE COURT: I'm sorry, he's testifying as to what?

20 MR. NEWVILLE: As to the use of the term "apparent

21 violations" at the FDIC. I believe that would be -- that

22 would fall under the expert opinion testimony.

23 THE COURT: So your objection on Daubert is that he's

24 not an expert on the practices and policies of the department

25 he works in? Because that's what this is, testimony about the

1 practices and policies of the department he works in. You're
2 objecting to that?

3 MR. NEWVILLE: Your Honor, he's testifying about the
4 use by the FDIC. He works at the DFI.

5 THE COURT: Uh-huh.

6 MR. NEWVILLE: In addition, the --

7 THE COURT: "Apparent violations, as does the FDIC,
8 federal regulatory agencies, so that's where I brought it
9 from. I was with the FDIC before I came to Washington State."

10 He's testifying based upon his own personal knowledge
11 of what he did when he worked at that agency and the agency
12 he's working at in Washington.

13 Are you saying that your Daubert motion challenges
14 that type of opinion testimony? Because that's not what I
15 understood. It's not testimony that has to do with scientific
16 principle or knowledge. It doesn't have to do with
17 application of a process or a procedure that's reliable. It
18 doesn't have to do with any of those things. It has to do
19 with the practices within his own agency.

20 It's not Daubert. It's not a Daubert objection
21 really. I agree with counsel.

22 MR. NEWVILLE: Your Honor, the testimony regarding
23 "apparent violations"?

24 THE COURT: Excuse me?

25 MR. NEWVILLE: Your Honor, the testimony regarding

1 the term "apparent violations"?

2 THE COURT: Yeah, what about it?

3 MR. NEWVILLE: Okay. I understand.

4 THE COURT: Yeah, I'll overrule the objection to
5 that.

6 Okay. Next?

7 MR. BROOKS: Next, your Honor, is page 102, lines 13
8 through 21. The questioning is about a phone call from
9 plaintiffs' counsel to the witness. The question is about
10 whether Mr. Cross was asked if he would be willing to testify
11 in this case as an expert. He indicates that he didn't think
12 that that was discussed, and continues on to say it's his
13 practice not to testify as an expert.

14 We don't see the relevance of this testimony, your
15 Honor. And, again, the point with Mr. Cross being an expert
16 is that he's not a retained expert. He's a percipient witness
17 who has specialized knowledge.

18 THE COURT: What's the relevance of this? What's it
19 being offered to prove?

20 MR. NEWVILLE: Your Honor, the plaintiffs have
21 introduced testimony regarding his conversations with counsel
22 before he came to testify. The relevance of this is that
23 he -- he didn't agree to be an expert.

24 It goes to the weight that should be given to the
25 testimony that is being offered and the conclusions that

1 he's -- the conclusions that he's drawing from what he looked
2 at during the class period, his report.

3 THE COURT: So who called him and asked him to be an
4 expert here?

5 MR. BROOKS: Nobody, your Honor.

6 THE COURT: So who called him? Who's this --

7 MR. BROOKS: One of our lawyers did, Judge.

8 THE COURT: Called him, and now you're asking, "Did
9 that lawyer ask you to be an expert?"

10 And he says, "I don't think we -- people call me a
11 lot. I will be an expert for a state agency. I will not be
12 an expert for a private action, so if he did ask me that,
13 which is possible because I get asked that, seems like almost
14 a weekly basis these days, I would have said no."

15 And your objection to that is that it's what?

16 MR. BROOKS: It's irrelevant and it's --

17 THE COURT: I agree, it's irrelevant, and it seems to
18 be guessing. Apparently, he has no actual independent
19 recollection, which is what a witness must have to testify of
20 what -- of what the answer to the question is.

21 MR. NEWVILLE: Your Honor, to the extent that
22 Mr. Bley is held to be -- found to be a proper expert witness,
23 would this be relevant testimony?

24 THE COURT: A proper expert witness.

25 MR. NEWVILLE: In the event that our Daubert

1 motions --

2 THE COURT: Yeah.

3 MR. NEWVILLE: -- regarding Mr. Daubert -- or

4 Mr. Cross and our in limine motion regarding his testimony are

5 all denied --

6 THE COURT: Right.

7 MR. NEWVILLE: -- wouldn't this testimony have some

8 relevance?

9 THE COURT: Why?

10 MR. NEWVILLE: Because then Mr. Cross would be

11 offered as an expert witness.

12 THE COURT: Uh-huh. And as I understand it, that's

13 an issue for the Court to decide. Once he's admitted as an

14 expert, the jury simply listens to his testimony based upon

15 the content of the testimony, not on whether I decided he was

16 an expert or not.

17 He doesn't get to say whether he's an expert. That's

18 why you filed the motion, right?

19 MR. NEWVILLE: Correct.

20 THE COURT: Okay. Yeah -- no, I don't think it's

21 relevant.

22 Page 103, line 22?

23 MR. BROOKS: Plaintiffs withdraw their objection to

24 that testimony, your Honor.

25 THE COURT: Were there any questions not objected to

1 in this deposition that are being offered?

2 MR. BROOKS: There are, Judge. There's some pink
3 ones coming up.

4 THE COURT: Really? I'm looking and I don't see --

5 MR. BROOKS: 105 and 106.

6 THE COURT: Okay. That objection is withdrawn.

7 MR. BROOKS: There's a long series of questions
8 beginning on 106:15, and the objections start on 107:3. This
9 is, again, testimony that we've designated and
10 counter-designated in response to defendants' designations.

11 MR. NEWVILLE: Defendants have no objection if it's
12 on their time.

13 MR. BROOKS: And that would go through 111:1, I
14 believe.

15 MR. NEWVILLE: Through 111:1, that's correct,
16 omitting the colloquy that wasn't designated.

17 THE COURT: Okay. What's next?

18 MR. BROOKS: Well, we've both designated 111:15
19 through 113:16. There are no objections, but we intend to put
20 that in our depo designations, so we probably shouldn't show
21 it twice.

22 MR. NEWVILLE: Agreed.

23 THE COURT: Shouldn't show it twice? I'm not sure
24 what that means.

25 MR. BROOKS: We've designated, and they have

1 designated it also.

2 THE COURT: Right.

3 MR. BROOKS: So what I'm saying is we'll play it.

4 They're agreeing we don't have to show it twice.

5 THE COURT: Well, of course, you're not going to show
6 it twice.

7 Okay. 117, line 22 is next?

8 MR. NEWVILLE: Your Honor, we will withdraw the
9 objection to that testimony. Page 117, lines 22 through 25.

10 The testimony on page 118, 4 through 17, we have no
11 objection to. Plaintiffs' offering it as their affirmative
12 designation.

13 THE COURT: Next? 122, line 4, is that correct?

14 What's the objection?

15 MR. NEWVILLE: Your Honor, we'll withdraw the
16 objection. The objection is speculation and hearsay.

17 THE COURT: The objection's withdrawn.

18 MR. NEWVILLE: Page 122, line 21 through page 123,
19 line 10.

20 THE COURT: I'm -- I guess I'm a little confused by
21 the -- line 12 on page 122 seems to be green. Why is that?

22 MR. BROOKS: We'll withdraw that, Judge.

23 MR. NEWVILLE: We have counter-designated that as
24 fairness to the prior designation.

25 THE COURT: Objection is withdrawn. It's given.

1 Line 21, page 122.

2 MR. NEWVILLE: Your Honor, we'll withdraw this
3 objection, 122:21 through 123:10.

4 THE COURT: Objection is withdrawn.

5 Page 126, line 7?

6 MR. NEWVILLE: Page 126, line 7 through 17 we believe
7 is subject to the Daubert in limine -- the Daubert motion with
8 respect to his methodology.

9 THE COURT: Is it being offered under any other --

10 MR. BROOKS: If the Daubert were granted, Judge, we'd
11 offer it as percipient testimony, you know.

12 THE COURT: What does that mean, percipient?

13 MR. BROOKS: Lay opinion testimony, Judge.

14 MR. NEWVILLE: Your Honor, I don't -- I don't think
15 it's helpful to the jury for this witness to take unproven
16 anecdotes and package them into his theories about the
17 business practices of Household.

18 MR. BROOKS: He was their regulator, your Honor.

19 THE COURT: I think it's helpful to them, but the
20 objection is -- the Daubert objection is taken under
21 consideration. The offer of this as non-expert testimony is
22 overruled. This is -- this is not lay witness testimony.

23 He's talking about theories, evaluating the business
24 practices of Household, Household's internal documents used to
25 corroborate his theories, specific theories they were

1 operating under. That's expert testimony.

2 Page 127, line 16.

3 MR. NEWVILLE: The objection to the designations on
4 page 127 and 128 is that it's subject to the Daubert ruling.
5 It's opinion testimony.

6 MR. BROOKS: Your Honor, I would submit the
7 discussion of Mr. Cross's report which comes in under 403(8),
8 is permitted by Mr. Cross even if he's not designated as an
9 expert. The report itself under that rule is deemed
10 trustworthy and the case law supports --

11 THE COURT: It comes in under 403(8)?

12 MR. BROOKS: Correct, your Honor -- 803(8), sorry,
13 Judge.

14 THE COURT: Oh. I don't think 403 has an (8), does
15 it? No, it doesn't. It's one paragraph.

16 Okay. So let's go -- the last ruling takes us
17 through what page and line, please? That was 126, line 7 is
18 where the question began as to that series of questions I
19 ruled that these were -- this was expert testimony under
20 Daubert --

21 MR. BROOKS: I believe it ends at --

22 THE COURT: -- and I will take it under
23 consideration. Where does that take us to?

24 MR. BROOKS: To 127:5. Sorry, your Honor, I think
25 that takes us all the way down to 127:18. At that point,

1 Mr. Baker begins asking questions specifically about the
2 report, which comes in and is deemed trustworthy.

3 MR. NEWVILLE: Your Honor, the Washington DFI report
4 is subject to another motion in limine.

5 Let me just point out some of the testimony that the
6 plaintiffs have designated here. It's regarding some of the
7 things that you found. That's the question regarding the
8 findings of Mr. Cross in the report. It's page 127, line 21.
9 Page 128, lines 5 through 7 identified patterns of practice
10 that are fleshed out by the complaint history.

11 THE COURT: Let me just stop you. I mean are these
12 items that are included in his report?

13 MR. BROOKS: They are, Judge. It's testimony
14 explaining the report and discussing the report.

15 THE COURT: And what report is this?

16 MR. BROOKS: This is the report that Mr. Cross wrote,
17 the expanded Washington State DFI report.

18 THE COURT: All right.

19 MR. NEWVILLE: Your Honor --

20 THE COURT: Does anyone address the issue in your in
21 limine motions and your Daubert motions of expert opinion
22 testimony contained in a public report that would be
23 considered under 803(8)?

24 MR. KAVALER: Yes, your Honor.

25 THE COURT: And whether -- whether the issue of the

1 expertise of the author of that report is essentially

2 determined --

3 MR. BROOKS: Your Honor --

4 THE COURT: -- by the fact that he is the person

5 designated to make the report. Does anybody -- is that

6 addressed in the motions?

7 MR. DOWD: Your Honor, in the defendants' motion in

8 limine regarding regulatory exams, which they filed, I believe

9 it's (b) of their omnibus motion, they only object to the

10 reports on 403 and 106. They don't object as hearsay.

11 They had some references in their reply in certain

12 places to 803(8), but it's clear that these documents are

13 covered by 803(8).

14 THE COURT: That doesn't answer my question.

15 MR. DOWD: I'm sorry, your Honor.

16 THE COURT: It doesn't answer my question.

17 We appear to have a report by Mr. Cross that contains

18 expert opinion testimony. The question is if the Court finds

19 that the report is an official compilation or report such that

20 it is not hearsay and is going to come in, is it subject to a

21 further objection, which is that it's expert testimony given

22 by a party or in a manner -- by a person or in a manner which

23 would be excluded under Daubert?

24 MR. DOWD: No, your Honor. I think that the entire

25 purpose of 803(8) is to allow in reports by local, federal,

1 state, even foreign regulators who are charged with taking
2 those responsibilities and making those types of findings.
3 It's assumed, when you look at some of the case law, that the
4 basis for 803(8) is that these people are experts in this
5 field, that they're entitled to rely on the type of evidence
6 and information that experts in their -- in their area as
7 regulators, for example, are entitled to rely.

8 THE COURT: I don't know. 803(8) is just a hearsay
9 rule, isn't it? It doesn't -- it's not a rule about
10 competence or -- I mean it has as a backdrop, I guess, the
11 determination that these reports come in because they're
12 reliable based upon the fact that they're required by law or
13 statute or a codification of some sort, but it's not -- it
14 doesn't purport to be a ruling on expert testimony, does it?

15 MR. DOWD: Well, your Honor, I believe it does. It
16 does relate to that. To the extent that the point of 803(8)
17 is that the government officials responsible for preparing
18 this report often, often have expertise in that particular
19 area, and that's why it's subject to the 803(8) exception.

20 THE COURT: So does that trump the Daubert motion
21 completely?

22 MR. DOWD: I believe it would as to a particular
23 report, absolutely.

24 THE COURT: Does Mr. Cross testify to anything that's
25 not in the report?

1 MR. BROOKS: He does, your Honor.

2 THE COURT: Okay. All right.

3 MR. KAVALER: Your Honor, we've addressed this again

4 in a bifurcated fashion. It's addressed in our in limine --

5 in our opening brief at page 30 and in our reply brief at

6 page 10; but it is separately addressed in our Daubert

7 directed to Mr. Cross.

8 And the whole point we make, your Honor, is whatever

9 the efficacy vel non of 803(8) might be in the ordinary

10 course, in this case, for example, I'm just reading from

11 page 2 of that Cross Daubert:

12 "Question: Is what you're saying, that the purpose

13 of this report is not to come to the fairest overall

14 appraisal of all of Household's practices as to all of its

15 borrowers in the state of Washington?

16 "Answer" by Mr. Cross: "That's not the purpose of

17 this report."

18 Surely 803(8) does not provide a loophole into which

19 you can assert a report which is admitted by its author not to

20 be fair, not to be objective, not to be coming to a fair

21 conclusion.

22 THE COURT: He doesn't admit any of that in that

23 question and answer. He doesn't admit any of those things at

24 all. He just says the report has limited purpose.

25 MR. KAVALER: Yes, your Honor.

1 THE COURT: Doesn't mean it's not fair, doesn't mean
2 it's not accurate. It just means it has a limited purpose.

3 MR. KAVALER: Well, I think when you see what we said
4 about Mr. Cross's testimony in the Daubert motion, you'll see
5 this is the not the purpose of 803(8). Your Honor says it
6 addresses hearsay. It does not override Daubert.

7 Daubert says if Mr. Cross is going to give testimony
8 as an expert, he has to satisfy a two-pronged test. One goes
9 to his qualifications, and the other goes to his methodology,
10 the fit, I think as the courts say, of what he's doing to what
11 he purports to be talking about.

12 And here he says, I was not acting -- I am a
13 regulator, but I was not acting as a regulator does in doing
14 what regulators do. I was preparing a specific document for a
15 specific partisan purpose, we say.

16 THE COURT: My question is, and I think I glean your
17 answer, my question is if we conclude that this is a report
18 under 803(8) which is sufficiently reliable to be allowed as
19 an exception to the hearsay rule, is the content of the report
20 still subject to a Daubert-type analysis?

21 MR. KAVALER: Yes, your Honor, it is.

22 THE COURT: And, furthermore, is the testimony of the
23 person who wrote the report subject to a Daubert-type
24 analysis?

25 On the one hand, it would appear that it would likely

1 be. On the other hand, if the -- well, you know, I think that
2 the only conclusion we'd come to under 803(8) is that the
3 report is sufficiently reliable because of its creation by
4 statute or regulation to pass muster under the hearsay rule.

5 I don't think that gives it a pass under every other
6 possible objection that could be made to the report. It's
7 clearly just an exception to the hearsay objection to the
8 report.

9 MR. KAVALER: And, your Honor, one of those --

10 THE COURT: So I would think that the Daubert
11 analysis has to apply to this report as well, but I guess it's
12 something we're going to have to determine when we come out
13 with a ruling on both of those -- both of those motions.

14 MR. KAVALER: Your Honor, that's exactly what we say
15 in our opening brief at page 30. We say assuming, arguendo,
16 you conclude that it is admissible, you still have to
17 conclude -- I'm sorry -- that it's relevant, you still have to
18 conclude before you conclude it's admissible that it satisfies
19 403, because if you concluded it was not relevant or it was
20 not otherwise competent, you would never get to the second
21 half of 403.

22 The second half of 403, you analyze whether the
23 prejudicial value outweighs the probative value. If it had no
24 probative value, you would never get to a 403 analysis in the
25 first place. What we say in the brief is in this case, it

1 fails 403. You have to layer 403 on top of in this case the
2 hearsay exception.

3 That's our point in the brief, that whatever else you
4 may say about it, ultimately it fails 403.

5 THE COURT: Okay.

6 MR. DOWD: Your Honor, in our response to that, first
7 of all, they only objected to these reports under 403. I mean
8 that was their basis. They didn't raise a hearsay objection
9 at all to the regulatory exams.

10 And I would point out to the Court that I sat here
11 the other day and listened to how there was one plane over
12 Russia. And, you know, I understand defendants want there to
13 be one plane over Russia, but there were planes over
14 Tennessee, there were planes over Washington, there were
15 planes over New York, there were planes over California.

16 They got these regulatory exams non-stop, your Honor,
17 from regulators across the country telling Mr. Gilmer and
18 others at the company what you're doing is wrong.

19 THE COURT: I know --

20 MR. DOWD: You're violating the law.

21 THE COURT: -- but how does that help me decide this
22 issue?

23 MR. DOWD: Because --

24 THE COURT: If you folks want me to decide the entire
25 case based upon your oral arguments now, I would be happy to

1 do it. Go at it, and I'll decide.

2 But the issue here is whether this particular
3 witness, by virtue of the fact that he authored this report,
4 which, you know, if there's a hearsay objection, it comes in
5 under 803(8), is presumed to be able to testify as to the
6 contents of that report without meeting the Daubert's criteria
7 if the report contains expert opinions.

8 I think the answer to that is probably no, but I'm
9 not really sure to say at this point. I'm going to have to
10 take a look at the cases.

11 So I'm going to take these issues raised by these
12 objections under consideration.

13 Let's move on.

14 MR. KAVALER: Thank you, your Honor.

15 THE COURT: By the way, I'm serious. If you folks
16 want me to settle this case based upon the brilliance of your
17 oral arguments, I would be happy to do it.

18 MR. KAVALER: Would your Honor be interested in
19 hearing oral argument on the summary judgment motion? That
20 would resolve the case.

21 THE COURT: Only, only if you agree that whatever I
22 rule on the summary judgment motion oral argument that you
23 make will be the ruling on the case, period.

24 MR. KAVALER: But, your Honor, if you grant it, it
25 will be.

1 THE COURT: Yeah, but if I don't, it has to be also.

2 Are you ready to agree to that?

3 MR. KAVALER: It's only one element in the case.

4 That was the point of the conversation you and I had --

5 THE COURT: You would agree to that?

6 MR. KAVALER: Your Honor, with all due respect, that

7 was the point of the conversation we had when I stood at this

8 very lecturn. We elected to accede to your Honor's guidance

9 and not make an omnibus summary judgment motion. For example,

10 we did not address scienter. We addressed loss causation. If

11 there's no loss causation, there's no claim.

12 If there is loss causation, there still might not be

13 scienter.

14 THE COURT: I understand, but that's not what I'm

15 saying now. What I'm saying now is that I will happily rule

16 on your motion for summary judgment and rule on their response

17 to it if you both agree that whatever ruling I make will

18 actually be the judgment in this case. You give up your right

19 to go to a trial. That's what I'm saying.

20 Are you ready to do that? If you are, I'm happy to

21 rule on it. I don't have a problem with it. I can do that

22 very quickly. You'll all save a lot of money, and the case

23 will be decided.

24 MR. KAVALER: We'll take that under advisement, your

25 Honor. We'll let you know in the morning.

1 THE COURT: All right.

2 Page 128, line 5, objections?

3 MR. NEWVILLE: Your Honor, this testimony is --
4 relates to what Mr. Cross claims are identified patterns or
5 practice that are fleshed out by the complaint history.

6 Now, number one, we've got an issue with the
7 underlying consumer complaints; and, for the record, I'll note
8 that the Washington DFI report --

9 THE COURT: The basis for the objection is what?

10 MR. NEWVILLE: Improper expert conclusions.

11 THE COURT: Improper. What's improper expert
12 conclusion? I don't know that --

13 MR. NEWVILLE: Subject to our Daubert motion, your
14 Honor.

15 THE COURT: Okay. We'll skip over that. Does that
16 take us through -- where does that take us through? Are there
17 any --

18 MR. BROOKS: I would note, Judge, that I think going
19 forward with the discussion at least as to the complaint,
20 we'll have a continuing comment unless you want me to make it
21 every time that our position is that Mr. Cross can testify as
22 to these issues as a lay opinion witness who is testifying
23 about a report that is deemed reliable under 803(8).

24 I don't want to have to make that speech every time,
25 Judge, but I think as we get into defendants' objections, most

1 of them are going to be based on their Daubert position, and
2 my response is going to be the same.

3 THE COURT: So it's your position -- it's your
4 position that all of their Daubert objections, even if we
5 grant them, you still offer all of that testimony as testimony
6 that he can give as a lay -- or testimony he can give as an
7 opinion from a person with specialized knowledge not subject
8 to the -- to the stringent Daubert criteria?

9 MR. BROOKS: I'm not saying all of it, your Honor,
10 but I'm saying as --

11 THE COURT: Then you know what? You're going to have
12 to go through and tell me which ones because we have to get
13 this done. It's 4:15. We're not going to reserve now 30
14 objections for you to come up with after the Daubert motion
15 rulings come out to say now I want to argue these.

16 Tell me what part of this you claim is not subject to
17 Daubert? It's just testimony about his specialized knowledge
18 about the workings of his employment.

19 MR. BROOKS: Lines 5 through 12 on 128.

20 THE COURT: Overruled. That's Daubert.
21 What else?

22 MR. BROOKS: Lines 5 through 18 on page 129.

23 THE COURT: Overruled. That has nothing to do with
24 the workings of his department. He's opining there on the
25 meaning of things like prepayment penalties. He's analyzing

1 them. He's analyzing the payments sold, the amount of loans
2 being sold. That's all expert testimony. It has nothing to
3 do with his knowledge about his department, about his -- the
4 workings of the agency that he works for.

5 What else?

6 MR. BROOKS: Would that be your limitation, Judge, on
7 these?

8 THE COURT: That's pretty much my limitation. If
9 he's giving opinions on things that require specialized
10 knowledge about economics, finance, the impact of patterns and
11 practices, the meaning of patterns and the effect of insurance
12 packing, those types of things, that's expert testimony.
13 That's clearly Daubert stuff.

14 You know, what we had before was testimony about what
15 the practice was in his department as to what they called the
16 report. That's something he can testify to without going
17 through a Daubert criterion. It doesn't require specialized
18 knowledge about a particular science or art or expert -- area
19 of expertise.

20 What else?

21 MR. BROOKS: With that guidance, Judge, I think we
22 can go --

23 MR. NEWVILLE: Your Honor, we have an additional
24 objection starting on page 131 to the testimony that's not
25 specifically related to the expert Daubert issue.

1 THE COURT: What testimony? What lines?

2 MR. NEWVILLE: Page 131, lines 11 through 19 is

3 hearsay.

4 MR. BROOKS: Your Honor, I don't think they can have

5 it both ways. I don't think they can object to this and say

6 it's all subject to the Daubert motion and then pick out a

7 piece where he's talking about his personal perception, where

8 much of this talks about his personal perception, and say, oh,

9 that's hearsay.

10 Mr. Cross, an investigator, he's entitled to rely on

11 what consumers tell him. He's entitled to consider consumers'

12 reactions in writing his report. He's entitled to rely, if

13 you want to characterize that as hearsay on hearsay in writing

14 his report, that's what investigators do. That's what their

15 own expert in his declaration --

16 THE COURT: The objection is overruled. Anything

17 else?

18 MR. NEWVILLE: 131, line 20 through 132, line 22 we

19 believe is subject to the expert Daubert motion.

20 THE COURT: Well, I assume everything is the subject

21 of the expert Daubert motion unless you tell me otherwise. I

22 want you to tell me where that objection stops.

23 MR. NEWVILLE: Yes, your Honor.

24 THE COURT: Where you stop objecting on the basis of

25 the issues raised in the Daubert motion and are objecting on

1 the basis of something else that I can rule on now. That's
2 what I need to know.

3 MR. NEWVILLE: Page 132, lines 19 through 22. We
4 believe it doesn't come in under the hearsay exception even if
5 it was applicable to the report because you've got an
6 additional layer, what the -- what the --

7 THE COURT: Wait a second. What's the question being
8 objected to?

9 MR. NEWVILLE: The question being objected to is up
10 on line 2.

11 THE COURT: Okay. And that question is, "Why did the
12 department have that belief?" What's it refer to? What
13 belief and what department?

14 MR. NEWVILLE: It refers to the Washington DFI
15 Department's belief.

16 MR. BROOKS: It's on the prior page, Judge, on 131,
17 lines 20 to 25.

18 THE COURT: Well, there's an objection as to form.
19 I'll sustain it. I'm unfamiliar with departments having
20 beliefs.

21 MR. BROOKS: Your Honor, this is a quote from the
22 report. The report itself says --

23 THE COURT: That's fine, but the question is
24 improper. It asks for the belief of a department. I don't
25 know what that is.

1 If somebody had asked, for example, what is the
2 underlying basis for that finding, I guess that might be an
3 appropriate question; but it's not the question that was
4 asked, and the objection is as to form. It was made
5 appropriately and at the appropriate time. The question was
6 improper. The objection is sustained. The answer is
7 stricken.

8 Next question, I think, is line 5, page 133? What's
9 the basis for that objection?

10 MR. NEWVILLE: Your Honor, it's subject to the
11 Daubert motion.

12 THE COURT: Okay. Next then?

13 MR. BROOKS: Did we skip one, your Honor, on 132,
14 line 23?

15 THE COURT: We may have.

16 MR. BROOKS: Through 133:4.

17 MR. NEWVILLE: Daubert, your Honor.

18 THE COURT: Yeah, I don't think we skipped anything.

19 Line 23, page 132 purports to be a question, but it's a
20 statement. The next question is line 5, page 133.

21 MR. BROOKS: Well, your Honor, on 133, line 2 --
22 okay, Judge.

23 THE COURT: Yeah. "You see that in sort of the
24 second full paragraph there?" If you're asking him if he sees
25 something, well, then I think it's clearly irrelevant whether

1 he sees it.

2 If you're going to ask him a question about what he
3 sees somewhere, then that would be a question that would
4 actually be maybe relevant, have a relevant answer that could
5 be objected to; but the question that follows all of that
6 doesn't seem to have anything to do with the report that you
7 set out in the question.

8 Questions regarding the effective rate or equivalent
9 rate subject to the Daubert motion, I assume? Is that
10 correct?

11 MR. NEWVILLE: Yes, your Honor.

12 THE COURT: Okay. We'll skip on to the next. Line
13 12, page 134.

14 MR. NEWVILLE: We have an in limine motion that
15 refers to customer complaints. This is testimony regarding
16 one specific complaint.

17 THE COURT: Okay. Motion in limine.

18 MR. BROOKS: Your Honor --

19 THE COURT: Yes.

20 MR. BROOKS: -- again, this is part of Mr. Cross's
21 job. It's a complaint he reviewed in relation to this report.

22 THE COURT: Is it part of the motion in limine? If
23 it is, I'm not going to rule on it now. Is it included in a
24 motion in limine that's before us?

25 MR. BROOKS: I don't know specifically, your Honor.

1 MR. NEWVILLE: Yes, it is, your Honor.

2 THE COURT: What motion in limine is this?

3 MR. KAVALER: Omnibus motion, subpart (g), your
4 Honor, individual customer complaints beginning at page 65 of
5 our opening brief and in our reply brief at page 38.

6 THE COURT: Okay. We'll rule on it.

7 Next, next question as to which there is a different
8 objection.

9 MR. NEWVILLE: Omitting the fact that we have the
10 Daubert objections to this entire line.

11 THE COURT: No, I'm not omitting anything. I'm
12 trying to find out which of these questions are being objected
13 to on the grounds other than a pending Daubert motion or other
14 motion in limine. That's what I'm trying to find out.

15 So go through it and tell me. Don't omit anything.

16 MR. NEWVILLE: All right. Page 135, lines 6
17 through -- 6 through 25 are subject to the Daubert motion and
18 the individual customer complaints motion.

19 THE COURT: Okay. What I want is the opposite. Tell
20 me where you stop making those objections and you make an
21 objection to something other than Daubert or another pending
22 motion in limine.

23 MR. NEWVILLE: Yes, your Honor.

24 Page 138, line 13 through 25 is hearsay. The witness
25 isn't competent to testify as to findings in other states.

1 THE COURT: Response?

2 MR. BROOKS: Mr. Cross's Washington DFI examination
3 and investigation led to the multi-state group examination and
4 investigation. Mr. Cross was in communication with regulators
5 from other states who identified similar patterns and
6 practices in their states and as a regulator is entitled to
7 rely on those patterns and practices identified by others to
8 inform his conclusions.

9 THE COURT: Is that what this is? Are you asking him
10 if he relied upon those other reports in forming his
11 conclusions?

12 MR. BROOKS: In the context of the testimony, your
13 Honor --

14 THE COURT: Well --

15 MR. BROOKS: -- that's what he's saying. The
16 questioning is about the conclusion in the report and the
17 statement in the report that the department has identified the
18 practice in other branches in Washington and has even received
19 reports from regulators in other states concerning the
20 practice. That's on page 137, lines 11 through 16.

21 That's what leads to these questions as to which
22 other states found these problems. The report itself states
23 that other states had found similar problems, so it is a
24 question about his reliance on those states.

25 THE COURT: Response?

1 MR. NEWVILLE: The response is even if it's -- even
2 if it's a statement made to Mr. Cross, it's an out-of-court
3 statement being offered for the truth. Plaintiffs are clearly
4 attempting to use reports of complaints and offering them for
5 the truth of the matters asserted therein.

6 THE COURT: Okay.

7 MR. KAVALER: And once again, your Honor, we have a
8 separate motion in limine directed to the complaints
9 themselves, and that would be subparagraph (g) in our opening
10 memorandum on the omnibus motion in limine, which would appear
11 at page 65, and in the reply brief, which would appear at
12 page 38. So here you have a customer complaint --

13 THE COURT: It would appear that this is also subject
14 to a motion in limine, so let's move on to the next question
15 and answer, please.

16 What I want is to clear up any other objections in
17 this deposition testimony, so once the rulings come out on the
18 pending motions in limine, including the Daubert motions,
19 there won't be anything left to do with this deposition
20 transcript, folks. You'll be able to go on automatic pilot
21 from there on.

22 So please look through these and tell me if there's
23 any other objections that aren't going to be resolved by any
24 pending motions in limine. Objections as to form, et cetera.

25 MR. NEWVILLE: Your Honor, we have the same hearsay

1 objection as to the testimony on page 139, lines 1 through --

2 THE COURT: The same meaning what? You have a
3 hearsay objection, or do you have the same objection that's
4 already been explained as included in the motion in limine?

5 MR. NEWVILLE: It's included in the motion in limine,
6 your Honor.

7 THE COURT: Then keep going. I don't want to know
8 about the same objections. I want to know any objections you
9 have that are not going to be covered or resolved by pending
10 motions in limine at this point.

11 MR. NEWVILLE: Your Honor, page 140, line 9 through
12 10, and the answer is lines 18 through 24. There's an
13 objection to form noted on the record.

14 MR. BROOKS: We'll withdraw the designation, your
15 Honor.

16 THE COURT: Okay.

17 MR. NEWVILLE: Your Honor, page 142, lines 7 through
18 21 refers to findings in the State of Minnesota. We believe
19 that's a hearsay statement.

20 THE COURT: Response?

21 MR. BROOKS: It's the same as the others, your Honor.
22 Again, this is a discussion of the multi-state investigation
23 into Household's practices.

24 Mr. Cross was communicating with various regulators
25 from various states in his capacity as an expert and as a

1 regulator. He's entitled to rely on the findings to inform
2 his own conclusions, and that's what he's testifying about
3 here.

4 MR. NEWVILLE: Your Honor, that doesn't cure the
5 problem of the out-of-court statement being offered for the
6 truth. I mean what he relied upon is relevant to his expert
7 testimony. What -- what the underlying facts are are hearsay.

8 MR. BROOKS: Well, your Honor, if they're going to
9 attack his testimony as being based only on 19 complaints,
10 which they've done ad nauseam this afternoon, then we're
11 entitled to present evidence that his conclusions were, in
12 fact, based on much more than that.

13 THE COURT: Well, it appears that we're just getting
14 too involved in the pending motions. I mean this is all going
15 to be impacted by the rulings on the pending motions.

16 If, for example, Mr. Cross is ruled to be an expert,
17 then assuming that the foundation was laid somewhere in this
18 transcript, and I don't know if it is or not, if he testifies
19 that he took into consideration his -- statements from other
20 examiners in other states and that that's something that's
21 reasonably done by experts in his area of expertise, he's
22 entitled to testify as to his conclusions and possibly as to
23 the information itself.

24 If these other conclusions are contained in other
25 reports that are being offered, then they come in that way,

1 and those are all apparently parts of motions in limine that
2 are still pending before us. So we may be at a point where we
3 just can't make any more progress on this or it really isn't
4 necessary to make any more progress on this deposition.

5 It appears that all of the designations from here on
6 out call for expert testimony from Mr. Cross either in his own
7 proper person or to explain the conclusions in his report.

8 So, for example, page 185, line 11, the designation
9 that's objected to:

10 "Question: Mr. Sloane was asking you some questions
11 about hypothetical predatory lending practices or improper
12 practices."

13 The question is predicated on prior testimony which
14 dealt with expert testimony, so I -- as much as I would like
15 to get through the rest of this, it may just not be necessary.
16 It may be that the rulings on the motions in limine will
17 actually resolve the objections that are being made here. So
18 I think that's probably as far as we can go.

19 The question is then where do we go from here in
20 preparing for the trial? Be happy to hear your --

21 MR. BROOKS: Well, your Honor, with respect to the
22 remaining deposition designations, they are all subject to
23 some sort of motion in limine. Todd May was the Wells Fargo
24 30(b)(6) representative. They've moved to exclude Elaine
25 Markell's testimony I think in its entirety. And Dennis

1 Hueman testifies about a videotape that defendants are trying
2 to exclude. That one we might be able to make some progress
3 on, but it may not be worth it, Judge, until we get the
4 motions resolved.

5 THE COURT: So what should we do?

6 MR. NEWVILLE: Your Honor, defendants have designated
7 three deposition witnesses. I don't believe those are subject
8 to any motions in limine.

9 THE COURT: Is that correct?

10 MR. BROOKS: That's correct.

11 THE COURT: Okay. Then maybe we can do those next.
12 Do I have those transcripts?

13 MR. NEWVILLE: Your Honor, if you don't have them, I
14 have extra copies here that we can obtain in a couple of
15 minutes.

16 THE COURT: Good. We have the extra copies.

17 MR. KAVALER: These, I believe, your Honor, are the
18 ones we offered yesterday to give you extra ones. You told us
19 to hold off while you were looking. We brought them along in
20 an abundance of caution.

21 THE COURT: Let's have them. We can get some work
22 done.

23 (Tendered.)

24 THE COURT: I see they're not very heavy. Thank you.

25 MR. OWEN: Piece of cake.

1 MR. NEWVILLE: Your Honor, if I could just take a
2 minute. We actually have the highlighted versions for you.

3 THE COURT: These are not highlighted? Oh, God, no.
4 (Tendered.)

5 THE COURT: Feels better.

6 Okay. Where do you wish to start?

7 MR. NEWVILLE: The first one I have on my list is
8 Burgess, William Burgess.

9 THE COURT: Okay.

10 MR. BROOKS: Someone's going to have to tell me what
11 the color scheme is here because it's different, and I don't
12 recall exactly.

13 MR. NEWVILLE: The color scheme is green are
14 defendants' designations that have been objected to. Yellow
15 are defendants' designations that haven't been objected to.
16 That's the same as plaintiffs' -- as plaintiffs' color scheme.

17 For plaintiffs' designations, the color scheme is
18 slightly different. There's a light pink for plaintiffs'
19 designations with no objection. And a darker magenta reddish
20 color. I could have called the first one fuchsia. I think
21 pink will suffice.

22 MR. BROOKS: So that's objected to?

23 MR. NEWVILLE: Yes.

24 THE COURT: Sure, I think I can follow that.

25 Mr. Burgess begins on page 8, is that correct?

1 MR. NEWVILLE: That's correct. And we withdraw the
2 designation of the videographer's statement.

3 THE COURT: What do I have? Do I have two for
4 Mr. Burgess here? Burgess, William. Burgess, William. Yeah,
5 I seem to have --

6 MR. NEWVILLE: Your Honor, may I approach?

7 THE COURT: Sure. Why don't you tell me what I have
8 here. That's the deposition designation there, right?

9 MR. NEWVILLE: Yes, this is Burgess.

10 THE COURT: Is that all of the Burgess designation?

11 MR. NEWVILLE: Yes.

12 THE COURT: Okay. Do I need that other stack? Do I
13 need that?

14 MR. NEWVILLE: No, I don't believe so.

15 THE COURT: Okay.

16 MR. NEWVILLE: Your Honor, let me trade you. Sorry
17 about that.

18 THE COURT: Sure. You like that one better? Okay.

19 MR. NEWVILLE: I'm attached to this one.

20 THE COURT: All right. We've got 15 minutes. Let's
21 see what we can get done.

22 So I'm looking for green or magenta, right?

23 MR. BROOKS: Correct, your Honor.

24 THE COURT: Beginning of page 8, I guess. The
25 videographer's statement has become a staple of our

1 litigation. Videographer's statement is out. We will
2 instruct the jury as to what they're about to see, hopefully
3 accurately.

