

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: )  
DOUGLAS WARREN KIRKLEY, ) CHAPTER 13  
Debtor )  
)  
DOUGLAS WARREN KIRKLEY )  
)  
vs. ) CASE NO. 08-34987-HDH-13  
) ADVERSARY NO. 09-03045  
GMAC MORTGAGE, LLC A/K/A )  
GMAC MORTGAGE F/K/A GMAC )  
MORTGAGE CORPORATION )

ORAL DEPOSITION  
BILL HAUGHTON  
FEBRUARY 2, 2010

ORAL DEPOSITION OF BILL HAUGHTON, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 2nd day of February, 2010, from 10:11 a.m. to 4:45 p.m., before Sandy A. Treft, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Settle Pou, 3333 Lee Parkway, Eighth Floor, Dallas, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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APPEARANCES

FOR THE PLAINTIFF:

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MS. KAREN L. KELLETT  
Armstrong, Kellett, Bartholow, PC  
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FOR THE DEFENDANTS:

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1 BILL HAUGHTON,  
2 having been first duly sworn, testified as follows:

3 (Exhibit Nos. 1-7 marked.)

4 EXAMINATION

5 BY MR. BARTHLOW:

6 Q. All right. Sir, would you please state your  
7 full name for the record.

8 A. William Cornish Haughton.

9 Q. Okay. And can I call you Bill or Mr. Haughton?  
10 Is that all right?

11 A. Bill, sure.

12 Q. My name is Thad Bartholow, and I'll be taking  
13 your deposition today. I guess as a preliminary matter,  
14 have you had your deposition taken before?

15 A. Yes, I have.

16 Q. Okay. About how many times?

17 A. Probably eight to 10.

18 Q. Eight to 10 times, okay. All in your capacity  
19 while working for GMAC?

20 A. Yes.

21 Q. Okay. And I guess when was the first time you  
22 were deposed for GMAC?

23 A. Probably in 2005.

24 Q. 2005. So eight to 10 between 2005 and today.  
25 Okay. Some standard questions. Are you on any

1 medications today that would impair your ability to give  
2 testimony?

3 A. No.

4 Q. Okay. And I guess, let's talk about your  
5 background a little bit.

6 A. Okay.

7 Q. Tell me what your educational background is,  
8 please.

9 A. I have a bachelor business administration of  
10 history from Trinity University in San Antonio.

11 Q. Okay. And is that the highest level of  
12 education you completed?

13 A. Yes.

14 Q. Okay. And now, how long have you been working  
15 with GMAC?

16 A. Since January 2004.

17 Q. January 2004. And what was your position then?

18 A. As a lost litigation specialist.

19 Q. Okay. Tell me what that entails.

20 A. I work with homeowners to work out plans to  
21 help them stay in their houses or if they didn't have  
22 the desire or capacity to help them sell their  
23 properties.

24 Q. And how long did you hold that position?

25 A. Until July of 2004.

1 Q. Okay. And after that, what was your job?

2 A. I was a portfolio specialist which was a  
3 manager over a team of lost litigation specialist.

4 Q. Okay. When you say "portfolio specialist,"  
5 does that mean that it pertained to a specific portfolio  
6 of assets?

7 A. No.

8 Q. Okay. What does the word "portfolio" mean in  
9 that title?

10 A. Just that we have portfolios of loans and we  
11 manage them. It doesn't mean it's a specific portfolio.

12 Q. Okay. And how long did you hold that position?

13 A. Until August of 2009.

14 Q. Until August 2009, okay.

15 A. Right.

16 Q. And at that time, what job did you take?

17 A. Now I'm a portfolio manager.

18 Q. Okay.

19 A. So I manage two portfolio specialist and their  
20 teams.

21 Q. Okay. And what do your responsibilities  
22 entail?

23 A. Managing day-to-day responsibilities of the  
24 department and any issues that arise, HR issues, or I  
25 work with my manager in working on new projects, new

1 avenues of working a lost mitigation.

2 Q. Okay. Still focused on lost mitigation?

3 A. Oh, yes.

4 Q. And who is your direct supervisor?

5 A. Her name is Peggy Slattery.

6 Q. Okay, Peggy Slattery.

7 A. Uh-huh.

8 Q. Can you spell her last name for me?

9 A. S-l-a-t-t-e-r-y.

10 Q. Okay. And what is her title?

11 A. She's Vice President.

12 Q. Okay. Vice President of?

13 A. GMAC Mortgage.

14 Q. Just Vice President?

15 A. Right.

16 Q. Okay. All right. And do you know how long  
17 she's been with GMAC?

18 A. She's been with GMAC about five-and-a-half  
19 years.

20 Q. Okay. All right. And what are your reporting  
21 responsibilities to Ms. Slattery?

22 A. What do you mean by "reporting  
23 responsibilities"?

24 Q. Well, I guess to the extent that she is your  
25 manager, what does she manage?

1           A.    She manages the overall department.

2           Q.    Okay.

3           A.    And she is tasked with certain projects,  
4 special projects.

5           Q.    Special projects.  Could you give me an example  
6 of a "special project"?

7           A.    Oh, let's see.  Doing an update to our policies  
8 and procedures.

9           Q.    Okay.

10          A.    Kind of overseeing that.  She works on a group  
11 called a cross-functional review committee, so we keep  
12 in contact with other departments throughout GMAC  
13 Mortgage to make sure everybody is on the same page  
14 regarding specific topics.

15          Q.    Okay.  And would any of your responsibilities  
16 in lost mitigation involve the management of accounts  
17 that are in bankruptcy?

18          A.    Yes.  We manage the legal and bankruptcy lost  
19 mitigation departments.

20          Q.    Okay.  And are there specific policies written  
21 regarding the management of accounts while they're in  
22 bankruptcy?

23          A.    Yes.

24          Q.    There are, okay.  And do they relate to the  
25 application of payments received while an account is in

1 bankruptcy?

2 A. Not from the lost mitigation standpoint because  
3 that -- if it's in active bankruptcy and they're making  
4 payments, that goes to the bankruptcy department.

5 Q. Okay. That would be a different department?

6 A. Right.

7 Q. Okay. And then in terms of an account that is  
8 in bankruptcy, what role would lost mitigation play?

9 A. Helping the homeowner if they want to keep the  
10 property do a modification to their loan, get it  
11 approved by the court.

12 Q. Okay.

13 A. Get those changes made so they become current  
14 again, or if they want to dispose of the property, then  
15 we assist them if they have an offer on the property.

16 Q. Okay. Are you familiar with the payment  
17 processing procedures at GMAC?

18 A. Yes.

19 Q. Okay. So do you know where payments are  
20 received at GMAC?

21 A. Well, they are actually received in a lockbox  
22 and processed by our bank.

23 Q. Okay. Where is the --

24 A. The majority of our payments.

25 Q. -- lockbox located?

1           A.    There's different ones.  There's one in  
2           Phoenix.  There's different ones.

3           Q.    Do you know where the payments on this loan  
4           would have been sent, the Kirkley loan?

5           A.    No, I'm not sure.

6           Q.    Okay.  Well, are all of the lockbox operations  
7           set up identically?  Do they all -- you know, I guess in  
8           terms of how payments are received and coded into the  
9           accounts.

10          A.    Oh, in general, they would be set up the same  
11          way.

12          Q.    Okay.  And what does that set-up involve?

13          A.    Just if it's a regular monthly payment that's  
14          exactly what the payment is, what their regular monthly  
15          payment is, that's what's received, it's automatically  
16          processed systematically.

17                    If for any reason it's not exactly the  
18          exact payment, then it comes out of that system and it's  
19          manually done.

20          Q.    Okay.  So would that include a payment that was  
21          over the payment amount as well as a payment that was  
22          below the payment amount?

23          A.    Yes, it would.

24          Q.    Okay.  So any time the payment is not exactly  
25          the same as the payment amount to the penny, I assume?

1           A.    Yes.

2           Q.    Then it would require a manual processing?

3           A.    Correct.

4           Q.    Okay.  Have you ever seen the operations where  
5           payments are processed?  Have you ever seen somebody  
6           doing that coding work?

7           A.    Yes.  Part of that for Homecomings Financial  
8           used to be -- was here in Dallas in our office.

9           Q.    Okay.  But that would be -- and when was that?

10          A.    That wasn't till May of '08, I think.  I'd have  
11          to double check on that.  I can't remember exactly.

12          Q.    Okay.

13          A.    And then it moved to our Waterloo office.

14          Q.    Okay.  Prior to May of '08, was Homecomings a  
15          subsidiary or related entity of GMAC?

16          A.    Yes, it was.

17          Q.    It was.  Okay.  But it was -- it was a separate  
18          entity at that time, right?

19          A.    It was.

20          Q.    Okay.  Would you agree that the loan that we're  
21          here to talk about today has been serviced by GMAC?

22          A.    Yes.

23          Q.    And not Homecomings?

24          A.    Correct.

25          Q.    Okay.  So in terms of what GMAC's payment

1 processing operations are, have you ever observed GMAC's  
2 operations prior to Homecomings becoming GMAC, of  
3 course?

4 A. No.

5 Q. No, okay. Have you ever been to a location  
6 where the payments are, in fact, processed?

7 A. No.

8 Q. Okay. And let's talk about the manual coding  
9 procedure. Have you ever manually coded a payment  
10 yourself?

11 A. No. I've not been in that department.

12 Q. Okay. Have you -- are there policies and  
13 procedures for manually coding payments?

14 A. Yes.

15 Q. There are. Have you seen those?

16 A. In our policy and procedures, you can look  
17 anything up.

18 Q. I understand. Have you seen them?

19 A. I've looked at payment posting procedures over  
20 the years, but not on a daily basis.

21 MR. BARTHLOW: Have they been produced in  
22 this case?

23 MR. TOBIN: I don't think so. I'd have to  
24 double-check the request. I double-checked the request  
25 for production before to make sure we produced

1 everything. I'll double check.

2 MR. BARTHLOW: Okay. I will either  
3 formally submit another request or if you can get that  
4 to me, that would be fantastic.

5 MR. TOBIN: Yeah. I know they were for  
6 the insurance issue. I don't recall the payment  
7 history, but I'm not saying they were not requested.

8 MR. BARTHLOW: Understood.

9 Q. (BY MR. BARTHLOW) Okay. Well, so  
10 Mr. Haughton, in preparation for today's deposition, did  
11 you review the payment posting procedures?

12 A. I did look through them, not in great detail,  
13 but I looked. I've been involved in this since we had  
14 the mediation, so I dealt with what's going on. There's  
15 a lot of information on it.

16 Q. Okay. I guess, are they available in print  
17 form? Are they in --

18 A. They're available online.

19 Q. Online system, okay. I guess without having  
20 them here, it's sort of hard to talk about them. But  
21 can you describe how voluminous they are? Is this two  
22 or three pages of information or is it --

23 A. Oh, no, it's quite detailed.

24 Q. Okay.

25 A. And it's overseen by that department. And then

1           there's a group within the company that fine tunes them,  
2           the look of them and puts them into the policies and  
3           procedures system.