4 Page 14. By the way, who is Mr. Burgess? Give me
5 some background.

6 MR. NEWVILLE: He's a 30(b)(6) witness. He is an
7 investment banker at Goldman Sachs. This was a deposition
8 that was taken by the plaintiffs, and he worked on the
9 Household HSBC transaction.

10 THE COURT: Okay. Objection to line 10. Basis?

11 MR. NEWVILLE: Your Honor, I misspoke. Mr. Burgess
12 didn't work on the Household HSBC transaction. He worked on
13 the proposed Wells Fargo transaction.

14 THE COURT: That's the transaction where Wells Fargo
15 got cold feet?

16 MR. KAVALER: Your Honor, the plaintiffs have told
17 you that several times. There's no evidence in the record to
18 anything other than the fact that Mr. Aldinger testified --
19 he's Household's CEO -- that he put the kibosh on that
20 transaction for reasons which he gave.

21 Plaintiffs have created out of nowhere this myth that
22 Wells Fargo walked away from the deal. What the record shows
23 is Mr. Aldinger, for reasons he'll explain at trial, said no
24 more, no more discussions. That's the record.

25 THE COURT: Okay. Mr. Aldinger got cold feet or

1 Wells Fargo, somebody got cold feet and the transaction didn't
2 go through, right?

3 MR. KAVALER: I'd be happy to tell you what
4 Mr. Aldinger will say if you'd like, your Honor. That'll be
5 the subject of testimony.

6 THE COURT: That's okay. I just want to get started
7 on line 10.

8 MR. KAVALER: I understand that this is one of these
9 urban legends that have arisen around this case that somehow
10 Wells Fargo terminated these discussions, the record evidence
11 is exactly 180 degrees the opposite.

12 MR. DROSMAN: Your Honor, if I can just briefly
13 respond just to correct the misrepresentation.

14 THE COURT: No, no, I don't care. Again, unless you
15 want me to decide the case. If you folks decide you're going
16 to let me decide all the issues in the case and make a final
17 judgment as to all issues here and now based upon your
18 arguments, go at it. I'll let you talk as long as you like.

19 Otherwise, line 10, what's the objection here?
20 Page 14, line 10. It's the plaintiffs' objection, I believe?

21 MR. BROOKS: Withdrawn, Judge.

22 THE COURT: The objection is withdrawn.

23 MR. BROOKS: I would note, your Honor, before we get
24 too deeply into this, if, in fact, it was Mr. Burgess who was
25 the banker on the Wells Fargo deal, defendants have moved to

1 exclude everything about the Wells Fargo deal in one of their
2 motions in limine. That's why we're not going over Mr. May's
3 transcript.

4 So it's probably not the proper witness to start
5 with. Personally, I can't remember if it was Mr. Burgess or
6 someone else who was on the Wells Fargo deal or if Burgess was
7 on HSBC; but if that's the case, we could be wasting our time,
8 your Honor, but I'm willing to go through it.

9 THE COURT: Can we decide these issues without that
10 determination? Are these issues we would have to decide if
11 the -- I guess there is a pending motion in limine first, and
12 if that's correct, then are these issues that we would have to
13 decide if the motion is denied?

14 MR. NEWVILLE: Your Honor, I think -- I think I agree
15 with Mr. Brooks, and if we go to the Lou Levy transcript, I'm
16 not sure if we'll have that problem.

17 THE COURT: Let's do that.

18 Okay. The videographer's statement is out. Next is
19 page 8, line 15.

20 MR. BROOKS: Withdrawn, Judge.

21 THE COURT: Objection is withdrawn.

22 Page 12, line 10.

23 MR. NEWVILLE: Line 10 through 17 is offered by
24 plaintiffs as a fairness designation to the testimony
25 designated immediately above.

1 THE COURT: What's the objection?

2 MR. NEWVILLE: The objection is it's not a legitimate
3 fairness designation. The only hook to the prior testimony is
4 that Mr. Levy mentioned, among a number of other things, that
5 there was a charter for the audit committee.

6 The additional questions deal with the functions and
7 responsibilities of the audit committee changing after
8 adoption of the charter and when the charter was adopted.
9 Mr. Levy was testifying as to the duties of the audit
10 committee in general.

11 MR. BROOKS: And, your Honor, it's relevant that he
12 couldn't recall what changes were made after the charter
13 change for the audit committee.

14 MR. NEWVILLE: I'm not arguing relevance. I'm
15 arguing fairness.

16 MR. BROOKS: And in all fairness, your Honor, if he's
17 going to talk about the duties and responsibilities of the
18 audit committee, we should be able to present evidence
19 immediately following that which shows that he can't recall
20 some of the changes in those duties and responsibilities.

21 THE COURT: I'll overrule the objection.

22 Line 21, what's the objection?

23 MR. NEWVILLE: The objection is it's not a legitimate
24 fairness objection. Simply because the testimony refers to
25 engaging the independent auditors to review the financial

1 statements, I don't think it follows that testimony regarding
2 whether the audit committee reviewed the financial statements
3 is a fairness designation. It would be plaintiffs' own
4 designation.

5 MR. BROOKS: Your Honor, the question is within the
6 audit committee, the prior question to which this is
7 designated in fairness:

8 "Within the audit committee, did you review
9 Household's quarterly filings with the SEC?"

10 "Not during the whole period of time."

11 That's suggests, Judge, that at some point, they did
12 review the quarterly filings. The next series of questions
13 and answers establishes that, in fact, he does not remember
14 when they started reviewing the quarterly financials.

15 THE COURT: No, I'll sustain the objection. I don't
16 think -- it talks about the general functions of the audit
17 committee. It talks about what specifically they did with
18 regards to reviewing specific quarterly reports. The
19 objection is sustained.

20 Are you designating this as your own?

21 MR. BROOKS: No, Judge.

22 THE COURT: Okay. 27?

23 MR. NEWVILLE: Plaintiffs have counter-designated
24 page 27, lines 14 through 25, as a fairness
25 counter-designation to testimony on pages 89 through 90.

1 The testimony on pages 89 through 90 simply refers to
2 whether Mr. Levy formed an opinion as to the appropriate
3 accounting for the credit card contracts.

4 MR. BROOKS: And why not, your Honor.

5 MR. NEWVILLE: The question on page 27, the
6 plaintiffs have designated is a very specific, targeted
7 question. I don't believe it falls within a fairness
8 designation by any means.

9 THE COURT: Give me a second to read this.

10 (Pause.)

11 THE COURT: Okay. I'll overrule the objection, allow
12 it.

13 Next is page 28, line 24.

14 MR. NEWVILLE: Our objection is that it's not a --
15 should not be a fairness designation. Based on your Honor's
16 ruling as to the testimony above, we'll withdraw the
17 objection.

18 THE COURT: Page 29.

19 MR. NEWVILLE: The objection is that it's not
20 sufficiently related to the testimony on pages 100 --

21 THE COURT: What page?

22 MR. NEWVILLE: I'm not sure. It's plaintiffs'
23 counter-designation.

24 THE COURT: What's it being counter-designated to?

25 MR. BROOKS: To be honest, your Honor, I don't have

1 the chart for defendants' stuff. I'm willing to wing it.

2 He's got the chart. I just can't tell you specifically.

3 THE COURT: Does anybody have a chart?

4 Well, it doesn't seem fair. Let's call it a day.

5 It's ten minutes to 5:00. We'll start in on this tomorrow.

6 I'm sure we'll have some more rulings out by tomorrow, maybe

7 the remaining motions in limine all together, and we should be

8 able to make some progress.

9 I'd like to -- I'd like to designate or direct a

10 task. We have now a fair number of rulings on the motions in

11 limine. We'll have more by tomorrow. We have a large number

12 of rulings on the objections to some of the deposition

13 testimony. You have a much better idea of what's coming into

14 evidence in this case.

15 I want the parties to go back over the list of

16 exhibits that are objected to and review and reconsider

17 objections to those exhibits, see if some of those can't be

18 winnowed out so that when we get to that list, it won't be as

19 long as it appears right now.

20 MR. KAVALER: Your Honor, Mr. Dowd and I discussed

21 precisely that yesterday, and I think both of us agreed that

22 we want to do that. We believe it will be enormously

23 efficacious. I think what we're waiting on is your ruling on

24 the remaining motions in limine and Dauberts.

25 But we certainly had exactly that conversation, and

1 we both agreed the minute we have that, we were going to
2 propose to your Honor jointly we take a break in these
3 proceedings, depending on what time of day it is, allow a
4 designee for each side or two designees from each side to sit
5 down with the voluminous exhibit designations and exhibit
6 objections and resolve them in conformity with your Honor's
7 rulings. The only thing we're waiting on is the conclusion of
8 the rulings.

9 THE COURT: Okay. We should have those pretty soon.
10 My small chambers and I are working on those as much as we
11 can.

12 When I'm not here, the time that you folks take going
13 over the objections to the exhibits again can be utilized by
14 designating others of your group to commence going over the
15 jury instructions either with me or if you feel it's
16 appropriate to have a conference on your own before you come
17 to me with the jury instructions.

18 But that's the next step after we do the exhibits.
19 So tomorrow if we have these opinions out, these rulings out,
20 we can count on either proceeding -- maybe we can count on
21 proceeding with a jury instruction conference with some of you
22 while the others work on the objections.

23 MR. KAVALER: That would be fine with us, your Honor.

24 MR. DOWD: Your Honor, could I just ask one question?

25 Is the Court inclined, and I'm just not sure of the practice

1 here, to actually do the post-trial instructions before trial

2 or just the preliminary instructions?

3 THE COURT: I -- I can't imagine that the preliminary
4 instructions are going to take more than ten minutes.

5 MR. DOWD: Well, that's why I asked, your Honor.

6 THE COURT: No, I'm talking about the post-trial
7 instructions, sure. And in the process, we can try to put
8 together a short and simple statement of the issues in the
9 case for the jury to give as pretrial instructions as well.

10 But that's sort of secondary. I'm talking about the
11 post-trial instructions.

12 MR. DOWD: Fair enough.

13 THE COURT: What I don't want is to have this case
14 come to a halt on the evidence and then have to scramble to do
15 the jury instructions. So we'd like to do those as much as
16 possible before we start with the evidence.

17 MR. KAVALER: On that point, I was thinking this
18 morning you're going to tell the jurors when you impanel them
19 it's a four-week trial. The four weeks, as I understood it,
20 was for the presentation of evidence and summations. It will
21 be four weeks plus however long it takes you to charge them
22 and then them -- them then to deliberate.

23 THE COURT: Right.

24 MR. KAVALER: So it could be longer from their point
25 of view. My only point.

1 THE COURT: The jurors will know. They will be fully
2 advised.

3 MR. KAVALER: Thank you, your Honor.

4 THE COURT: Okay. I think we can do this tomorrow
5 starting at 10:30 again, and hopefully we'll begin to see some
6 light at the end of the tunnel. Okay. We're adjourned.

7 (Court adjourned, to reconvene at 10:30 a.m. on 3-18-09.)

8 * * * * *

9 C E R T I F I C A T E

10 We certify that the foregoing is a correct
11 transcript from the record of proceedings in the
12 above-entitled matter.

13 /s/ Nancy C. LaBella
14 _____

15 /s/ Kathleen M. Fennell
16 _____

17 /s/ Joseph Rickhoff 3/18/09
18 _____

19 Official Court Reporters Date
20 United States District Court
21 Northern District of Illinois
22 Eastern Division
23
24
25

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION
3 LAWRENCE E. JAFFE PENSION PLAN,)
 on behalf of itself and all)
4 others similarly situated,)
)
5 Plaintiff,)
)
6 vs.) No. 02 C 5893
)
7 HOUSEHOLD INTERNATIONAL, INC.,)
 et al.,) Chicago, Illinois
8) March 26, 2009
 Defendants.) 9:30 a.m.
9
 VOLUME 8
10 TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE
 BEFORE THE HONORABLE RONALD A. GUZMAN
11

12 APPEARANCES:

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

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

24
25

1 think the other stuff is actually in the --

2 MR. HALL: With that understanding, we can withdraw

3 our objection to No. 125.

4 THE COURT: Okay.

5 MR. HALL: And with the same understanding, we'll

6 withdraw on 126 and 127.

7 On No. 128, I believe we're going to get a modified

8 version from the plaintiffs that will consolidate 1999 into

9 one number, which will match up with their expert's report.

10 MR. DOWD: That's correct, your Honor.

11 MR. HALL: And, your Honor, the last -- we withdraw

12 our objections on the rest of these, except No. 149. Here,

13 your Honor, this is a slide presumably that plaintiffs intend

14 to use with Professor Fischel which mentions the \$484 million

15 settlement explicitly. We had talked about that earlier. And

16 I believe the Court clarified that to the extent the

17 plaintiffs need to use that number with one of their experts,

18 including Mr. Devor or Mr. Fischel, that the amount of the

19 settlement is going to be allowed to be presented to the jury.

20 We just want to clarify that that will be the limit of the

21 \$484 million settlement's use in the trial.

22 THE COURT: I don't know that I can do that. I don't

23 know what's going to happen during the trial. I mean, you may

24 bring it up. I don't know. Or you may open the door. Or

25 there may be some other legitimate function for it.

1 MR. HALL: Okay, your Honor.

2 THE COURT: I'm not prepared to make an advisory
3 ruling as to anything.

4 MR. HALL: I understand, your Honor. I guess all I'm
5 saying is to the extent that the Court's previous order was
6 limited -- and this falls within that order -- and it's used
7 here to establish plaintiffs' loss causation argument or to
8 advance plaintiffs' loss causation argument, we'll withdraw
9 the objection on this slide.

10 MR. BURKHOLZ: Thank you.

11 THE COURT: That's why it's there, right? That's
12 what you're going to use it for?

13 MR. BURKHOLZ: Yes.

14 THE COURT: Okay.

15 MR. HALL: Your Honor, that's the last of the
16 defendants' objections on plaintiffs' demonstrative exhibits.

17 THE COURT: Thank you. We go the other way now.

18 MR. HALL: Yes, your Honor.

19 Your Honor, if I may approach, I'll hand you up a
20 copy of the defendants' demonstratives. There's an electronic
21 form on a DVD. If you'd like, we could have someone put them
22 up on the screen.

23 THE COURT: Are they all in here?

24 MR. HALL: No, your Honor. Some of them are
25 animations so they don't --

EXHIBIT 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
MR. DANIEL S. DROSMAN
MS. MAUREEN E. MUELLER
655 West Broadway
Suite 1900
San Diego, California 92101
(619) 231-1058

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

Aldinger - cross

3330

1 Q. What did Household do to respond to this increased
2 headline risk?

3 A. Well, we tried to be active with regulators. We tried to
4 be active with investors to tell them our story. But it was a
10:10:42 5 challenging time.

6 Q. Did you add any employees? Did you beef up any of your
7 departments?

8 A. Well, we obviously -- after adding Jim Kauffman and his
9 team, we added a significant number of people to the
10:10:54 10 compliance effort. We basically gave him an open budget.

11 Q. What does an open budget mean?

12 A. That means he could hire as many people as he wanted to,
13 no questions asked. We said to him we want you to absolutely
14 have control of whatever you need.

10:11:09 15 Q. Is that a normal thing in the company?

16 A. No. That's rare.

17 Q. Why did you do that?

18 A. Because I thought compliance was the really important
19 issue of the day.

10:11:17 20 Q. Did you give any other departments any -- an open budget?

21 A. Not that I recall.

22 Q. Now, Mr. Aldinger, you've heard some testimony in this
23 case from various people about a settlement with the attorneys
24 general?

10:11:36 25 A. Yes, I have.

1 Q. Let's see if we can put that in context. What led up to
2 that scenario? Who were the attorneys general? Let's start
3 with that.

4 A. Well, each state has an attorneys general in it; and I
10:11:50 5 think as you've heard in earlier discussions, at some point
6 the State of Washington was very active in discussing their
7 issues with Household. And there were two or three states,
8 Minnesota being one, which eventually grew to be a group of 12
9 to 15 attorneys general that began discussing with Household
10:12:12 10 the idea of trying to make some kind of a compromise or a
11 settlement with that group.

12 Q. And did there come a time where you got involved in
13 directing Household's efforts in connection with that subject?

14 A. Yes.

10:12:25 15 Q. Why?

16 A. Well, I thought it was the most important issue in front
17 of us. Clearly, the concerns about regulatory issues were
18 dragging our stock price down, were hurting the morale of the
19 company, were distracting the executives, and so I thought at
10:12:41 20 some point it made sense, if we could, to reach a settlement
21 potentially with the AGs even though we may not have agreed
22 that we had done anything wrong.

23 Q. When you first got involved, how many attorneys general
24 were gathered together opposing Household?

10:12:57 25 A. I think it was between 12 and 15. And at that point, I

Aldinger - cross

3332

1 authorized my team to go in and begin discussions with them.

2 Q. Were you prepared to come to a resolution with these 12 to
3 15 attorneys general?

4 A. As it later turned out, we decided not to do that.

10:13:14 5 Q. Did you make that decision?

6 A. I did.

7 Q. What did you want to do instead?

8 A. Instead I wanted to get a global settlement. My view was
9 that settling with 12 to 15 of the most aggressive AGs didn't
10:13:26 10 make sense because investors would still have concerns. There
11 still would be the potential for somebody else to come in and
12 litigate, and so we told the team that if we're going to have
13 any settlement, it had to be global with all of the AGs where
14 we did business, and we did business in roughly 48 states.

10:13:46 15 Q. So the idea to expand from 12 or 13 to 48 was yours?

16 A. That's correct.

17 Q. Did you find that there were attorneys general who had no
18 interest in participating?

19 A. Yes, I did. When we first sent the team out to talk to
10:13:59 20 other attorneys general about joining the compromise and the
21 settlement, the reaction of many of the AGs was --

22 MR. DROSMAN: Objection, hearsay.

23 BY MR. KAVALER:

24 Q. Focus on what you said. Did you give instructions to your
10:14:11 25 people with regard to bringing in other attorneys general?

Aldinger - cross

3333

1 A. Yes, I did.

2 Q. What did you say to them?

3 A. I said that unless we could get a global settlement of 48
4 AGs, we wouldn't do any settlement.

10:14:22 5 Q. Was there a time when you had to authorize certain
6 activities to cause additional attorneys general to join the
7 team that was opposing Household?

8 A. Yes.

9 Q. What did you authorize?

10:14:32 10 A. What I authorized was our government relations team to go
11 out with some outside lawyers and we also hired a number of
12 former attorneys general to come out and work with us and
13 approach the other attorneys general around the country and
14 ask them to join in this --

10:14:48 15 MR. DROSMAN: Objection, hearsay.

16 BY MR. KAVALER:

17 Q. Are these the instructions you gave?

18 A. These are the instructions I gave.

19 THE COURT: Overruled.

10:14:56 20 BY MR. KAVALER:

21 Q. Please continue, Mr. Aldinger.

22 A. And so we asked them to go out and approach the attorneys
23 general and try to sign up effectively 48 of the AGs. And
24 ultimately, in order to get broader participation, we actually

10:15:15 25 had to go out and we offered to pay each of the attorneys

Aldinger - cross

3334

1 generals' offices \$200,000 per attorneys general per state to
2 join in this settlement negotiation.

3 So literally we went and ultimately spent \$7 million
4 bringing in all the states. About 35 states that did not
10:15:38 5 originally participate and did not originally want to
6 participate, we brought them in ourselves and actually had to
7 expend \$7 million of our own money of what we called
8 administrative expenses to get them on board.

9 One of the ironic parts or the funny parts to this is
10:15:55 10 that at the end, we got calls from two other attorneys
11 general, one in South Dakota and one in Alaska, where we had
12 no customers, no business, no offices, and they said they
13 wanted to join too.

14 MR. DROSMAN: Objection, hearsay.

10:16:10 15 THE COURT: I'll sustain the objection.

16 BY MR. KAVALER:

17 Q. Mr. Aldinger, is there a practice in the business of being
18 a regulated industry where the regulated company reimburses
19 the regulator for the cost of investigating the company?

10:16:21 20 A. Yes, there is.

21 Q. And is that the model that you were following here?

22 A. Absolutely.

23 Q. The \$200,000 was a measure of the expense an attorney
24 general might incur in having to send his people to these
10:16:32 25 meetings?

Aldinger - cross

3335

1 A. Absolutely.

2 Q. Did there come a time when you achieved a critical mass of
3 attorneys general?

4 A. Yes.

10:16:43 5 Q. Once you had the critical mass, Mr. Aldinger, did you
6 authorize people to negotiate with the attorneys general?

7 A. I did.

8 Q. Were you kept apprised of the progress of the
9 negotiations?

10:16:51 10 A. I was.

11 Q. Did there come a time when the people who were reporting
12 to you about the negotiations reported that an offer was on
13 the table that seemed to be within the range of acceptable?

14 A. Yes.

10:17:00 15 MR. DROSMAN: Objection, leading and hearsay.

16 THE COURT: I'll sustain the objection.

17 BY MR. KAVALER:

18 Q. Did you come to understand, Mr. Aldinger, at some point
19 these negotiations had come to a head?

10:17:11 20 A. Yes.

21 Q. What, if any, actions did you take at that point?

22 A. I essentially then talked with my board about the
23 possibility of a settlement once we had a number that we
24 thought made good business sense in terms of settling this

10:17:30 25 whole issue with all the AGs across the board.

Aldinger - cross

3336

1 Q. Were you in favor of settling this issue with all the AGs
2 across the board?

3 A. Well, I initially was not in favor of it and there were a
4 number of my board members who had reservations, but in --
10:17:44 5 because we felt we had done nothing wrong. But in the end, I
6 think we had to make a practical business decision.

7 If we didn't settle, we could have potentially had
8 this drag out for years, keep our stock price down for years,
9 distract management. And so our view was that if we could get
10:18:03 10 a reasonable settlement, put this all behind us, that our
11 stock price would rise. And from a business standpoint, not a
12 legal standpoint, it was a good decision.

13 Q. Do you recall when you had this conversation with your
14 board of directors?

10:18:16 15 A. It was sometime in October, the day before we announced
16 our settlement.

17 Q. The day before you announced. Do you remember what day
18 you announced the settlement?

19 A. It was in October, I think 11th or 12th. I can't remember
10:18:29 20 the exact date today.

21 Q. But your best recollection is the conversation with the
22 board was the day before?

23 A. That's my best recollection, yes.

24 Q. Did you have to have the board's approval to make this
10:18:38 25 settlement?

Aldinger - cross

3337

1 A. I did.

2 Q. So was it possible to make a settlement before you talked
3 to the board?

4 A. No.

10:18:45 5 Q. You didn't have that authority yourself?

6 A. No, I didn't.

7 Q. The people you had negotiating with the attorneys general
8 didn't have that authority?

9 A. No, they had no authority.

10:18:54 10 Q. Did the board authorize the settlement?

11 A. They did.

12 Q. What did you do then?

13 A. We then went back and --

14 Q. What did you do, sir?

10:19:00 15 A. Well, I settled it.

16 Q. Did you instruct the people negotiating with the attorneys
17 general?

18 A. Yes, I did.

19 Q. What instruction did you give them?

10:19:08 20 A. To settle the -- to settle.

21 Q. Did the company disclose the fact that it reached a
22 settlement with the attorneys general?

23 A. It did.

24 Q. Let's look at Exhibit 74 in evidence.

10:19:50 25 A copy to counsel. A copy to you, Mr. Aldinger.

Aldinger - cross

3338

1 (Tendered.)

2 BY MR. KAVALER:

3 Q. This is a July 17, 2002, conference call transcript.

4 Do you see that?

10:20:01 5 A. Yes, I do.

6 Q. Is that several months before the settlement?

7 A. Yes, it is.

8 Q. Turn, if you would, to page ending in 489.

9 Do you see there's a question asked by Bob Napoli?

10:20:29 10 "Good morning and nice quarter." Do you see that?

11 A. I do.

12 Q. Do you know who Mr. Napoli is?

13 A. Yes, he was an analyst.

14 Q. And he says, Good morning and nice quarter. I wonder if
10:20:39 15 you could just expand a little bit more on two issues that are
16 on everybody's minds. Are there any other discussions going
17 on with the regulators? I mean, are they looking for any
18 other unusual types of information or spending and I wonder if
19 you can just talk about that a little bit more.

10:20:56 20 And then the second issue, you know, that frequently
21 comes up is that -- the predatory lending issue. I was
22 wondering if you could just talk about a little bit what's
23 going on with some of the lawsuits and the extent that you can
24 help us out on that. Thanks.

10:21:10 25 And then you begin to answer. And then down at the

Aldinger - cross

3339

1 bottom you begin to answer.

2 And on the top of the next page, 490, you say, What
3 is happening, I mean, with the ACORN suits and what is
4 happening with the AGs.

10:21:25 5 Do you see that?

6 A. No, I'm not in the right -- same place yet.

7 Q. Top of 48 -- 490. Top of the next page. Second line
8 down.

9 A. Yes.

10:21:38 10 Q. Okay. That was you talking?

11 A. That's right.

12 Q. And on the next page, 491, third paragraph down, that's
13 still you talking. And you say, Now let's talk about the
14 lawsuits. We think straight out the class action suits

10:21:55 15 brought by ACORN in particular are just baseless, and we don't
16 see any long-term impact there. We think they're wrong.

17 On the AGs, obviously again it's a very political
18 issue. There's been lots of talk. We will, like we do on
19 everything else, focus on resolving that issue over the next

10:22:14 20 six months or so. But I can't go into any details except to
21 say that I am confident that our best practices in our current
22 model ultimately will prevail and we'll do what we do because
23 we do not do predatory lending.

24 Do you see that?

10:22:30 25 A. I do.

Aldinger - cross

3340

1 Q. And this conversation was in July of '02?

2 A. That's correct.

3 Q. And you settled with the attorneys general in October of

4 '02?

10:22:38 5 A. That's correct.

6 Q. Within six months?

7 A. That's right.

8 Q. Exactly as you had said?

9 A. Yes.

10:22:48 10 MR. KAVALER: Ladies and gentlemen of the jury, that
11 transcript is at tab 20 of your binder.

12 And I was remiss in not telling you that the AG
13 Edwards document, Defendants' 891, was tab 19 in your binder.
14 So I apologize for that.

10:23:06 15 BY MR. KAVALER:

16 Q. Now, let's look at Exhibit 550.

17 A copy to counsel. A copy to you, Mr. Aldinger.

18 (Tendered.)

19 BY MR. KAVALER:

10:24:03 20 Q. Is this an analyst report prepared and issued by Morgan
21 Stanley about Household International on or about July 31,
22 2002, while you were CEO?

23 A. Yes, it is.

24 MR. KAVALER: Offer Defendants' 550 in evidence, your
10:24:17 25 Honor, with the usual limiting instruction.

Aldinger - cross

3341

1 THE COURT: It will be admitted.

2 MR. KAVALER: Ladies and gentlemen of the jury, this
3 document appears at tab 21 in your binder.

4 BY MR. KAVALER:

10:24:37 5 Q. Now, Mr. Aldinger, this is an analyst's report released on
6 July 31?

7 A. That's correct.

8 Q. About two and a half months before the settlement?

9 A. Yes.

10:24:46 10 Q. And this is by Mr. Kenneth A. Posner, whom you talked
11 about yesterday?

12 A. Yes.

13 Q. You thought his analyses were usually the most acute?

14 A. I did.

10:25:00 15 Q. Look at the first page. It's got some bold headings, and
16 the last one down -- the next to the last one down says,
17 Impact of predatory lending may be overblown. Do you see
18 that? He says, New lending practices could reduce the
19 company's consumer finance margins from 2.0 percent to 1.5 to
10:25:21 20 1.75 percent.

21 Do you see that?

22 A. I do.

23 Q. What is he referring to by new lending practices?

24 A. That was the best practices we would put in place. And,
10:25:29 25 also, there's some speculation that if we were to do a

Aldinger - cross

3342

1 settlement, there may be other practices to change.

2 Q. And then he continues, And we're factoring in \$500 million
3 in legal damages/regulatory fines in our price target.

4 Do you see that?

10:25:43 5 A. I do.

6 Q. When you saw this, what did you think he was referring to
7 by the \$500 million?

8 A. Well, what he was referring to is what we might settle for
9 with the AGs.

10:25:55 10 Q. Did you know on July 31 what that number might be that you
11 would settle with the AGs for?

12 A. No. We had no number at that point.

13 Q. When is the first time you knew what number you would be
14 able to settle with the AGs for?

10:26:10 15 A. Not until very close -- the day before the settlement.

16 Q. The conversation you described earlier?

17 A. That's correct.

18 Q. And for there to be a settlement, both the company and the
19 AGs had to agree?

10:26:19 20 A. That's correct.

21 Q. And the company could not agree until the board told you
22 it was all right?

23 A. That's correct.

24 Q. Turn to page ending in Bates range 405 in that same

10:26:36 25 document.

Aldinger - cross

3343

1 Lower right-hand corner, bold heading, Household has
2 already been targeted in a number of regulatory and legal
3 actions.

4 Do you see that?

10:26:50 5 A. I do.

6 Q. He wrote, Further, bad press doesn't help as it often
7 encourages more borrowers and activist groups to step forward
8 with complaints. Household has been the subject of a great
9 deal of bad press lately. To capture the likelihood of
10:27:06 10 additional legal damages and/or regulatory fines, we subtract
11 \$1 per share from our target price, based on a probability of
12 75 percent applied to \$500 million in damages. This estimate
13 represents an educated guess. We cannot anticipate the
14 outcome of ACORN's class action lawsuit, regulatory actions in
10:27:31 15 the State of Washington, or other potential legal and
16 regulatory issues.

17 Do you see that?

18 A. I do.

19 Q. When you saw that, Mr. Aldinger, did you know if the
10:27:38 20 probability of success of resolving a lawsuit or a dispute,
21 rather, the probability of resolving the matter with the AGs
22 was 75 percent?

23 A. No.

24 Q. Did you know whether \$500 million was a high number, a low
10:27:50 25 number or an accurate number?

Aldinger - cross

3344

1 A. No.

2 Q. When is the first time you knew that the probability of
3 being able to resolve this with the attorney generals was a
4 hundred percent?

10:28:01 5 A. About a day before we settled it.

6 Q. When is the first time you knew what number you'd be able
7 to settle on with the attorneys general?

8 A. Again, it would have been about a day before.

9 Q. The day before what, sir?

10:28:11 10 A. The day before we officially settled it.

11 Q. Mr. Aldinger, have we prepared a demonstrative to show the
12 movement of the stock price on the day the settlement was
13 announced?

14 A. Yes, we have.

10:28:49 15 Q. Now, was there some talk in the marketplace about the
16 settlement even before it was formally announced?

17 A. There appeared to be leaks.

18 Q. Did any leaks come from the Household side?

19 A. They did not.

10:29:05 20 Q. Do you know where the leaks came from?

21 A. Not for certain.

22 Q. But in any event, you know there were leaks?

23 A. Yes.

24 Q. Can we look at DDX 230-03.

10:29:18 25 And, Mr. Aldinger, the left-hand axis reads,

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?

Aldinger - cross

3347

1 A. I was.

2 Q. Still?

3 A. I still am.

4 Q. Let's talk about what that \$484 million represented to
10:31:40 5 Household. Have we prepared a demonstrative that shows us --
6 first, have we prepared a demonstrative that compares the two
7 numbers you just gave us, the approximately \$3-1/2 billion
8 increase and the \$484 million payment?

9 A. I believe we have.

10:31:58 10 Q. Can we see DDX 220-01.

11 What does this show us, Mr. Aldinger?

12 A. It shows the cost at 484 million and the increase in
13 Household stock to \$3.3 billion.

14 Q. Is it to \$3.3 billion or by 3.3 billion?

10:32:18 15 A. By 3.3 billion.

16 Q. Secondly, can you give us some idea -- withdrawn.

17 Can you put in perspective this \$484 million for us,
18 Mr. Aldinger? For example, can you tell us what Household's
19 gross revenues were in 2002?

10:32:54 20 A. Yes. I think our revenues were about \$15 billion during
21 that period.

22 Q. Okay.

23 THE COURT: Is this a good time to stop?

24 MR. KAVALER: Whatever you say, your Honor.

10:33:04 25 THE COURT: I think we'll take our 15-minute break at

Aldinger - cross

3348

1 this time and then we'll continue.

2 (Jury out.)

3 THE COURT: You may step down, sir.

4 THE WITNESS: Thank you.

10:33:38 5 THE COURT: Okay. We're recessed for 15 minutes.

6 MR. KAVALER: Thank you, your Honor.

7 (Recess taken.)

8 THE COURT: Ready to resume.

9 MR. KAVALER: Yes, your Honor.

10:56:21 10 (Jury in.)

11 MR. KAVALER: Thank you, your Honor.

12 BY MR. KAVALER:

13 Q. Mr. Aldinger, I can't remember if I asked you this

14 question or started to ask you this question. So, let me ask

10:56:30 15 it, again, if I didn't finish it or, in any event.

16 You told me Household's gross revenues in 2002 were

17 about \$15 billion. I know I didn't ask it. Can you do the

18 math -- compare Household's gross revenues of 15 billion to

19 the settlement price of 484 million?

10:56:52 20 A. It would be about three percent, I think, of the revenues.

21 Q. Three percent. Is that the same as about 30 times as much

22 revenue?

23 A. That's about right.

24 Q. 15 billion is 30 times as much?

10:57:05 25 A. Yes.

Aldinger - cross

3349

1 Q. Okay.

2 Do you know or can you calculate in your head

3 Household's gross revenues for the entire period?

4 We've been talking about 1999 to 2002?

10:57:17 5 A. I don't know that I'd venture a guess on that.

6 Q. But it was a lot more than 15 billion?

7 A. A lot more than 15.

8 Q. Let's talk briefly about Wells Fargo.

9 You saw the videotaped deposition of Mr. Todd May?

10:57:33 10 A. I did.

11 Q. Did you ever meet Mr. May in your life?

12 A. No, I did not.

13 Q. The negotiations between Wells Fargo and Household -- that

14 Mr. May was talking about -- did you participate in those?

10:57:44 15 A. I did.

16 Q. Who did you discuss -- who did you negotiate against? Who

17 was your counter-party?

18 A. Dick Kovacevich, the CEO of Wells Fargo.

19 Q. You were the CEO of Household and he was the CEO of Wells

10:57:56 20 Fargo?

21 A. That's correct.

22 Q. You spoke CEO to CEO?

23 A. Yes, we did.

24 Q. Mr. May was not in the room?

10:58:00 25 A. That's right.

Aldinger - cross

3371

1 THE COURT: Go ahead.

2 MR. KAVALER: (Reading):

3 "MS. BUCKLEY: Many states participated at the
4 request of Household.

11:20:06 5 "THE COURT -- "

6 THE COURT: And, at this point, she's arguing as to
7 why we should not allow evidence of the Arizona Consent Decree
8 to come in; is that correct?

9 MR. KAVALER: I think that's right.

11:20:14 10 THE COURT: All right.

11 Go on.

12 MR. KAVALER: It seems to be the context.

13 "THE COURT: If you want to bring that out, I guess
14 you can."

11:20:21 15 THE COURT: Which is true.

16 MR. KAVALER: That's precisely the point Mr. Aldinger
17 was addressing. 35 states participated because Household
18 agreed to reimburse their expenses for participating.

19 THE COURT: Well, sure.

11:20:31 20 I mean, if you want to bring that out, you can; but,
21 you can't bring it out and then say, "Oh, because of your
22 prior ruling, they cannot now rebut the evidence you brought
23 forth."

24 MR. KAVALER: Your Honor, I'm not saying that at all.

11:20:42 25 What transpired at sidebar --

Aldinger - cross

3372

1 THE COURT: Then I don't know what we're arguing
2 about.

3 MR. KAVALER: Frankly, I don't, either, your Honor.

4 What transpired at the sidebar is Mr. Drosman said he
11:20:50 5 wanted to use the SEC Consent Decree. That was on one
6 subject. Somehow it segued into a different subject.

7 I can't understand the difference between the two.

8 Let me be clear.

9 THE COURT: Because they're somewhat related. I
11:21:01 10 mean, you have that quote there. So, it was clear that you
11 thought they were related, as well. You brought the quote
12 with you to the sidebar.

13 Look, your client just testified for about 20 minutes
14 as to the negotiations that went on in reaching the settlement
11:21:18 15 agreement with the different states' AGs, as to his
16 motivations for doing that -- why he did it -- and made it
17 clear, from his testimony, that the reason he did it was not
18 because he believed that your clients had done anything wrong,
19 but solely for business purposes.

11:21:41 20 And you even put up a chart to show what good
21 business sense it made -- separate and apart from issues of
22 liability or whether they did anything wrong or not; what good
23 business sense it made -- to spend a small amount of money in
24 a settlement agreement and gain the huge bump in the stock
11:21:59 25 prices that you gained.

Aldinger - cross

3373

1 They now have a right to rebut that. They have a
2 right to bring out evidence to rebut what your client said
3 about how the negotiations went down and what his motivation
4 was for the -- for reaching that settlement. That's all this
11:22:16 5 is.

6 MR. KAVALER: And I have an observation and a
7 question, your Honor.

8 THE COURT: Sure.

9 MR. KAVALER: The observation is: And none of that
11:22:20 10 was objected to by Mr. Drosman on a timely manner.

11 THE COURT: No. And he's not objecting to it now.
12 He's just saying, "Voila, you opened the door."

13 MR. KAVALER: And, secondly, your Honor --

14 THE COURT: Well, he didn't say "Voila," but, I mean,
11:22:32 15 that's what he's doing.

16 MR. KAVALER: -- I don't see how that subject leads
17 in any way to the SEC Consent Decree, which has nothing to do
18 with the Attorney General settlement. It is a hundred percent
19 related to a different document, a different set of facts.

11:22:43 20 THE COURT: I may be mistaken, but I thought that the
21 argument was going to be a parallel argument to both, and
22 that's why I brought them both in together, after he began
23 with the SEC.

24 But maybe I'm mistaken, so let's hear now --

11:22:53 25 MR. KAVALER: They're wholly separate.