4           Q.     Okay.

5           A.     And notes when they're updated.

6           Q.     Okay.  Yeah, let's talk about updates.  Do you  
7           know when they were most recently updated?

8           A.     No, I don't.

9           Q.     Okay.  Do you know when they were originally  
10          set for the payment posting procedures?

11          A.     No.

12          Q.     Okay.

13                         MR. BARTHOLOW:  Well, then, I would also  
14          like to request any payment posting procedures that have  
15          been in effect for the duration of this mortgage loan.

16          Q.     (BY MR. BARTHOLOW) In preparation for today's  
17          mediation, did you review the payment history for this  
18          loan?

19          A.     Yes.

20          Q.     Okay.  Payment history can be a fairly  
21          ambiguous term because I know that the information can  
22          be produced in several different formats.

23                         If you would, be more specific for me in  
24          terms of which formats of the payment history or format  
25          that you reviewed prior to today's deposition?

1           A.    Well, I mean, I pulled from the system what --  
2           from our system of record, Mortgage Serve, what the  
3           payment history is.

4                         And then I looked at some other -- I  
5           looked at some correspondence that were sent to  
6           Mr. Kirkley when he requested an audit be done.

7           Q.    Uh-huh.

8           A.    So I reviewed that as well.

9           Q.    Okay. Anything else?

10          A.    No, I don't believe so.

11          Q.    Okay. Well, let's talk about the Mortgage  
12          Serve payment history. Tell me what that is.

13          A.    Mortgage Serve is our system of record.

14          Q.    Okay.

15          A.    And so we can by hitting soft keys, you can go  
16          in and look at the history of the loan or you can look  
17          at the notes on the loan or you can look at anything to  
18          do with that loan.

19          Q.    Okay.

20          A.    You can look at any aspects of the loan, the  
21          history, the notes, if a homeowner's working with you to  
22          maybe do a modification.

23          Q.    Uh-huh.

24          A.    Their financial information will be put into  
25          that system, so it will show what their current income

1 is and their expenses to help us determine what the best  
2 modification for them would be --

3 Q. Is this also a web interface?

4 A. -- as far as affordability. Web interface  
5 like?

6 Q. Well, I guess, how do you access the Mortgage  
7 Serve system?

8 A. Well, it would be the -- it would be web based.

9 Q. It would be web based. Okay. Do you know  
10 where the servers for the Mortgage Serve system are  
11 located, where that data is?

12 A. Well, there's -- it's located in various  
13 places, and then there's back-ups too. So I know  
14 there's one in Irving. Part of it's here in our Dallas  
15 office.

16 Q. Okay. And how does the information that's  
17 contained in that Mortgage Serve payment history get  
18 placed into the system?

19 A. When payments are posted, it goes into that  
20 system.

21 Q. Okay. Am I correct that you don't -- that  
22 you've reviewed the procedures for posting payments, but  
23 you don't know where the payments in this case were  
24 specifically posted, right? Like where they were  
25 received and applied?

1           A.    Like a location?

2           Q.    Yeah.

3           A.    No, I don't know where his payments go.

4           Q.    Okay. And in reviewing the --

5           A.    I mean, I think they go to Waterloo. I'm  
6 pretty sure they go to Waterloo since it's a GMAC loan,  
7 but I'd have to double-check that. I can find out and  
8 get back with you.

9           Q.    That would be great. In reviewing the payment  
10 history, did you identify any payments that were coded  
11 manually?

12          A.    There would be payments coded manually because  
13 I know that Mr. Kirkley paid sometimes a couple dollars  
14 more than his payment.

15                         Since he had had a fixed rate, his  
16 payment's not gonna change. It's pulling interest. And  
17 so if he paid extra, then it would be posted manually to  
18 post that extra to principle or --

19          Q.    Okay. And in preparation for today's  
20 deposition, did you review the complaint that we filed  
21 in this case?

22          A.    Yes.

23          Q.    Okay. Did you also review the amended response  
24 or answer that your attorneys filed in this case?

25          A.    Yes.

1           Q.    Okay.  I'm going to hand you what I've got  
2 marked as Exhibit 3, which I will represent to you is  
3 Page 9 of 23 (sic) from the amended answer that your  
4 attorneys filed in this case, and I would like you for  
5 read to me, please, Line Number 69.

6           A.    Okay.  It says, "Defendant admits that it  
7 received a payment from Plaintiff in the amount of  
8 \$2,303 on April 24th, 2006.  Defendant denies the other  
9 allegations contained in Paragraph 69 of the complaint."

10          Q.    Is that statement true?

11          A.    No, it is not.

12          Q.    It's not?

13          A.    No.

14          Q.    So even after amending the answer in this case  
15 to make this statement, that's not accurate?

16          A.    No.  This is a human error.

17          Q.    Okay.  Tell me how it's not accurate.

18          A.    Well, I've looked at the history and the  
19 payment was received.  A check was received on, I  
20 believe, April 17th.  And later on in the month, around  
21 the 24th is when the stop payment was received on that  
22 check, notification of a stop payment.

23          Q.    Okay.  Now I'm going to hand you what I've got  
24 marked as Exhibit 4.

25          A.    Okay.

1 Q. You can hand this to the court reporter.

2 A. Oh.

3 Q. Do you recognize this letter? Well, I will  
4 represent to you that this is a letter that my client  
5 received from GMAC on August 5th, 2008 stating that  
6 corrections were made to the credit repositories.

7 Have you seen this before?

8 A. Yes.

9 Q. Okay. If you would just read that first -- the  
10 first two lines of the letter beginning with "in  
11 response."

12 A. "In response to your inquiry, this letter will  
13 confirm we have made corrections to the following credit  
14 repositories for 4/06 through 8/08, to show paid within  
15 the month.

16 You may use this letter for verification,  
17 should you need to provide a potential credit grantor  
18 with proof that this correction is in process."

19 Q. Okay. You can stop there. So is that  
20 information correct? Well, let me clarify the question.  
21 First of all, were corrections made to the credit  
22 repositories?

23 A. I believe that they were.

24 Q. Okay. And did those corrections reflect that  
25 Mr. Kirkley made a payment for every month from April 6

1 through August -- April of 2006 through August of 2008?

2 A. Yes. It says to show paid within the month  
3 due.

4 Q. Okay. And those corrections were made?

5 A. I believe they were.

6 Q. Okay. So is it GMAC's policy to submit  
7 inaccurate information to the credit bureaus?

8 A. No, it's not.

9 Q. Are you representing to me, though, that that  
10 information was, in fact, inaccurate that GMAC submitted  
11 to the credit bureaus?

12 A. No, it was not.

13 Q. Okay. So payments were made within the month  
14 due for all of those months?

15 A. No, they were not.

16 Q. What am I not understanding?

17 A. It's not inaccurate that we stated we sent the  
18 reports to the credit bureaus each month. Payments, in  
19 fact, were not made each month.

20 This was a courtesy because there had been  
21 issues with his account. This was a show of good faith  
22 on our part, on the company's part to help the  
23 homeowner.

24 Q. But it's a misrepresentation to the credit  
25 bureau, correct?

1           A.    It's saying that it's going to say paid within  
2           the month due.

3           Q.    But you're saying that they were not paid  
4           within the month due?

5                     MR. TOBIN:  Objection, asked and answered.

6                     MR. BARTHOLOW:  Just want to make sure  
7           that that's the testimony.  Okay.

8                     (Ms. Kellett confers with Mr. Bartholow.)

9                     MR. BARTHOLOW:  Actually, I don't know if  
10          we do.  That's a good question.

11                    Had the letters to the credit bureaus that  
12          were sent out by GMAC been produced in this case?

13                    MR. TOBIN:  I don't know.  I'll look into  
14          it.  If they haven't, I would suspect they may not even  
15          send letters.  Do you know, Bill?

16                    THE WITNESS:  No, I don't think letters  
17          are sent.  There's an update to the tape is made.

18                    MR. TOBIN:  But I'll look into it and get  
19          written verification.

20                    MR. BARTHOLOW:  Yeah.  And I guess if you  
21          can get it, I'm trying --

22                    MR. TOBIN:  Mr. Kirkley can certainly  
23          check his credit.  A credit report would seem to --

24                    MR. BARTHOLOW:  Well, certainly.  I'd just  
25          like the information that came from GMAC's system.

1 MR. TOBIN: Uh-huh.

2 Q. (BY MR. BARTHOLOW) All right. Well,  
3 Mr. Haughton, I apologize. I'm afraid this is going to  
4 be the laborious portion of -- or one of the laborious  
5 portions of today's deposition.

6 (Exhibit No. 7 marked.)

7 Q. (BY MR. BARTHOLOW) What I am handing to you is  
8 a copy of every statement in our file that Mr. Kirkley  
9 received from GMAC basically from the loan's inception  
10 up through looks like November 14, 2008.

11 And then I'm also going to submit to you  
12 what I've got marked as Exhibit 7. Do you recognize  
13 this document?

14 A. This would be a payment history.

15 Q. It would be a payment history. Okay. Given  
16 that I am somewhat of a novice in reading and  
17 understanding these computer-generated documents, I will  
18 ask for your assistance in helping me understand it.

19 MR. TOBIN: I'm gonna object to that.  
20 That's not true. Thad looks at these things more than  
21 anybody. I'm just kidding, Thad.

22 MR. BARTHOLOW: Believe me, I don't have  
23 the GMAC system down pat.

24 MR. TOBIN: Nobody does.

25 Q. (BY MR. BARTHOLOW) But first off, if you would

1 flip exhibit -- what is it?

2 A. Seven.

3 Q. Seven -- over on the back. I believe the last  
4 page that we received begins with the date of  
5 January 15, 2006.

6 Am I correct that these sort of begin  
7 at -- or the oldest date is at the back up to the most  
8 current date which is at the top on the first page?

9 A. Yes. I mean, this one does. Some of them go  
10 from oldest going forward to the current.

11 Q. Understood. And I'm referring to the one that  
12 you're looking at today --

13 A. Right.

14 Q. -- as Exhibit 7 dated January 30, 2009.

15 A. Correct.

16 Q. Okay. So would you agree that in going through  
17 the mortgage statements which I've got in chronological  
18 order beginning with the oldest to the most recent, that  
19 it would probably make sense for us to work through this  
20 pay history from the back forward?