Aldinger - cross

3385

1 My ruling with respect to the Attorney Generals'
2 settlement is that that door has been opened; that the very
3 things we said could not be brought out by the plaintiff --
4 and the reason I -- this is clearly on my mind -- is that, you
11:38:04 5 know, we spent a long time ruling on this -- the multiple
6 motions in limine that were filed by both sides.

7 One of the major ones was to what extent could the
8 settlement with the various Attorney Generals of the different
9 states be brought into evidence.

11:38:22 10 And, you know, the defendants made it clear that they
11 did not want that settlement brought in for any reason other
12 than to show the change in price.

13 Now, during the course of -- and we ruled in their
14 favor on that.

11:38:39 15 During the course of the trial, that ruling was
16 modified to allow the experts -- okay? -- to bring in their
17 use of that settlement and how it affected their opinions.

18 And the jury was instructed that they were to
19 consider the information regarding that settlement -- the
11:38:59 20 settlements -- and what they contained and the amounts, and so
21 on, for purposes of determining how much weight and
22 credibility they wanted to give to the opinion reached by the
23 experts.

24 Now, so far so good. And I feel that my time was
11:39:12 25 properly utilized prior to trial.

Aldinger - cross

3386

1 But, then, we come here with what is probably the
2 last of the defense -- defendants -- to testify; and, the last
3 15, 20, 30 minutes of his testimony is spent describing the
4 process, the analysis, the motivations for agreeing to the
11:39:37 5 settlement. All the things that we had ruled could not be
6 gone into by the plaintiffs are now brought out by the defense
7 before the jury.

8 And if, indeed, the sole reason for filing that
9 motion in limine was to get the Court to rule that this
11:39:58 10 information was not admissible, was to gain a tactical
11 advantage so that the plaintiffs couldn't bring it out, but
12 the defense would be the first to bring it out in its
13 examination of the witnesses, I feel my time has been poorly
14 utilized.

11:40:10 15 MR. KAVALER: Your Honor, let me assure you that was
16 not our purpose. Our feeling is exactly the opposite. We
17 feel we have not gotten the benefit of our victory because
18 it's been undermined, eroded and chipped away at by the
19 plaintiffs.

11:40:21 20 For example, they've shown Plaintiffs' 550 to a
21 number of witnesses. This is a document concerning settlement
22 discussions.

23 They've asked each of their witnesses -- each of
24 their expert witnesses -- to comment about the -- we've had
11:40:30 25 this conversation previously on the record, your Honor. I'm

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 27, 2009
Defendants.) 1:25 p.m.

VOLUME 19
TRANSCRIPT OF PROCEEDINGS - TRIAL
BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

APPEARANCES:

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

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

1 already determined its own language is sufficient to cause the
2 issue to go to the jury.

3 MR. BROOKS: Okay. Thank you.

4 THE COURT: And that, so we're clear, is going to
04:43:49 5 determine which of those things actually become part of your
6 closing argument and which don't and part of your case.

7 Okay. We're running out of time here, so I want to
8 go to the verdict form itself. I would like to propose a
9 modification in form. I suggest that the verdict form as you
04:44:26 10 have it here, for example, question number one, statement
11 number one, yes or no, that you make this verdict form a -- I
12 think they call it a landscape orientation of the document --
13 I'm not quite sure what it has to do with landscaping, but --
14 and that you include in this table a column for yes or no, a
04:45:09 15 column for the topic; that is, yes or no as to predatory
16 lending, credit card statement or -- this you do later on, but
17 do it all in one, or re-aging and a column for state of mind,
18 reckless or knowing, knowingly, rather than making it
19 different questions.

04:45:40 20 That way, the jury only has to go through this list
21 once, just one time and check off every item once, rather than
22 having them go through it to determine whether it's yes or no,
23 and then go through that whole list again to determine whether
24 it was knowingly and recklessly, and then go through it again
04:46:03 25 to determine whether it was predatory lending, delinquency, or

1 restatement.

2 Just make it one. I think you're going to make it a
3 lot easier for the jury if you do that.

4 MS. BEER: Could we ask a question, your Honor? I
04:46:13 5 think our understanding on Friday was that the Court's
6 instruction to the plaintiffs was to revise their Table A of
7 statements to determine -- to indicate on that table which
8 statements they alleged went to which theory, not that that
9 was a question to be submitted to the jury; that the
04:46:34 10 plaintiffs were to determine, were to tell the jury what their
11 case is and which statements they claim contribute to each
12 theory.

13 So we were somewhat surprised when we got what they
14 supplied late last night.

04:46:48 15 THE COURT: Well, it's not what I intended. I guess
16 my initial reaction is -- I mean do you really want the
17 plaintiffs to have an opportunity to do a mini-summary of
18 their closing argument in the verdict form?

19 MS. BEER: I think our suggestion has, from the very
04:47:07 20 beginning, in looking at the task of designing a verdict form,
21 our suggestion has been that the statements that are included
22 in their table have to be broken apart and that they have to
23 be broken apart for a number of reasons, that there are
24 unrelated subjects being included in one -- what they call one
04:47:28 25 statement is one of the reasons.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 28, 2009
Defendants.) 9:10 a.m.

VOLUME 20
TRANSCRIPT OF PROCEEDINGS - TRIAL
BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

APPEARANCES:

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

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

Bajaj - direct

4077

1 Are we ready to proceed?

2 MR. KAVALER: Yes, your Honor. The defendants call
3 Dr. Mukesh Bajaj.

4 (Witness sworn.)

09:14:07 5 MR. KAVALER: Your Honor, we have a jury binder of
6 exhibits that were previously approved by plaintiffs' counsel.
7 May we pass it out?

8 THE COURT: Yes.

9 MR. KAVALER: Thank you, your Honor.

09:14:32 10 (Brief pause.)

11 MUKESH BAJAJ, DEFENDANTS' WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. KAVALER:

14 Q. Good morning, Dr. Bajaj. You're the one we've all been
09:15:17 15 waiting for, the last witness.

16 Would you state your name for the record, please?

17 A. Good morning, counsel. My name is Mukesh Bajaj.

18 Q. And what is your educational background, sir?

19 A. I got an undergraduate degree in chemical engineering from
09:15:31 20 the Indian University of Technology in Delhi, India. And I
21 got interested in social sciences, so I joined the MBA program
22 at the University of Texas at Austin. And then I developed an
23 interest for financial economics, and I enrolled in the Ph.D.
24 program at University of California, Berkeley. I graduated
09:15:53 25 with a Ph.D. in finance in 1988.

Bajaj - direct

4078

1 Q. So would it be right to call you Dr. Bajaj?

2 A. You can call me Mukesh or Dr. Bajaj.

3 Q. Okay.

4 A. Would you let me know if I'm at the right distance from
09:16:08 5 the mike, please?

6 MR. KAVALER: Can everyone hear him? Okay.

7 BY MR. KAVALER:

8 Q. I'll call you Dr. Bajaj. We'll leave it to your friends
9 to call you Mukesh.

09:16:17 10 Do you have any experience, Doctor, involving
11 liability on damages in securities fraud cases?

12 A. Yes, counsel. I've been engaged in dozens of such matters
13 over the years.

14 Q. And have you ever testified in court previously?

09:16:32 15 A. Yes, I've testified on about 45 matters.

16 Q. And have you been retained by both plaintiffs and
17 defendants over the years?

18 A. Yes.

19 Q. And have you ever worked for any government agencies?

09:16:45 20 A. I have been frequently engaged by Internal Revenue
21 Service, by the Department of Justice, by U.S. Attorney's
22 Office, by the Securities and Exchange Commission, by
23 Franchise Tax Board of California and by Dallas City Appraisal
24 District.

09:17:07 25 Q. And what is your current position, sir?

Bajaj - direct

4079

1 A. I'm senior managing director and I head the securities
2 practice of LECG, which is an international consulting firm
3 focused on expert services.

4 Q. Do you teach any courses at the university level?

09:17:25 5 A. Yes, I teach at University of California, Berkeley in
6 their master's program. I've done that continuously since
7 1997.

8 Q. So would it be all right if I called you Professor Bajaj?

9 A. That would be fine, too.

09:17:44 10 Q. Okay. Do you also conduct research in the same areas as
11 you teach?

12 A. Yes. I have maintained an active research program for the
13 last 25 years. And a lot of my research is focused on
14 empirical analysis of capital market data to understand how,
09:18:08 15 when market receives new information, it gets impounded into
16 stock prices. And I have published many articles involving
17 the use of event study technique that we've been listening
18 about in this case quite a bit.

19 Q. And are those scholarly journals in the field of finance?

09:18:33 20 A. Yes. I've published in some of the most prestigious
21 academic journals like the Journal of Finance, Journal of
22 Financial Economics, as well as many well-regarded applied
23 journals.

24 Q. Has your work been cited from time to time?

09:18:51 25 A. Yes, my work has been extensively cited.

Bajaj - direct

4080

1 Q. And does your research and writing relate to the impact of
2 information on the price of the stock of companies?

3 A. Yes.

4 Q. Okay. And did we engage you to give an opinion in this
09:19:11 5 case?

6 A. You engaged me to examine some economic evidence in this
7 case to formulate my opinions.

8 Q. Okay. And were you sitting in the courtroom last week
9 when I interviewed -- spoke with Professor Fischel?

09:19:22 10 A. Yes, I was.

11 Q. I believe he's sitting here today. There he is. He's
12 watching you.

13 It's pretty normal for experts in cases like this to
14 watch each other?

09:19:32 15 A. Yes. I happen to know Professor Fischel a little bit and
16 happy to see him again always.

17 Q. Okay. Now, you listened to my questioning of Professor
18 Fischel as I walked him through the analysis he did of the
19 various days, and we crossed out some days in red on those
09:19:50 20 charts.

21 Do you remember all of that?

22 A. Yes, I do remember.

23 Q. Did you form an opinion at that point as to what was going
24 on between me and Professor Fischel, what point I was making?

09:19:59 25 A. Well, I believe I understood the point you were making,

Bajaj - direct

4081

1 yes.

2 Q. What did you take away from that?

3 A. Well, I understood your point to be that Professor
4 Fischel's analysis leads him to conclude that there was a
09:20:19 5 certain amount of inflation that purportedly came out of
6 Household's stock during a period when he believed the market
7 learned corrective information. And in his specific
8 disclosure model, for example, that inflation he quantified at
9 \$7.97 on November 14, 2001.

09:20:50 10 Now, plaintiffs have alleged, if I recall correctly,
11 22 false statements between July 30 and November 14, 2001. So
12 while plaintiffs have alleged there were 22 lies told by
13 Household to the market, none of those lies has any effect
14 whatsoever on how much inflation was present in Household's
09:21:27 15 stock price as of November 14.

16 So how could that \$7.14 in inflation that he
17 quantified as a matter of logic be related to any of the lies
18 that plaintiffs have asserted? In fact, the same amount of
19 inflation was present on the very first day of the relevant
09:21:53 20 period. So the only logical inference from an economic
21 perspective is the inflation Professor Fischel concluded must
22 have come about as a result of things that happened before the
23 relevant period and then it was maintained throughout the
24 period.

09:22:15 25 Think about it in another way. Professor Fischel

Bajaj - direct

4082

1 said, well, it's for the jury to find which of these 22 lies
2 were, in fact, misstatements. But whether the jury finds one
3 of these 22 lies were, in fact, a lie or all 22 or some
4 combination thereof, there are actually four million different
09:22:44 5 permutations and combinations that the jury could find.

6 Regardless of what the jury finds, according to
7 Professor Fischel, inflation on November 14, 2001, was exactly
8 7.97 which existed before any lie was told. I think that's
9 the point you were making.

09:23:03 10 Q. All right. And does that make any sense to you?

11 A. From what I understand this case is about, it does not
12 make any sense to me.

13 Q. Let's forget the questions I asked Professor Fischel the
14 other day, and let me ask you this: Did you review Professor
09:23:20 15 Fischel's analysis independently and come to your own
16 conclusions?

17 A. Yes, I did.

18 Q. And what conclusion did you draw about the validity of
19 Professor Fischel's analysis as applied to the facts of this
09:23:33 20 case that these plaintiffs have put before this jury?

21 A. So I have examined all of the economic evidence available
22 in this matter, hundreds of analyst reports, tens of thousands
23 of press stories, stock price data, what I gather from the
24 economic industry about the industry, Household and its
09:24:02 25 competitors. And based on my review of all the economic

Bajaj - direct

4083

1 evidence, I concluded that there is absolutely no economic
2 evidence that Household's stock price was ever inflated during
3 the relevant period.

4 Q. Now, you say you examined thousands of documents. Did you
09:24:21 5 do this all by yourself or did you have help?

6 A. No, I was very ably assisted by a lot of my good
7 colleagues at LECG.

8 Q. How large a team did it take to do this analysis?

9 A. Well, over two and a half years or so that we've been
09:24:38 10 engaged, there must be 25-odd colleagues who worked
11 significantly on this matter, and collectively they worked for
12 about 10,000 hours.

13 Q. And did you use computers to assist you in this work?

14 A. Sophisticated computers, econometric packages and other
09:25:02 15 statistical programs and a variety of other tools, yes.

16 Q. Is that why we hired you in the first place, because you
17 have to be an expert with sophisticated abilities and skills
18 and assistance to do this kind of analysis?

19 A. To examine the evidence carefully, I believe that
09:25:18 20 expertise is helpful, yes.

21 Q. Okay. Now, is it your understanding that plaintiffs put
22 on Professor Fischel to show that the alleged
23 misrepresentations by Household caused the investors to suffer
24 loss?

09:25:37 25 A. Yes.

Bajaj - direct

4084

1 Q. And what does someone, given that assignment, need to show
2 in order to make that case? What does an expert have to bring
3 forth to make that showing?

4 A. Well, from an economic perspective, the first thing you
09:25:53 5 have to establish is the alleged falsehoods led to the stock
6 price being inflated.

7 Second aspect of your analysis has to establish that
8 when the market learned the truth, learning of that truth
9 resulted in stock price declining, thereby causing economic
09:26:25 10 harm to investors who purchased the stock at an inflated price
11 due to earlier falsehoods.

12 Q. Can we refer to those two concepts today for shorthand
13 purposes as an up leg, which is the inflation going in, and a
14 down leg, which is the inflation coming out?

09:26:43 15 A. Yes.

16 Q. Okay. Did Professor Fischel show this jury an up leg, the
17 inflation coming in?

18 A. There was nothing in his analysis to that effect.

19 Q. Is there any relationship in your mind between the
09:26:59 20 exercise I went through of crossing out a lot of statements
21 with my big red marker and an up leg?

22 A. Well, I thought that was the point of your examination,
23 that Professor Fischel's analysis does not show that any of
24 the alleged falsehoods ever created any inflation in
09:27:23 25 Household's stock price, at least until November 15, 2001. I

Bajaj - direct

4085

1 believe there are two dates subsequent to November 15, 2001,
2 when Professor Fischel claims Household's misrepresentations
3 resulted in stock price being inflated.

4 Q. So at least up until November 15, 2001, even if you assume
09:27:48 5 he showed a down leg, if he didn't show an up leg, he didn't
6 fulfill the assignment he had to fulfill?

7 MR. BURKHOLZ: Your Honor, objection, leading.

8 THE COURT: I'll allow it. Don't lead, please.

9 MR. KAVALER: Yes, sir.

09:27:59 10 BY THE WITNESS:

11 A. Well, my understanding is that even if you quantified the
12 amount of inflation that preexisted in the stock price by
13 looking at what happens when market learns the truth, the
14 whole point of what is called loss causation analysis from an
09:28:26 15 economic perspective is to link the negative effect of stock
16 price decline when market learned the truth to specific
17 falsehoods that are alleged in the case.

18 Otherwise, you haven't fulfilled the objective of
19 loss causation analysis, namely, showing that there was a
09:28:51 20 relationship between plaintiffs' losses and what's alleged to
21 be false. You have to link what you call the down leg to
22 specific falsehoods that are asserted in this case, which you
23 call the up leg. Unless you establish that link, you haven't
24 shown economic evidence that plaintiffs' allegations caused
09:29:18 25 anybody any loss.

Bajaj - direct

4086

1 BY MR. KAVALER:

2 Q. Now, I spent a lot of time with Professor Fischel talking
3 about the up leg. I didn't spend much time on the down leg.

4 So let me ask you: Did Professor Fischel show the down leg
09:29:31 5 correctly?

6 A. No. As I pointed out in my detailed reports in this case,
7 there are several methodological flaws in Professor Fischel's
8 analysis. And most of the time when he believes market
9 learned the truth on a certain day, he's actually got the
09:30:00 10 wrong date. He's looking at stale information rather than
11 new. So in my opinion, Professor Fischel has not reliably
12 shown what you describe as the down leg.

13 Q. And this up leg and down leg are measuring the movement of
14 something called inflation?

09:30:20 15 A. Correct.

16 Q. And would you tell us what you mean by the term inflation
17 in the context of this lawsuit.

18 A. Well, inflation in most simple terms and very
19 commonsensically could be understood as the overpricing of the
09:30:39 20 stock that results from a lie that the plaintiffs assert.

21 Q. All right. When you say the stock -- did I understand you
22 just to say that for the stock to be inflated is the same as
23 to say the stock is overpriced?

24 A. Well, stock can be overpriced without there being a lie,
09:31:08 25 in which case you would not call it inflation, because nobody

Bajaj - direct

4087

1 is perfect. It's -- the market doesn't know what a stock
2 should be exactly priced at on any given day. Stock prices
3 are very noisy. They go up and down for all kinds of reasons.

4 In fact, any day a company's stock trades on the
09:31:28 5 Exchange, if it goes up, that's because some people have
6 formed an opinion that the stock is a good buy at its current
7 price. They think it's undervalued and they'd like to buy it.
8 And for every buyer there's a seller, somebody thinking this
9 stock is a bad hold at this price; it's going to go down.
09:31:55 10 That's why they're selling.

11 So people form expectations and opinions about what's
12 going to happen to a stock all the time, which makes stock
13 prices move. And sometimes due to market expectations
14 changing, we may determine with the benefit of hindsight maybe
09:32:12 15 some stocks were overpriced. Like after the Internet bubble
16 burst, everybody realized, hey, these stocks were way
17 overpriced.

18 But the crucial distinction here is that we are
19 talking about overpricing that results from defendants' lies,
09:32:31 20 and that is the job of economic analysts to determine how much
21 was the stock overpriced as a result of defendants' lie;
22 that's the up leg concept.

23 Q. Now, did Professor Fischel -- who did -- whose job did
24 Professor Fischel say it was to determine by how much the
09:32:52 25 stock was overpriced on any particular day?

Bajaj - direct

4088

1 A. Well, what I heard him say again and again is it's for the
2 jury to determine whether plaintiffs' allegations are true
3 that the defendants lied. And I agree with him on that.
4 That's the jury's job. The jury listens to the fact
09:33:13 5 testimony. The jury listens to a lot of witnesses, looks at
6 the record and determines whether any of the alleged
7 misstatements and omissions are, in fact, lies.

8 But then Professor Fischel curiously told this jury,
9 once you've determined that the first lie happened on a
09:33:32 10 certain date, I have given you a table which says there was
11 zero inflation prior to that date and there was exactly \$7.97
12 inflation for all days subsequent to that date. And that is a
13 very curious statement and not economically logical.

14 Because, think about it. You have 27 -- I'm sorry --
09:33:58 15 22 different misstatements that are alleged. What if the jury
16 determines 21 of the 22 were not falsehoods at all? Only one
17 of the 22 was wrong. Does that mean that one single
18 misstatement caused the same amount of inflation, 7.97,
19 compared to if the jury determines all 22 were false?

09:34:23 20 What if the jury determines that, yes, there was a
21 falsehood but there is a gradation here? There was just a
22 little bit of a lie, not much of a lie. How does the jury
23 apportion how much of 7.97 belongs to that small lie versus a
24 big lie?

09:34:41 25 So I just don't understand the economic logic of the

Bajaj - direct

4089

1 approach that Professor Fischel asked the jury to follow.

2 Q. Now, you told us that you've testified in the past for
3 plaintiffs. When you testify for plaintiffs, do you come up
4 with a number?

09:34:54 5 A. Yes. If I'm asked to determine damages, it's my
6 obligation to come up with a number that ties specifically to
7 specific allegations in the case.

8 Q. From an economic perspective, Professor, in your opinion,
9 did Professor Fischel do his job in this case?

09:35:13 10 A. Well, I regard him highly. I wouldn't want to say he
11 didn't do his job or anything like that. I believe his
12 analysis is flawed and not reliable for this case.

13 Q. What causes an -- in economic theory, Professor, what
14 causes a stock price to become inflated or overpriced in the
09:35:31 15 context you're using those terms here?

16 A. If a company lies and that lie is considered material or
17 important or significant by the market, then that lie can
18 result in the stock price becoming inflated.

19 Q. Can you give us an example, a hypothetical, of inflation
09:35:52 20 causing -- of a lie causing inflation in the price of a stock?

21 A. Yes. So, you know, these days people are very concerned
22 about global warming. So let's say a car company comes up
23 with an announcement which says, you know, we have a
24 revolutionary new engine, not very expensive. You can put
09:36:13 25 that engine in your big SUVs for only a couple hundred

Bajaj - direct

4090

1 dollars; and if you do that, you'll have zero emissions,
2 you'll get 200 miles to a gallon, and this will really be a
3 revolutionary development in the car market.

4 And let's say before that statement were made, that
09:36:35 5 company's stock was trading at \$100 a share. We see that
6 statement being made and the stock price goes up by \$20 a
7 share. In my hypothetical, if the company's statement was
8 false, the jury finds in a proceeding like this later that the
9 company made a false statement that day, the jury will then
09:36:55 10 have an objective basis to determine that on the day of the
11 company's announcement of this engine, \$20 of inflation came
12 into the stock price. That's your up leg.

13 Q. All right. Could a company's stock price also become
14 inflated because of something the company failed to disclose
09:37:16 15 at a particular time, in other words, an omission?

16 A. Yes, indeed.

17 Q. And tell us how that would work in your same hypothetical.

18 A. Okay. So in the same hypothetical, let's say the day the
19 company made the announcement, it didn't lie. It really had a
09:37:35 20 research program going and it truly believed that it has this
21 revolutionary engine. So the statement was truthful when
22 made. Nobody was trying to deceive anybody, and the stock
23 went from \$100 to \$120.

24 Let's say that happened on January 1, 2008. And
09:37:56 25 let's say six months later, the company learns that the

Bajaj - direct

4091

1 technological breakthrough it was counting on is not going to
2 happen. So now the company knows that this engine ain't going
3 to work.

4 And let's say on that day, the company has a legal
09:38:19 5 obligation to disclose that information to the market, but it
6 keeps quiet about it, fails to tell the market the truth. In
7 this example, that omission has created an inflation, and the
8 amount of inflation is how much the stock price would have
9 dropped had the company truthfully made the announcement that
09:38:46 10 it was legally required to do.

11 So you can have a stock price becoming inflated
12 because of an affirmative misrepresentation or a lie that
13 makes it go up after adjusting for market and industry; or you
14 can have inflation when the company fails to tell the truth,
09:39:08 15 thereby preventing a decline in stock price, assuming it had a
16 duty to tell that truth.

17 Q. So in both cases, Professor, there's an identifiable event
18 that causes the stock to be overpriced?

19 A. Yes. There has to be, for proper loss causation analysis,
09:39:30 20 an identifiable event which maps into a quantified quantum of
21 inflation, whether it is an omission or it is a
22 misrepresentation.

23 Q. From an economist's perspective, Doctor, is there an
24 important difference between telling a lie that causes
09:39:48 25 inflation and omitting to make a statement that causes

Bajaj - direct

4092

1 inflation?

2 A. There's no fundamental difference as we just explained.

3 Q. So would a proper expert analysis identify either the
4 misstatement or the omission that gives rise to inflation in

09:40:03 5 either event?

6 A. A proper economic analysis, whether it is about omission
7 or misrepresentation, will tie the amount of inflation
8 determined by the economic analysis to what was it that caused
9 the inflation, what specific lie, what specific omission

09:40:24 10 caused how much inflation.

11 Q. So in that case, why can't the jurors just do what
12 Professor Fischel suggested they do, pick the first statement
13 that they believe to have been false and make that the date on
14 which the stock price became inflated?

09:40:41 15 A. Well, assuming jurors don't believe my analysis, which
16 would be the easy way out, they'd have to do a lot of work
17 themselves to actually do all the statistical analysis to
18 determine how much a particular misstatement or omission
19 affected the stock price to create inflation.

09:40:59 20 Q. Professor Fischel has not provided them with those -- that
21 data?

22 A. Well, the only way Professor Fischel's analysis is
23 relevant is if the jurors believe 100 percent of the
24 plaintiffs' claim is correct and there are no methodological

09:41:18 25 flaws in Professor Fischel's analysis and he hit it right on

Bajaj - direct

4093

1 the head and came with the right number. And even then I
2 think there is a crucial piece of analysis that is missing
3 from Professor Fischel's quantification.

4 Q. And what's that?

09:41:36 5 A. Professor Fischel repeatedly said that I have given you my
6 estimate of inflation that existed on the first day of the
7 relevant period, July 30, 1999. And then between July 30,
8 1999, and November 15, 2001, for about a year and a half,
9 while there are 22 separate lies being asserted by the
09:42:10 10 plaintiffs, inflation does not change by one single cent.

11 So what did this inflation -- where did this
12 inflation come from? Economic logic tells us, whether we call
13 something an inflation or not as a result of legal subtlety,
14 the \$7.97 overpricing in the stock must have come from what
09:42:38 15 happened before the relevant period. Or why would it be there
16 on the first day of the relevant period and never change?

17 So --

18 Q. Doctor --

19 A. -- if his inflation came from before the class period,
09:42:52 20 then it's my understanding that such inflation may not be
21 considered for purposes of damages in this case pursuant to
22 this Court's ruling.

23 Q. Professor, is there a similar problem with calculating the
24 amount of the inflation as among the three separate subject
09:43:11 25 matters, that is, predatory lending, re-age and restatement,

Bajaj - direct

4094

1 or does Professor Fischel's analysis cover that adequately?

2 A. No, it's the same problem with regards to the fact that
3 plaintiffs have alleged three categories of lies, and
4 Professor Fischel has not told us how much of his quantified
09:43:33 5 inflation comes from which of these three categories of lies.

6 Q. Okay. Is there a similar problem for days after November
7 15, 2001, in Professor Fischel's analysis?

8 A. After November 15, 2001, Professor Fischel's analysis
9 looks at specific dates when he believes market learned the
09:44:01 10 truth or plaintiffs' misrepresentations added to inflation
11 that preexisted even the relevant period, but there are
12 several methodological flaws with that part of the analysis.

13 At least in principle, that analysis is based on what
14 an economist would be consider the reliable ways of thinking.
09:44:27 15 Whether he executed it correctly or not is something that we
16 differ on, obviously.

17 Q. Let's look at Plaintiffs' Exhibit 1397 if we can. That's
18 Professor Fischel's inflation chart.

19 Now, the plaintiffs claim that there was a
09:44:42 20 misrepresentation on September 2, 2002, when a Household
21 spokeswoman said that she was not aware of any pending
22 enforcement actions or settlement talks. Let's look at
23 September 2.

24 How would Professor Fischel's chart work if the jury
09:44:55 25 finds that's the first misrepresentation?

Bajaj - direct

4095

1 A. September -- I'm not able to see the heading of this chart
2 and I haven't got it memorized.

3 Q. There it is. There's the heading.

4 A. Okay.

09:45:13 5 Q. Professor, you can look at the screen in front of you or
6 at the big screen or we can get you a copy of this document.

7 A. That's fine. I understand now what the columns are.

8 Q. Okay. Go down to September 2, please.

9 A. I see.

09:45:31 10 Q. Or September 3, I guess.

11 A. It must be, because September 2 was not a trading date.

12 Q. Right.

13 A. So the effect of that alleged misstatement would have been
14 felt in the stock price on the next trading day of September

09:45:47 15 3.

16 Q. So what Professor Fischel would say is the jury should put
17 zeroes on every day before September 2?

18 A. That is correct.

19 Q. Does that work?

09:45:57 20 A. Well, then the misstatement did not create any inflation.
21 There's negative inflation on that day according to Professor
22 Fischel, right?

23 Q. That's my question. What does a minus sign mean there?

24 A. That means the stock was underpriced as a result of this
09:46:18 25 alleged lie. It was correctly priced before. The lie is

Bajaj - direct

4096

1 supposed to inflate the stock price, but his analysis shows
2 that it actually ended up deflating the stock price.

3 Q. So if the jury accepts his invitation to pick a date and
4 they pick this one and then they accept his invitation to put
09:46:37 5 zeroes instead of the 7.97s for every entry before here, and
6 they get to this date and they've done exactly what Professor
7 Fischel told them to do, they just applied their judgment and
8 they found the September 2 false statement -- I'm sorry -- the
9 September 2 statement is false and it's the first false
09:46:55 10 statement, that's exactly what he told them to do, right?

11 A. Right.

12 Q. Then you have the false statement creating negative
13 inflation?

14 A. That is correct.

09:47:04 15 Q. Does that make any sense to you?

16 A. No. It's very curious.

17 Q. But they've done everything exactly the way he told them?

18 A. I would assume so, yes.

19 Q. So they didn't make a mistake in my hypothetical?

09:47:18 20 A. No. Obviously, this means the misstatement had the
21 opposite effect of what plaintiffs thought it did.

22 Q. Does that make any sense to you?

23 A. It makes no economic sense.

24 Q. But I just want to be clear. In the hypothetical I'm
09:47:30 25 asking you, the jury would have done exactly what Professor

Bajaj - direct

4097

1 Fischel told them, pick a date, replace all the numbers before
2 it with zeroes, look at my chart for the inflation and we're
3 there, correct?

4 A. That's correct. That's what he said.

09:47:43 5 Q. But it would give you a ridiculous result; it would show
6 negative inflation?

7 A. Well, it would be a curious result, of course.

8 Q. But it wouldn't be the jury's fault?

9 A. I mean, I don't know what I would do if I were a juror in
09:47:59 10 that situation.

11 Q. Okay. Let's get to the bottom line. Is it realistically
12 possible for a jury or for me or for anyone who is not an
13 economist like you are with 10,000 hours of staff help and
14 sophisticated computers to calculate how much inflation
09:48:24 15 resulted from a particular statement?

16 MR. BURKHOLZ: Objection, compound, leading.

17 MR. KAVALER: Let me rephrase the question.

18 BY MR. KAVALER:

19 Q. Is it possible to do what Professor Fischel suggested,
09:48:34 20 take this chart, cross out some days, put in zeroes and figure
21 out the right number?

22 A. I don't think that would lead to an economically sensible
23 result at all.

24 Q. To lead to an economically sensibly result, would you have
09:48:55 25 to do a regression analysis?

Bajaj - direct

4098

1 A. Yes.

2 Q. Would I be able to do a regression analysis here at the
3 lectern? I have a pencil and I have some papers. Can I do
4 it?

09:49:09 5 A. Counsel, I have a very high degree of confidence in you,
6 so I'm reluctant to say you cannot do something, but it would
7 be hard.

8 Q. Very hard. In part because a regression analysis requires
9 a computer?

09:49:22 10 A. Yes. You need sophisticated statistical programs to do a
11 proper analysis.

12 Q. Okay. All right. Well, instead of me trying to do it,
13 I'm sure you've done it. You have all these sophisticated
14 tools. So help us out.

09:49:44 15 After reviewing all the economic evidence in this
16 case, when do you think Household's stock price became
17 inflated as a result of a false statement?

18 A. As I said, counsel, I looked very carefully and I found no
19 evidence that Household's stock price was ever inflated during
09:50:09 20 the relevant period. It doesn't mean Household's stock price
21 didn't decline for part of the period. Like the rest of the
22 market and other finance companies, consumer finance companies
23 in particular, there was time when Household's stock declined
24 a lot. But I did not find any evidence that any of that
09:50:31 25 decline was a result of previous inflation.

Bajaj - direct

4099

1 In fact, Professor Fischel's own analysis, when
2 corrected, leads to the conclusion that Household's stock
3 price was weighed down by headline risk. And as that headline
4 risk became worse, stock kept on getting punished more and
09:50:57 5 more. And in the end when Household alleviated this headline
6 risk by buying peace with attorneys general, the stock price
7 went up over two days by 33 percent, which is the largest
8 history -- largest increase in history of the stock ever since
9 it was a public company.

09:51:24 10 And all the economic evidence is consistent with
11 Household's stock price never being inflated for a single day
12 during the relevant period. And Professor Fischel's own
13 analysis, when reasonably corrected, supports that conclusion.

14 Q. Now, can anything other than a lie cause inflation?

09:51:53 15 A. Inflation is a term of art in a proceeding such as this
16 where overpricing that results from a lie is called inflation.
17 So as I said, you can have a stock being overpriced or
18 underpriced with the benefit of the hindsight.

19 If you look at all the stocks that lost a lot of
09:52:21 20 money yesterday and there was no news, well, with the benefit
21 of hindsight we can say, yeah, the day before yesterday, they
22 were overpriced. But inflation comes into consideration when
23 it is a misrepresentation or omission, namely, a lie that
24 creates overpricing.

09:52:44 25 Q. So if I understand correctly, inflation is different than

Bajaj - direct

4100

1 just the price of the stock going up and down?

2 A. Absolutely. That's a crucial distinction in a case like
3 this to keep in mind.

4 Q. Okay. Maybe it would help if you would walk us through
09:53:05 5 what might happen when a stock -- a company's stock price
6 becomes inflated. Have you prepared a demonstrative that
7 would help you to illustrate this point?

8 A. Yes, I have.

9 Q. Can we see DDX 568-01, please.

09:53:23 10 Now, Professor Fischel -- I'm sorry. Professor
11 Bajaj, could you explain to us -- could you explain to us what
12 this demonstrative is showing us, please.

13 A. Yes. So in this demonstrative, if you look at the
14 vertical axis --

09:53:40 15 Q. What is that? Where am I looking?

16 A. That's on the left-hand side of the chart.

17 Q. Where it says dollars of inflation?

18 A. You'll see zero, five, ten, 15 and \$20 labeled on the
19 chart. That axis measures inflation.

09:54:00 20 So going back to our hypothetical car company
21 example, if the company's stock was trading at \$100 a share
22 and it told a lie and the stock went up by \$20, this chart
23 shows \$20 of inflation came in. So stock price would be 120,
24 but inflation is \$20.

09:54:22 25 Q. Let me stop you there. I don't see the hundred on this

Bajaj - direct

4101

1 chart. Where's the hundred?

2 A. Because in my axis I have not measured stock price. I
3 have only measured overvaluation as a result of a lie, namely,
4 inflation.

09:54:36 5 Q. So we're just going to measure the inflation?

6 A. Yes.

7 Q. The stock price can be anything it wants to be?

8 A. Stock price could be \$50, \$100, \$2, \$300, whatever.

9 Q. Why does the line that goes up -- the red line with the
09:54:51 10 arrow, why does it start at zero?

11 A. Because before there is a lie, there is no inflation.
12 That goes to your up leg concept. You have to demonstrate
13 that there was a lie and that made stock price inflated.

14 Q. So for this exercise, the chart always has to begin at
09:55:13 15 zero?

16 A. Yes.

17 Q. Okay. Sir, I'm sorry I interrupted you. Let's continue.
18 What's the next step on your chart?

19 A. Well, suppose a lie is told on January 1, 2008. Going
09:55:29 20 back to our automobile example, a \$100 stock became 120; and
21 for the next six months, the stock may go from 120 to 500 or
22 it may drop to 10.

23 Investors would either make a lot of money or lose a
24 lot of money. But none of their gains and none of their
09:55:52 25 losses have anything to do with economic harm that the jury

Bajaj - direct

4102

1 has to determine in this particular case. As long as the
2 market did not learn the truth about the original lie, that
3 inflation remains constant even though stock price may go up
4 or down.

09:56:16 5 So what we have to do in economic analysis is to
6 separate changes in stock price that result from any factor
7 other than a lie or a correction of the lie. We have to focus
8 on change in inflation, not change in stock price.

9 Q. What happens next after this second stage?

09:56:41 10 A. So in this hypothetical, when the market learns the truth
11 that the company had lied, there was no such engine, and stock
12 price drops, that's when inflation has come out of the stock.

13 And the measure of economic harm that is at issue in
14 this case is the loss investors suffered if they held the
09:57:11 15 stock when it was inflated and suffered the consequences of
16 that inflation coming out of the stock. The rest of their
17 gains and losses have nothing to do with this case or a
18 similar case.

19 Q. Professor, I noticed that your chart both begins and ends
09:57:30 20 at zero. Is that a coincidence?

21 A. No. Because before there is first actionable
22 misstatement, there must be zero inflation. And I apologize
23 for the jargon. Before there is a lie that the Court has
24 ruled can be considered for purposes of this case, by
09:57:56 25 definition, the stock is not inflated. And after the market

Bajaj - direct

4103

1 has learned the truth, which is at the end of the relevant
2 period, all the truth is out and inflation is zero.

3 So in a proper analysis, you begin with zero
4 inflation and you end with zero inflation. So an investor who
09:58:16 5 had purchased before there was any inflation and held the
6 stock until after all the inflation was out has not been
7 harmed. Only investors who have been harmed are those
8 investors who purchased while the stock maintained an
9 inflation and they held until after the inflation came out.

09:58:38 10 Q. Let's look at one of Professor Fischel's inflation charts.
11 Can we see Plaintiffs' Demonstrative 151, please.

12 Does Professor Fischel show inflation starting at
13 zero?

14 A. Not in the range of his chart. So on the first day of the
09:58:59 15 relevant period, Professor Fischel shows \$7.97 of inflation.

16 Q. In other words, Professor Bajaj, over here on the left
17 side, I think you called it the left axis. Let's put your
18 chart and this chart next to each other. Can we do that?

19 Okay. Do you see here on the left side of your
09:59:21 20 chart, your up leg starts at zero and goes up?

21 A. Correct.

22 Q. Where is Professor Fischel's analogous up leg showing the
23 first time a false statement put inflation into the price of
24 Household's stock?