21 A. Uh-huh, yes.

22 Q. Well, then, doing that, I guess we'll need to  
23 skip all the way to the January 15, 2006 statement when  
24 we compare them, but I would like instead to first get  
25 there --

1           A.    Okay.

2           Q.    -- by going through the statements that you've  
3   provided today.

4           MR. TOBIN:  If I could, do you not have a  
5   pay history that goes all the way back?

6           MR. BARTHOLOW:  I have --

7           MR. TOBIN:  I mean, I'm asking because I  
8   want to produce it if you don't have it.

9           MR. BARTHOLOW:  I have a variety of pages.

10          MR. TOBIN:  Right.

11          MR. BARTHOLOW:  And I believe that I do  
12   have the pay history that was produced on October 17,  
13   2008 by the loan audit department in spreadsheet form,  
14   but not in this computer-generated format form.

15          MR. TOBIN:  Okay.  You don't think you  
16   have -- I'm not -- I don't care what you ask  
17   Mr. Haughton.  I just want to make sure we've covered  
18   our bases with providing a pay history back in 2003.  If  
19   we haven't, I will produce it.  I'll double-check.

20          MR. BARTHOLOW:  If you would go ahead and  
21   reproduce that, that would be fantastic.  Honestly, I've  
22   got about 12 different pay histories in this case.

23          MR. TOBIN:  Oh, I know.

24          MR. BARTHOLOW:  And they begin and end at  
25   different dates, so it would be nice to have one that is

1 complete and current.

2 Q. (BY MR. BARTHLOW) While we're marking  
3 exhibits, I'm also going to hand you Exhibit No. 5 which  
4 is -- I will represent to you is a spreadsheet prepared  
5 by the Loan Audit Department for the Kirkleys dated  
6 October 17, 2008.

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. Okay. And what is this that you're looking at?

10 A. This was as a result of a request for  
11 Mr. Kirkley to send him an audit of his account.

12 Q. Okay. And what is the -- what is this document  
13 that's attached to the cover letter?

14 A. That's the audit that was done.

15 Q. Okay. When you say "audit," it appears to me  
16 to be a spreadsheet.

17 A. Right.

18 Q. Okay. And is this a hand coded spreadsheet, or  
19 is this something that is generated by a computer?

20 A. I'm not really sure. I mean, I think they go  
21 through -- I believe they go through and do an audit of  
22 the account, and then they're putting it into this  
23 spreadsheet.

24 Q. Okay. Who is "they"?

25 A. Someone, somebody in the Loan Audit Department.

1 Q. Okay. And where is the Loan Audit Department  
2 located?

3 A. It's in Waterloo.

4 Q. It's in Waterloo. Okay. Have you ever been  
5 there?

6 A. No.

7 Q. No, okay. And are there policies and  
8 procedures in place for the preparation of a spreadsheet  
9 like this?

10 A. I'm sure there are.

11 Q. Okay. And you're sure there are because you've  
12 seen them?

13 A. I've seen them notated in the policy and  
14 procedures, that topic.

15 Q. As a topic that can be selected when looking  
16 through the policies and procedures --

17 A. Correct.

18 Q. -- website?

19 A. Correct. It's very large.

20 MR. BARTHOLOW: And if you could produce  
21 that as well, Dan, that would be fantastic. I'm pretty  
22 sure that has not been produced, the procedures for  
23 preparing these spreadsheets.

24 MR. TOBIN: Right. Just to be clear, I'm  
25 not agreeing to produce that at the moment. I'll look

1 at the request and see if it's relevant.

2 I'm not saying there's going to be a  
3 problem, but off the top of my head, I'm not sure  
4 there's relevance, so let me think about it a little bit  
5 more. I'll let you know. I'm not going to --

6 MR. BARTHLOW: I understand. We don't  
7 need to argue about it right now.

8 MS. KELLETT: What exhibit is this?

9 Q. (BY MR. BARTHLOW) Excuse me, Mr. Haughton,  
10 what exhibit is this marked as?

11 A. Five.

12 Q. Okay. Mr. Haughton, I've taken the liberty of  
13 hand marking line numbers you'll see on the left-hand  
14 side of this because this spreadsheet is -- you'll see  
15 if you turn to the second page, it appears to carry  
16 over.

17 So Page 1 of the spreadsheet is actually  
18 more than one page large.

19 A. Right, okay.

20 Q. If you'd like, I brought a staple remover. We  
21 can maybe take the staples out of this so we can line  
22 them up a little bit better. So have you reviewed this  
23 particular spreadsheet in preparation for today's  
24 deposition?

25 A. Yes, I have.

1           Q.    You have.  Okay.  And in reviewing it, did you  
2 compare it against anything else?

3           A.    I did.  I looked at the payment history from  
4 the system.

5           Q.    From the system, okay.  And did you compare --  
6 what did you review when you did that, when you were  
7 doing that?

8           A.    Payment dates and payment amounts.

9           Q.    Okay.  Did you also review how specific funds  
10 were applied?

11          A.    Yes, on some of the entries.

12          Q.    Okay.  And did you notice any inconsistencies  
13 between what the system reflected and what this payment  
14 spreadsheet reflects?

15          A.    What I reviewed, I didn't see any.

16          Q.    Okay.  I guess we'll in going through this --  
17 and, again, I apologize.  It will be a little tedious --  
18 we'll be able to determine whether there are, in fact,  
19 any.

20                         But let's go ahead, and what I'd like to  
21 do is I would like to look at this spreadsheet and,  
22 again, it's Exhibit No. 5.

23          A.    Five.

24          Q.    Along side of the statements in Exhibit 6,  
25 okay?

1           A.    Okay.

2           Q.    So the first statement in Exhibit 6, I will  
3 represent to you is dated May 27, 2003.  Would you  
4 agree?