09:59:36 25 A. There is nothing in Professor Fischel's analysis that

Bajaj - direct

4104

1 tells us how that inflation came in. It couldn't have
2 magically appeared. There must be some economic falsehood,
3 some lie. And the only reasonable interpretation is there was
4 \$7.97 of inflation because of lies that existed before July
10:00:02 5 30, which we have never been told about what those lies were
6 so that we could examine whether those lies, in fact, resulted
7 in stock price going up after adjusting for market and
8 industry factors.

9 Q. As a professional economist, Professor, what is your
10:00:19 10 opinion of the significance of the fact that Professor
11 Fischel's chart doesn't start at zero; it has no up leg
12 whatsoever?

13 A. Well, the only way to interpret this chart is the
14 inflation Professor Fischel quantifies existed through
10:00:34 15 November 15, 2001, pertained to some untold lies and
16 misrepresentations and omissions that happened before July 30.
17 Each and every one of the 22 lies that plaintiffs claim
18 happened between July 30, 1999, and November 15, 2001, did not
19 change his inflation quantification one bit.

10:01:08 20 Q. And you're just assuming there were lies, right?

21 A. Well, if there were, in fact, lies, then economic evidence
22 would have shown some sort of an impact. And that's what you
23 were doing when you were examining Professor Fischel. His
24 event study does not show any economic impact of those
10:01:28 25 misstatements that are alleged by the plaintiffs, so they did

Bajaj - direct

4105

1 not change his inflation.

2 Q. So what does that tell you? Does that mean his study is
3 wrong, or does it mean there are no lies? What does it mean?

4 A. Well, what that tells you is the study is unreliable and,
10:01:42 5 further, as we will discuss more, the plaintiffs' entire
6 theory of the case is not consistent with economic evidence.

7 The market always knew about what plaintiffs allege.

8 Household had a duty to tell the public, failed to tell the
9 public, the public did not know, and when it found out, the
10:02:08 10 stock price went down. There is simply no evidence that's
11 consistent with those allegations.

12 Q. Okay. Let's focus on your model again. Do Household's
13 stock prices -- let's go back to your model -- from 1999 to
14 2002 fit with this model?

10:02:24 15 A. No, it did not.

16 Q. Have you prepared a demonstrative to illustrate that
17 point?

18 A. Yes, I have.

19 Q. Can we see DDX 551-01, please.

10:02:36 20 Professor, explain to us what this shows us.

21 A. So as we were looking at Professor Fischel's inflation
22 chart, Professor Fischel says inflation existed on the first
23 day of the class period or it would exist whenever the jury
24 thinks there was an actionable disclosure defect. He has not
10:03:01 25 shown us how that inflation got into the stock price. What

Bajaj - direct

4106

1 were the specific misrepresentations and omissions and how did
2 they affect the stock price to create the inflation?

3 He assumes the existence of the inflation based on
4 what he found during tail end of the relevant period when

10:03:26 5 Household's stock price went down along with the rest of the
6 industry, and he assumes that decline must be because there
7 was inflation earlier.

8 Q. Let's go on to the next slide, please.

9 Professor, please walk us through this one.

10:03:42 10 A. So this segment says during the period July 30, 1999, to
11 November 15, 2001, when there were 22 separate lies according
12 to the plaintiffs, there was not any change in inflation.
13 None of them had any effect on the inflation, didn't increase
14 it by a cent, didn't decrease it by a cent.

10:04:10 15 Q. Does that make any sense to you?

16 A. It makes no economic sense to me.

17 Q. Let's go to the next slide.

18 What does this show us, please?

19 A. Well, curiously in this case, plaintiffs are asserting
10:04:21 20 that all of Household's lies were about three categories that
21 we've been hearing about and plaintiffs have asserted in their
22 complaints and other filings when the market learned the truth
23 about those three categories of lies.

24 So if, in fact, there had been inflationary lies, you
10:04:44 25 would expect when market learns the truth for stock price to

Bajaj - direct

4107

1 come down. For each and every one of the dates when
2 plaintiffs claim market actually learned the truth, we find no
3 evidence of stock price decline.

4 In fact, as we were just saying, their major
10:05:06 5 allegation on predatory lending, which they say was revealed
6 right at the end of the relevant period, resulted in the
7 largest stock price increase in the history of this company as
8 a publicly traded company.

9 Q. And is that what this final chart shows us?

10:05:23 10 A. That is correct.

11 Q. And that would not be true if the theory of the case made
12 sense?

13 A. I think that right there tells you that there is no loss
14 causation in this case. There is something wrong with the
10:05:33 15 plaintiffs' theory of the case when confronted with economic
16 evidence.

17 Q. Okay. Didn't Mr. Dowd in his opening show the jury a big
18 chart demonstrating how Household's stock went down overall,
19 and you're saying Household's stock price didn't go down? Am
10:05:50 20 I missing something here?

21 A. No, I'm not saying Household's stock price didn't go down
22 at all. Household's stock price suffered terribly between
23 November 15, 2001, and October 11, 2002, when the relevant
24 period ends. But think of what the time period was in our
10:06:08 25 economic history.

Bajaj - direct

4108

1 November 15 is right after 9/11 when the economy,
2 which was already weakening, started to suffer more. And
3 we've heard a lot of testimony that Household's customers were
4 medium- to low-income working people, who are among the first
10:06:32 5 to be affected by weakening economy. They tend to lose their
6 jobs. They don't have enough savings so they can't pay their
7 bills. That was not a good time for Household. So Household
8 as well as other consumer finance companies were facing a
9 rough time in the marketplace.

10:06:51 10 And then we had December 3 when Enron imploded. We
11 had a couple of months of the most difficult time in our
12 economic history between December 3 and October of 2002 when
13 corporate America be -- came under great deal of suspicion.
14 After Enron's meltdown, we had Global Crossing implode. We
10:07:21 15 had WorldCom implode. We had Adelphia implode. We had Tyco
16 almost not make it.

17 So people were reacting to a lot of innuendo and
18 rumor, and corporate America was not believed. There was
19 Sarbanes-Oxley Act enacted. And in this environment,
10:07:42 20 Household was in an industry that had been growing
21 explosively.

22 Lending to middle- to low-income Americans didn't
23 practically exist until 1995. And starting in 1995 and over
24 this relevant period, this was becoming a big market. I cite
10:08:03 25 to a Fed study in my report how subprime sector was exploding.

Bajaj - direct

4109

1 And as the economy, as the industry was becoming larger,
2 regulators were thinking about what are good practices to lend
3 to these consumers? How are they going to regulate them?

4 Certain states and cities started enacting their own
10:08:29 5 legislations; whereas, lenders like Household preferred to
6 work with national regulators so they could use their national
7 scale to their advantage. And over this period of time, over
8 and over again, in hundreds of analysts' reports, you will see
9 statements like headline risk is the bane of subprime lenders.

10:08:57 10 And during this period, Household's stock price
11 suffered. So did other consumer finance companies' stock
12 price. The question is, was that decline related to market
13 learning truth about the earlier fraud? Decline is not the
14 issue. It's whether the decline was related to revelation
10:09:18 15 about truth about the earlier fraud.

16 Q. Let's see if we can put that in some context. Are some
17 investments riskier than other investments?

18 A. Yes.

19 Q. Do you have a demonstrative that you prepared to
10:09:27 20 illustrate this concept?

21 A. Yes.

22 Q. Can we have DDX 820-01, please.

23 What is this, Professor Fischel -- Professor Bajaj?

24 That's two.

10:09:40 25 A. This demonstrative shows what rate of return on an

Bajaj - direct

4110

1 annualized basis you could get if you wanted to --

2 A JUROR: Talk into the mike.

3 BY THE WITNESS:

4 A. I'm sorry. Thank you.

10:09:55 5 So investors have a choice to make. We can invest
6 our money in relatively safe investments or risky investments.
7 And there's a spectrum of investments with different degree of
8 risk and different expected return.

9 What we teach our students in our finance classes is
10:10:20 10 the safest investment you can imagine is short-term U.S.
11 treasury bills. And what this chart shows you is that if you
12 invested in one-month treasury bills, you would never have had
13 a dime of loss going back to 1996. This is as close to a
14 risk-free asset as you can get. Of course, you wouldn't have
10:10:44 15 made much of a return.

16 And when you do see a little bit of a respectable
17 return, that was in a very high inflation environment. So
18 adjusting for inflation, you basically tread water. You might
19 as well put your money under a mattress if you want it to be
10:11:00 20 totally safe. That's the U.S. treasury bill.

21 BY MR. KAVALER:

22 Q. Professor, where did you get this information from?

23 There's a source note on the bottom. Where did this come
24 from?

10:11:02 25 A. This is an accepted source for such data, Ibbotson SBBI

Bajaj - direct

4111

1 Yearbook, and it's a standard reference for compilation of
2 return data.

3 Q. What about stocks? Do you have a demonstrative that shows
4 us how stocks compared to government bonds over the same time?

10:11:21 5 A. Yes, I have.

6 Q. Can we see DDX 820-02, please.

7 What are we looking at now, Professor?

8 A. Well, if we were looking at very calm, classic waters,
9 here we are seeing a storm, right? This is what would happen
10:11:36 10 if you had put your money in a well-diversified portfolio of
11 large U.S. company stock. On a year-by-year basis going back
12 to 1926, in good years, you might get over 50 percent return.
13 But in bad years, you can lose up to 40 percent of your
14 investment, historically speaking.

10:12:00 15 And this is a well-diversified portfolio of large
16 company stocks, and you can see this is a much riskier
17 investment. And individual stock, it's this chart on
18 steroids.

19 Q. Again, where does this data come from?

10:12:15 20 A. This data, again, comes from the same source that I talked
21 about, Ibbotson's Yearbook.

22 Q. A commonly consulted reference?

23 A. Yes. It's the standard and well-accepted reference for
24 such data.

10:12:30 25 Q. What about investment in Household stock? Was that any

Bajaj - direct

4112

1 different?

2 A. As I said, investment in a single stock is this particular
3 chart you're looking at on steroids. It's much riskier.

4 Q. Let's look at that. Let's look at Plaintiffs'

10:12:43 5 Demonstrative 132.

6 And this, I believe, is the chart that Mr. Dowd
7 showed us in the opening. What does this tell you with regard
8 to the charts we just looked at?

9 A. Without additional context, it tells me nothing other than
10:13:03 10 this is a risky investment. It did well for a while and it --
11 then it did poorly.

12 Q. So this shows us the price of Household stock declining?

13 A. It shows price of Household stock going up for part of the
14 period and going down for part of the period.

10:13:22 15 Q. Does -- I'm sorry.

16 A. And the period it went down, in light of what we talked
17 about the economic environment, is not at all surprising.

18 Q. Does it tell us anything whatsoever about inflation?

19 A. It has nothing to do with inflation.

10:13:35 20 Q. Nothing to do with it.

21 In preparing your analysis, Professor, that you're
22 testifying about here today, did you identify other consumer
23 finance companies as a first step to conducting your analysis?

24 A. Yes, I did.

10:13:50 25 Q. How did you do that? How did you identify these consumer

Bajaj - direct

4113

1 finance companies?

2 A. So there is an industry code assigned by the government to
3 various publicly traded companies based on what is their major
4 line of business. It's called GCIS code. And according to
10:14:11 5 Standard & Poor's, Household belonged to a certain GCIS code
6 along with six other companies that traded over the relevant
7 period.

8 So I looked at those six companies with the same GCIS
9 code as a first step in my statistical analysis to put
10:14:37 10 Household's stock price movements in context.

11 Q. And that's a code provided by the United States
12 government?

13 A. Yes.

14 Q. And Standard & Poor's tells you what companies fall within
10:14:49 15 that code?

16 A. Yes. And this is a very, very, very well-accepted and
17 commonly used methodology to start to look for comparable
18 companies.

19 Q. And how did Household's stock price perform relative to
10:14:59 20 other consumer finance companies during the same time period?

21 MR. BURKHOLZ: Objection, vague as to time.

22 MR. KAVALER: I'll specify.

23 BY MR. KAVALER:

24 Q. During the period between July 30, 1999 -- I'll do even
10:15:14 25 better than that.

Bajaj - direct

4114

1 Did you look at how Household's stock price performed
2 during the period from July 30, 1999, to October 11, 2002, in
3 relationship to the other companies which fall within this
4 government code called GCIS and are identified as being
10:15:33 5 consumer finance companies?

6 A. Yes, I did. And what I found is Household's stock price
7 was right in the middle of the pack.

8 Q. Do you have a demonstrative that shows that?

9 A. Yes.

10:15:42 10 Q. Can we see DDX 405, please.

11 Okay. Tell us what this chart is designed to show.

12 A. Well, this chart shows what would happen if you invested a
13 hundred dollars in Household stock on July 29, 1999, the day
14 before the relevant period, and you held it until the end of
10:16:08 15 the relevant period. Unfortunately, over this relevant
16 period, you would have lost about 34 and a half percent of
17 your money.

18 Q. That's --

19 A. Your -- I'm sorry.

10:16:18 20 Q. I apologize. Go ahead.

21 A. I was just going to say, your hundred dollars becomes \$65
22 at the end of the period.

23 Q. A bad result?

24 A. A bad result.

10:16:26 25 Q. But you said Household was in the middle of the pack?

Bajaj - direct

4115

1 A. Yes.

2 Q. Do we have the capacity to see the rest of the pack on
3 this chart?

4 A. Yes.

10:16:34 5 Q. Show us the rest of the pack, please.

6 What does the chart show now, Professor?

7 A. Well, the first thing I would point out is the red line,
8 and you'll see the label on the right-hand side, S&P 500.

9 You'll see if you had invested \$100 in the most well-
10 diversified U.S. large company stocks that investment
11 professionals recommend you do -- that's S&P 500 portfolio,
12 it's the proxy for the market, it's about 80 percent of the
13 market value of all publicly traded companies -- you would
14 have \$62.29 left of your hundred dollars.

10:17:19 15 Q. So Household performed better than the S&P 500 during the
16 time period we're looking at?

17 A. Household did better than the market over the relevant
18 period; not by much, but it did better.

19 Q. What about the rest of these companies?

10:17:34 20 A. Of the six consumer finance companies that share the GCIS
21 code with Household, Providian, AmeriCredit and Capital One
22 did worse than Household. Had you invested \$100 in Providian
23 instead of in Household, you would have lost over 90 percent
24 of your money. You would have less than \$1 left at the end of
10:17:56 25 this period.

Bajaj - direct

4116

1 With AmeriCredit, you would have \$47 left. With
2 Capital One Financial, you would have \$63 left or almost 64,
3 as compared to with Household, 65.50.

4 But three consumer finance companies did better than
10:18:16 5 Household. MBNA did better. Cash America did better. Cash
6 America broke even, made a positive 1 percent return. And
7 Countrywide did the best. They had a 25 percent return.

8 But the other thing I want to point out, just going
9 back to our previous point, you know, the reason these trends
10:18:38 10 are not as clear, the \$65 going from \$100 looks almost like a
11 flat line, is there's no way to scale this chart to show that.
12 35 percent decline to most people would look like a pretty
13 significant decline.

14 Look at the volatility in these individual companies.
10:19:00 15 Look at the green line AmeriCredit. This is what it means to
16 invest in individual stocks. They go up and down a lot. And
17 Household was right in the middle of the pack during this time
18 period.

19 Q. And so does that mean that other finance companies also
10:19:20 20 lost money during the same time period?

21 A. Well, three did, three didn't. And also it depends on
22 when you invested. Like we talked about AmeriCredit doing
23 worse than Household. But what if you were lucky enough to
24 buy just before a big run-up and you happened to sell at the
10:19:37 25 top of the run-up? You would have made a lot of money.

Bajaj - direct

4117

1 Q. Did you prepare a demonstrative listing the factors that,
2 in your opinion, affected Household's stock price during the
3 relevant period, by that I mean the same time period we just
4 looked at?

10:19:51 5 A. Yes, I did.

6 Q. Can we look at DDX 553-01, please.

7 Can you describe to us, Professor Bajaj, what these
8 factors are? These are the factors that in your opinion
9 affected Household's stock price during the relevant period.

10:20:05 10 A. Yes. The first is market and industry factors, and we
11 talked about it a little bit. After the NASDAQ bubble started
12 to burst in the beginning of 2000, Federal Reserve --

13 Q. I'm sorry. The what bubble?

14 A. NASDAQ stock prices.

10:20:22 15 Q. What is NASDAQ?

16 A. These are high-tech company stocks that are traded on a
17 marketplace called NASDAQ, national association of dealers or
18 something, but it's high-tech stocks. The Internet stocks are
19 most identified by -- with NASDAQ.

10:20:39 20 Q. I'm sorry to interrupt. Go ahead.

21 A. So we remember the beginning of 2000, market prices
22 started to crash in the stock market; and Federal Reserve
23 started to cut interest rates very rapidly. And that -- other
24 things being equal, the interest rate cuts, per se, is a good

10:20:58 25 thing for finance companies. Because when interest rates --

Bajaj - direct

4118

1 short-term interest rates go down, they can borrow the money
2 that they use to lend out more cheaply.

3 We also talked a little bit about this being a time
4 period when the industry as a whole was facing explosive
10:21:16 5 growth. It was also a period when the industry was facing a
6 changing regulatory environment.

7 Larger consumer finance companies wanted to have
8 national level legislation so they could standardize their
9 products. They didn't have to worry about what legal risk
10:21:41 10 they faced in what jurisdiction. They were better positioned
11 because of their nationwide technology.

12 And Household was mentioned in analyst reports to be
13 better than its competitors during this period. When a lot of
14 mom-and-pop businesses that lent to subprime lenders were
10:22:00 15 making mistakes, facing regulatory sanctions, some going out
16 of business, people thought Household was -- had a competitive
17 advantage because it had a large company culture. It had
18 seasoned management. It had technology infrastructure, so it
19 could navigate the regulatory waters better than its
10:22:19 20 competitors.

21 There's a lot of talk in analyst reports about that
22 being a favorable factor during part of the relevant period.
23 And then the headline risk started growing. And after a
24 while, Household was the only large stand-alone player left in
10:22:36 25 subprime market because Citigroup bought its biggest

Bajaj - direct

4119

1 competitor, First Associates.

2 So consumer activists started to get very focused on
3 Household. One of Professor Fischel's exhibits quotes a
4 consumer activist as saying, We will not rest until

10:22:57 5 Household's subprime customers are treated the same way as
6 conforming loan customers.

7 Well, you can't lend to subprime customers on same
8 terms that banks give to conforming loan customers so you can
9 stay in business.

10:23:13 10 Q. Professor, what's a conforming loan and what is a
11 conforming loan customer?

12 A. These are people with very good credit, very good income,
13 good savings that are usually very rate sensitive and are very
14 creditworthy with major banks and other depository

10:23:29 15 institutions.

16 Q. Sometimes called prime customers?

17 A. Those are prime customers.

18 Q. Okay.

19 A. So headline risk became a big factor. And as you see us
10:23:38 20 talk about various analyst reports and what the market was
21 learning, you will see evidence of headline risk affecting
22 Household's stock price.

23 There were other non-fraud related firm specific
24 factors, and then there were days when nothing happened and
10:23:57 25 stock price moved a lot. If I remember correctly, in

Bajaj - direct

4120

1 Professor Fischel's event study, the largest negative return
2 happens on a day when he finds no news. That's just changing
3 investor expectations. It happens all the time. Nothing
4 wrong with that finding.

10:24:14 5 Every day of the week investors have new expectations
6 about stock. And sometimes market analysts change their
7 expectations, not because they've discovered something new.
8 But based on what is already public, they may become less
9 bearish on a stock or more bearish or less bullish or more
10:24:38 10 bullish. And sometimes their opinions impact stock price
11 because certain investors follow these analyst
12 recommendations.

13 Q. Did you find any economic evidence that Household's stock
14 price was affected by fraud?

10:24:52 15 A. As I said before, and I'm sure we'll examine this evidence
16 carefully, there is absolutely no economic evidence that
17 Household's stock price was affected by fraud during this
18 relevant period.

19 Q. Okay. Now, did you evaluate what information was
10:25:13 20 available to the market about the risks you've just
21 enumerated?

22 A. Yes.

23 Q. And you mentioned stock analysts in this case who wrote up
24 various reports that we've seen. Did analysts also discuss
10:25:25 25 these risks that you're talking about?

Bajaj - direct

4121

1 A. Yes.

2 Q. Why don't we take a look at what some of those analysts

3 said about headline risks. Let me show you a Paine

4 Webber analyst report. Well, let me show you Defendants'

10:25:40 5 Exhibit 232.

6 A copy to counsel. A copy for you, Professor.

7 (Tendered.)

8 BY MR. KAVALER:

9 Q. Is this one of the documents you looked at in formulating

10:25:47 10 your opinions here in this case?

11 A. Yes, I did, counsel.

12 MR. KAVALER: I offer Defendants' --

13 MR. BURKHOLZ: Your Honor, I object to this document.

14 It's not listed in his expert report as a document.

10:26:08 15 MR. KAVALER: Your Honor, I'm told it's in his event

16 study. It's specifically called out in his event study, which

17 is listed in and attached to his expert report.

18 MR. BURKHOLZ: He lists all the documents he's relied

19 upon in Exhibit 2 to his report.

10:26:23 20 MR. KAVALER: Let me ask him, your Honor.

21 THE COURT: It's 10:25. Let's take our morning

22 break.

23 MR. KAVALER: Okay.

24 THE COURT: And we'll discuss it during the break.

10:26:30 25 (Jury out.)

Bajaj - direct

4122

1 THE COURT: You may step down, sir.

2 What do we have here?

3 MR. KAVALER: If you give us a minute, your Honor,
4 when we come back, I'll ask him if it's in his event study.

10:27:07 5 I'll have him point to where it is. If that satisfies
6 counsel, so be it. If not, we'll move on.

7 THE COURT: All right. Ten minutes.

8 MR. KAVALER: Thank you, your Honor.

9 THE CLERK: The court is in recess for ten minutes.

10:27:19 10 (Recess taken.)

11 THE COURT: Okay. Where do we stand with the
12 objection?

13 MR. KAVALER: We fixed it. Everything is okay.

14 THE COURT: No objection?

10:47:56 15 MR. BURKHOLZ: No objection.

16 THE COURT: Okay. Bring the jury out.

17 MR. KAVALER: Thank you for that, your Honor. The
18 break was very helpful. We straightened the whole thing out.

19 (Jury in.)

10:49:55 20 THE COURT: We're ready to proceed again.

21 MR. KAVALER: Thank you, your Honor.

22 I think the last thing I said was I offer Defendants'
23 232 in evidence, your Honor.

24 THE COURT: No objection?

10:50:05 25 MR. BURKHOLZ: No objection, subject to the limiting

Bajaj - direct

4123

1 instruction, your Honor.

2 MR. KAVALER: I agree with that, your Honor.

3 THE COURT: Okay. It's admitted subject to the
4 limiting instruction.

10:50:16 5 BY MR. KAVALER:

6 Q. Okay. Let's look at this one. Professor Bajaj, do you
7 see where it says, The political/legal risk facing subprime
8 lenders appears to be steadily growing?

9 A. Yes, I do.

10:50:29 10 Q. And then it goes on to say that, In recent weeks and
11 months, we've seen sanctions against Advanta, Delta Financial
12 and other subprime lenders?

13 A. Yes, I do.

14 Q. And then it says, Further, we hear continued rhetoric from
10:50:44 15 Washington about predatory and discriminatory lending.

16 Do you see that?

17 A. Yes, I do.

18 Q. And then it says, Our ongoing concerns are we are unable
19 to forecast either the timing of government/legal decisions or
10:50:56 20 the ultimate earnings impact of these decisions.

21 Do you see that?

22 A. Yes, I do.

23 Q. And there are several other quotes to the same effect?

24 A. Indeed.

10:51:08 25 Q. Is that what you were referring to earlier when you talked

Bajaj - direct

4124

1 about the market's awareness of headline risk?

2 A. Yes.

3 Q. And the date on this document is December 3, 2001?

4 I'm sorry. Wrong document.

10:51:31 5 The date of this document is June 23, 2000?

6 A. That's correct.

7 Q. Let's look at another one. This is Defendants' 289.

8 A copy for counsel. A copy for you, Dr. Bajaj.

9 (Tendered.)

10 BY MR. KAVALER:

11 Q. Is this another document that you looked at in formulating
12 your opinion that you're testifying about here today?

13 A. Yes, I did.

14 MR. KAVALER: Offer Defendants' 289, your Honor.

10:52:14 15 THE COURT: Admitted.

16 BY MR. KAVALER:

17 Q. This is a UBS Warburg report from November 16, 2001?

18 A. Yes, it is.

19 Q. Another analyst report?

10:52:22 20 A. Correct.

21 Q. And if you'll turn to the second page, third bullet, it
22 says, We believe the more immediate danger to Household's
23 stock price stems from the headline risk and association,
24 justified or not, with predatory lending.

10:52:53 25 Do you see that?

Bajaj - direct

4125

1 A. Yes, I do.

2 Q. Is that one of the things you were referring to?

3 A. Indeed.

4 Q. And is this one of the things that supports your view that
10:53:01 5 it was headline risk and not fraud that caused Household's
6 stock price to decline in 2002?

7 A. Yes.

8 Q. Let me show you another document, Defendants' 357.

9 A copy for counsel. A copy for you, Professor Bajaj.

10:53:25 10 (Tendered.)

11 BY MR. KAVALER:

12 Q. Is this another analyst report that you relied on in
13 formulating your opinions that you're giving here today?

14 A. Yes, I did, counsel.

10:53:34 15 MR. KAVALER: Your Honor, I offer Defendants' 357.

16 MR. BURKHOLZ: Same limiting instruction, your Honor.

17 MR. KAVALER: Agreed.

18 THE COURT: Admitted with the same limiting
19 instruction.

10:53:42 20 BY MR. KAVALER:

21 Q. This is a Bear Stearns report dated December 3, 2001?

22 A. Yes.

23 Q. And the heading is, Is the biggest risk in subprime
24 lending headline risk.

10:53:54 25 Do you see that?

Bajaj - direct

4126

1 A. I do.

2 Q. And turn to the second page, first full paragraph there.

3 It says, The real risk of subprime lending appears to be

4 headline risk.

10:54:14 5 Do you see that?

6 A. Yes.

7 Q. Is that another piece of information that you relied on in

8 coming to your conclusion that what was affecting Household

9 during the relevant period was headline risk and not fraud?

10:54:27 10 A. Yes.

11 Q. Are there others as well?

12 A. There are many, many, many more.

13 Q. Let's talk briefly about an event study.

14 To do this -- an event study is a method of analysis?

10:54:43 15 A. Yes. It's a widely recognized and accepted method of

16 analysis.

17 Q. And to do this kind of an analysis -- withdrawn.

18 For what does one use an event study in connection

19 with what we're talking about here today?

10:55:01 20 A. Well, as the name implies, event study is a statistical

21 technique to study the impact of an event on stock price of a

22 company after adjusting for market and industry or other

23 unrelated factors.

24 Q. And what is your goal -- withdrawn.

10:55:24 25 Did you do an event study to come to your conclusions

Bajaj - direct

4127

1 in this case?

2 A. Yes, I did.

3 Q. And what is the goal of the event study that you performed

4 in this case?

10:55:34 5 A. Well, the goal in an event study was to see if there is

6 any relationship between plaintiffs' allegations and

7 investors' losses.

8 Q. And do you use a tool called a regression analysis in

9 conducting an event study?

10:55:54 10 A. Yes. Regression analysis is a tool that is used to

11 conduct an event study.

12 Q. And in order to conduct an event study, do you need to

13 perform a careful review of all of the economic evidence

14 available?

10:56:07 15 A. That is correct.

16 Q. Now, did Professor Fischel conduct an event study in this

17 case?

18 A. He did.

19 Q. And have you had an opportunity to review and study his

10:56:16 20 event study?

21 A. Yes, I did.

22 Q. In your opinion, is the event study that Professor Fischel

23 conducted a proper event study?

24 A. In my opinion, his event study is subject to very serious

10:56:31 25 methodological flaws.

Bajaj - direct

4128

1 Q. Let me ask you a hypothetical.

2 Let me not.

3 Let me ask you in this context, let's see if I can
4 understand the process. If a company announces on January 1,
10:57:04 5 2010, next January, that it's going to open a new factory and
6 that day its stock price increases by 5 percent, can I
7 conclude that the market increased the value of 5 by -- 5
8 percent due to the decision to open a new factory?

9 A. No, you cannot.

10:57:20 10 Q. Why not?

11 A. Well, that's why you need an event study. In the
12 hypothetical that you gave me, if the company announces that
13 it's going to open a new factory, and let's say it's a
14 computer company, and the stock price goes up by 5 percent,
10:57:42 15 before you attribute that 5 percent increase in stock price to
16 that announcement, you have to remove effect of other
17 unrelated influences on the stock price.

18 So if this is a computer company and you find, based
19 on historical study of how this company's stock price co-moves
10:58:09 20 with other computer companies, that on average when an index
21 of computer companies goes up by 1 percent, this company's
22 stock price goes up by 1 percent and vice versa.

23 Now, armed with this historical pattern, this
24 historical relationship that you determine through regression
10:58:33 25 analysis, in your hypothetical, I would look at the 5 percent

Bajaj - direct

4129

1 stock price increase that happened on the same day that the
2 factory news came into the market, and I'll see what happened
3 to other computer companies' stock. And if an index of
4 computer company stock went up by 3 percent on the same day,
10:58:59 5 then I say, wait a minute, on average this company goes up one
6 for one with other computer companies; and on this particular
7 day, other computer companies went up by 3 percent, so 3
8 percent of the 5 percent increase that we are talking about is
9 due to market or industry factors.

10:59:20 10 So the part of stock price increase that I can
11 associate with this factory announcement is not 5 percent, but
12 2 percent. This is the abnormal return after correcting for
13 market and industry. And before I conclude that even this 2
14 percent increase can be linked to announcement of the factory,
10:59:49 15 I have to see whether there was something else announced.
16 Let's assume not. Then I have to see whether this 2 percent
17 is significant enough, is it large enough, or is it within the
18 range of random noise that happens on a day-to-day basis in
19 stock prices.

11:00:09 20 And the regression analysis that allows me to
21 benchmark this company's stock price with other computer
22 companies also gives me a threshold level of movement which is
23 considered significant. So the regression analysis might show
24 that it's really the case that this company's stock price
11:00:35 25 moves over and above computer index by 2 percent.

Bajaj - direct

4130

1 And the threshold level that statisticians usually
2 use and financial economists use is typically 5 percent. In
3 other words, when abnormal return is large enough that there
4 is less than 5 percent chance that it is just a random
11:01:02 5 fluctuation, then we will consider it significant.

6 So there are several steps I would need to take in
7 order to determine what was the impact of the announcement of
8 a new factory in your hypothetical. I'll start with 5
9 percent. Based on regression analysis in my hypothetical, 3
11:01:25 10 of the 5 percent is due to industry factors. That leaves me 2
11 percent. And then I will see whether this 2 percent number is
12 unusual enough or significant enough. And if it is, then I
13 will say the impact of the factory's announcement on this
14 company's stock is 2 percent, not 5 percent. And if it is not
11:01:52 15 significant, I would say there is no evidence that this
16 announcement significantly changed this computer company's
17 stock price at all.

18 Q. Is it your opinion, sir, that Professor Fischel's event
19 study gave him unreliable results?

11:02:08 20 A. Yes.

21 Q. Do you have an opinion as to why that is?

22 A. Well, there are two or three main reasons why I believe he
23 got unreliable results.

24 Q. Please list them for me.

11:02:24 25 A. Okay. So, one, remember when we were talking about the

Bajaj - direct

4131

1 computer company example? If the announcement was made on
2 January 1, 2008, let's say, and you have to do a regression
3 analysis to see what's the normal relationship between this
4 stock price and the computer industry, you have to pick a
11:02:51 5 period of time over which you measure what is the average
6 relationship between the stock price and the computer
7 industry. In the jargon of economists, it's called the
8 estimation window.

9 So you do your regression analysis over an estimation
11:03:12 10 window to determine what is the normal relationship between
11 this stock and the market and the industry.

12 And in my opinion, Professor Fischel made a mistake
13 in the estimation window he picked.

14 Q. What did he pick?

11:03:29 15 A. Well, since you do white board so well, I think it would
16 help if you just draw the relevant period on a white board,
17 counsel.

18 Q. I'll just draw a straight line. And we'll just label --
19 this is July 30, 1999. And this is October 12, 2002.

11:04:08 20 You mean like that?

21 A. Yes. This is the relevant period, right.

22 Q. Okay.

23 A. Now, typically when you do event studies, you pick
24 estimation window so it is close enough to the event that you
11:04:29 25 are studying. You don't want to find out that this company

Bajaj - direct

4132

1 moved relative to industry in a certain way five years back
2 and whatever your regression was may not be relevant now, so
3 you can reach an erroneous conclusion. So you want to pick
4 your estimation window to be near enough. And you want to
11:04:51 5 pick your estimation window so the relationship between the
6 company and the market is a reasonable descriptor of the
7 period you are going to study.

8 And people do this typically in two ways. One,
9 people look at period just preceding the event. So if your
11:05:16 10 first event that you want to study is August 16, 2000, what
11 you might do is you study one-year period before the beginning
12 of the relevant period ending July 30, and you estimate
13 regression. And it's a reasonable inference that whatever
14 interrelationship you study describes how the stock price is
11:05:45 15 related to market and industry on the event date of October
16 16.

17 Q. And what period did Professor Fischel pick here for his
18 estimation window?

19 A. Well, Professor Fischel picked a period right in the
11:06:02 20 middle of this estimation window, starting November 14, 2000,
21 and ending November 14, 2001.

22 Q. Have I done this approximately right?

23 A. Yes.

24 Q. Okay. And is that the usual approach?

11:06:25 25 A. It's not the usual approach. And in this case -- what's

Bajaj - direct

4133

1 more important is that in this case, it leads to two serious
2 methodological problems with this event study.

3 Q. What are those?

4 A. Well, if we look at Professor Fischel's own charts, you
11:06:46 5 will find the estimation window that he picked was very
6 unusual.

7 Over that one-year period, Household's stock price
8 went up by about 25 percent, when Standard & Poor's 500 Index,
9 which is his market measure, went down by about 17 and a half
11:07:15 10 percent. I may not remember it exactly, but it's
11 approximately that. And the industry index that he relied on,
12 Standard & Poor Financial, went down by about 6 and a half
13 percent.

14 So now what Professor Fischel is doing is he's
11:07:35 15 looking at about 250 data points. There are about 250 trading
16 dates in a year. And he's telling his computer, take 250 data
17 points on Household stock return day by day, market return on
18 S&P 500 and Standard & Poor Financial return. Household's
19 stock price index is trending up, market is declining and
11:08:05 20 industry is declining.

21 Household outperformed Standard & Poor's 500 by over
22 40 percentage point in this one-year period. And it
23 outperformed its industry index by over 30 percent in this
24 period.

11:08:30 25 So the only way a computer can make this data fit is

Bajaj - direct

4134

1 it spits out an equation which says, on average, when
2 Household's stock price goes up, Standard & Poor's market
3 index goes down. That's the only way computer can fit this
4 data. That's what the dumb computer does in a regression
11:08:56 5 analysis. It finds the best possible fit.

6 And because the market went down a lot and the
7 company stock went up a lot, built into Professor Fischel's
8 regression model is a prediction that more the market goes
9 down, higher S&P -- higher Household stock price should be.

11:09:18 10 And now when he takes that regression equation and he
11 applies it to various purported corrective disclosures after
12 this period, it creates a bias.

13 Q. When you say after this period, Professor, you mean after
14 November 14, '01?

11:09:38 15 A. Yes.

16 Q. So he derives some kind of a formula over here in this
17 area shown by the circle, the estimation period, and he uses
18 it out here?

19 A. That is correct, subsequent to this period.

11:09:48 20 Q. What -- this is the estimation period. What do we call
21 this period?

22 A. He calls it his corrective disclosures period.

23 Q. Is this where he finds the down leg?

24 A. This is where he says the fraud is being learned by the
11:10:01 25 market, the down leg, yes.

Bajaj - direct

4135

1 Q. So this is the down leg. And this is the estimation
2 period.

3 Okay. Please continue.

4 A. So, you know, what happens here is, we talked about how
11:10:22 5 starting November 15, 2001, to October 12, 2002, the end of
6 the relevant period, was a bad time in the market. S&P 500
7 did poorly. Most stocks did poorly.

8 But now Professor Fischel is working with a model
9 that makes him predict that, other things being equal, worse
11:10:50 10 the market does, better Household should have done. And, of
11 course, over this period, that 40 percent overperformance,
12 superior performance related to S&P that was true during his
13 estimation window doesn't happen.

14 So as a result, he is biasing his measure of how
11:11:12 15 poorly Household is doing on any day that he studies
16 Household's stock price reaction. He's putting too high a
17 benchmark and, therefore, concluding Household's stock price
18 declined by a lot and it is significant, even though it was
19 not. This bias makes him find inflation coming out of the
11:11:36 20 stock when, in a proper regression analysis, he would not have
21 so concluded. So that's one of the important biases that
22 results from wrong choice of estimation window.

23 Q. When you use the word bias in that answer, you don't mean
24 bias the way we use it when we talk about someone is biased
11:11:56 25 against someone? It's an economic term?

Bajaj - direct

4136

1 A. Oh, not at all. I didn't mean to imply that at all. This
2 is a statistical term of art where your model is biased. I
3 don't mean to suggest Professor Fischel is in any way, shape
4 or form biased. He's a respected scholar. I have high regard
11:12:14 5 for him. It's just that his method is biased.

6 Q. It's a mistake?

7 A. It's a mistake, yes.

8 Q. People make mistakes?

9 A. Well, I know I do.

11:12:24 10 Q. Okay. Is there a second mistake that Professor Fischel
11 made?

12 A. Yes. There is a second implication of his picking the
13 wrong window.

14 Q. And what's that?

11:12:35 15 A. The period that he picks for his estimation window was
16 relatively calm period for Household. It's like you go to the
17 ocean. Some days are very calm days; and, you know, if you'll
18 see a five-foot wave, you'll say, wow, this is a big one. And
19 there are other days when ocean is very stormy and almost
11:13:04 20 every other wave will be more than five feet. Or, you know,
21 in Chicago in the middle of the winter, 30 degrees would be
22 considered balmy and nice and hot. And if you use that
23 benchmark to judge what happens in the summer, you'll find
24 every day in the summer very abnormally hot.

11:13:24 25 So what happens is because of his estimation window,

Bajaj - direct

4137

1 he ends up setting too low a bar for what he considers to be a
2 significant price movement. And he does that in two ways.
3 Remember, I told you typically statisticians say a reaction is
4 not significant unless there's 5 percent or more chance that
11:13:55 5 it's not just a random occurrence. Professor Fischel picks a
6 10 percent threshold rather than 5 percent.

7 That choice, combined with the fact that his
8 estimation window is unusually quiet for Household, except
9 normal returns didn't vary as much -- this was a good time for
11:14:21 10 Household -- means he judges too many of his specific
11 disclosure dates significant; whereas, under a proper
12 threshold, he would not have found them significant. So
13 that's the second of the three errors in his regression
14 analysis.

11:14:37 15 Q. And what's the third one?

16 A. Well, the third one is this: You want to adjust for
17 market and industry factors when you study a particular stock
18 price movement by carefully picking the right benchmarks.

19 And what he did in picking the two indices is normal
11:15:06 20 and fine as a starting point. Most people compare a company's
21 stock price to a broad-based market index. Professor Fischel
22 testified that Household itself in its proxy statement
23 compared itself to Standard & Poor's 500. Nothing wrong
24 there. I have no quarrel with his choice of S&P 500 there.

11:15:28 25 Of course, he should have noticed why is he

Bajaj - direct

4138

1 predicting a negative coefficient on S&P 500, meaning more the
2 market went -- goes down, higher Household should go up.
3 Well, that's not the reason Household compares itself to S&P
4 500. He might have been alerted to his estimation window
11:15:50 5 being wrong perhaps, but leave that aside.

6 He picks the S&P 500. And then he picks a
7 broad-based financial index called Standard & Poor's
8 Financials, which have over 80 companies, if I remember, most
9 of whom were not in consumer finance business. And he says,
11:16:10 10 well, Household uses that comparison too in its proxy
11 statement; so that's fine and good.

12 But what is missing in his regression equation is a
13 benchmark that's close to Household's business. That's the
14 consumer finance business.

11:16:26 15 Q. Let me stop you there a minute. Let's go back to DDX 405.

16 This is the one we looked at earlier. Is this what
17 you're talking about, the Consumer Finance Index?

18 A. Yes.

19 Q. And you think this would have been a better index to use
11:16:40 20 as a comparison?

21 A. Well, I would say in all the tests I did statistically,
22 every time, model tracked the data better. And the
23 performance of the model on technical measures that you
24 typically use to see how good your model is improved when you
11:17:02 25 added an index of consumer finance companies in addition to

Bajaj - direct

4139

1 Standard & Poor 500 Index and S&P Financial Index that he
2 used.

3 I don't say that he chose the wrong indices. In
4 fact, in my report, I used the same two indices. But I added
11:17:21 5 a third one, which is consumer finance companies because the
6 economic environment during this time that explained
7 Household's return was being felt by consumer finance
8 companies that had similar clientele to Household.

9 So I thought S&P 500 for broad market-based
11:17:44 10 influences, Standard & Poor Financial for broad financial
11 sector, and then an index of these six consumer finance
12 companies for consumer finance business would make a better
13 model.

14 Q. All three of these indices include Household; is that
11:18:01 15 right?

16 A. Yes. But I took care to exclude Household from these
17 indices because otherwise you end up comparing Household
18 against itself. It doesn't matter a whole lot in this
19 particular case because Household was a very small part of S&P
11:18:19 20 500 and a very small part of S&P Financials; but it was a
21 significant part of consumer finance companies. So I
22 constructed the Consumer Finance Index without Household in
23 it. And I also adjusted S&P index and S&P Financial Index to
24 make sure that I take out the influence of Household in those
11:18:44 25 indices.

Bajaj - direct

4140

1 Q. So would you say that your analysis is slightly more
2 sophisticated than his?

3 A. Well, I believe it is more precise.

4 Q. Precise.

11:18:53 5 A. And it gives you a better picture of what is happening.

6 And there is a measure that statisticians use to know how good
7 their model is. It's called R-square. And my R-square was
8 significantly higher than his R-square.

9 Q. I'm not going to ask you what R-square is.

11:19:13 10 Let me ask you this: Your Ph.D. is in economics and
11 finance?

12 A. Yes.

13 Q. Do you know what Professor Fischel's Ph.D. is in?

14 A. Well, I understand his formal training is as a lawyer.

11:19:31 15 But I'm not going to sit here and say he's not an accomplished
16 scholar. He's a very smart man. He's contributed a lot to
17 use of economics in law. He's very well-qualified.

18 Q. Agreed. But you had to study a lot of technical stuff
19 like R-squared that lawyers don't study in law school?

11:19:49 20 A. Well, I know some law school courses go into pretty
21 sophisticated econometrics. I do not know whether he studied
22 econometrics or not.

23 Q. In any event, your analysis was more precise, in your
24 opinion, than his?

11:20:06 25 A. I believe my analysis is more precise, yes.

Bajaj - direct

4141

1 Q. Because you added the most appropriate comparative
2 schedule, which is the other finance companies?

3 A. Yes. And I chose a more appropriate estimation window.

4 Q. Okay. Did you prepare a demonstrative which compares
11:20:29 5 Household's returns to the various stock indices you mentioned
6 for a particular day during the relevant period?

7 A. Yes.

8 Q. Let's look at DDX 750-02.

9 What does this chart show us, Professor?

11:20:44 10 A. Well, this chart shows you, through an example of a
11 specific disclosure date in Professor Fischel's analysis as to
12 how shortcomings of his regression analysis cause him to
13 conclude that inflation came out of Household's stock price;
14 whereas, in fact, there was nothing abnormal about this day at
11:21:15 15 all in a properly specified regression analysis.

16 Q. Tell us what day we're looking at here.

17 A. If you look at the bottom, it is looking at -- it says
18 it's -- we are looking at September 3, 2002, which is one of
19 his specific disclosure dates.

11:21:32 20 Q. Okay. And tell us -- walk us through this chart,
21 Professor, and tell us what it shows us.

22 A. So this was a day that was a pretty bad day in the market.
23 As you can see, S&P 500 Index declined by more than 4 percent.
24 That's pretty unusual. It was a bad market day. And S&P

11:21:56 25 Financials Index declined by almost 5 percent, 4.9 percent.

Bajaj - direct

4142

1 And these are some of the largest financial companies. So it
2 was not a good day for financial companies in general.

3 Now, remember I told you Professor Fischel's
4 regression model contains these two indices, Standard & Poor's
11:22:16 5 500 and S&P Financials. So in his model when it's a bad day
6 for S&P Financials, he says, well, I expect Household to do
7 poorly too because it is positively related to S&P Financials.

8 So the minus 5 percent that you see on S&P Financials
9 causes him to predict that Household's stock price should have
11:22:45 10 gone down on this day by some amount. But he has a negative
11 coefficient on his market index, S&P 500 portfolio.

12 Because of that odd result, this being a very bad day
13 in the market, it causes him to revise upward his prediction
14 of how Household should have done. So other things being
11:23:12 15 equal, on a bad market day, he would predict Household's stock
16 price should go up, when we know it didn't go up. It actually
17 declined by 7.62 percent.

18 So Professor Fischel's prediction was it would go
19 down because it was a bad day for S&P Financials. It would go
11:23:37 20 up because it was a bad day for the market. And overall, he
21 predicted that on this day, Household should have declined by
22 around 4 percent; and it declined by 7 and a half. He says
23 that 3 and a half percent of difference is abnormal return.
24 And given his low threshold of judging significance, he says 3
11:24:05 25 and a half percent is significant.

Bajaj - direct

4143

1 And this is why I conclude on this day, the news that
2 came into the market about Household significantly affected it
3 negatively after adjusting for market and industry. And I
4 conclude inflation came out of the stock price. But this
11:24:25 5 mistaken conclusion is because of shortcomings in his event
6 study.

7 Q. Okay. And you've added the Consumer Finance Index here?

8 A. Yes.

9 Q. And how does that change what we're looking at?

11:24:37 10 A. So there are two reasons why I found that there was
11 nothing abnormal on this day.

12 One, in my model, I don't have this odd prediction
13 that when market goes down, Household should go up. My model
14 says when market goes down, Household is likely to go down.
11:24:57 15 And that's why Household compared itself to the entire market.
16 So that's one difference between Professor Fischel's event
17 study model and mine.

18 And, second, I found that Household moved together on
19 average with Consumer Finance Index. And you'll see what
11:25:15 20 Consumer Finance Index did that day. It went down by almost
21 as much as Household did, by 7 and a half percent.

22 So based on these two differences, I found that
23 Household's 7 and a half percent drop that day was within the
24 range of what you would have expected; and the market did not
11:25:37 25 learn anything significant on September 3.

Bajaj - direct

4144

1 Q. Now, did you prepare a demonstrative, Professor,
2 illustrating how Household compared to other companies in the
3 Consumer Finance Index on that day?

4 A. Yes, I did.

11:25:48 5 Q. Can we see DDX 751-02, please.

6 Professor, is this that demonstrative?

7 A. This is the demonstrative.

8 Q. And what does this show us, please?

9 A. It shows each and every company in Consumer Finance Index
11:26:03 10 had a down day that day. Cash America by very little. But
11 most companies declined by at least 4 percent. All the rest
12 declined by at least 4 percent. Countrywide, over 4 percent
13 decline; AmeriCredit, over 4 percent decline; Capital One, 6
14 and a quarter percent decline; MBNA, 8.76 decline, more steep
11:26:30 15 than Household; Providian, 10.39 percent decline, much more
16 steep than Household. Household was behaving like other
17 consumer finance companies on that day. This was not an
18 unusual day for Household.

19 And what you will find on Professor Fischel's 14
11:26:50 20 specific disclosure dates, most of the time when he says
21 Household's stock price declined significantly and I say no,
22 which happens on most of the days, if you draw charts like
23 this, if you look at data like this, you will find Household
24 was behaving like other consumer finance companies were
11:27:13 25 behaving. So that's the reason he misses the fact that the

Bajaj - direct

4145

1 declines were not extraordinary, and he ends up concluding a
2 lot more often than he should have, according to me, that
3 Household's stock price declined significantly when the market
4 learned certain news.

11:27:35 5 In my regression analysis, most of his days are not
6 statistically significant.

7 Q. Let's talk a little bit about specific issues confronting
8 Household and the rest of the consumer finance industry during
9 the relevant time period.

11:27:56 10 Did you consider those issues in conducting your
11 analysis?

12 A. Yes, I did.

13 Q. And are you aware that Mr. Dowd in his opening statement
14 suggested that Household was focused on growth?

11:28:07 15 A. Yes.

16 Q. Are you also aware that Mr. Aldinger testified that he
17 disagreed with Mr. Dowd?

18 A. Yes. I read that transcript.

19 Q. Did you investigate the issue of growth in the industry
11:28:19 20 during the relevant period?

21 A. Yes. As I had said in my report, it was indeed a period
22 when this subprime lending industry became very big, relative
23 to where it had started.

24 As I was saying earlier, before 1995, if you were not
11:28:44 25 what is called a prime customer, you couldn't get credit to

Bajaj - direct

4146

1 buy a house or buy a car easily. You had to go to hard-money
2 lenders, who were predatory.

3 Starting in 1995, companies like Household moved into
4 the sector for residential lending and grew rapidly. The
11:29:11 5 whole industry grew very rapidly. But it is incorrect to say
6 Household grew more rapidly than the industry. In fact,
7 according to the Fed study that I talked about in my report,
8 if you looked at top 25 players in this space, which is called
9 B and C lending as against prime lending or A lending, if you
11:29:40 10 look at top 25 players over the years in question, Household's
11 ranking on growth was always between 20 and 25. It was not
12 growing faster than other players in this industry. It was
13 actually growing much slower than other players in this
14 industry.

11:30:02 15 Q. Are you able to rank Household vis-a-vis other players in
16 the consumer finance industry during the relevant period in
17 terms of growth?

18 A. Yes.

19 Q. And where does it rank?

11:30:14 20 A. Well, as I said, among B and C lenders referenced in the
21 Fed study, Household always ranked between number 20 and 25
22 out of 25, at the bottom of the pack.

23 Q. I guess I should have asked you this earlier. I
24 apologize.

11:30:31 25 What's a B and C lender?

Bajaj - direct

4147

1 A. B and C lender is a term of art for nonconforming loan
2 providers; whereas, A paper is considered conforming loans.
3 These are Freddie Mac, Fannie Mae underwritten guideline type
4 of loans that banks and mortgage bankers make to wealthier
11:30:54 5 customers.

6 Q. Where would a bank like Wells Fargo be?

7 A. Well, Wells Fargo is a very big bank; and they are in all
8 kinds of things. But they're primarily known to be A paper
9 lenders.

11:31:07 10 Q. Let's turn to the two models that Professor Fischel
11 produced.

12 Can you briefly tell us what they are?

13 A. Yes. He uses two models. First one he calls an event
14 study approach, not an event study, but an event study
11:31:27 15 approach. It's his so-called leakage model. It is not an
16 event study. There is not an event in that model.

17 The second model he uses is an event study. He calls
18 it a specific disclosure model.

19 Q. And did you come to any conclusions about either of these
11:31:48 20 models?

21 A. Yes, I did.

22 Q. And what were those conclusions?

23 A. Well, I believe his specific disclosure model is more
24 consistent with how event studies are generally performed in a
11:32:06 25 setting such as this. But as I testified, it is subject to

Bajaj - direct

4148

1 certain methodological flaws that make Professor Fischel reach
2 erroneous conclusions.

3 His leakage model, from economic perspective or from
4 statistical perspective, is deeply flawed and unreliable and
11:32:30 5 has nothing to do with what is at issue in this case, in my
6 opinion.

7 Q. Let's start with that one, his leakage model. Can you
8 expand upon what you just said and tell us why you came to
9 that opinion?

11:32:42 10 A. Well, in leakage model, Professor Fischel says, well,
11 maybe the market learned certain news over a period of time.
12 So one of his disclosures that he considers, for example, is
13 November 15, 2001, CDC lawsuit. That's his first corrective
14 disclosure. And it is indeed true that that was not the only
11:33:21 15 day that the market heard about CDC lawsuit. That lawsuit was
16 actually filed and the market knew about it on November 9.
17 And even in Professor Fischel's event study, nothing happened
18 on November 9.

19 So if you want to consider leakage, if you say, well,
11:33:45 20 maybe I did not find a significant price reaction on November
21 15, is because market had learned part of the story on
22 November 9, even though in this case, market had learned all
23 of the story on November 9. Then I can understand that you
24 take this leakage and consider whether the market price
11:34:08 25 reaction on November 9 and November 15, 2001, put together was

Bajaj - direct

4149

1 statistically significant. He actually did that in one place
2 in his report.

3 On December -- on October 10th and 11th, the last two
4 days in the relevant period when Household stock price went
11:34:29 5 way up upon settling with attorney general, in his report, he
6 says, well, on October 10th, the news had leaked out. I agree
7 with him, the news had leaked out. And he looked at how the
8 market reacted on 10th and how the market reacted on 11th.
9 And he concluded correctly so, that on those two days
11:34:51 10 together, considering the leakage and considering the news,
11 the market price reaction was significantly positive.

12 But in his leakage model, he does none of that. What
13 he does is he takes his regression equation over his
14 estimation window, which, of course, as we discussed earlier
11:35:13 15 is predicated on an odd result that if the market goes down,
16 Household should go up; and then he uses that model to see how
17 Household performed each and every day after November 15,
18 2001, until the end of the relevant period, whether there was
19 any event or not, whether there was any news or not, whether
11:35:35 20 the news had anything to do with the fraud or not, he just
21 added it all up. And he says, that's my quantification of
22 inflation coming out of the stock due to leakage. No
23 statistical test of significance. No careful evaluation of
24 whether there was an event or not.

11:35:54 25 There are lots of days when the market reacts very

Bajaj - direct

4150

1 negatively and there is no news in his event study. And he
2 adds it all up, and he calls it leakage-based quantification
3 of inflation. That's not accepted methodologically at all.

4 Q. Let me ask you about that. So you're saying that this
11:36:14 5 method, the leakage method, is not a recognized method in the
6 field of economics for conducting an event study?

7 A. Absolutely not. It has nothing to do with what we are
8 here for, which is to find how much the stock price declined
9 because of market learning the truth about the purported
11:36:33 10 fraud. It has no linkage with any of the purported fraud.

11 Q. But Professor Fischel says that he relies on some
12 professor at UCLA, Professor Cornell, to support his approach.

13 Have you looked at Professor Cornell's work?

14 A. I know his work well, and I know Professor Cornell well.

11:36:50 15 Q. And does his work support Professor Fischel's method here?

16 A. Absolutely not.

17 Q. Let me ask you this: If he doesn't identify any days when
18 anything special happened in his leakage model, special in the
19 sense that it was related to the alleged fraud, how does he
11:37:09 20 come up with inflation figures that he says are fraud related?

21 A. Well, all he has measured is underperformance in
22 Household's stock price between November 15, 2001, and end of
23 the relevant period, based on his faulty regression model.

24 That has nothing to do with fraud per se.

11:37:35 25 Q. Is that the same problem we were looking at over here on

Bajaj - direct

4151

1 the white board; he's got this estimation period where he's
2 got the wrong high bar, I think you said it was, and now he's
3 comparing the price of the stock in a declining stock market
4 and that's giving him the result?

11:37:48 5 A. Yes.

6 Q. Okay. And is this -- is this leakage model that Professor
7 Fischel used capable -- can you use it to distinguish stock
8 price movements that might be attributable to fraud from other
9 movements that have nothing to do with fraud?

11:38:13 10 A. By construction it cannot separate such sources of
11 movement.

12 Q. It's just going to measure decline?

13 A. It's the kitchen sink.

14 Q. All right. Let's talk about his other model, the specific
11:38:30 15 disclosures model. That, at least, is a model you recognize?

16 A. The methodology is well-accepted. I have differences with
17 Professor Fischel about how that methodology was implemented.

18 Q. We'll get to how he implemented it in a minute.

19 Let's start with the basic methodology. Please tell
11:38:50 20 us how that kind of a specific disclosure model is supposed to
21 work to measure inflation.

22 A. Okay. So let's go back to what you were talking about, a
23 typical pattern in these cases. There's an up leg. Inflation
24 comes in. And there is a down leg when market learns the

11:39:11 25 truth and inflation goes up.

Bajaj - direct

4152

1 Now, you can conduct economic analysis in one or both
2 of the following ways: You can look at the plaintiffs'
3 allegations. Lie number one was told on date number one. And
4 you can quantify inflation on that date number one. Whether
11:39:41 5 it is a misrepresentation or it's an omission, you can use
6 well-accepted statistical techniques and methods to say I now
7 know as an economist the company lied, stock price was
8 inflated by 50 cents a share on lie number one.

9 And you can quantify inflation by adding up all the
11:40:08 10 inflation that came into the stock price on all the dates that
11 lies were told.

12 In addition to this methodology, or depending on
13 facts and circumstances sometimes instead of this methodology,
14 you might say it's more reliable for me to measure how much
11:40:30 15 inflation came out of the stock when the market learned the
16 truth. That's the approach Professor Fischel has adopted.
17 It's factually incorrect. It's methodologically incorrect.
18 But in principle, there's nothing wrong per se in adopting
19 that approach.

11:40:52 20 But if you are quantifying inflation, as an economist
21 whose work is going to be the basis of award of damages,
22 you've got to link the amount of inflation you have quantified
23 to specific lies that are at issue in this case.

24 And as we discussed earlier, Professor Fischel, by
11:41:21 25 looking at certain disclosures after November 15, 2001, has

Bajaj - direct

4153

1 concluded that as of November 14, 2001, there was \$7.97 of
2 inflation. But there is nothing in his work that can tell us
3 how much of that 7.97 is because of lie number one or lie
4 number 40 that plaintiffs allege in that case.

11:41:53 5 In fact, the oddness of the result is during July 30,
6 1999, to November 15, 2001, when 22 lies were told, according
7 to the plaintiffs, that inflation does not change one cent.
8 How could the inflation he determined be -- in any reliable
9 way be tied to the fraud plaintiffs allege has been committed
11:42:20 10 in this case?

11 That is the major shortcoming of Professor Fischel's
12 specific disclosure model at a conceptual level, rather than
13 methodological levels.

14 Q. You told us a few minutes ago, Professor Bajaj, that the
11:42:36 15 information related to plaintiffs' claims was already known to
16 investors before, I think you were talking about November 15,
17 2001. Does that apply to Professor Fischel's specific
18 disclosures model, the one we're talking about now?

19 A. Yes, it does.

11:42:51 20 Q. Why?

21 A. Well, Professor Fischel, as I was saying, is a respected
22 scholar in use of economics for legal proceedings. And I am a
23 fan of some of his writings in the area. And in his own
24 writings, Professor Fischel has said that markets are
11:43:21 25 efficient. He's assumed that Household traded in an efficient

Bajaj - direct

4154

1 market.

2 Q. What does an efficient market mean, sir?

3 A. An efficient market is one where market reacts to news.

4 It does not wait a week or two to react to stale information.

11:43:41 5 An efficient market is one where investors are awake and

6 paying attention to what they are learning. And market

7 imbibes news into stock prices immediately.

8 Q. What does immediately mean? In a minute, in a second, in

9 an hour, in a day, in a week, in a month?

11:44:00 10 A. There are thousands of academic papers, some of which I

11 have written, in the -- testing market efficiency. One social

12 scientist says it's the most-tested hypothesis in all of

13 social science. And you know what these papers show?

14 Q. What?

11:44:23 15 A. When companies announce earnings of prices, for example,

16 the game is over within five minutes or less. If your broker

17 calls you and says, hey, company announced positive earnings,

18 it was more than the market expected, and if it is going to

19 take you more than a minute to place a trade, the game is

11:44:42 20 over. The market has already reacted to it because there are

21 people on the floor of the Exchange, you know, who are tied to

22 the tape, who will immediately put the order before the price

23 reflects the positive news to earn a little bit of profit.

24 Because of these active traders, market imbibes content of

11:45:01 25 news into stock prices very quickly.

Bajaj - direct

4155

1 Now, for actively-traded companies, like Household,
2 followed by dozens of analysts, it might mean minutes. And
3 for some upscale company that hardly ever trades or certain
4 kinds of announcements which are very difficult to understand
11:45:22 5 and interpret and that as a team we will return to when
6 talking about Household's restatement, it may be a two-day
7 period. But market -- in parts, market imbibes the value of
8 the news when it is news before it is stale information.

9 In this particular case, Professor Fischel says he
11:45:46 10 did not find any evidence of market learning about Household's
11 fraud prior to November 15, 2001.

12 We will see a chart today which will show there were
13 hundreds of announcements earlier in the class period. It was
14 not a secret in the market that Household was in the subprime
11:46:15 15 business, that subprime business was subject to attack.

16 Just sit back and think about the fact, we've heard
17 in this case Household had over three million customers that
18 were residential customers. And when you combine credit card
19 and other businesses, it had 48 million customers. If
11:46:37 20 Household's business practices were illegal, could that remain
21 a secret when one in every seven Americans is Household's
22 customers that deal with Household, they experience those
23 practices firsthand, they are -- they have friends, they have
24 brokers, they themselves are investors. Record is replete
11:47:02 25 with --

Bajaj - direct

4156

1 MR. BURKHOLZ: Your Honor, I move to strike this.

2 This is a narrative not responsive to the question at hand,
3 which goes to market efficiency.

4 MR. KAVALER: I'll ask another question, your Honor.

11:47:12 5 THE COURT: Ask another question.

6 BY MR. KAVALER:

7 Q. Professor Bajaj, from an economic perspective, why does it
8 matter whether the same information that Professor Fischel has
9 picked for a particular day was already known to the market,
11:47:25 10 say, a week earlier? What difference does that make?

11 A. Because if it was known a week earlier, you cannot
12 attribute market price reaction to that information. It must
13 be due to something else.

14 Q. In other words, if Household makes an announcement on day
11:47:42 15 one, the market reacts on day one?

16 A. It should.

17 Q. And if it makes the same announcement on day ten, should
18 it make any difference?

19 A. None whatsoever.

11:47:50 20 Q. Let me give you a more specific example.

21 If Household discloses a certain fact on July 22,
22 1999, by when would you expect the market to react to that?

23 A. If that was a trading day, I would expect by the end of
24 the trading day for that fact to be reflected in stock prices,
11:48:08 25 assuming the announcement took place at least a few minutes

Bajaj - direct

4157

1 before the trading day ended.

2 Q. And then if Household made the same exact precise
3 announcement or disclosure again on August 16, 1999, would you
4 expect there to be any market reaction?

11:48:22 5 A. No.

6 Q. Why not?

7 A. Because in an efficient market, market doesn't react to
8 stale information.

9 Q. And you and Professor Fischel agree that Household traded
11:48:40 10 in an efficient market?

11 A. Yes, we both agree on that.

12 Q. So was -- in your opinion, was Professor Fischel correct
13 in considering information that was already known to the
14 public, what you call stale information, as part of his
11:48:55 15 analysis?

16 A. No, he was incorrect.

17 Q. Why?

18 A. Because in an efficient market, that piece of news, when
19 it was news, would have been reflected in the stock price.

11:49:09 20 Q. Previously?

21 A. Previously.

22 Q. The first time it was announced?

23 A. Yes.

24 Q. Have you prepared a demonstrative to illustrate this
11:49:19 25 point?

Bajaj - direct

4158

1 A. Yes, I have.

2 Q. Let's have DDX 703-01, please.

3 Have I got the right demonstrative here?

4 A. Yes.

11:49:41 5 Q. I have? Okay. Sorry. I have the wrong tab in my book
6 then.

7 All right. Please explain what we're looking at
8 here.

9 A. So Professor Fischel said in his report and clarified
11:49:55 10 repeatedly that the methodology he followed is looking at what
11 he considered to be fraud-related disclosures; and if they
12 were significant, he considered them in quantification of his
13 inflation.

14 And that is flawed methodology because, as I said,
11:50:25 15 there is information, and that dog did not bark. The point
16 is, if Household announces something or the market learns
17 something about Household and you see no market reaction, and
18 then that information is repeated when it's stale information
19 and you see a market reaction, you should look hard for why
11:50:50 20 that market reaction happened. It was not to stale
21 information. It is either because of some other news or it's
22 random noise.

23 So there is a statistical bias -- and, again, I don't
24 mean this in a derogatory sense, to clarify. As a term of
11:51:12 25 art, there is a statistical bias in his methodology. And that

Bajaj - direct

4159

1 is explained by this exhibit.

2 So if you told me you are a champion at tossing
3 coins, you can always get heads, I said, okay, Mr. Kavalier,
4 prove it to me. And you took out the coin and you tossed it a
11:51:29 5 hundred times. And I noticed sometimes you record your
6 results and other times you just toss it again before
7 recording your results. And then you come to me and say, see,
8 50 times I tossed heads. I tell you, Mr. Kavalier, you haven't
9 proven anything because the other 50 times when you didn't
11:51:52 10 record your results, you tossed tails. You've got to consider
11 that evidence in totality of evidence to know whether you're a
12 champion head-tosser or not.

13 So Professor Fischel ended up ignoring information
14 when the market heard something and didn't react. And that's
11:52:13 15 a significant source of bias in his results.

16 MR. KAVALER: Your Honor, I'm about to move into a
17 topic -- a discrete topic, which I can either start now or
18 break for lunch and start after lunch. The topic is lengthy,
19 and I won't finish it in the ten minutes left before lunch.

11:52:32 20 THE COURT: We can break now. Let's take our lunch
21 break now. Let's resume at 1:00 o'clock, ladies and
22 gentlemen.

23 MR. KAVALER: Thank you, your Honor.

24 (Jury out.)

11:53:05 25 THE COURT: You may step down, sir.

1 We'll recess until 1:00 o'clock, folks.

2 (Trial recessed until 1:00 p.m. of the same day.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 28, 2009
Defendants.) 1:00 o'clock p.m.

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
San Diego, California 92101
(619) 231-1058

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

1 APPEARANCES: (Continued)

2 For the Plaintiff: MILLER LAW LLC
3 BY: MR. MARVIN ALAN MILLER
4 115 South LaSalle Street
Suite 2910
Chicago, Illinois 60603
(312) 332-3400

5 For the Defendants: CAHILL, GORDON & REINDEL LLP
6 BY: MR. THOMAS J. KAVALER
MS. PATRICIA FARREN
7 MR. DAVID R. OWEN
MS. JANET A. BEER
8 MR. JASON M. HALL
MR. JOSHUA M. NEWVILLE
9 MS. KIM A. SMITH
MS. SUSAN BUCKLEY
10 MS. YAFIT COHN
MR. MICHAEL WERNKE
11 80 Pine Street
New York, New York 10005
12 (212) 701-3000

13

14

15

16

17

18

19

20

21

22

23 Court Reporter: NANCY C. LaBELLA, CSR, RMR, CRR
24 Official Court Reporter
219 South Dearborn Street
Room 1222
Chicago, Illinois 60604
25 (312) 435-6890
Nancy_LaBella@ilnd.uscourts.gov

Bajaj - direct

4163

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

2 THE COURT: All set for the jury?

3 MR. KAVALER: Ready, your Honor.

4 THE COURT: Bring them out, please.

5 (Jury in.)

6 MR. KAVALER: Thank you, your Honor.

7 MUKESH BAJAJ, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

8 DIRECT EXAMINATION - Resumed

9 BY MR. KAVALER:

01:07:38 10 Q. Professor Bajaj, you were here when Professor Fischel
11 testified. So, you know that he walked us through his 14
12 dates and he had an exhibit, Plaintiffs' Demonstrative 150. I
13 think we'll put that up and look at it, again.

14 Can you see that, okay?

01:08:05 15 A. Yes, I do.

16 MR. KAVALER: Can you all see that?

17 Your Honor, can you see that or should I tilt it a
18 little bit?

19 THE COURT: That's fine.

01:08:13 20 MR. KAVALER: Okay.

21 BY MR. KAVALER:

22 Q. You understand these to be the dates that Professor
23 Fischel picked?

24 A. Yes.

01:08:20 25 Q. Okay.

Bajaj - direct

4164

1 Let's start with the first one, November 15, 2001.

2 And you were here for Professor Fischel's testimony about

3 that?

4 A. Yes, I was.

01:08:33 5 Q. Okay.

6 Let's look at Plaintiffs' 1405.

7 MR. KAVALER: And, ladies and gentlemen, this is Tab

8 1 in the jury notebook.

9 Copy for you, counsel.

10 BY MR. KAVALER:

11 Q. This is a copy for you, Professor Bajaj.

12 (Document tendered to counsel and the witness.)

13 BY MR. KAVALER:

14 Q. It's a little bit light, a little hard to read. Let's
01:09:00 15 look at the fourth paragraph.

16 It says, "'Household and Beneficial are engaging in

17 joint pervasive patterns of abusive lending practices

18 consisting of routine statewide imposition of excessive and

19 improper fees, penalties, interest and charges, in violation

01:09:19 20 of state consumer protection laws,' the lawsuit said."

21 Do you see that?

22 A. Yes, I do.

23 Q. That's referring to a lawsuit by the California Department

24 of Corporations?

01:09:29 25 A. Yes.

Bajaj - direct

4165

1 Q. And this is a news release -- a news story -- that
2 appeared on November 14, 2001; is that right?

3 A. This is something that appeared on Bloomberg --

4 Q. Okay.

01:09:47 5 A. -- on November 14, 2001, after the market closed, at 5:16
6 p.m.

7 Q. Okay.

8 That's what 7:16 means up there?

9 A. 17.

01:09:57 10 Q. 17:16?

11 A. Right.

12 Q. Okay.

13 And Professor Fischel picked this as his first
14 disclosure date, did he?

01:10:01 15 A. Yes.

16 Q. All right.

17 And he says that it disclosed information which
18 caused inflation to be removed from the Household stock price?

19 A. Yes.

01:10:09 20 Q. Did you analyze this date, as well?

21 A. Yes, I did.

22 Q. Okay.

23 And did you identify an earlier article which
24 contained the same information?

01:10:19 25 A. Yes.

Bajaj - direct

4166

1 Q. Let's look at Defendants' 615.

2 MR. KAVALER: A copy for counsel.

3 BY MR. KAVALER:

4 Q. A copy for you, Professor.

01:10:35 5 (Document tendered to counsel and the witness.)

6 BY MR. KAVALER:

7 Q. What is Defendants' 615?

8 A. This is the press release that I found dated November 9,
9 2001, Friday, which announces the same lawsuit.

01:10:51 10 Q. Okay.

11 MR. KAVALER: I offer 615, your Honor.

12 MR. BURKHOLZ: No objection.

13 THE COURT: It will be admitted.

14 (Defendants' Exhibit No. 615 received in evidence.)

01:11:07 15 MR. KAVALER: And this is also contained in Tab 1 of
16 your notebooks behind the blue divider.

17 BY MR. KAVALER:

18 Q. And this article says, "The state sued Household Finance
19 Corp. of California and its Beneficial California, Inc., unit
01:11:27 20 today for more than \$8 million, accusing both of a pattern of
21 abusing lending practices -- " "abusive lending practices."

22 Do you see that?

23 A. Yes, I do.

24 Q. Okay.

01:11:35 25 What is the significance of the fact that you found

Bajaj - direct

4167

1 an earlier article -- that is, earlier than the one Professor
2 Fischel relied on -- which contains the same information?

3 A. Well, the market would have reacted to this lawsuit when
4 it was news, not when it was stale information. And even in

01:11:56 5 Professor Fischel's event study, there is no significant
6 reaction to this particular announcement.

7 Q. On November 9?

8 A. On November 9.

9 Q. Right.

01:12:05 10 And what is the significance, in your opinion, of the
11 fact that the same article -- the same content -- is
12 contained --

13 MR. KAVALER: Well, withdrawn.

14 BY MR. KAVALER:

01:12:13 15 Q. Do you view these articles as conveying the same
16 information to the marketplace?

17 A. Indeed.

18 Q. And what is the significance of the fact that Professor
19 Fischel is using the second -- the later of these dates, the

01:12:23 20 November 14 article -- and not the November 9 article?

21 A. Well, to the extent Professor Fischel found market
22 reaction or that Household's stock price declined

23 significantly on November 15th -- which in my event study is
24 not significant, but leaving that aside; to the extent he

01:12:50 25 found that stock price declined significantly on November

Bajaj - direct

4168

1 15th -- it couldn't be because of this news. This was old
2 information. It could be something else or it could be random
3 noise. We cannot attribute the price reaction to this news
4 the way he does.

01:13:09 5 Q. So, if we're going through this list of 14 disclosure
6 dates trying to see which ones allow us to attribute price
7 reaction to the news as Professor Fischel suggests they do,
8 this one is not one that satisfies that requirement?

9 A. Yes.

01:13:26 10 Q. So, we cross it off the list.

11 Let's go to the next one.

12 You were here when Professor Fischel discussed a news
13 article dated December 3, 2001, reporting on Household's
14 accounting practices; is that right?

01:13:46 15 A. Correct.

16 Q. All right.

17 MR. KAVALER: Let's look at Plaintiffs' 1409, which
18 is in evidence.

19 And this is Tab 2 in your binder, ladies and
01:13:57 20 gentlemen.

21 A copy for counsel.

22 BY MR. KAVALER:

23 Q. A copy for you, Professor Bajaj.

24 (Document tendered to counsel and the witness.)

25 BY THE WITNESS:

Bajaj - direct

4169

1 A. Thank you.

2 BY MR. KAVALER:

3 Q. Does this article disclose any information about
4 Household's re-age practices?

01:14:18 5 A. I did not see those words in this article.

6 Q. Okay.

7 Does it disclose Household's accounting issues -- any
8 Household accounting issues?

9 A. Yes. It discusses certain accounting practices of
01:14:31 10 Household.

11 Q. Okay.

12 And this is the -- what's the date of this article?

13 A. It is December 1, 2001, which is a Saturday.

14 Q. And in what publication does it appear?

01:14:46 15 A. It is in Barron's.

16 Q. Barron's is a magazine?

17 A. Yes.

18 Q. If you look at Page 4, look at the seventh full paragraph,
19 it says, "It's easy to dismiss Ryan's criticisms as quibbles
01:15:15 20 as Household's management is wont to do. After all, Household
21 disclosed all the changes, albeit often in the small print of
22 financial filings."

23 Do you see that?

24 A. Yes.

01:15:25 25 Q. Okay.

Bajaj - direct

4170

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

4 A. Yes.

01:15:37 5 Q. All right.

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

7 A copy for counsel.

8 BY MR. KAVALER:

9 Q. A copy for your, Professor.

10 (Document tendered to counsel and the witness.)

11 BY MR. KAVALER:

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

14 A. Yes, I did.

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

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

18 MR. KAVALER: I agree with that.

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

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

22 BY MR. KAVALER:

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

01:16:12 25 Do you see that?

Bajaj - direct

4171

1 A. Yes, I do.

2 Q. And if you look at page ending 692, it goes on to say,

3 "The cover article on this weekend's Barron's bashed Household

4 on accounting issues, almost all of which have been aired

01:16:27 5 before and most of which are inaccurate."

6 Do you see that?

7 A. Yes, I do.

8 Q. All right.

9 And it goes on to say, "Both Barron's and Business

01:16:35 10 Week carry articles bashing Household this week, both of which

11 are largely reprints of a report previously published by a

12 short-selling boutique."

13 Do you see that?

14 A. Yes, I do.

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

16 boutique?