5           A.    Yes.

6           Q.    Okay.  And would you agree that this is the  
7 first statement that was sent out for this loan?

8           A.    It appears that it was, yes.

9           Q.    Okay.  And it indicates that the payment amount  
10 was \$2,302.63, correct?

11          A.    Correct.

12          Q.    Okay.  The interest rate was 5.625?

13          A.    That's right.

14          Q.    And the original principle balance was  
15 \$400,000?

16          A.    Correct.

17          Q.    Okay.  And it appears that on May 23rd,  
18 preliminary interest in the amount of \$554.76 was paid  
19 on this loan?

20          A.    Yes.

21          Q.    Okay.  Would that be money paid in connection  
22 with the closing of the loan?

23          A.    Most likely with the closing.

24          Q.    Okay.  So you'd agree at this point there have  
25 been no regular payments made on the loan, correct?

1           A.    Correct.

2           Q.    Okay.  Let's go ahead and turn to the next  
3 page.  I will represent to you that this appears to be a  
4 statement dated August 11, 2003; is that correct?

5           A.    Yes.

6           Q.    Okay.  And it appears to reflect a current  
7 principle balance of \$399,043.99, correct?

8           A.    That's right.

9           Q.    Okay.  And interest paid year-to-date of  
10 \$4,302; is that correct?

11          A.    Yes.

12          Q.    Okay.  Now, turning back to Exhibit 6, am I  
13 right about exhibit -- I'm sorry -- Exhibit 7, the  
14 spreadsheet.

15          A.    Oh.

16          Q.    What I'd like to do is try to find the payments  
17 that are reflected here on the spreadsheet and try to  
18 understand what has happened with the money that was  
19 applied here based on what's reflected in the  
20 spreadsheet.

21                        Okay.  So in looking at the spreadsheet,  
22 do you see the payment that was due for August 1st  
23 coming in to the date on the spreadsheet?

24          A.    Yes.  It's the -- you have it marked as the  
25 second line.

1           Q.    The second line, okay. That would be the  
2           payment -- okay. First column is Comments. The second  
3           one is PMT CHNG. Do you know what that means?

4           A.    I think that means payment change. I'm not for  
5           sure what that means. Payment change I would think it  
6           to mean.

7           Q.    Okay.

8           A.    It should be the date that moves forward as  
9           payments are made. The next due date.

10          Q.    Okay. And so on Line 2, it appears that the  
11          date there is July 1st, 2003; is that correct?

12          A.    Correct.

13          Q.    Okay. And that appears to be payment number  
14          one?

15          A.    Correct.

16          Q.    Okay. And it indicates that principle and  
17          interest payment of 2,302.63 was made, correct?

18          A.    Yes.

19          Q.    And 1,875 was applied to interest and \$427.63  
20          applied to principle, correct?

21          A.    Yes.

22          Q.    And then the curtailment, can you tell me what  
23          curtail is?

24          A.    It appears to be anything that was extra. That  
25          was \$1.37.

1 Q. Okay. So then based on a payment amount of  
2 2,302.63, that would mean that the payment was likely  
3 2,304?

4 A. Zero five. 2,304, right.

5 Q. Okay. All right. And as we look across at the  
6 other columns, I guess, while we're at it, what does PMI  
7 ADJT mean?

8 A. Principle and interest adjustment.

9 Q. Okay. What is that?

10 A. That's probably if it's an adjustable rate  
11 loan, adjustable rate mortgage; so in this case, that  
12 shouldn't be.

13 Q. There should never be anything in that column?

14 A. No.

15 Q. And then the next column, I think I know what  
16 this is, if you just tell me, it says UPB.

17 A. Unpaid principle balance.

18 Q. Okay. And then the next line, it's broken into  
19 two columns, but I believe that says "escrow," correct?

20 A. Escrow.

21 Q. Okay. And in this loan, was there an escrow  
22 account?

23 A. No. I don't believe that was set up to be  
24 escrowed when it originated.

25 Q. Okay. And so is the -- is the "W" underneath

1           ESCRO just the word "escrow" cut off?

2           A.    I think it is wrapped.

3           Q.    Just wrapped?

4           A.    The "W" wrapped.

5           Q.    And then the next column is ESCROW BAL?

6           A.    Balance.

7           Q.    Balance, okay. And then the next column, it  
8           says "Suspense." What is suspense?

9           A.    Suspense is if -- it's used to place money if  
10           it's unknown where the funds should go on the account.  
11           It's a suspense balance that would just apply to each  
12           individual account.

13                        So if the homeowner made extra -- paid  
14           extra but didn't indicate where the extra funds should  
15           be applied, then it would go into a suspense.

16           Q.    Okay.

17           A.    Or if the homeowner made a payment that was  
18           short, not enough to make the regular payment, then it  
19           would go into suspense until such time as there was  
20           enough money sent in to, therefore, make that payment.

21           Q.    Okay. And is there a document that my client  
22           would have signed that explains the suspense accounts  
23           and how funds are to be applied through a suspense  
24           account?

25           A.    I wouldn't think at closing, no.

1 Q. No. As the borrower and person who had entered  
2 into a contract with GMAC, how would my client know what  
3 GMAC would do with suspense funds?

4 A. I don't know that they would.

5 Q. Okay. Well, then, how does GMAC decide what to  
6 do with funds in suspense?

7 A. Well, through policy and procedures, if  
8 there's --

9 Q. Let me stop you real quick. You said through  
10 policies and procedures, but it's your testimony those  
11 would be policies and procedures not disclosed to my  
12 client, correct?