17 A. So, while most investors in the stock market buy stock in

18 the hope that stock price will go up and they will make money,

19 there are certain investors who attempt to make money by

01:17:06 20 selling stock short. Namely, they borrow shares that they do

21 not own from their broker and sell those shares in the

22 marketplace hoping that stock price will drop and they will be

23 able to buy those shares back at a cheaper price to return

24 them to their broker and make money in this manner.

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

Bajaj - direct

4172

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

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

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

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

11 A. Yes.

12 Q. Okay.

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

16 A. That was his conclusion.

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

18 A. Yes, I did.

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

21 A. Yes, I did.

22 Q. Let me show you Defendants' 516.

23 MR. KAVALER: A copy for counsel.

24 BY MR. KAVALER:

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

Bajaj - direct

4173

1 (Document tendered to counsel and the witness.)

2 BY MR. KAVALER:

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

4 A. Yes.

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

6 MR. BURKHOLZ: No objection. Limiting instruction.

7 MR. KAVALER: I agree with that.

8 THE COURT: Admitted with a limiting instruction.

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

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

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

13 BY MR. KAVALER:

14 Q. And what is this, Professor?

01:19:09 15 A. Well, this is one of the reports authored by William Ryan
16 when he was with the short-selling boutique Ventana
17 Capital, Inc. And the Barron's article that Professor Fischel
18 cited was largely a reprint of allegations made in Mr. Ryan's
19 Ventana Capital report, which was published several weeks
01:19:44 20 earlier.

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

23 A. Yes.

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

Bajaj - direct

4174

1 A. That is correct.

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

4 A. Yes.

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

8 MR. BURKHOLZ: Objection. Leading.

9 BY MR. KAVALER:

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

11 MR. KAVALER: Withdrawn.

12 BY MR. KAVALER:

13 Q. Would you expect the market to have reacted to the
14 information in the Ventana Capital account story about
01:20:20 15 Household, or not, within a reasonable time after October 12,
16 2001?

17 A. Yes.

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

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

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

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

Bajaj - direct

4175

1 BY MR. KAVALER:

2 Q. A copy for you.

3 (Document tendered to counsel and the witness.)

4 BY MR. KAVALER:

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

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

8 A. Yes, I did.

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

11 THE COURT: Admitted --

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

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

16 MR. KAVALER: Thank you, your Honor.

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

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

20 BY MR. KAVALER:

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

23 A. That is correct.

24 Q. All right.

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

Bajaj - direct

4176

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

6 Do you see that?

7 A. Yes, I do.

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

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

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

18 MR. BURKHOLZ: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. KAVALER:

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

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

Bajaj - direct

4177

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

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

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

6 BY MR. KAVALER:

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

9 A. He is recommending a sell.

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

12 MR. KAVALER: Withdrawn.

13 BY MR. KAVALER:

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

18 A. Yes.

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

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

Bajaj - direct

4178

1 THE COURT: Sustained.

2 BY MR. KAVALER:

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

7 A. Yes. I believe --

8 Q. What's that opinion?

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

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

16 A. Yes, I do.

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

18 BY MR. KAVALER:

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

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

Bajaj - direct

4179

1 And if you see on the left-hand side, same opinion is
2 expressed by Mr. Ryan on October 12 and October 18. On
3 October 12, Mr. Ryan says, "We believe Household, at a
4 minimum, is set up for a dramatic decline in quality of
01:25:53 5 company's earnings and at most a potential reduction in
6 earnings estimates and/or credit-related charges."

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

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

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

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

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

18 A. It's not appropriate.

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

01:26:50 20 A. Sure.

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

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

01:27:20 25 A copy for counsel.

Bajaj - direct

4180

1 BY MR. KAVALER:

2 Q. A copy for you, Professor.

3 (Document tendered to counsel and the witness.)

4 BY MR. KAVALER:

01:27:28 5 Q. What is this, Professor?

6 A. This is an article I found on conference in -- that was
7 published in American Banker on December 5, 2001.

8 Q. And did it form part of your opinion in this case?

9 A. Yes.

01:27:49 10 MR. KAVALER: Your Honor, I offer -- this is
11 Plaintiffs' 1433. I offer it in any event. Plaintiffs' 1433,
12 your Honor. The same limiting instruction.

13 THE COURT: It's admitted with the same limiting
14 instruction.

01:28:01 15 (Plaintiff's Exhibit No. 1433 received in evidence.)

16 MR. KAVALER: And, ladies and gentlemen, this is Tab
17 3 in your binder today.

18 BY MR. KAVALER:

19 Q. Now, what's the date of this article, Professor?

01:28:06 20 A. The article is dated December 5, 2001.

21 Q. And you see on the first page there, it says, "The
22 Chairman and Chief Executive of Household International
23 stepped forward Tuesday with a rebuttal of accusations that
24 his consumer finance company is playing accounting tricks to
01:28:23 25 mask bad loans, saying repeatedly that his company has a good

Bajaj - direct

4181

1 balance sheet and a conservative approach."

2 Do you see that?

3 A. Yes, I do.

4 Q. Okay.

01:28:31 5 Now, Professor Fischel picked this article for his
6 third disclosure date claiming that it disclosed information
7 which inflated Household's stock price; is that right?

8 A. That is correct.

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

01:28:44 10 A. I did.

11 Q. And had the investors found out about this information
12 previously?

13 A. Yes. In fact, right after the Barron's article, there
14 were several analyst reports that anticipated Mr. Aldinger's
01:29:02 15 remarks at a Goldman Sachs news con- -- investor conference --
16 on Tuesday, December the 4th. It was a well-publicized event.

17 And Mr. Aldinger spoke at that event between 2:30 and
18 3:20 Eastern. And as this article says, he gave his address
19 on Tuesday, which is December 4th. American Banker is simply
01:29:31 20 reporting on what happened the previous day.

21 Q. Let's mark Plaintiffs' Exhibit 1248.

22 MR. KAVALER: A copy for counsel.

23 BY MR. KAVALER:

24 Q. A copy for you, Professor.

01:29:42 25 (Document tendered to counsel and the witness.)

Bajaj - direct

4182

1 BY MR. KAVALER:

2 Q. Is this a document that you considered in coming to your
3 opinions that you're testifying about here today?

4 A. Yes.

01:29:46 5 Q. And what do you understand this to be?

6 A. This appears to be Mr. Aldinger's presentation at Goldman
7 Sachs conference dated December 4, 2001.

8 MR. KAVALER: Your Honor, I offer Plaintiffs' 1248.

9 I'm sorry, it's in evidence. I apologize. I don't offer it.

01:30:08 10 Ladies and gentlemen, it's Tab 3 of your binder
11 behind the first blue subdivider.

12 I knew I had seen that before. Okay.

13 BY MR. KAVALER:

14 Q. And on Slide 9 of Bill Aldinger's presentation, which is
01:30:21 15 at page ending in 152, he says, "Why are Household's credit
16 losses better?"

17 A. I see that.

18 Q. "Prudent growth rates, lower risk portfolio mix."

19 Do you see that?

01:30:40 20 A. Yes.

21 Q. All right.

22 And on Slide 26, on page ending in 160, he talks
23 about summary, and the third bullet down is "Fortress Balance
24 Sheet."

01:30:57 25 Do you see that?

Bajaj - direct

4183

1 A. Yes, I do.

2 Q. What is the significance of the fact that you located this
3 presentation made on December 4, which is earlier in time than
4 the American Banker article on December 5?

01:31:17 5 A. Well, whatever the market price did on December 5 -- and,
6 according to my event study, it did nothing significant -- it
7 should not be attributed to Mr. Aldinger's presentation
8 because that news was in the marketplace the day before.

9 There is also another inconsistency here in Professor
01:31:41 10 Fischel's theory. He testified that beginning November 15th,
11 the market stopped believing Household. And if the market
12 stopped believing Household and Mr. Aldinger denies Barron's
13 accusations, why would he say that would lead to stock price
14 becoming more inflated?

01:32:08 15 Q. He -- in your last -- you say "why would he say." You
16 mean Professor Fischel?

17 A. Yes.

18 Q. All right.

19 Have you prepared a demonstrative reflecting on the
01:32:17 20 interrelationship of these two exhibits?

21 A. Yes, I have.

22 MR. KAVALER: Let's look at DDX 559-06.

23 BY MR. KAVALER:

24 Q. And please tell us, Professor, what this shows.

01:32:28 25 A. Well, on the right-hand side, we have the American

Bajaj - direct

4184

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

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

9 A. Yes.

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

11 A. Okay.

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

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

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

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

21 A. Yes.

22 Q. And you were here then?

23 A. Yes.

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

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

Bajaj - direct

4185

1 MR. KAVALER: A copy for counsel.

2 BY MR. KAVALER:

3 Q. A copy for you, Professor.

4 (Document tendered to counsel and the witness.)

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

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

7 binder.

8 BY MR. KAVALER:

9 Q. And what is this, Professor?

01:34:13 10 A. Well, this is an analyst report issued by certain analysts

11 at Legg Mason investment firm on 11 December, 2001, at 6:04

12 p.m. Eastern. It says "Part 3" in its title.

13 Q. That's the Legg Mason report referred to by Professor

14 Fischel as Item 4 here on Plaintiffs' Demonstrative 150?

01:34:43 15 A. Yes.

16 Q. Okay.

17 And if you look at the second page, it says, quote --

18 last paragraph -- "We find this lenient re-aging policy

19 disturbing, as it undermines the analytical value of the

01:34:56 20 reported asset quality statistics."

21 Do you see that language?

22 A. Yes, I do.

23 Q. All right.

24 And what role did this report play, as you understand

01:35:05 25 it, in Professor Fischel's analysis?

Bajaj - direct

4186

1 A. Professor Fischel concluded -- incorrectly so, I
2 believe -- that the market reacted negatively to this report
3 the next trading day, on December 12, 2001. And he,
4 therefore, concluded some \$2.39 of inflation came out of the
01:35:32 5 stock.

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

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

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

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

16 BY MR. KAVALER:

17 Q. A copy for you, Professor.

18 (Document tendered to counsel and the witness.)

19 BY MR. KAVALER:

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

22 A. Yes.

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

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

Bajaj - direct

4187

1 instruction.

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

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

5 BY MR. KAVALER:

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

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

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

11 A. During trading hours.

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

21 Do you see that?

22 A. Yes, I do.

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

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

Bajaj - direct

4188

1 trading hours on December 11th.

2 Q. Let me show you Plaintiffs' 319.

3 MR. KAVALER: A copy for counsel.

4 BY MR. KAVALER:

01:37:57 5 Q. A copy for you, Professor.

6 (Document tendered to counsel and the witness.)

7 BY MR. KAVALER:

8 Q. Is this the document you're referring to?

9 A. Yes.

01:38:04 10 Q. Did you rely on this in forming your opinions?

11 A. Yes, I did.

12 MR. KAVALER: Your Honor, I offer Plaintiffs' 319 in

13 evidence, subject to the same limiting instruction.

14 THE COURT: Admitted.

01:38:14 15 (Plaintiff's Exhibit No. 319 received in evidence.)

16 MR. KAVALER: Ladies and gentlemen, this is behind

17 the next blue subdivider behind Tab 4 in your binders.

18 BY MR. KAVALER:

19 Q. And if you look at page ending in 380, the first page,

01:38:31 20 Professor, about four lines from the bottom, it says, "We

21 believe the company's lenient and aggressive asset quality

22 policies and the wide variation in how these policies are

23 implemented among HI's five major business lines call this

24 record into question."

01:38:46 25 Do you see that?

Bajaj - direct

4189

1 A. Yes, I do.

2 Q. What is the significance, in your opinion, of the fact
3 that you found these earlier analyst reports?

4 A. Well, there was no news in the third analyst report that
01:38:59 5 Professor Fischel mistakenly attributed the Household negative
6 stock price reaction to.

7 Q. Did you prepare a demonstrative that helps illustrate this
8 point?

9 A. Yes, I did.

01:39:12 10 MR. KAVALER: Let's have DDX 559-08, please.

11 BY MR. KAVALER:

12 Q. Professor, please tell us what this shows us.

13 A. Well, on the right-hand side is what Professor Fischel
14 considered to be news, for which he attributed what he
01:39:29 15 concluded to be negative price reaction on December 12. It
16 says, "Lenient re-aging policy disturbing as it undermines the
17 analytical value of reported asset quality statistics."

18 And on the left-hand side, we find the first of two
19 reports issued by the same author from the same company during
01:39:53 20 trading hours on December 11, making the same allegations.

21 Q. Now, Professor, I see that both of these reports are
22 issued on December 11. The one on the right at 6:04 p.m. and
23 the one on the left at 10:50 a.m., and they're both Eastern
24 Standard Time.

01:40:11 25 What is the significance of that time difference of

Bajaj - direct

4190

1 about seven hours?

2 A. So, if you did not have the earlier reports and the only
3 report the market had received was the one that Professor
4 Fischel considered at 6:04 p.m. Eastern, by then stock market

01:40:31 5 would have closed. So, market wouldn't have had the
6 opportunity to react to this report. And that's why you would
7 look at what the market did on December 12th --

8 Q. And that's what they used?

9 A. -- in response to this report.

01:40:43 10 Q. And that's -- he used the 12th?

11 A. Yes.

12 Q. Because he's working off the 6:00 p.m. release?

13 A. Yes.

14 Q. In your opinion, what would actually have happened when
01:40:51 15 the first release came out at 10:50 in the morning?

16 A. The first one came out at 10:50, and the second one came
17 out at 1:15 in the afternoon, both during trading hours.

18 Q. And what would have -- would the market have reacted
19 during trading hours?

01:41:03 20 A. Yes. If it was significant, it would have reacted then.

21 Q. So, the one -- in your opinion, is the one Professor
22 Fischel is relying on stale?

23 A. It is stale information.

24 Q. Should I cross it off my list?

01:41:15 25 A. Sure.

Bajaj - direct

4191

1 Q. Let's look at the next one. Day number 5, February 27,
2 2002. Professor Fischel says something about expansion of
3 best practices.

4 He's discussing a news article there?

01:41:50 5 A. Or a press release. I don't recall.

6 Q. All right. Let's see if we can refresh your recollection.

7 Here's Plaintiffs' 1453.

8 MR. KAVALER: Copy for counsel.

9 BY MR. KAVALER:

01:41:58 10 Q. Copy for you.

11 (Document tendered to counsel and the witness.)

12 BY MR. KAVALER:

13 Q. Does this refresh your recollection as to what he's
14 talking about, Professor?

01:42:06 15 A. Yes.

16 Q. Is this something you reviewed in coming to your opinion?

17 A. Yes, I did.

18 MR. KAVALER: Your Honor, I offer Plaintiffs' 1453 in
19 evidence, subject to the same limiting instruction.

01:42:15 20 THE COURT: Admitted.

21 (Plaintiffs' Exhibit No. 1453 received in evidence.)

22 MR. KAVALER: Ladies and gentlemen, this is Tab 5 in
23 your binder.

24 BY MR. KAVALER:

01:42:23 25 Q. This one on Page 1 in the first paragraph says, "Household

Bajaj - direct

4192

1 announced today significant additions to its already extensive
2 set of voluntary responsible consumer lending practices
3 following on the heels of the company's best practices
4 initiatives announced in July, 2001. Household is, once
01:42:47 5 again, raising industry standards for responsibly serving
6 middle market borrowers."

7 Do you see that?

8 A. Yes, I do.

9 Q. And this is the article that underlies Professor Fischel's
01:43:02 10 fifth disclosure date, correct?

11 A. Correct.

12 Q. Did you identify any previous article containing the same
13 information?

14 A. I did.

01:43:10 15 Q. Let me show you Defendants' 1084.

16 (Document tendered to counsel and the witness.)

17 BY MR. KAVALER:

18 Q. Is this one such article, Professor?

19 A. Yes, it is.

01:43:26 20 Q. And did you rely on it in forming your opinions?

21 A. Yes, I did.

22 MR. KAVALER: I offer Defendants' 1084, your Honor,
23 subject to the same limiting instruction.

24 THE COURT: Admitted.

01:43:43 25 (Defendants' Exhibit No. 1084 received in evidence.)

Bajaj - direct

4193

1 MR. KAVALER: And this, ladies and gentlemen, is also
2 in Tab 5 behind the blue subdivider.

3 BY MR. KAVALER:

4 Q. Professor, this is an article from the Chicago Tribune
01:43:52 5 dated, when?

6 A. 26th of February, 2002.

7 Q. And Professor Fischel's article -- or reference -- is to
8 something dated February 27th, 2002; is that right?

9 A. That is correct.

01:44:08 10 Q. Okay.

11 And this article says on Page 1, "Household Finance
12 and Beneficial, which traditionally make loans to less
13 creditworthy borrowers, will cut loan rates a quarter
14 percentage point for every year a borrower makes payments
01:44:22 15 within 30 days of the due date."

16 Do you see that?

17 A. Yes.

18 Q. And it continues to say, "Other reforms included caps on
19 points and fees, a one-page plain-English disclosure form and
01:44:34 20 a provision that would let borrowers cancel a deal as late as
21 ten days after getting their money."

22 Do you see that?

23 A. Yes, I do.

24 Q. And do you consider these reforms to be the same as the
01:44:44 25 voluntary responsible consumer lending practices referenced

Bajaj - direct

4194

1 the following day in the article Professor Fischel chose?

2 A. They are identical.

3 Q. And what, in your opinion, is the significance of the fact
4 that they're identical?

01:44:55 5 A. Well, if the market had reacted to these announcements, it
6 would have reacted on February 26th, not on February 27th.

7 And, once again, this is also inconsistent with Professor
8 Fischel's theory that after November 15th if Household said
9 "We're not doing anything wrong," market stopped believing

01:45:26 10 them. But over here Household is advancing itself in a
11 positive light and, according to Professor Fischel, the market
12 is reacting positively and that is introducing inflation in
13 the stock.

14 Q. Okay.

01:45:39 15 Did you prepare a demonstrative that illustrates why
16 this selection by Professor Fischel was also stale
17 information?

18 A. Yes, I did.

19 MR. KAVALER: Can we see DDX 559-12, please.

20 BY MR. KAVALER:

21 Q. Tell us what this is, Professor Bajaj.

22 A. Well, on the right-hand side we have the source Professor
23 Fischel cites about company's best practices initiative as a
24 source of inflation introduced into Household's stock price on

01:46:15 25 February 27th. And on the left-hand side, you have Chicago

Bajaj - direct

4195

1 Tribune's story reporting on this news the previous day. So,
2 it was obviously stale information on the 27th.

3 Q. Based on your testimony just now, would it be correct for
4 Professor Fischel to include the February 27th item as one of
01:46:43 5 the 14 disclosure dates in his survey?

6 A. It would not be correct for him to include it.

7 Q. Should I cross that one off my list, as well?

8 A. Okay.

9 Q. Let's turn to the next one. Before I do that, Professor,
01:47:06 10 let me ask you this: Did Professor Fischel testify that in
11 order for inflation to enter a company's stock price, there
12 must be an actionable disclosure defect?

13 A. Yes.

14 Q. Did plaintiffs allege any false statement that occurred on
01:47:22 15 February 27th that you know of?

16 A. I don't believe plaintiffs have asserted the statement to
17 be false.

18 Q. All right.

19 Did Professor Fischel find any inflation on this
01:47:31 20 date?

21 A. He claimed to.

22 Q. How much inflation did he find, based on their
23 demonstrative?

24 A. \$1.64, if I'm reading it correctly.

01:47:43 25 Q. Is that right here (indicating)?

Bajaj - direct

4196

1 A. Yes.

2 Q. Plus 1.64. It's in black. A lot of these numbers are in
3 red. Some are in black. Okay.

4 A. Okay.

01:47:54 5 Q. So, tell me, even if on every other date that Professor
6 Fischel identified -- well, let me ask you this: How can his
7 7.97 inflation calculation be consistent with plaintiffs'
8 fraud claims in light of the fact that he's got a significant
9 date here where there's no claimed false statement?

01:48:17 10 A. Well, by definition, 7.97 cannot be the right answer
11 because he included a date that plaintiffs don't allege any
12 falsehood occurred. And, therefore, by definition there can
13 be no inflation on that day.

14 Q. I'm sure Professor Fischel would say, "But it's a net
01:48:34 15 number." He's taking the 7.97, netted all these numbers. I
16 see what he did here. I think his words were, "I gave you
17 credit for the numbers that appear in black."

18 Does that change your view?

19 A. No. His math is wrong.

01:48:47 20 Q. He added this column up wrong?

21 A. Absolutely.

22 Q. Because?

23 A. Because the dollar sixty-four should not be there at all.

24 It's not in plaintiffs' theory of the case. It's not in
01:48:59 25 plaintiffs' allegations.

Bajaj - direct

4197

1 Q. But that would make this number higher?

2 A. That's besides the point. It would make the number
3 higher, but the number is incorrect.

4 Q. I'm calling to your attention a number that's bad for me.

01:49:11 5 A. Okay.

6 Q. But this number would be higher (indicating), but it would
7 still be wrong?

8 A. It would be wrong, yes.

9 Q. Okay.

01:49:25 10 Let's turn to Day 6. July 26th, Bellingham Herald
11 article. Let's look at Plaintiffs' 283, which is already in
12 evidence.

13 MR. KAVALER: And, ladies and gentlemen, this is in
14 Tab 6 of your notebook.

01:49:40 15 Copy for counsel.

16 BY MR. KAVALER:

17 Q. A copy for you, Professor.

18 (Document tendered to counsel and the witness.)

19 BY MR. KAVALER:

01:49:49 20 Q. This is the article that underlies Professor Fischel's
21 sixth disclosure date, correct?

22 A. That's correct.

23 Q. Okay.

24 And let's see what it says. Look at page ending in

01:50:00 25 077 at the top: "But this week, Hayden said an internal

Bajaj - direct

4198

1 company probe of the complaints had uncovered some serious
2 problems."

3 Do you see that? She's talking about the Bellingham
4 office?

01:50:13 5 A. Yes.

6 Q. "Those investigations did, indeed, show there were some
7 customers whom we believe had legitimate confusion on the
8 interest rate of their loans."

9 Do you see that?

01:50:23 10 A. Yes, I do.

11 Q. All right.

12 And he picked this article for his sixth disclosure
13 date because he said this information caused inflation to be
14 removed from Household's stock price?

01:50:33 15 A. Yes.

16 Q. All right.

17 And did you analyze this disclosure, as well?

18 A. I did.

19 Q. Did you identify a previous article which contained the
01:50:43 20 same information?

21 A. Yes, I did.

22 Q. Let me show you Plaintiffs' Exhibit 1446, which is in
23 evidence.

24 MR. KAVALER: A copy for counsel.

25 BY MR. KAVALER:

Bajaj - direct

4199

1 Q. A copy for you, Professor.

2 (Document tendered to counsel and the witness.)

3 BY MR. KAVALER:

4 Q. The date Professor Fischel has here for Item 6 is July
01:51:07 5 26th, 2002.

6 What is the date for Plaintiffs' Exhibit 1446?

7 A. It is May 31, 2002.

8 Q. Is that earlier?

9 A. It is earlier than July 26th, 2002.

01:51:20 10 MR. KAVALER: Ladies and gentlemen, this document
11 appears at Tab 6 in your binder.

12 Is that right? Yes.

13 Behind the blue subdivider at Tab 6.

14 BY MR. KAVALER:

01:51:37 15 Q. And if you look at the second page of this document,
16 Professor, it says, in the sixth and seventh paragraphs,
17 "'Some customers in Bellingham may, indeed, have been
18 justified in their confusion about the rate of their loan,'
19 she said. Ms. Hayden said Household took full and prompt
01:51:55 20 responsibility."

21 Do you see that?

22 A. Yes.

23 Q. What is the significance of the fact that you found a May
24 31 article which contains --

01:52:03 25 MR. KAVALER: Withdrawn.

Bajaj - direct

4200

1 BY MR. KAVALER:

2 Q. Do you view the information disclosed in the May 31
3 article to be identical to the information contained in the
4 July 26th article?

01:52:10 5 A. Yes, I do.

6 Q. What is the significance of the fact that you found an
7 article dated May 31, which contains the same article as
8 the -- same information as the -- article dated July 26, which
9 Professor Fischel counts as his sixth disclosure date?

01:52:26 10 A. Once again, Professor Fischel made the mistake of counting
11 old information as news and a corrective disclosure.

12 Q. Did you prepare a demonstrative that illustrates this
13 point?

14 A. Yes.

01:52:39 15 MR. KAVALER: Can we have 559-14, please.

16 BY MR. KAVALER:

17 Q. What does this show us, Professor?

18 A. On the right is the Bellingham Herald article that
19 Professor Fischel cited as a corrective disclosure. On the
01:52:55 20 left is the American Banker article we just reviewed dated May
21 31, 2002, some two months earlier which had the same
22 information.

23 Q. Based on your testimony, Professor, is it possible for
24 Professor Fischel to have correctly included as his sixth
01:53:11 25 disclosure date July 26th, 2002?

Bajaj - direct

4201

1 A. No. He made a mistake.

2 Q. I'll cross this one off.

3 Okay with you?

4 A. Yes.

01:53:24 5 Q. Okay.

6 Let's go to the next date, Day 7. This is --

7 Professor Fischel's entry reads, "8-14-02 Financial

8 Restatement."

9 You know what that's about?

01:53:39 10 A. Yes.

11 Q. And he picked this one for his seventh disclosure date
12 because he said it revealed information to the market causing
13 inflation to be removed from Household's stock price?

14 A. That is correct.

01:53:50 15 Q. Did you analyze this disclosure date, as well?

16 A. Yes, I did.

17 Q. Did you determine whether the restatement significantly
18 affected Household's stock price?

19 A. Yes, I did determine.

01:54:00 20 Q. What did you conclude?

21 A. This event is a little complicated.

22 Q. Unlike the rest of your testimony.

23 (Laughter.)

24 BY THE WITNESS:

01:54:13 25 A. Household announced a restatement of its earnings due to

Bajaj - direct

4202

1 some credit card-related amortization items on August 14,
2 2002, and the stock, indeed, opened significantly lower.
3 Throughout the day, there was analyst commentary indicating
4 that this was a technical accounting matter that affected
01:54:49 5 different -- that reflected difference of opinion between
6 Household's old auditor and Household's new auditor; did not
7 indicate any malfeasance on part of Household; that the
8 amounts involved were small relative to Household's balance
9 sheet and income; and, in any case, this did not involve any
01:55:16 10 cash implications.

11 And a fundamental principle of finance is that in an
12 efficient market, accounting changes that do not involve cash
13 flow differences, the market looks through, does not react to.

14 And as this commentary hit the market during the day
01:55:38 15 on August 14th and continued after the closing hours on August
16 14th and into August 15th, Household's stock price continued
17 to recover. On August 14th, it closed up from where it opened
18 or relative to previous day's close by 29 cents. So, it
19 hadn't declined by the end of the day on August 14th. And
01:56:03 20 August 15th, it went up and, if I recall correctly,
21 significantly so, according to Professor Fischel's event
22 study.

23 In any case, when you add August 14th and August
24 15th, the period over which market absorbed this news, the
01:56:21 25 market did not react negatively to this news at all, and it

Bajaj - direct

4203

1 was not significant by anybody's event study.

2 Q. Do you have a demonstrative that illustrates what you just
3 said, Professor?

4 A. Yes, I do.

01:56:35 5 MR. KAVALER: Can we see 559-16, please.

6 BY MR. KAVALER:

7 Q. What are we looking at here, Professor?

8 A. Professor Fischel focuses on Household's stock price
9 reaction on August 14th, which he says is significantly
01:56:51 10 negative, even though in absolute terms, Household's stock
11 price increased that day.

12 But what I indicate is when you look at the two-day
13 period of August 14th and August 15th -- and I believe I
14 recall Professor Fischel testifying here on the stand that
01:57:10 15 this was a controversial day, where there was a lot of analyst
16 commentary. When you look at the totality of analyst
17 commentary and the market understanding what this complicated
18 accounting issue was, over those two dates, even in Professor
19 Fischel's own event study, nothing happened. There was no
01:57:28 20 significant decline in Household's stock price after adjusting
21 for market and the industry.

22 Q. Now, Professor, in the last few examples, you've always
23 pointed to things being virtually immediately absorbed by the
24 market, and here you're telling us it took two separate days
01:57:42 25 for the market to fully understand this. How do you reconcile

Bajaj - direct

4204

1 those two opinions?

2 A. Well, I think they are perfectly consistent. It's a facts-
3 and-circumstances issue, and that's why you need some
4 expertise to evaluate the results of an event study.

01:57:57 5 Here, there must have been at least a dozen analyst
6 reports that were received over August 14th and August 15th.
7 And we have to remember the environment and the period over
8 which this restatement was announced. This was in the middle
9 of 2002. And ever since Enron's implosion on August 3rd --
01:58:22 10 which is Professor Fischel's Barron's date -- a lot of
11 analysts said that a mere suggestion that some company's
12 accounting may be questionable would oftentimes elicit an
13 immediate negative reaction on part of the market that was --
14 that had heightened sensitivity after Enron to accounting-
01:58:43 15 related issues.

16 And it took a lot of back-and-forth between analysts
17 to flush out what this restatement was about for the market to
18 realize this was not cash flow relevant. This was not
19 significant. This was simply a technical accounting matter
01:58:59 20 where two auditors disagreed. And, therefore, I believe it's
21 appropriate in an instance like this to look at a two-day
22 price reaction.

23 Q. Now, Professor, you mentioned numerous analyst reports.
24 We've all seen those before. So, I won't waste everyone's
01:59:13 25 time showing them to you, again. But you've seen them.

Bajaj - direct

4205

1 They're all in the record. You know they're exhibits in this
2 case?

3 A. Yes, I'm familiar with that.

4 Q. Okay.

01:59:20 5 So, let's go back to Professor Fischel's
6 demonstrative, Plaintiffs' Demonstrative 150 here.

7 So, in your opinion, is Professor Fischel right in
8 counting as his seventh disclosure date which caused inflation
9 to come out of the price of Household stock August 14th, 2002?

01:59:38 10 A. No, he is not.

11 Q. So, should I cross it off the list?

12 A. Yes.

13 Q. Let's to the eighth date. This is August 16, the Forbes
14 article. August 16 of 2002.

01:59:56 15 Are you familiar with that article?

16 A. Yes, I am.

17 MR. KAVALER: Give me a second here.

18 (Brief pause.)

19 BY MR. KAVALER:

02:00:42 20 Q. Notwithstanding what I just told you, I do need to show
21 you one analyst report to -- from that period.

22 MR. KAVALER: Counsel, Defendants' 566.

23 BY MR. KAVALER:

24 Q. And one for you, Professor Bajaj.

25 (Document tendered to counsel and the witness.)

Bajaj - direct

4206

1 BY MR. KAVALER:

2 Q. Is this one of the analyst reports you were talking about
3 which discussed the financial restatement?

4 A. Yes.

02:00:56 5 Q. Did you rely on this in coming to your opinion in this
6 case?

7 A. Yes.

8 MR. KAVALER: Your Honor, I offer Defendants' 566,
9 subject to the same limiting instruction.

02:01:07 10 THE COURT: Admitted.

11 (Defendant's Exhibit No. 566 received in evidence.)

12 MR. KAVALER: Ladies and gentlemen, that's at Tab 7
13 in your binder.

14 BY MR. KAVALER:

02:01:12 15 Q. I'm not going to spend time going through it with you,
16 though, Professor.

17 Let me also show you Plaintiffs' 69.

18 MR. KAVALER: Copy for counsel.

19 This is already in evidence.

20 BY MR. KAVALER:

21 Q. A copy for you, Professor Bajaj.

22 (Document tendered to counsel and the witness.)

23 BY MR. KAVALER:

24 Q. Is this another document related to the -- I think I'm
02:01:42 25 ahead of myself. Give me a second here.

Bajaj - direct

4207

1 (Brief pause.)

2 MR. KAVALER: Okay. I'm slightly ahead of myself.

3 BY MR. KAVALER:

4 Q. So, we're up to 8, the Forbes "Home Wrecker" article.

02:02:03 5 Let's look at Plaintiffs' 69, which is in evidence.

6 MR. KAVALER: And that's Tab 8 in the jury's binder.

7 BY MR. KAVALER:

8 Q. Does this attach the Forbes "Home Wrecker" article,

9 Professor?

02:02:20 10 A. Yes.

11 Q. Okay.

12 And this article is what Professor Fischel chose as

13 Item 8 on his list?

14 A. Yes.

02:02:32 15 Q. If you go to Page 363 in the middle of the page, it says,

16 "In July, Forbes has learned authorities from more than a

17 dozen states descended on Household to demand refunds and

18 reforms."

19 Do you see that?

02:02:51 20 A. Yes, I do.

21 Q. And Professor Fischel picked this information for his

22 eighth disclosure date, claiming it revealed information to

23 the market causing inflation to be removed from Household's

24 stock price; is that right?

02:03:04 25 A. That's correct.

Bajaj - direct

4208

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

2 A. I did.

3 Q. Did you identify a prior disclosure with similar
4 information?

02:03:12 5 A. Yes, I did.

6 Q. And what did you find?

7 A. I found that same information was received by the market,
8 and the market did not react.

9 Q. Okay.

02:03:23 10 What was the date of the Forbes article?

11 A. The date of the e-mail is August 16. The Forbes article
12 has a date of September 2nd. But it's common practice for
13 magazines like Forbes and Business Week to hit the newsstand
14 prior to the date indicated on that addition. And the e-mail

02:03:54 15 exchange says that this Forbes article -- this Forbes issue --
16 will hit the newsstand on Monday, August 19th.

17 Q. So, the 8-16 date is the date of the e-mail, and that's
18 the date Professor Fischel used on his chart?

19 A. Yes.

02:04:09 20 Q. Okay.

21 Let's look at Defendants' 74.

22 MR. KAVALER: A copy for counsel.

23 BY MR. KAVALER:

24 Q. A copy for you.

02:04:17 25 (Document tendered to counsel and the witness.)

Bajaj - direct

4209

1 MR. KAVALER: And this is in evidence.

2 BY MR. KAVALER:

3 Q. Is this the earlier disclosure of the same thing that
4 you're looking at -- that you're referring to?

02:04:36 5 A. Yes.

6 Q. And this is a transcript of an earnings call that
7 Household held on July 17?

8 A. Yes.

9 Q. Remind us what an earnings call is, Professor.

02:04:46 10 A. Well, every quarter when company announces -- a
11 publicly-traded company announces -- its earnings, it
12 typically issues a press release stating the earnings. Along
13 with that, they host a call where analysts can call in and ask
14 questions. They discuss their results and, then, subsequently
02:05:08 15 they formally file with the Securities and Exchange Commission
16 a quarterly report presenting results of the quarter formally
17 with the Securities and Exchange Commission.

18 MR. KAVALER: So, Defendants' Exhibit 74 is in your
19 binder, ladies and gentlemen, behind Tab 8, behind the first
02:05:31 20 blue subdivider.

21 BY MR. KAVALER:

22 Q. Now, turn, if you will, Professor, to the page ending with
23 491 in Defendants' Exhibit 74, please.

24 And you see there it says, "On the AGs, obviously,
02:05:51 25 again, it's a very political issue"?

Bajaj - direct

4210

1 A. Yes.

2 Q. Okay.

3 Does this mean to you that you found an earlier
4 disclosure of the same subject that Professor Fischel cited
02:06:00 5 the Forbes article for?

6 A. Yes. And there was a lot of talk in analyst reports and
7 other commentary around this time.

8 Q. Now, when this was first disclosed or previously disclosed
9 on July 17, 2002, in the analyst call, which is Defendants'
02:06:18 10 74, did the market react significantly to that?

11 A. No, it did not.

12 Q. Based on the opinion you just gave, does August 16, 2002,
13 qualify under Professor Fischel's theory as one of the
14 disclosure dates which caused inflation to come out of the
02:06:46 15 price of Household stock?

16 A. No.

17 Q. Should I cross it off the list?

18 A. Yes.

19 Q. Let's turn to the next one. Item No. 9 is August 27, the
02:07:07 20 KPW Report and the Bellingham Herald.

21 Let me show you Plaintiffs' 1429, which is in
22 evidence.

23 MR. KAVALER: And is Tab 9 of your binder, ladies and
24 gentlemen.

02:07:20 25 Copy for counsel.

Bajaj - direct

4211

1 BY MR. KAVALER:

2 Q. A copy for you, Professor.

3 (Document tendered to counsel and the witness.)

4 BY THE WITNESS:

02:07:25 5 A. Thank you.

6 BY MR. KAVALER:

7 Q. Look at the first page. This is a -- the Bellingham
8 Herald from August 27, 2002?

9 A. Yes.

02:07:39 10 Q. The first page, it says, "A state investigative report on
11 Household Finance Corp. suppressed by court order for more
12 than three months contains a blistering assessment of the
13 mortgage lending giant's mortgage practices."

14 Do you see that?

02:07:53 15 A. Yes.

16 Q. This is what Professor Fischel picked as his ninth
17 disclosure date, saying that it revealed information to the
18 market which caused inflation to be removed from Household's
19 stock price?

02:08:04 20 A. Yes.

21 Q. Did you analyze this date, as well?

22 A. I did.

23 Q. Did you identify a previous article which contained
24 similar information?

02:08:12 25 A. Yes.

Bajaj - direct

4212

1 Q. Let me show you Plaintiffs' Exhibit 1428.

2 MR. KAVALER: A copy for counsel.

3 BY MR. KAVALER:

4 Q. A copy for you, Professor Bajaj.

5 (Document tendered to counsel and the witness.)

6 BY MR. KAVALER:

7 Q. Is this an article that you looked at in forming your
8 opinions that you're testifying here today?

9 A. Yes, I did.

02:08:35 10 Q. Testifying to here today.

11 MR. KAVALER: Your Honor, I offer Plaintiffs' Exhibit
12 1428, subject to the same limiting instruction.

13 THE COURT: Admitted.

14 (Plaintiffs' Exhibit No. 1428 received in evidence.)

02:08:42 15 MR. KAVALER: And, ladies and gentlemen, this is also
16 in Tab 9 of your binder. It's behind the blue subdivider.

17 BY MR. KAVALER:

18 Q. And what is the date on this one, Professor?

19 A. August 26, 2002.

02:08:56 20 Q. The day before Professor Fischel's date, right?