13 A. No, they wouldn't be.

14 Q. No, they wouldn't be disclosed?

15 A. (Witness shakes head negatively.)

16 Q. Does the Deed of Trust provide any information  
17 regarding application of payments?

18 A. No.

19 Q. The Deed of Trust doesn't provide any  
20 information?

21 A. Not regarding a suspense account, I don't  
22 believe so, no.

23 Q. Okay. I'm asking a different question  
24 regarding application of payments.

25 A. Oh.

1 Q. Does it provide information?

2 A. Yes, it does.

3 Q. Have you reviewed the Deed of Trust in this  
4 case?

5 A. Yes.

6 Q. You have, okay. And does it provide for a  
7 priority of application of payments?

8 A. I don't recall if it list the priority or not.

9 MR. BARTHOLOW: Okay. Well, we need to  
10 get a copy made of that because I don't think I did mark  
11 that one for an exhibit today and mark it. I brought it  
12 with me. I don't know if you'd be able to run copies --

13 MR. TOBIN: Oh, yeah, of course.

14 MR. BARTHOLOW: -- maybe around lunchtime  
15 or something.

16 Q. (BY MR. BARTHOLOW) Okay. As far as you're  
17 aware, GMAC's policies for payment application are  
18 internal policies and procedures and not tied to the  
19 Deed of Trust; is that correct?

20 A. Correct.

21 Q. Okay. So, again, to rephrase, GMAC applies  
22 payments according to its own policies without regard to  
23 the Deed of Trust?

24 A. That sounds severe, but we have policies and  
25 procedures regarding accounting and so that's how

1           it's -- that's got to follow your policies and  
2           procedures.

3           Q.     Okay. Now, returning back to the payment  
4           histories here, the statement --

5           A.     The payment coupon?

6           Q.     I'm sorry, yeah, what I'm calling the  
7           statements or the coupon that is Exhibit 6. We were  
8           just looking at the statement dated August 11th,  
9           correct?

10          A.     Right.

11          Q.     And it reflected a payment on August 1st,  
12          correct? Or I'm sorry, a payment on August 11th.

13          A.     Correct.

14          Q.     Okay. So the statement was issued the same  
15          date that the payment was received, is that -- seems a  
16          little unusual, but I suppose that's possible.

17          A.     Oh, very likely. They're usually run around  
18          the 11th.

19          Q.     Okay. So if payment came in, they would run  
20          them and show it?

21          A.     It's realtime so it would.

22          Q.     Okay. All right. And looking at the interest  
23          paid year-to-date, that figure of \$4,302.75.

24          A.     Correct.

25          Q.     That would appear to include the \$554 from the

1 May 27 statement. And then it looks like there's  
2 probably an intervening July statement that we don't  
3 have here.

4 Does that sound plausible it would have  
5 shown one other payment?

6 A. Let me see. Well, this is -- this first one is  
7 really the July 1st payment statement. It's dated May  
8 27, but the account due date over in the bottom  
9 right-hand column is July 1st.

10 So this is telling Mr. Kirkley this is  
11 what you owe for July 1st, for your July 1st payment.

12 Q. Okay. And then the second statement is dated  
13 in August which means that we don't have the July  
14 statement here, correct?

15 A. For the August 1st payment.

16 Q. Okay. But it appears based on this number,  
17 \$4,302 in interest paid to date, that's clearly more  
18 than one payment?

19 A. Correct.

20 Q. So it appears that the July payment was also  
21 received?

22 A. That's correct.

23 Q. And looking at the spreadsheet, we do show  
24 payments made for both August and July, correct, on  
25 Lines 2 and 3?

1           A.    That's right.

2           Q.    Okay.  Now, is there anywhere on this  
3 spreadsheet that tells us when the payment came in?

4           A.    No, I don't believe so.

5           Q.    Okay.

6           A.    No.

7           Q.    And is that -- is that typical of these  
8 spreadsheets not to show a payment received date?

9           A.    I've seen some -- I've seen these before where  
10 they have -- I've seen one, an image where they've  
11 written in the date that the payment was made.

12          Q.    By "written in," do you mean handwritten in?

13          A.    (Witness nods head affirmatively.)

14          Q.    Okay.  So it wouldn't necessarily be electronic  
15 data that would be put in is what you're saying?

16          A.    Well, they would have looked on the system like  
17 they looked on the system for all of this information.

18          Q.    Okay.  So this, again, I guess -- and I'm sorry  
19 to belabor the point.  This is probably a hand coded  
20 spreadsheet, then?  Somebody put in each one of these  
21 line entries?

22          A.    One off audit.  The homeowner requested an  
23 audit, so an individual audit.

24          Q.    Okay, great.  And when you looked at the  
25 system, the data that you looked at also reflect the

1 actual date that was received, payments were received?

2 A. Our system of record would, of course, show  
3 that date.

4 Q. Would show that, okay. And so just turning  
5 briefly -- we're gonna be getting chronologically out of  
6 order, but if you turn to this spreadsheet which is  
7 Exhibit 7.

8 A. Seven.

9 Q. And if you'll just turn over to the back page,  
10 again, the bottom entry says 1/15/06.

11 A. Uh-huh.

12 Q. And then the entry above that says 1/17/06, and  
13 then the entry above that says 1/1/06.

14 A. Correct.

15 Q. Can you show me in these numbers, I guess  
16 starting from the bottom column moving upwards which  
17 number reflects when the payment was actually received?

18 A. This one is difficult to tell that so...

19 Q. Is there a name for this type of transaction  
20 history? I see sort of at the bottom third of the page  
21 on the front it says "Detail by Transaction."