21 A. Yes.

22 Q. And in what periodical did this appear?

23 A. This appeared in American Banker.

24 Q. Look at Page 1. It says, "A controversial -- I think it's
02:09:12 25 talking about the Washington Department of Financial

Bajaj - direct

4213

1 Institutions.

2 "A controversial report on Household

3 International, Inc., alleges that the subprime lender violated

4 federal and state consumer protection laws by failing to make

02:09:23 5 key disclosures and by using sales tactics intended to

6 mislead, misdirect or confuse the borrower."

7 Do you see that?

8 A. Yes, I do.

9 Q. Let me show you Plaintiffs' Exhibit 284.

02:09:45 10 MR. KAVALER: Copy for counsel.

11 BY MR. KAVALER:

12 Q. A copy for you, Professor.

13 (Document tendered to counsel and the witness.)

14 BY MR. KAVALER:

02:09:50 15 Q. Is this another document that you looked at in formulating

16 your opinions that you're testifying to here today?

17 A. I did.

18 MR. KAVALER: Your Honor, I offer Plaintiffs' 286 in

19 evidence, subject to the same limiting instruction.

02:09:59 20 THE COURT: 286?

21 MR. KAVALER: 286. I apologize, your Honor. 286.

22 THE COURT: Admitted.

23 (Plaintiffs' Exhibit No. 286 received in evidence.)

24 MR. KAVALER: And, ladies and gentlemen, this is also

02:10:09 25 in Tab 9 of your binder behind a blue subdivider.

Bajaj - direct

4214

1 BY MR. KAVALER:

2 Q. And this one is dated when, Professor?

3 A. This is dated May 30th, 2002.

4 Q. And what major publication is this from?

02:10:25 5 A. This is from the New York Post.

6 Q. And it says -- page ending 737, which is the first page --

7 "I don't know what's in that -- " referring to the Washington

8 report " -- but I bet it isn't complimentary of Household."

9 Do you see that?

02:10:39 10 A. Yes, I do.

11 Q. What is the significance of the --

12 MR. KAVALER: Withdrawn.

13 BY MR. KAVALER:

14 Q. Do these disclosures disclose the same information as the

02:10:46 15 articles that Professor Fischel is citing as his Item No. 9?

16 A. Yes.

17 Q. What is the significance of the fact that you found

18 earlier disclosures containing the same information as

19 Professor Fischel is using for his ninth disclosure day?

02:10:59 20 A. Once again, Professor Fischel mistakenly considers old

21 information as news.

22 Q. He made another mistake?

23 A. It appears so.

24 Q. Okay.

02:11:10 25 Do you have a demonstrative that shows this point?

Bajaj - direct

4215

1 A. Yes, I do.

2 Q. Let's look at 559-20.

3 Please tell us what we're looking at here, Professor.

4 A. What we're seeing is, on the right-hand side, the
02:11:25 5 publication that Professor Fischel cites for his August 27th
6 purported disclosure date. That's the Bellingham Herald
7 article. And on the left-hand side, we see that the same
8 information had previously been revealed by American Banker on
9 the previous day and anticipated by New York Post several
02:11:54 10 months earlier.

11 Q. What is the significance of these facts with regard to the
12 viability of Professor Fischel's inclusion of August 27, 2002,
13 as his ninth disclosure date of a date which supposedly took
14 inflation out of the price of Household stock?

02:12:14 15 A. Well, I don't believe that conclusion is justified.

16 Q. Should I strike this from the list?

17 A. Yes.

18 Q. Let's look at his 10th day. Let me show you Exhibit 1431,
19 which is in evidence.

02:12:37 20 MR. KAVALER: A copy for counsel.

21 BY MR. KAVALER:

22 Q. A copy for you, Professor.

23 (Document tendered to counsel and the witness.)

24 BY MR. KAVALER:

02:12:44 25 Q. This is the Bernstein report that Professor Fischel talked

Bajaj - direct

4216

1 about?

2 A. Yes.

3 MR. KAVALER: Ladies and gentlemen, this is Tab 10 of
4 your binder.

5 BY MR. KAVALER:

6 Q. Look at Page 1, the second bullet. It says, "We believe
7 that as a sales practice reform" -- "We believe that as a
8 sales practice reform takes hold, Household will need to reset
9 its long-term EPS growth target of 13 to 15 percent to 10 to
02:13:10 10 12 percent."

11 Do you see that?

12 A. Yes, I do.

13 Q. Professor Fischel picked this date -- September 3, 2002 --
14 as his 10th disclosure date, claiming that it revealed
02:13:23 15 information to the market, causing inflation to be removed
16 from the price of Household stock; is that correct?

17 A. That's correct.

18 Q. Did you analyze this date -- or this disclosure -- as
19 well?

02:13:32 20 A. I did.

21 Q. Did you identify a previous report with similar
22 information?

23 A. Yes, I did.

24 Q. Let me show you Plaintiffs' Exhibit 1412.

02:13:44 25 MR. KAVALER: A copy for counsel.

Bajaj - direct

4217

1 BY MR. KAVALER:

2 Q. And a copy for you, Professor Bajaj.

3 (Document tendered to counsel and the witness.)

4 BY MR. KAVALER:

02:13:50 5 Q. Professor Bajaj, is this one of the documents that you
6 found?

7 A. Yes, it is.

8 Q. Did you rely on this in forming your opinion that you're
9 testifying about here today?

02:13:57 10 A. Yes, I did.

11 MR. KAVALER: Your Honor, I offer Plaintiffs' 1412,
12 subject to the same limiting instruction.

13 THE COURT: Admitted.

14 (Plaintiffs' Exhibit No. 1412 received in evidence.)

02:14:05 15 MR. KAVALER: Ladies and gentlemen, this is in your
16 binder at Tab 10, behind the first blue subdivider.

17 BY MR. KAVALER:

18 Q. All right.

19 Professor, what is the date of this disclosure in

02:14:18 20 Exhibit -- Plaintiffs' -- 1412?

21 A. It is August 12, 2002, and this report is time-stamped
22 before the market opened on August 12th.

23 Q. Okay.

24 And Professor Fischel's 10th disclosure date is

02:14:31 25 September 3?

Bajaj - direct

4218

1 A. Yes.

2 Q. And do you see where it says, "We are lowering our target
3 price to \$53 from \$63"?

4 A. Yes.

02:14:55 5 Q. "We're also lowering our long-term growth rate to 10 to 12
6 percent from 14 percent"?

7 A. Yes.

8 Q. "As we believe Household's loan growth rate -- " I'm
9 sorry -- "loan growth will slow, as lending restrictions
02:15:06 10 gradually take hold."

11 Do you see that?

12 A. Yes, I do.

13 Q. Is it your opinion that that is substantially the same as
14 the information contained by Professor Fischel's 10th
02:15:18 15 disclosure date item in the Bernstein report?

16 A. Yes, it is.

17 Q. And this one is dated August 12; Plaintiffs' 1412 is dated
18 August 12; and, the Bernstein report is dated September 3,
19 correct?

02:15:28 20 A. That is correct.

21 Q. What is the significance of these facts, in your opinion?

22 A. Once again, Professor Fischel has mistaken old information
23 as news on September 3rd.

24 Q. Did you prepare a demonstrative reflecting this example?

02:15:41 25 A. Yes, I have.

Bajaj - direct

4219

1 MR. KAVALER: Can we have DDX 559-24, please?

2 (Brief pause.)

3 BY MR. KAVALER:

4 Q. Tell us what this says, Professor.

02:15:50 5 A. Again, we see on the right-hand side the Bernstein
6 Research Report that Professor Fischel considered a corrective
7 disclosure; but, we see the same information being received by
8 the market on at least two earlier dates: August 12th, 2002,
9 Deutsche Banc Report that we just discussed, as well as a
02:16:14 10 Morgan Stanley report that was issued even earlier on July 31,
11 2002.

12 Q. Let me show you that one. I think I missed Plaintiffs'
13 Exhibit 1241.

14 MR. KAVALER: A copy for counsel and a copy for you.

15 (Document tendered to the witness and counsel.)

16 BY MR. KAVALER:

17 Q. Is this the Morgan Stanley report you're talking about?

18 A. Yes.

19 MR. KAVALER: Your Honor, if I didn't previously
02:16:30 20 offer it, I offer Plaintiffs' 1241, subject to the same
21 limiting instruction, sir.

22 THE COURT: It will be admitted.

23 (Plaintiffs' Exhibit No. 1241 received in evidence.)

24 MR. KAVALER: And that appears, ladies and gentlemen,
02:16:41 25 in your binder at Tab 10, behind the next blue subdivider.

Bajaj - direct

4220

1 BY MR. KAVALER:

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

4 A. Yes.

02:16:51 5 Q. Okay.

6 On the basis of the testimony you've just given, is
7 there any basis for Professor Fischel having included the
8 Bernstein report on September 3, 2002, in his list of
9 disclosure dates, or dates on which disclosure caused
02:17:09 10 inflation to come out of the price of Household stock?

11 A. No, that's not justified.

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

13 A. Yes.

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

16 Let me show you Exhibit 1435 in evidence.

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

19 (Document tendered to counsel and the witness.)

20 BY MR. KAVALER:

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

23 A. Yes, it is.

24 Q. All right.

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

Bajaj - direct

4221

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

4 And it skips some words.

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

8 Do you see that language?

9 A. I do.

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

12 A. No, it does not.

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

17 A. That's correct.

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

19 A. I did.

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

22 A. Yes, I did.

23 Q. All right.

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

Bajaj - direct

4222

1 Defendants' 892?

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

4 (Document tendered to counsel and the witness.)

5 BY THE WITNESS:

6 A. Yes, it is.

7 BY MR. KAVALER:

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

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

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

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

14 BY MR. KAVALER:

15 Q. Okay.

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

21 Do you see that?

22 A. I do.

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

Bajaj - direct

4223

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

3 Do you see that?

4 A. Yes.

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

7 MR. BURKHOLZ: A limiting instruction.

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

02:20:56 10 THE COURT: Admitted.

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

12 MR. KAVALER: Sorry about that.

13 BY MR. KAVALER:

14 Q. Okay.

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

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

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

02:21:42 25 22, which is Plaintiffs' Exhibit 1435, which forms the basis

Bajaj - direct

4224

1 for Professor Fischel's 11th entry?

2 A. Yes.

3 Q. So, in your opinion, is he justified in claiming the 11th

4 entry -- the September 23, 2002, CIBC report -- as a day on

02:21:58 5 which a disclosure took inflation out of the price of

6 Household stock?

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

8 Q. Should I cross it off the list?

9 A. Yes.

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

11 This is -- Professor Fischel chose the October 4,

12 2002, Wall Street Journal article. It's Plaintiffs' Exhibit

13 1375 in evidence.

14 MR. KAVALER: A copy for counsel and a copy for you,

02:22:41 15 Professor.

16 (Document tendered to counsel and the witness.)

17 BY MR. KAVALER:

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

19 A. October 4, 2002.

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

21 your binder.

22 BY MR. KAVALER:

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

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

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

Bajaj - direct

4225

1 Street analysts."

2 Do you see that?

3 A. Yes.

4 I think you mistakenly said "550." It is 350 to 500

02:23:17 5 million.

6 Q. I apologize. I get my 50s wrong.

7 You are exactly right, 350 million to 500 million.

8 And he picked this information for his 12th

9 disclosure date, claiming that it revealed information to the

02:23:31 10 market, causing inflation to be removed from Household's stock

11 price, correct?

12 A. Yes.

13 Q. Did you independently analyze this disclosure, as well?

14 A. I did.

02:23:38 15 Q. Did you identify a previous article with similar

16 information?

17 A. Well, actually, this article refers to a previous analyst

18 report as the basis for this information.

19 Q. Go back three documents to Plaintiffs' 1241, which is the

02:24:00 20 Morgan Stanley report.

21 Is this the prior report it's referring back to?

22 A. No, that's an even earlier report, but I was also

23 mentioning that the Wall Street Journal article is talking

24 about Howard Mason's report that was issued the previous day.

02:24:26 25 So, there are two older sources, which provide the

Bajaj - direct

4226

1 same information.

2 Q. Okay.

3 In any event, if there are two or three or more than
4 that, what is the significance, in your opinion, of the fact
02:24:40 5 that the article he cites -- the October 4, 2002, Wall Street
6 Journal article -- is not the first public disclosure of this
7 same information?

8 A. There was no news content to the story. It was old
9 information.

02:24:58 10 Q. So, then, in your opinion, is he justified in including
11 this item as No. 12 on his list of dates, on which, in his
12 opinion, new information came into the market which caused
13 inflation to come out of the price of Household stock?

14 A. No, that's not a justified conclusion.

02:25:14 15 Q. Should I strike this one from the list?

16 A. Yes, please.

17 (Brief pause.)

18 BY MR. KAVALER:

19 Q. Let's look at No. 13.

02:25:34 20 Were you here when the professor discussed
21 Household's announcement of its preliminary agreement with the
22 Attorneys General on October 10 and October 11, 2002?

23 A. Yes.

24 Q. And he's got one article on the 10th and one on the 11th.

02:25:48 25 The first one is called, "AG Settlement Rumors" and

Bajaj - direct

4227

1 the second one is "Ag Settlement Announced."

2 Do you see that?

3 A. I do.

4 Q. Let's look at Plaintiffs' 1418 in evidence.

02:26:03 5 MR. KAVALER: A copy for counsel.

6 (Document tendered.)

7 BY MR. KAVALER:

8 Q. A copy for you, Professor Bajaj.

9 (Document tendered to the witness.)

10 BY MR. KAVALER:

11 Q. Is this one of the articles Professor Fischel relied upon?

12 A. Yes.

13 Q. And do you see on Page 1 where it says --

14 MR. KAVALER: I'm sorry, this is Tab 13 in your
02:26:33 15 binder, ladies and gentlemen.

16 BY MR. KAVALER:

17 Q. Page 1, where it says, "One standout was Household
18 International, which surged more than 25 percent on market
19 talk that it could reach an agreement as soon as Friday, that
02:26:47 20 would settle investigations by State Attorneys General into
21 its sub-prime lending business."

22 Do you see that?

23 A. I do.

24 Q. And that was on October 11?

02:26:55 25 A. Yes.

Bajaj - direct

4228

1 Q. And let me show you Defendants' 684.

2 MR. KAVALER: A copy to counsel.

3 (Document tendered to counsel.)

4 BY MR. KAVALER:

02:27:07 5 Q. And a copy to you, Professor.

6 (Document tendered.)

7 BY MR. KAVALER:

8 Q. Is this an article you relied upon in coming to your
9 opinions in this case?

02:27:12 10 A. Yes, I did.

11 MR. KAVALER: Your Honor, I offer Defendants' 684,
12 subject to the same limiting instruction.

13 THE COURT: Admitted.

14 (Defendants' Exhibit No. 684 received in evidence.)

02:27:20 15 MR. KAVALER: And, ladies and gentlemen, this is also
16 in Tab 13 of your binder, behind the blue subdivider, and it's
17 the last document in your binder.

18 BY MR. KAVALER:

19 Q. And this one says on the first page, "Household
02:27:33 20 International, HI, one of the nation's largest lenders to
21 consumers, with spotty credit histories, agreed to pay up to
22 \$484 million to settle allegations of deceptive lending
23 practices to consumers."

24 Do you see that?

02:27:45 25 A. I do.

Bajaj - direct

4229

1 Q. And this is the Wall Street Journal and Dow Jones News
2 Service dated October 11, 2002?

3 A. Yes, it is.

4 Q. These are the articles Professor Fischel picked for his
02:27:58 5 13th and 14th entries here (indicating) --

6 A. Yes.

7 Q. -- for days that he included on his list, claiming that it
8 returned the inflation and Household stock price back to zero,
9 right?

02:28:11 10 A. Yes.

11 Q. And what did you determine about Professor Fischel's
12 findings with respect to October 10 and 11, 2002?

13 A. Well, I think the market's reaction to these two dates,
14 which is the largest price reaction ever in Household's
02:28:30 15 history as a public company, till that point, is very telling
16 about Plaintiffs' claims.

17 If, indeed, as plaintiffs have claimed, the market
18 finally learned the truth about Household's predatory lending
19 practices, then you would expect that, upon announcement of
02:28:53 20 this truth, the stock price should go down.

21 Instead, we have almost seven -- we have almost 33
22 percent increase in stock price.

23 No question it was a very significant event. Small
24 differences in event study, et cetera, can't change the fact
02:29:15 25 that the market reacted very, very significantly upon hearing

Bajaj - direct

4230

1 of the settlement.

2 What this evidence tells us, along with all the other
3 analyst reports and everything else we are seeing, is that
4 Household's stock price was weighed down by market's concerns
02:29:38 5 about regulatory developments; and, when Household alleviated
6 this regulatory risk by settling with the Attorneys General,
7 it paid almost \$500 million to buy that peace.

8 But that's about one dollar a share. And Household's
9 stock price went up over those two days by \$7 a share.

02:30:05 10 The market is reacting to the relief -- that this
11 regulatory headwind has now been alleviated -- and Household
12 can continue to be in business. And its business would not be
13 threatened.

14 And if you look at the analyst reports that Professor
02:30:21 15 Fischel has cited in his own reports -- if you look at each
16 and every one of the analyst reports, starting November 15,
17 2001 -- whenever you see an analyst say, "This is our target
18 price where Household was trading at the time," on average,
19 their target price was 35 percent higher.

02:30:45 20 What does that tell us? That tells us the market was
21 well aware of the headline risk to Household; the talk that
22 this headline risk was weighing down Household stock price;
23 and, when Household settled with Attorneys General to
24 alleviate this headline risk, its stock price went up by 33
02:31:09 25 percent.

Bajaj - direct

4231

1 So, I think plaintiffs have it exactly wrong. There
2 is no evidence that Household's stock price was ever inflated.
3 Analysts thought Household's stock price was weighed down due
4 to headline risk, regulatory developments that were creating
02:31:29 5 headwind for Household, distracting management, making it
6 difficult for it to be in business; and, when Household did
7 settle these allegations, even though it had to pay a lot of
8 money, the market was relieved and the stock price went up.

9 The stock was never overvalued. There is absolutely
02:31:48 10 no evidence -- no economic evidence -- that the stock was
11 overvalued. And truthful disclosures took inflation out of
12 the stock, which is the basis of Professor Fischel's inflation
13 quantification.

14 Q. Did you prepare a demonstrative to illustrate this point,
02:32:06 15 Professor?

16 A. I did.

17 Q. Let's look at DDX 559-30.

18 And what does this chart show us, Professor?

19 A. Well, this shows that market evidence on October 10th and
02:32:22 20 11th is totally inconsistent with plaintiffs' fraud claims in
21 this case.

22 Professor Fischel has it wrong. Economic evidence
23 shows us the opposite of what he believes it shows us.

24 Q. Another mistake?

02:32:42 25 A. I guess so.

Bajaj - direct

4232

1 Q. Let's look back at Plaintiffs' Demonstrative 150.

2 On the basis of the testimony you've just given, are
3 entries 13 and 14 on this chart dates which probably should be
4 included on a listing of days on which the events Professor

02:33:02 5 Fischel describes took inflation out of the price of Household
6 stock?

7 A. No.

8 Q. Can I cross them off?

9 A. You can.

10 (Brief pause.)

11 BY MR. KAVALER:

12 Q. Now, Professor, we've just walk together through all 14
13 dates that Professor Fischel identified and we saw various
14 issues with each of them.

02:33:37 15 Did you prepare a demonstrative that visually depicts
16 those issues?

17 A. Yes.

18 MR. KAVALER: Let's look at DDX 705-01.

19 BY MR. KAVALER:

02:33:49 20 Q. Tell us what we're looking at here, Professor.

21 A. This is a chart I prepared where each of Professor
22 Fischel's 14 purported disclosure dates are shown by Xs on the
23 chart.

24 So, on the horizontal axis, you have calendar date;

02:34:09 25 and, you will see all 14 Xs appear in period November 15,

Bajaj - direct

4233

1 2001, forward.

2 And on the vertical axis is Professor Fischel's
3 measure of abnormal return.

4 So, if Professor Fischel claimed that a particular
02:34:36 5 disclosure removed inflation from the stock, that "X" will be
6 below the zero line. That's the abnormal return on that date
7 was negative; namely, stock price declined after adjusting for
8 market and industry.

9 And you'll see a lot of dots in the negative column
02:34:59 10 because, according to Professor Fischel, inflation was coming
11 out of the stock starting November 15, punctuated by a few
12 dates -- four dates -- when he said inflation went in.

13 There's the Aldinger Goldman Sachs conference date
14 that is above zero on December 5. Then there is the
02:35:22 15 announcement of Best Practices date on February 27, 2002.
16 That is shown above zero.

17 And the last two Xs that are shown above zero are the
18 final two dates in the relevant period when market learned
19 about Attorneys General settlement, and the stock price
02:35:40 20 exploded positively.

21 Q. Do you have any further example of your analysis of
22 Professor Fischel's dates?

23 A. Yes. We discussed how each and every one of these dates,
24 for the most part, represented -- or I shouldn't say "each and
02:35:59 25 every." Most of these dates represented stale information.

Bajaj - direct

4234

1 Q. All right.

2 MR. KAVALER: Can you go to 705-03?

3 (Brief pause.)

4 BY MR. KAVALER:

02:36:09 5 Q. What is this showing us?

6 A. So, what this shows is the effect of Professor Fischel
7 picking the wrong dates.

8 If, instead of picking July 22, 2002, as his
9 disclosure date, he had picked the earlier date when market
02:36:26 10 learned of this information. That would have been May 31,
11 2002.

12 And you'll see in the red dot there (indicating), May
13 31, 2002, is closer to the zero line.

14 In other words, on May 31, 2002, even in Professor
02:36:43 15 Fischel's own event study, the abnormal return would have been
16 smaller in magnitude; and, hence, not significant; and, hence,
17 it would not qualify as a disclosure date. Because, remember,
18 his disclosure dates have to be statistically significant,
19 according to his event study; and, May 31, 2002, is close
02:37:03 20 enough to zero, that it won't even show up if he had found the
21 right date.

22 It wouldn't be considered a disclosure at all.

23 Q. Let's look at another day.

24 MR. KAVALER: How about 705-04.

25 (Brief pause.)

Bajaj - direct

4235

1 BY MR. KAVALER:

2 Q. What does this show us?

3 A. Once again, if, instead of picking December 3rd as his
4 disclosure date, he had picked the earlier October 12th
02:37:24 5 disclosure date.

6 You will see the market reaction was less negative
7 and it wouldn't have been significant; and, if would,
8 therefore, not even be a disclosure date, according to
9 Professor Fischel.

02:37:38 10 Q. Do you have a demonstrative that shows how many of his
11 days were stale?

12 A. Yes.

13 MR. KAVALER: Let's look at 705-05.

14 (Brief pause.)

15 BY MR. KAVALER:

16 Q. What does this show us?

17 A. This shows earlier dates that we talked about,
18 corresponding to each and every one of the 14 disclosure
19 dates, when applicable, accept for the last two, of course.

02:37:59 20 And what you will see is instead of these 14
21 corrective disclosure in the aggregate having large negative
22 numbers, that add up to a larger amount than the positive
23 numbers, then maybe we could refer to the chart we've been
24 discussing.

02:38:19 25 You see, on the 14 dates put together, according to

Bajaj - direct

4236

1 Professor Fischel, a total of \$16.33 of inflation came out.

2 But \$8.37 went in, and that's why he concludes "net
3 7.97" came out.

4 Well, when you see the negative dates moving up
02:38:39 5 towards zero, the net result is if you do the math, there was
6 no inflation, according to his own methodology, if he had not
7 chosen stale dates.

8 Q. Now, Professor, during the period when Professor Fischel
9 claims inflation was being removed from the price of Household
02:39:08 10 stock, did most analysts that you looked at have a view as to
11 whether Household's stock was overpriced or was being weighed
12 down by headline risk?

13 A. You know, all the analyst reports -- I was keeping track,
14 as we were discussing them today; and, I know many more have
02:39:25 15 been discussed over the course of last couple of weeks -- I
16 would invite anybody to do within exercise of looking at these
17 analyst reports; and, they sometimes have a target price and
18 they indicate what the current price is.

19 Even reports that are critical -- that Professor
02:39:45 20 Fischel says removed inflation from the stock -- you will see
21 a target price significantly higher than where the stock was
22 trading. And these target prices are for 12 to 15-month
23 period, on average.

24 So, analysts on average, if you do the math, take all
02:40:02 25 the analyst reports that Professor Fischel himself has cited

Bajaj - direct

4237

1 in his report, starting November 15th, 2001. On average, they
2 conclude Household stock's target price should be 35 percent
3 higher than where it was trading at the time.

4 And we know what happened on the last two dates. The
02:40:25 5 stock went up by about 33 percent.

6 The analysts did not consider, for the most part --
7 other than Montana Capital and Mr. Ryan, and a few
8 exceptions -- most analysts in the analyst community thought
9 Household was being unfairly punished in this political
02:40:48 10 environment, and its stock was being weighed down by headline
11 risk, which Household removed by settling with the Attorneys
12 General, creating a big pop in the stock price.

13 Q. Professor, in your research, aside from the 14 dates that
14 we looked at here on Plaintiffs' Demonstrative 150, all of
02:41:08 15 which turn out to be improperly counted, did you find any
16 initial dates that, in your opinion, Professor Fischel should
17 have considered?

18 A. Yes.

19 Q. How many?

02:41:17 20 A. Hundreds.

21 Q. What was your test for a date that he you should have
22 considered?

23 A. I looked for some kind of news items that Professor
24 Fischel said, after November 15th, resulted in the market
02:41:33 25 learning the truth about Household's fraud, I looked at my

Bajaj - direct

4238

1 event study; I search for key words, such as "predatory
2 lending," and I looked at the analyst reports that either he
3 cited in his report or I cited in mine, and I gave a
4 comprehensive list of all such dates.

02:41:51 5 And, if I recall correctly, there are 166 of those
6 dates. And those dates start well before November 15, 2001,
7 which is very significant in Professor Fischel's methodology.

8 If you recall, his estimation window, when he
9 estimated his regression between 11-15-2000 and 11-15-2001 --
02:42:20 10 and we talked about this morning -- his justification for that
11 estimation window was he didn't find any corrective
12 disclosures before November 15, 2001.

13 I found over a hundred disclosures before November
14 15, 2001.

02:42:39 15 And, you know, as I said in my report, if you pick an
16 estimation window that precedes those disclosure dates,
17 according to his methodology, using his own methodology, even
18 keeping his stale dates, there will be zero inflation. You
19 cannot show a single cent of inflation.

02:42:59 20 Q. Did you prepare a demonstrative to illustrate all of the
21 dates that Professor Fischel failed to include?

22 A. Yes, I did.

23 MR. KAVALER: Can we see 799-01, please?

24 (Document tendered.)

02:43:13 25 BY MR. KAVALER:

Bajaj - direct

4239

1 Q. Explain to us what this shows us, Professor.

2 A. Red dots are dates and stories that Professor Fischel did
3 not analyze.

4 BlueCrosses are his 14 purported disclosure dates.

02:43:31 5 Including in red dots are 27 dates that Professor
6 Fischel discussed in his report, but did not analyze
7 quantitatively.

8 And when you look at the evidence, it's very clear,
9 so-called predatory lending and other practices were no secret
02:43:50 10 to the market. That was part of being in this business.

11 It's true that headline risk grew over this period,
12 you'll see greater density of these stories as we go later
13 towards the period, because regulators were becoming more and
14 more concerned. Headline risk was increasing.

02:44:12 15 But it's not true that the market did not know of
16 headline risk. There were shareholder resolutions offered at
17 Household's annual meetings, saying that maybe we should look
18 senior management's compensation to managing headline risk,
19 managing risk of predatory lending acquisitions. What greater
02:44:38 20 proof there can be that investors knew about this risk of
21 investing in the stock.

22 Q. All right, Professor Bajaj, we're almost done. Let me
23 just ask you can couple more questions.

24 You told us a few minutes ago the stock went up, not
02:44:56 25 down, on each of the three dates the plaintiffs say marked the

Bajaj - direct

4240

1 end of one of their major pieces of the case: Predatory
2 lending, re-aging and restatement.

3 If the public learned it had been deceived by a
4 fraud, would you expect the price to go up or down?

02:45:11 5 A. Down.

6 Q. We're talking about the price now -- the price of the
7 market -- not just inflation.

8 You'd expect the price to go down?

9 A. Yes.

02:45:18 10 Q. This is ordinary common sense, something I can see, right
11 there on the New York Stock Exchange closing price, without
12 all this regression analysis stuff?

13 A. Other things being equal, yes.

14 Q. Okay.

02:45:28 15 And, yet, we saw -- we've seen throughout this --
16 that on each of these dates the price of the stock went up?

17 A. That's correct.

18 Q. Have you prepared a demonstrative that examines this
19 phenomenon?

02:45:43 20 A. Yes, I have.

21 Q. Let's look at DDX 230-01.

22 What is this day?

23 A. This shows you how Household's stock price -- what
24 Household's stock price was around April 9th, 2002, when

02:46:05 25 Household presented detailed statistics on its re-aging

Bajaj - direct

4241

1 practices.

2 And you'll see, from the day before to the day after,
3 stock price went up.

4 Q. All right.

02:46:17 5 Let's look at DDX 230.02.

6 This is the date of the restatement.

7 What does this one show us?

8 A. Well, August 14th was the restatement date.

9 You will see from the day before, the stock price was
02:46:32 10 37.80.

11 It closed slightly up by 29 cents on the date of
12 the -- on the date of the restatement -- and it closed up to
13 39.60, the day after the restatement, as analyst commentary
14 had continued and the market absorbed this information.

02:46:50 15 Q. And let's look at DDX 2230-03.

16 This is the Attorney General settlement. What does
17 this show us?

18 A. This shows you that when Household settled with Attorneys
19 General, its stock price went up from \$21 a share to \$28.20 a
02:47:09 20 share. That's seven times the increase on a per share basis
21 that the settlement represented in payments by Household.

22 Q. And did you prepare a demonstrative summarizing these
23 three points?

24 A. Yes, I did.

02:47:22 25 Q. Let's look at DDX 577-04.

Bajaj - cross

4242

1 Tell us what this shows us?

2 A. Well, it summarizes what we've been discussing, on April
3 9th, when Household -- according to the plaintiffs --
4 disclosed its re-aging policies at Financial Relations

02:47:43 5 Conference. The stock price went up.

6 On August 14th, when Household issued its
7 restatement, the stock price went up -- and August 10th and
8 11th, when Household settled with Attorneys General -- the
9 stock price went up.

02:48:00 10 Q. Professor Bajaj, is any of the economic evidence in this
11 case in any way consistent with fraud?

12 A. No.

13 MR. KAVALER: No further questions, your Honor.

14 THE COURT: I think it's a good time to take our
02:48:14 15 break for the afternoon.

16 Take a 15-minute break, ladies and gentlemen.

17 (Jury out.)

18 (Brief recess.)

19 (Proceedings heard in open court:)

03:11:38 20 THE COURT: Ready?

21 MR. BURKHOLZ: All set.

22 (Jury in at 3:13 p.m.)

23 CROSS-EXAMINATION

24 BY MR. BURKHOLZ:

03:13:36 25 Q. Sir, you criticized Professor Fischel on market efficiency

Bajaj - cross

4244

1 Q. Right. Okay.

2 Now, you will agree with me, won't you, sir, that you
3 don't need a stock price increase on the day a company makes a
4 false statement in order for inflation to come into that

03:14:59 5 company's stock price? Do you agree with that?

6 A. Yes, I do.

7 Q. Thank you.

8 In fact, in the Computer Associates case, another
9 case in which you were an expert, you gave the opinion that

03:15:11 10 you don't have to measure a stock price increase in order to
11 estimate inflation, right?

12 You did that in that case, right?

13 A. Well, what I did in that case was estimate inflation on
14 the way in by looking at other companies --

03:15:30 15 Q. Sir, that wasn't my question, sir.

16 My question was, in that case you didn't measure the
17 stock price increase in order to estimate inflation, right?

18 You didn't do that, right?

19 A. Counsel, if I may answer?

03:15:42 20 Q. It's a "yes" or "no," sir. Did you do it?

21 I asked you the question at your deposition and you
22 answered it.

23 A. Well, I think a "yes" or "no" answer would be misleading,
24 so --

03:15:51 25 Q. I don't want you to mislead anybody here.

Bajaj - cross

4245

1 MR. BURKHOLZ: I will withdraw the question, your
2 Honor.

3 BY MR. BURKHOLZ:

4 Q. Now, you will agree with me, sir, that a company does not
03:16:00 5 need to admit it committed fraud for inflation to come out of
6 the stock price?

7 A. As a general proposition that could be true, yes.

8 Q. Okay.

9 In fact, there are a number of ways in which
03:16:12 10 inflation can come out of a company's stock price. It can
11 come out through a company admission. It can come out from
12 information from third parties, such as analysts or the media.
13 Isn't that correct, sir?

14 A. Not necessarily.

03:16:24 15 Q. Okay. Sir, your deposition was taken in this case, right?

16 A. Yes.

17 Q. And you gave an oath to tell the truth in the deposition,
18 right?

19 A. Of course I did.

03:16:32 20 Q. Okay. Let's look at your deposition at Page 43, Lines 5
21 through 21.

22 (Said videotape was played in open court.)

23 BY MR. BURKHOLZ:

24 Q. That was your testimony that day, right, sir?

03:17:46 25 MR. KAVALER: I'm going to move to strike. That's

Bajaj - cross

4267

1 analyst who's afraid to talk because his company has an
2 investment banking relationship with Household and they want
3 to get fees from Household for doing the banking.

4 Here we have the same situation with Mr. Posner.

03:50:04 5 And you considered that in forming your opinion,
6 didn't you, sir?

7 A. And you didn't want me to explain.

8 Q. No. You considered that in forming your opinion, didn't
9 you?

03:50:11 10 A. Yes, I did.

11 Q. Okay. Thank you.

12 Now, you reject Professor Fischel's leakage model in
13 this case, don't you?

14 A. Yes, I do.

03:50:40 15 Q. Okay. And Professor Fischel's opinion is that his leakage
16 model is the most appropriate way to estimate damages in this
17 case, right? That's your understanding of his opinion, right?

18 A. I heard him say that he preferred his leakage model, yes.

19 Q. Now, you, sir, in fact, in your expert report, Page 58,
03:51:00 20 referred to the fact that the Washington DFI report had leaked
21 out at four various times during the summer of 2002, right,
22 sir?

23 A. Where are you referring to in my expert report?

24 Q. Page 58.

03:51:39 25 A. I see that, yes.

Bajaj - cross

4268

1 Q. So there was evidence of leakage in this case on this
2 Washington DFI report which basically said Household was
3 committing predatory lending practices in Washington and
4 around the country. And you saw evidence of that leakage,
03:51:56 5 didn't you, sir? You put it in your report?

6 A. And as I testified this morning, there is a proper way to
7 analyze that leakage.

8 Q. Okay. So your quarrel with Professor Fischel is over the
9 way that he quantified the leakage, right? That's really your
03:52:09 10 qualm, right?

11 A. I have no quarrel with Professor Fischel. I like the man.
12 I am simply saying I have a difference of opinion with him on
13 how to analyze this evidence of leakage.

14 Q. Okay. Now let's talk about the October 10th and 11th
03:52:25 15 dates, okay?

16 Household gained about 3 billion in value on that day
17 because the stock went from \$22 to about \$28, right, sir?
18 About \$6 a share, right?

19 A. I think it's about \$7 a share, and it's about 3.3 billion,
03:52:43 20 but give or take, you are about right.

21 Q. Now, Household stock had lost somewhere between 16 and
22 \$18 billion from November 15th, 2001, to October 10th, 2002,
23 right, sir? Somewhere in that area?

24 A. I didn't do the calculation, but I can take your
03:53:02 25 representation for it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.) 1:10 p.m.

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

APPEARANCES:

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

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

Kavaler - closing

4633

1 My point is: Since he's got to get all four, loss
2 causation turns out to be the simplest one, doesn't it? After
3 all that talk, it turns out to be pretty easy because Fischel
4 already did it for you with the red Xs. Check no. All right.
03:27:14 5 That's the box chart and the verdict form.

6 One final note on Professor Fischel's charts. You
7 know, ladies and gentlemen, and your common sense tells you,
8 all these lawyers haven't been sitting around this room all
9 these weeks taking up your valuable time for \$7.97. I suspect
03:27:33 10 we all know there's some larger number involved. Maybe none
11 of us are quite sure what it is. But you know in this case
12 every number winds up being a gigantic number.

13 For example, what Bill was telling you, how he came
14 up with the 3 and a half billion dollar increase in the stock
03:27:50 15 price, which compared to the \$484 million for the attorney
16 generals' settlement, he said there were 500 million shares
17 outstanding. The stock went up about seven bucks. He
18 multiplied 500 million by \$7 and he came up with 3 and a half
19 billion dollars. And that puts the settlement in perspective
03:28:08 20 for you.

21 Every number in this case is very large because the
22 company is very large. I don't want you to think -- first of
23 all, I think you'll never think this because I don't believe
24 you'll ever get to the point of picking a number off this
03:28:19 25 chart. And, secondly, if you are picking a number, you can't

Kavaler - closing

4634

1 pick a number because Fischel didn't tell you how to do it.
2 But when you look at Fischel's chart, I don't want you to ever
3 think, well, it's only \$7.97; what's the harm. There's a lot
4 of harm.

03:28:36 5 The last point. Mr. Dowd told you before, he always
6 goes first and I go last and today it's different. He's
7 absolutely right. Absolutely correct. This is my last chance
8 to speak to you. No matter what he says now, I don't get to
9 respond. So I'm going to rely on you. When you go in the
03:28:51 10 jury room there, you'll have his words ringing in your ears,
11 and I suspect they will be ringing. And you'll say to
12 yourself, what would Mr. Kavaler say if he got one last
13 response. You know my answers to everything because they've
14 been consistent throughout this case. I told you in the mini
03:29:03 15 summations. You know the questions I've asked. Whatever he
16 says now, I want you to go in the room and say to yourself, if
17 Kavaler got to speak one more time, what would he say, how
18 would he respond. Because you know we have a response to
19 everything he says. So you go in there and you make my
03:29:20 20 response for me, if you will.

21 The reason I don't get to go again is exactly what
22 Mr. Dowd said. It's his burden. If the scales are equal, he
23 loses. So if he can't persuade you, if he can't explain it to
24 you, and that's why he needs another opportunity to speak,
03:29:32 25 because he's not quite there yet. I don't think he's going to

EXHIBIT 5

AG Costs
Side Loans
\$'s in millions
E:\Dept\HFCBUSIMCARIN\Special Requests\AG Costs.xls]5

\$5,000	O/S PHL at 5/02
20%	estimated % side loans
1,000	PHL side loans
10%	Assume 22% PHL rate vs 12% RE rate
100	
18	mos average outstanding
<u>\$150</u>	Interest Refunded
\$1,000	PHL side loans
15	avg size (in 000's)
66,667	# accounts
0.001	Assume 3.5 points = \$525 + \$475 additional closing costs
<u>\$67</u>	Points and fees refunded
<u>\$217</u>	Total Refund

Case # 02-C-5893
Jaffe v. Household
Plaintiffs' Exhibit
P0681

07/15/2002 2:05 PM ¹

Rodemeyer
DEP. EXH. # 17
Date: 6/27/06

HHS 03070933

CONFIDENTIAL

AG Costs
 Points
 \$'s in millions
 E:\Dept\HFCBUSIN\CARIN\Special Requests\AG Costs.xls]5

\$6,200	2002 RE Volume (2QF)
10,900	2001 RE volume
7,600	2000 RE volume
6,000	1999 RE volume
<u>30,700</u>	
3%	Assume 3% points refunded (6%-3%)
\$921	Points refunded
\$921	Points refund
12%	Estimated Contract rate
<u>18</u>	mos average outstanding
<u>\$166</u>	Interest on refunded points
<u><u>\$1,087</u></u>	Total refund

2
 07/15/2002 2:05 PM

AG Costs
Interest Rate
\$'s in millions
E:\Dept\HFCBUSIN\CARIN\Special Requests\AG Costs.xls]5

\$30,700	Jan 1999 - June 2002 RE volume
<u>68%</u>	% that accepts EZPay
20,876	Volume that could have been misled
<u>4%</u>	Assume comparison rate 4% lower than contract rate received
835	
<u>18</u>	mos average outstanding
<u>\$1,253</u>	Interest refunded

3
07/15/2002 2:05 PM

AG Costs
Single Premium Credit Insurance
\$'s in millions
E:\Dept\HFCBUSIN\CARIN\Special Requests\AG Costs.xls]5

86	2002 RE Premiums (June YTD)
295	2001 RE Premiums
194	2000 RE Premiums
	1999 RE Premiums
<hr/>	
575	Total Premiums
<hr/>	
80%	1-% of customers that file claim (SWAG)
<hr/>	
460	Premiums refunded
<hr/>	

Note: Over 65% of premiums are paid out in claims

5
07/15/2002 2:05 PM

AG Costs


PPP

\$'s in millions

E:\Dept\HFCBUSIN\CARIN\Special Requests\AG Costs.xls]5

\$32	2002 RE PPP (May YTD)
61	2001 RE PPP
34	2000 RE PPP
<u>34</u>	1999 RE PPP (estimate)
<u>\$161</u>	Total PPP refunded

EXHIBIT 6

HOUSEHOLD  Gary D. Gilmer
07/01/2002 07:40 AM

To: Donna X. Tailon/Household International@HFN
cc:
Subject: Discussion Framework

— Forwarded by Gary D. Gilmer/Household International on 07/01/2002 07:40 AM —

HOUSEHOLD  Kathleen K. Curtin
06/29/2002 03:59 PM

To: Gary D. Gilmer/Household International@HFN, Larry N. Bangs/Household International@HFN, Megan E Hayden/US/Household@HFN, Lisa M. Sodeika/US/Household@HFN, Robin L. Alcock/US/Household@HFN, James B Kaufman/USVEN/Household@HFN, Kenneth H. Robin/US/Household@HFN, Thomas M. Detefich/Household International@HFN, Mark F. Leopold/US/Household@HFN, Kathy Mikos/US/Household@HFN, Paul J. Creature/US/Household@HFN, Walt X. Rybak/US/Household@HFN, Joe A. Vozar/Household International@HFN

cc:
Subject: Discussion Framework

Here it is. I haven't reviewed it yet.

— Forwarded by Kathleen K. Curtin/US/Household on 06/29/2002 04:04 PM —



"Huey, David (ATG)"
<DavidH3@ATG.WA.GOV>
06/28/2002 07:42 PM

To: "kkcurtin@household.com" <kkcurtin@household.com>
cc:
Subject: Discussion Framework


Sorry this took so long. We were exchanging drafts between Word and Wordperfect and that is always a problem.

As noted in this document, this is a discussion framework and not a final position paper. As you know, we are awaiting production of information we have previously requested of Household. I anticipate that our receipt of that information could result in some changes. If you have any questions, please call me.

<<Lisafact1.doc>>

Dave Huey
Assistant Attorney General
Consumer Protection Division
Washington Attorney General's Office
1019 Pacific Avenue, 3rd Fl.
Tacoma, WA 98402-4411
253-593-5057

→ ok to give a prepays
→ 5 PB - so forward only.

 Lisafact1.doc

Case # 02-C-5893
Jaffe v. Household
Plaintiffs' Exhibit
P0516

CONFIDENTIAL

Hayden Habas

DEP. EXH. # *71*
Date: *8/1/02*

HHS 02915307

Which states?

**FRAMEWORK FOR THE DISCUSSION OF ISSUES
CONCERNING LENDING PRACTICES OF
HOUSEHOLD INTERNATIONAL, INC.**

A number of States, through their Attorney General's offices and through their financial regulatory agencies, have been investigating Household residential mortgage lending practices. These investigations have revealed that Household engages in widespread lending patterns and practices that violate both state and federal law. These states have agreed to meet with representatives of Household to discuss whether an agreement can be reached regarding measures (a) to provide consumer redress for past violations; (b) to insure future compliance with the law; and (c) to provide other appropriate relief to the states. This paper is designed to provide a framework for the discussion of these matters.

PATTERNS AND PRACTICES

The following list sets forth the significant patterns and practices the states have identified. While all of these practices do not occur with every loan, the practices are national in scope and not confined to a single state or branch office. The investigations are ongoing and this list is not intended to be exhaustive. The states reserve the right to raise additional issues as they may arise.

- (1) Splitting loans into a closed-end home equity and a "spurious" open-end loan. Household charges consumers illegal and unconscionable fees and interest by splitting what the consumer expects will be one loan, into two distinct secured loans, the second of which is structured as an open-end revolving line of credit but has all of the characteristics of a standard closed-end home equity loan with an interest rate of over 20%. Household misrepresents that these high interest loans are open-end "revolving credit lines" when in fact (a) close to the full amount of the line is drawn down immediately, (b) the loans are non-amortizing, making it nearly impossible for the consumer to replenish the credit line, and (c) neither Household nor the consumer reasonably anticipate subsequent extensions of credit. Therefore, these loans should be subject to the Home Ownership Equity Protection Act ("HOEPA") restrictions placed on closed-end loans. Whether the "spurious" open-end loan is sold separately or in the context of a "split loan", Household misleads consumers into believing that these credit lines will fully amortize if the minimum monthly payments are made, when in fact, a large balloon payment will be required to pay off the loan at the end of the term.
- (2) Misrepresenting the loan fees. Household misrepresents to consumers the fees and transaction costs associated with the loan, and the purpose of these fees and costs, including, for example:
 - > Household discloses as "discount fees" charges that are not bona fide

discount fees, that is, they are not used to "buy down" the interest rate, nor are consumers informed that paying a discount fee should result in a reduced interest rate;

➤ Household discloses these fees in the Good Faith Estimate using a wide dollar range for the proposed loan that is misleading, especially when the fees it consistently imposes vary within a much narrower range (approximately 7.25 points for loans and 5 points for lines of credit);

➤ Household consistently charges fees that are either at the high end of the disclosed range or exceed that range.

- (3) **Misrepresenting rate of interest and amount of monthly payments to consumers.** Household misrepresents the rate of interest and monthly payments required on the Household loan. For example, in its loan proposals, Household compares consumers' current monthly debt payments to a consolidated Household loan monthly payment by excluding from the latter taxes, insurance, financing fees and closing costs. Another example of this practice is the promotion of the bi-weekly payment program. Household misleads consumers by comparing the total interest the consumer will pay over a 30-year term of monthly payments, against the total interest a consumer would pay making bi-weekly payments. Household deceptively asserts that the effective interest rate is lower under the bi-weekly program because the loan is paid off sooner.
- (4) **Engaging in equity based lending.** Household engages in the practice of frequently refinancing – or flipping – one Household loan with another, imposing additional costs and fees with no or little net tangible benefit to the consumer. Additionally, Household engages in the practice of selling a loan to a consumer with an existing loan where the new Household loan results in no or little tangible benefit to the consumer.
- (5) **Packing single premium credit insurance.** Household charges consumers for single premium credit insurance where the consumer has not requested it and is unaware of the sale until receipt of the monthly statement. Alternatively, Household falsely represents to consumers that insurance is required as a condition of the loan.
- (6) **Imposing prepayment penalties.** Household does not adequately disclose the imposition of prepayment penalties on non-HOEPA loans, and violates HOEPA by imposing prepayment penalties on high cost loans. Household also imposes prepayment penalties on open-end credit.
- (7) **Failing to provide required disclosures.** Household fails to provide consumers who receive high cost loans with certain disclosures required under state and/or federal law.

- (8) **Employing "live checks" to solicit consumers. Household uses highly aggressive push marketing tactics in employing "live checks" to solicit real estate loan business from homeowners. In many cases, the consumer may not understand that the "check" is in fact a loan. In addition, the checks are at risk of being intercepted and cashed by third parties.**
- (9) **Loan accounting practices. Household fails to adequately disclose to consumers the potential effect on loan amortization of its "as made" method of accounting for loan payments and its use of "interest short" accounts.**
- (10) **Household misrepresents to consumers its "skip a payment" plan and the ease with which loans can be restructured if a consumer encounters financial problems.**

PROPOSED REMEDIES

This is a summary of remedial measures proposed by the Multistate Working Group. It is intended as a framework for discussion of possible remedies. It is neither an exhaustive list nor a binding offer of settlement. Participants in the Multistate Working Group reserve the right to seek additional relief or otherwise modify these terms.

COVERAGE

All real estate loans made by Household, by whatever Household entity, during the period from January 1, 1996 to date.

INTERIM RELIEF

- (1) Tolling Agreement – tolling statutes of limitations while negotiations continue, through September 30, 2002, with a 10-day notice to terminate for all parties.
- (2) Good faith standstill on all foreclosure activity while negotiations continue.

FINAL RELIEF

- (1) Splitting loans into a closed-end home equity and a “spurious” open-end loan.

Injunctive: “Spurious” open-end lines of credit are not permitted. Disclosures for true open-end credit must clearly state in plain language that making minimum payments will not fully amortize the loan by the end of its term but will result in a balloon payment at the end of the term. The disclosure must also state the full amount of the balloon payment. “Split loans”, those made within 90 days of each other, are not permitted—with a limited exception for purchase money mortgages.

*OK
→ show how much money
acc. still
o/s*

Restitution: For “spurious” open-end lines, refund all fees and costs, and interest paid to date in excess of the “new rate,” and offer borrowers the right to rescind and to repay the loan amount less all loan charges and excess interest, or reform the loan to payoff at the conclusion of the term at the “new rate.” The “new rate” for “spurious” open-end credit lines shall be the Household benchmark rate available to the borrower at the time of origination. For split loans, refund all fees and costs on the second loan, and all interest paid to date on the second loan in excess of the “new rate,” which shall be the interest rate on the first loan.

(2) Misrepresenting the loan fees.

Injunctive: Discount fees that do not "buy-down" the interest rate are not permitted. Loan fees, origination and discount, to be capped at 3%. Disclose to borrowers Household's "benchmark" interest rate and the manner and extent to which the borrower can reduce this rate by paying discount points, which shall include a copy of the matrix for the relevant benchmark rate; disclose the borrower's monthly payment amount if fees are paid to buy down the rate and if they are not.

ok if can a state
to but can't
business
we have a
general
example

Restitution: Refund fees charged in excess of the lowest amount disclosed in the Good Faith Estimate, or over 3% of the original loan, whichever is greater, and interest accrued thereon.

(3) Misrepresenting rate of interest and monthly payments to borrowers.

Injunctive: Provide disclosures that make accurate and nondeceptive comparisons between the current and proposed interest rates, monthly payments (which shall include taxes and insurance), and total loan costs.

we'll revise
to get comparison
w/ total int.
biweekly proposed

Restitution: Reform the loans at the interest rate represented to the borrower and refund any excess interest.

(4) Engaging in equity-based lending.

Injunctive: Household may not (a) make a new loan to a borrower where there is no net tangible benefit to the borrower, or (b) charge points and fees in connection with a loan if the proceeds of the loan are used to refinance an existing loan and the last financing was within three years of the current refinancing.

Restitution: Compensate borrowers who have lost homes in foreclosure and who previously held a Household loan that had been flipped into another Household loan within a three-year period. Refund finance charges, fees and all closing costs related to the second loan.

(5) Selling single premium credit insurance.

Injunctive: Prohibit single premium credit insurance. As to other insurance products, disclose monthly payments that include the monthly cost of insurance *only when* also disclosing the monthly payment without such cost. Disclose the existence of credit insurance *only after request* by the borrower and provide detailed information concerning the cost and coverage of the insurance.

Disclose that all insurance products are optional and eliminate the automatic opt-in.

Restitution: Refund all premiums, all "excess insurance-related charges" and all interest paid thereon.

PTs on insur. Premium

(6) Imposing prepayment penalties.

Injunctive: For non-HOEPA loans, disclose the existence of all prepayment penalties at least 3 days prior to closing. Prepayment penalties on non-HOEPA loans are prohibited when (a) not timely and fully disclosed; (b) the borrower sells the secured property; (c) the penalty accrues more than one year after origination; or (d) the borrower has made 6 months of timely consecutive monthly payments. Prepayment penalties may not be imposed on open-end credit.

before signing doc's.

Restitution: Refund all prepayment penalties previously paid on non-HOEPA and HOEPA loans.

Section 32

(7) Failing to provide required disclosures.

Injunctive: Provide HOEPA disclosures, including notice of the right to rescind. Provide timely Good Faith Estimate disclosures. With the GFE, disclose the probable loan interest rate.

(8) Employing live checks to solicit borrowers.

Injunctive: Discontinue aggressive "push" marketing, including the practice of soliciting borrowers through the use of "live" checks.

(9) Misrepresenting loan accounting practices.

Injunctive: Household must provide clear plain language disclosures to borrowers. Additional relief to be discussed.

(10) General injunctive relief.

- Establish an effective compliance monitoring system.
- Provide employee training.
- Provide borrowers the lowest interest rate for which they qualify.
- Provide plain language material loan disclosures and loan documents for review by borrower well in advance of closing.
- Simplify, improve, and ensure accuracy and specificity of disclosures by,

among other things, presenting information prominently and in a manner understandable to the least sophisticated consumer.

- **Correct borrower credit reports.**
- **Offer loan documents in languages sufficient to assist borrowers with limited English proficiency.**
- **Provide adequate notice to borrowers of all remedies.**

(11) **Civil penalties, attorneys fees, and investigative costs.**

EXHIBIT 7

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC.,
Plaintiff,
v.
SAMSUNG ELECTRONICS CO. LTD., et
al.,
Defendants.

Case No. 11-CV-01846-LHK
CASE MANAGEMENT ORDER

The Court received the mandate from the Federal Circuit Court of Appeals today and issues the instant case management order.

Apple’s Request for Entry of Partial Final Judgment

Apple shall respond to Samsung’s Objections to Apple’s Proposed Partial Final Judgment, ECF No. 3269, by no later than September 8, 2015. Apple’s response shall clarify whether Apple is seeking entry of partial final judgment without supplemental damages and prejudgment interest. No further briefing may be filed.

Samsung’s Motion for Entry of Judgment of Invalidity on the ‘915 Patent and Stay

Apple’s response shall be filed no later than September 9, 2015. Samsung’s reply shall be

1 filed no later than September 16, 2015. No further briefing may be filed.

2 Case Management Conference

3 The Court will hold a case management conference in Courtroom One on the fifth floor of
4 the San Jose Courthouse on September 18, 2015 at 2 p.m. The parties shall file a Joint Case
5 Management Statement by September 11, 2015, which addresses, among other things, the timing
6 and the quantity of supplemental damages and prejudgment interest that should be ordered on the
7 damages award affirmed by the Federal Circuit Court of Appeals. The parties shall also address
8 whether they are willing to engage in alternative dispute resolution, and if so, what form, with
9 whom, and when.

10 The instant retrial on damages will be the parties' fourth jury trial before this Court, third
11 jury trial in the instant case, and second damages retrial in the instant case. The sole purpose of
12 the instant damages retrial is to determine the amount of damages for the infringement of Apple's
13 '163, '381, '915, D'305, D'677 and/or D'087 Patents by five Samsung products: the Fascinate,
14 Galaxy S4G, Galaxy S Showcase, Mesmerize, and Vibrant. The Court will not allow substitution
15 of damages experts absent extraordinary circumstances such as Mr. Musika's death after the 2012
16 jury trial. The Court will not allow supplemental fact discovery. The Court will not permit the
17 parties to expand the scope of the damages retrial and will not allow the parties to rely on new
18 sales data, new products, new methodologies or new theories.

19 The 2013 damages retrial involved thirteen products and lasted a total of 8 days, which
20 consisted of one day for jury selection; four days for opening statements, evidence, reading the
21 final jury instructions, and closing slide objections and rulings; one day for closing arguments and
22 deliberations; and two additional days of deliberations.

23 The instant damages retrial involves only five products, which is eight fewer products than
24 the 2013 damages retrial, so seven days of trial suffice. Each side will have forty-five minutes for
25 opening statements, one hour for closing arguments, and six hours for evidence.

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court requests that the parties propose a case schedule that includes the following. On different Thursdays in February 2016, a hearing on motions to strike and a pretrial conference. A seven consecutive days jury trial in March and/or April 2016. A hearing on post-trial motions on a Thursday on or between May 5 and June 2, 2016.

The Court’s prior rulings on the parties’ *Daubert* motions, motions in limine, discovery disputes, and evidentiary objections will remain in effect as law of the case. The parties may not relitigate these issues.

Each side is limited to one motion to strike, which may not exceed five pages. Each side’s opposition shall not exceed five pages. Each side’s reply shall not exceed three pages.

Each side is limited to three motions in limine per side. Motions and oppositions are limited to three pages. No replies will be entertained.

The Court will empanel 8 jurors. Each side may exercise up to 3 peremptory challenges.

Before the parties file any motions in this case, lead trial counsel must meet and confer in person. A declaration confirming compliance with this requirement must be filed with every motion.

IT IS SO ORDERED.

Dated: September 1, 2015



LUCY H. KOH
United States District Judge

EXHIBIT 8

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Household is a Delaware corporation headquartered in Prospect Heights, Illinois. Household's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. Household's stock is listed on the New York Stock Exchange under the symbol HI. During the relevant time period, Household filed periodic and other informational reports with the Commission pursuant to Section 13(a) of the Exchange Act. Household was created as a holding company in 1981 as a result of a shareholder approved restructuring of Household Finance Corporation.

Background

2. Household is a financial institution that, through its subsidiaries, provides a variety of loan products to consumers in the United States, the United Kingdom and Canada. Household is a Fortune 500 company with more than \$97.9 billion in owned assets and with reported net revenues for 2002 of approximately \$11.2 billion. Household sells its loan products primarily to sub-prime borrowers. Sub-prime borrowers are those who exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers. Household's loan products include real estate secured loans, auto finance loans, credit cards, tax refund anticipation loans, retail installment loans and other unsecured loans. As of December 31, 2002, Household had approximately 31,000 employees and over 50 million active customer accounts. Household's primary business units are Consumer Lending, Mortgage Services, Retail Services, Credit Card Services and Auto Finance.

3. Household's Consumer Lending business unit extends both secured and unsecured loans to consumers through a network of over 1,300 branch offices located throughout the United States. Consumer Lending has approximately \$43.4 billion in managed receivables. Managed receivables include the sum of Household's owned receivables and those that it services for investors as part of its asset securitization program. The Mortgage Services business unit is involved primarily in the purchase in the secondary market of mortgage loans that are originated by other lenders, as well as the servicing of these loans after they are purchased. Mortgage Services has approximately \$17 billion in managed receivables. The Retail Services business unit is one of the largest providers of third-party private label credit cards in the United States, with approximately \$12.6 billion in managed receivables. The Credit Card Services business unit includes both the direct issuance by Household of credit cards to consumers and Household's purchase and servicing of credit card accounts originated by third parties. The Credit Card Services business unit has approximately \$18.1 billion in managed receivables. The Auto Finance business unit extends secured loans to consumers and purchases installment contracts from auto dealers and has approximately \$7.4 billion in managed receivables.

4. One of the critical measures of Household's financial performance is the delinquency rate for its loan portfolio and related disclosures and statistics concerning the restructuring (or so-called re-aging) of delinquent accounts.

Household, like its peer lending institutions, reports to the investing public its "2+ delinquency" rate. The 2+ delinquency rate refers to the percentage of loans in Household's total loan portfolio that are at least sixty days past due. The 2+ delinquency rate and restructuring statistics are key measures of Household's financial performance because they positively correlate to charge-off rates and loan loss reserves. Investors and analysts use Household's 2+ delinquency rate and restructuring statistics to evaluate the relative credit quality of Household's consumer finance receivables. The 2+ delinquency rate and restructuring statistics are especially important for sub-prime lenders like Household because of the increased likelihood of credit quality problems in sub-prime loan portfolios.

Household's False and Misleading Statements Concerning Its Delinquent Loan Restructure and Forbearance Policies

5. In late 2001, in response to questions raised by the media and analysts, Household initiated a number of actions designed to obtain more information about its practice of restructuring delinquent loans. Household requested an outside consultant to prepare a report that, among other things, benchmarked Household's restructure policies and volume to its peer group of financial institutions. Household also conducted an internal study to determine the number of loans in its portfolio that had ever been restructured.

6. The consultant delivered its report to Household on or about March 12, 2002. The report disclosed, among other things, that Household had a higher volume of delinquent loan restructures and was outside of the range of its peer group's practices with respect to its practice of automatically restructuring delinquent accounts without requiring contact with delinquent customers.

7. On March 13, 2002, Household filed a Form 10-K that disclosed Household's restructuring policies. Specifically, the Management's Discussion and Analysis of Financial Condition and Results of Operations portion of Household's Form 10-K included the statement that "[o]ur policies for consumer receivables permit reset of the contractual delinquency status of an account to current, subject to certain limits, if a predetermined number of consecutive payments has been received and there is evidence that the reason for the delinquency has been cured." Household reiterated this disclosure in its Form 10-Q for second quarter 2002, filed on August 14, 2002, its Form 10-K/A for fiscal year 2001, filed August 27, 2002, and its Form 10-Q for third quarter 2002, filed October 24, 2002. Beginning in April 2002, Household also disclosed the percentage of loans in its domestic portfolio that had ever been restructured. In various Commission filings since April 2002, Household has reported that the percentage of loans in its domestic portfolio that had ever been restructured ranged from 16.9% as of December 31, 2001, to 15.6% as of December 31, 2002.

8. Household's disclosures regarding its restructure policies fail to present an accurate description of the minimum payment requirements applicable under the various policies and are therefore false and misleading. In numerous instances Household will accept one or zero payments prior to restructure. The Auto Finance and Retail Services businesses, for example, generally allow the restructuring of delinquent accounts if one payment is

made within the last sixty days. There are also instances where Household will restructure a delinquent loan without receiving any payments, such as loans where the borrower has filed for Chapter 7 bankruptcy protection and has reaffirmed Household's debt.

9. Household's restructure policy disclosures are also false and misleading since they fail to disclose Household's policy of automatically restructuring numerous loans. With automatic restructures, no communication with the customer is required to determine whether the cause of delinquency is cured. In Consumer Lending, for example, the majority of the more than \$1 billion of restructures per month are performed automatically, without any requirement that Household employees first contact the customer to determine whether the reason for delinquency has been cured. Instead of obtaining information from the customer that the cause of the delinquency has been cured, Consumer Lending sends a computer-generated notice to customers stating that the account has been restructured to current status.

10. Household's false and misleading disclosures are material in light of the significant volume of Household's loan restructures and the nature of Household's lending businesses. During the time period covered by Household's disclosure of its restructuring policies, between 15.6% and 16.9% of Household's domestic loans had been restructured at least once and many of those restructures were done automatically. Further, the consultant's study of Household's restructuring policies showed that Household restructures significantly more loans than its peer financial institutions and that, unlike its peers, Household automatically restructures delinquent loans without requiring communications with the borrower prior to the restructure. Moreover, Household's restructured loans are likely to be restructured again, 2+ delinquent or charged-off at 12 months after the initial restructure. For example, as of December 31, 2001, 53.9% of the real estate secured loans restructured by Household in the previous 12 months were restructured again, were 2+ delinquent, or had been charged-off. In addition, as of December 31, 2001, 75.2% of the personal homeowner loans Household had restructured in the previous 12 months were restructured again, were 2+ delinquent, or had been charged-off. Further, loans automatically restructured by Household's Auto Finance business unit have a significantly higher charge-off rate than those restructured manually by Household's employees after contact with the delinquent customer.

11. Household knew or was reckless in not knowing that its disclosures regarding restructuring policies were false and misleading. Before disclosure, Household did an internal study to determine the volume of loans in its portfolio that it had ever restructured and had an outside consultant benchmark Household's restructure volume and policies to its peer financial institutions. Prior to Household's March 13, 2002 Form 10-K disclosure, Household knew that it was outside its peer group range with respect to the volume of delinquent loans that it restructures and with respect to its practice of automatically restructuring delinquent loans. Nevertheless, Household chose to disclose its restructure policies in a way that connoted strict controls, rather than in a way that accurately described the policies.

12. Household's disclosures relating to its restructuring and account management policies are also misleading because Household omits to

disclose its policy of excluding forbearances from 2+ delinquency in certain of its businesses. In substance, forbearance occurs when Household acts on a delinquent account by entering into an arrangement with a customer to forbear on collection actions in exchange for temporarily increased payments or, in the case of certain forbearances, or re-writes, reduced payments. Household's Mortgage Services business unit enters into forbearance arrangements and then automatically excludes those forbearances from its 2+ delinquency statistics. Household also has approximately \$900 million of loans in some form of forbearance, or approximately 1% of Household's total assets.

13. Household knowingly or recklessly omitted to disclose that loans in forbearance are excluded from its 2+ delinquency rates. The failure to disclose this fact when making specific disclosures about restructuring practices and delinquent accounts made the disclosures false and misleading.

Violations of the Exchange Act

14. As a result of the conduct described above, Household violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit a person, in connection with the purchase or sale of a security, from making an untrue statement of a material fact or from omitting to state a material fact necessary to make statements made, in light of the circumstances under which they were made, not misleading.

15. In addition, Household violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. Rule 12b-20 under the Exchange Act requires that such reports contain, in addition to disclosures expressly required by statute and rules, such other information as is necessary to ensure that the statements made in those reports are not, under the circumstances, materially misleading. The obligation to file such reports embodies the requirement that they be true and correct.

Undertaking

16. Respondent Household undertakes to fully cooperate in the Commission's ongoing investigation in this matter.

Cooperation and Other Acts

17. In determining to accept the Offer, the Commission considered Household's undertaking described in section 16 herein and certain other acts related to Household's cooperation in this investigation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Household's Offer.

ACCORDINGLY, IT IS HEREBY ORDERED:

Pursuant to Section 21C of the Exchange Act, that Respondent Household cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 13(a) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

By the Commission.

Jonathan G. Katz
Secretary

Footnote

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<http://www.sec.gov/litigation/admin/34-47528.htm>

[Home](#) | [Previous Page](#)

Modified: 03/19/2003

EXHIBIT 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 28, 2009
Defendants.) 9:10 a.m.

VOLUME 20
TRANSCRIPT OF PROCEEDINGS - TRIAL
BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

APPEARANCES:

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

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

Bajaj - direct

4077

1

16 Would you state your name for the record, please?

17 A. Good morning, counsel. My name is Mukesh Bajaj.

18 Q. And what is your educational background, sir?

19 A. I got an undergraduate degree in chemical engineering from
09:15:31 20 the Indian University of Technology in Delhi, India. And I
21 got interested in social sciences, so I joined the MBA program
22 at the University of Texas at Austin. And then I developed an
23 interest for financial economics, and I enrolled in the Ph.D.
24 program at University of California, Berkeley. I graduated
09:15:53 25 with a Ph.D. in finance in 1988.

Bajaj - direct

4078

1 Q. So would it be right to call you Dr. Bajaj?

2 A. You can call me Mukesh or Dr. Bajaj.

3 Q. Okay.

4 A. Would you let me know if I'm at the right distance from
09:16:08 5 the mike, please?

6 MR. KAVALER: Can everyone hear him? Okay.

7 BY MR. KAVALER:

8 Q. I'll call you Dr. Bajaj. We'll leave it to your friends
9 to call you Mukesh.

09:16:17 10 Do you have any experience, Doctor, involving
11 liability on damages in securities fraud cases?

12 A. Yes, counsel. I've been engaged in dozens of such matters
13 over the years.

14 Q. And have you ever testified in court previously?

09:16:32 15 A. Yes, I've testified on about 45 matters.

Bajaj - direct

4080

4 Q. Okay. And did we engage you to give an opinion in this
09:19:11 5 case?

6 A. You engaged me to examine some economic evidence in this
7 case to formulate my opinions.

Bajaj - direct

4090

13 Q. All right. Could a company's stock price also become
14 inflated because of something the company failed to disclose
09:37:16 15 at a particular time, in other words, an omission?
16 A. Yes, indeed.

Bajaj - direct

4091

23 Q. From an economist's perspective, Doctor, is there an
24 important difference between telling a lie that causes
09:39:48 25 inflation and omitting to make a statement that causes

Bajaj - direct

4092

1 inflation?

2 A. There's no fundamental difference as we just explained.

Bajaj - direct

4112

21 In preparing your analysis, Professor, that you're
22 testifying about here today, did you identify other consumer
23 finance companies as a first step to conducting your analysis?

24 A. Yes, I did.

10:13:50 25 Q. How did you do that? How did you identify these consumer

Bajaj - direct

4113

1 finance companies?

2 A. So there is an industry code assigned by the government to
3 various publicly traded companies based on what is their major
4 line of business. It's called GCIS code. And according to
10:14:11 5 Standard & Poor's, Household belonged to a certain GCIS code
6 along with six other companies that traded over the relevant
7 period.

8 So I looked at those six companies with the same GCIS
9 code as a first step in my statistical analysis to put
10:14:37 10 Household's stock price movements in context.

11 Q. And that's a code provided by the United States
12 government?

13 A. Yes.

14 Q. And Standard & Poor's tells you what companies fall within
10:14:49 15 that code?

16 A. Yes. And this is a very, very, very well-accepted and
17 commonly used methodology to start to look for comparable
18 companies.

Bajaj - cross

4244

2 Now, you will agree with me, won't you, sir, that you
3 don't need a stock price increase on the day a company makes a
4 false statement in order for inflation to come into that
03:14:59 5 company's stock price? Do you agree with that?
6 A. Yes, I do.

Bajaj - cross

4245

4 Q. Now, you will agree with me, sir, that a company does not
03:16:00 5 need to admit it committed fraud for inflation to come out of
6 the stock price?

7 A. As a general proposition that could be true, yes.

Bajaj - cross

4248

14 Let's talk about the index that you created, the six
03:21:07 15 companies that you put together.

16 Household was a Fortune 500 company during the time
17 period that we were discussing here, right, 1999 to 2002?

18 A. Yes.

19 And I did not put those companies together. I
03:21:19 20 selected those companies, yes.

21 Q. Right. Okay. You selected them.

22 So Household is a Fortune 500 company.

23 Let's look at one of the companies that you selected.

24 It's called CashAmerica. This is how you described it in your
03:21:34 25 expert report.

Bajaj - cross

4249

1 A. Okay.

2 Q. I don't want to misrepresent it, so I am going to give you
3 a copy of your report.

4 (Document tendered.)

03:21:42 5 BY THE WITNESS:

6 A. Thank you, Counsel.

7 BY MR. BURKHOLZ:

8 Q. You refer to CashAmerica as a specialty financial services
9 enterprise principally engaged in acquiring, establishing, and
03:21:57 10 operating pawn shops in 16 states, in the United Kingdom, and
11 Sweden. The company also provides check-cashing services in
12 21 states.

13 I got that right, didn't I, sir, in the description?

14 A. You paraphrased it a little bit, but it is substantially
03:22:16 15 correct, yes.

16 Q. Thank you.

17 Household didn't own any pawn shops or check-cashing
18 services, did they?

19 A. Not to my knowledge.

Bajaj - cross

4267

12 Now, you reject Professor Fischel's leakage model in
13 this case, don't you?

14 A. Yes, I do.

03:50:40 15 Q. Okay. And Professor Fischel's opinion is that his leakage
16 model is the most appropriate way to estimate damages in this
17 case, right? That's your understanding of his opinion, right?

18 A. I heard him say that he preferred his leakage model, yes.

19 Q. Now, you, sir, in fact, in your expert report, Page 58,
03:51:00 20 referred to the fact that the Washington DFI report had leaked
21 out at four various times during the summer of 2002, right,
22 sir?

23 A. Where are you referring to in my expert report?

24 Q. Page 58.

03:51:39 25 A. I see that, yes.

Bajaj - cross

4268

1 Q. So there was evidence of leakage in this case on this
2 Washington DFI report which basically said Household was
3 committing predatory lending practices in Washington and
4 around the country. And you saw evidence of that leakage,
03:51:56 5 didn't you, sir? You put it in your report?

6 A. And as I testified this morning, there is a proper way to
7 analyze that leakage.

8 Q. Okay. So your quarrel with Professor Fischel is over the
9 way that he quantified the leakage, right? That's really your
03:52:09 10 qualm, right?

11 A. I have no quarrel with Professor Fischel. I like the man.
12 I am simply saying I have a difference of opinion with him on
13 how to analyze this evidence of leakage.

EXHIBIT 10



Home > B > Bajaj, Ph.D. Mukesh



Mukesh Bajaj, Ph.D. Managing Director

[Download vCard](#)

Dr. Mukesh Bajaj is a Managing Director and Global Head of the Securities & Finance Practice at Navigant Economics, LLC. Prior to joining Navigant Economics, Dr. Bajaj founded AFE Consulting and served as its President.

Dr. Bajaj advises clients in matters involving economic and financial issues, and has managed hundreds of consulting and litigation support assignments. Dr. Bajaj is an expert in matters relating to securities fraud, valuation of complex derivatives and intellectual property, insider trading, financial market microstructure, intangible assets, transfer pricing, interests in closely-held firms, warrants, restricted stock and other complex contingent securities, and purchase price allocation studies. He has also consulted on financial strategy and acquisition analysis.

Dr. Bajaj has testified in various Federal and State Courts, the Superior Court of California, the State Board of Equalization in California, the U.S. Tax Court, arbitrations, mediations and in IRS Appeals proceedings. He has also testified in Canadian and Australian courts, testified in JAMS arbitration and filed an expert report in the International Center for Settlement of Investment Disputes.

As a practicing academic, Dr. Bajaj has an active research program and he has taught corporate finance, investments, and financial engineering courses in the MBA and MFE programs at the Haas School of Business at the University of California at Berkeley. Prior to his consulting practice, Dr. Bajaj was an assistant professor of finance and business economics at the University of Southern California where he taught undergraduate and graduate courses in finance. Dr. Bajaj is the recipient of several teaching awards and scholastic honors and has published several articles in leading academic and applied journals, such as the *The Journal of Finance*, *The Journal of Financial Economics*, *The Journal of Financial Research*, *The Journal of Applied Finance*, *International Economic Review*, *Research in Finance*, *The Journal of Corporation Law*, *The Journal of Derivatives and Research in Law and Economics*.

Dr. Bajaj holds a PhD in Finance from the University of California at Berkeley and an MBA from the University of Texas at Austin. He earned a Bachelor of Technology in Chemical Engineering from the Indian Institute of Technology, Delhi.

To download Dr. Bajaj's comprehensive CV, [click here](#).

Publications

- » [Economics Magazine](#)
- » [Who benefits from Securities Fraud Class Actions?](#)
- » [The Economic Irrationality Of Securities Class Actions](#)

Navigant utilizes cookies to support analysis of aggregated site usage. In order to have the full site experience, keep cookies enabled on your web browser. By browsing our site with cookies enabled, you are agreeing to their use. Review Navigant's cookies information for more details.



EXHIBIT 11

From: Dan Drosman
Sent: Tuesday, April 19, 2016 4:18 PM
To: 'Farina, Steve'; 'Stoll, R. Ryan'
Cc: Mike Dowd; Spence Burkholz; Luke Brooks
Subject: Household

Steve and Ryan,

Thanks for the call this afternoon. I write to document a couple agreements we made. First, you agreed that Messrs. Bajaj, Hicks, O'Han and Hueman reside outside the subpoena power and that you will not contest their status as unavailable pursuant to Federal Rule of Evidence 804(a) (while reserving your right to object to these witnesses on all other grounds, including relevance). Second, you also agreed that you will not object to trial designations for Gary Gilmer on timeliness grounds if we do not submit those designations with the PTO on Friday in light of Mr. Gilmer's counsel's April 4, 2016 e-mail in which he said he was undecided whether Mr. Gilmer will appear as a witness and would agree to extend the time any designations would be due for Mr. Gilmer until a final decision is made. Please let me know right away if you believe that I have not accurately documented our agreement.

Best,

Dan