22 A. Detail by Transaction.

23 Q. Is that a history type, a transaction history  
24 type?

25 A. Yes.

1           Q.    Okay.  Are there other transaction history  
2           types that you are familiar with that have names,  
3           whether it be called detail by transaction or something  
4           else?

5           A.    Yes.  I mean, I can't think off the top of my  
6           head what the name of them are, but they're like --

7           Q.    Would history of account ring a bell?

8           A.    History, detailed history.  There's one, I  
9           think, that says detailed history.

10          Q.    Detailed history?

11          A.    I think.  I believe that's right.

12          Q.    And how are these histories generated?

13          A.    They're generated out of the records from the  
14          system of record which is Mortgage Serve.

15          Q.    Okay.  And if you logged into Mortgage Serve,  
16          could you ask it to produce, for example, a detail by  
17          transaction?

18          A.    I can hit a button at the bottom of the screen  
19          that says DIS space HIST, display history.

20          Q.    Okay.

21          A.    Then it will -- then you can page down as far  
22          as you want to to the beginning of the loan.

23          Q.    Okay.  And I guess could you have it be  
24          prepared in a different format so that it showed the  
25          data in a way that's different from what you've got on

1           **this Exhibit 7?**

2           **A.     Yes.   I mean, I think we have one that's**  
3           **different.**

4           **Q.     Okay.**

5           **A.     That was printed out.**

6                   MS. KELLETT: We should go off the record.

7                   MR. BARTHOLOW: Yeah, we should go off the  
8           record. Your counsel has left the room.

9                   THE WITNESS: Okay.

10                   (Recess from 10:55 a.m. to 10:56 a.m.)

11                   MR. BARTHOLOW: Just for the record, we  
12           took a short break because Mr. Tobin, GMAC's counsel,  
13           had stepped out of the room for a moment.

14                   And Mr. Tobin has assured us that he is  
15           comfortable with us continuing the deposition in the  
16           event he needs to step out again. Is that accurate?

17                   MR. TOBIN: Oh, yeah, unless I -- yeah,  
18           I'll say something.

19                   MR. BARTHOLOW: Of course.

20                   (Exhibit No. 8 marked.)

21           **Q.     (BY MR. BARTHOLOW) Okay. This is a good time**  
22           **for me to introduce Exhibit 8 which I will represent to**  
23           **you is a copy of the response to a qualified written**  
24           **request letter that my office sent to GMAC. Mr.**  
25           **Haughton, have you seen this document before?**

1 A. Yes, I have.

2 Q. Okay. What is it?

3 A. It is the response from GMAC to a Qualified  
4 Written Request that was received.

5 Q. Okay. Would you agree that on the first page  
6 at Line 5, it states that "No fees were assessed to the  
7 account in the 18 months prior to October 3rd, 2008"?

8 A. Yes, it says that.

9 Q. Okay. Is that accurate?

10 A. I'm not sure. I'd have to look at the history.

11 Q. Okay. We can do that in a minute. Okay. Now,  
12 we've got -- if you'll turn past the letter to the  
13 documents attached to the letter so --

14 A. On this 8?

15 Q. Yes. And there's a document that appears to be  
16 a fax page marked 1 of 16 in the upper right-hand  
17 corner. Do you see that?

18 A. Yes.

19 Q. Okay. Do you recognize what that is?

20 A. This is part of the payment history.

21 Q. Okay. Do you know what type of -- what format  
22 this type of payment history is?

23 A. No.

24 Q. Okay. I guess beginning at the top of that  
25 list, the first line is "Begin Balance"?

1           A.    Correct.

2           Q.    Okay.  That reflects \$400,000, correct?

3           A.    Yes.

4           Q.    All right.  And then that next line says PREL  
5   PYMT FUN.  I'm guessing that that means preliminary  
6   payment funds.  Does that sound correct?

7           A.    That's correct.

8           Q.    Okay.  And that would be the \$554.76 that was  
9   paid at closing?

10          A.    And interest.

11          Q.    For interest.  And then also on July 1st of  
12   2003, there's a line for mortgage PYMT which I'll again  
13   assume is payment?

14          A.    Payment.

15          Q.    Okay.  There are two dates there; the first one  
16   is 7/1/03, and then right next to it says 7/02.  Can you  
17   explain what those two dates represent?

18          A.    The first 7/1/03 would be the due date, and the  
19   second one should be the payment date, the date that it  
20   was received.

21          Q.    Okay.  And in looking at this, how would I be  
22   able to make that determination that that's what that  
23   is?

24          A.    I don't know that you would be able to.

25          Q.    Okay.  Would you agree that it appears that

1           there was a full payment made plus \$1.37 representing  
2           the 2,304 that we had previously discussed?

3           A.     Yes.

4           Q.     Okay.  And then the next mortgage payment on  
5           this is August 1st, 2003 which based on your analysis  
6           appears it was paid on August 11th; is that correct?

7           A.     That's right.

8           Q.     That would appear was a payment in the amount  
9           of \$2,400 with curtailment of \$97.37.  Does that look  
10          correct?

11          A.     That's right.

12          Q.     Okay.  And then the September '03 payment was  
13          paid on September 5th, correct?

14          A.     Yes.

15          Q.     No principle curtailment there?

16          A.     Correct.

17          Q.     And then October was paid -- October '03 was  
18          paid on October 6?

19          A.     Yes.

20          Q.     Also no principle curtailment?

21          A.     Correct.

22          Q.     Okay.  And then on May 23rd, 2003 but with an  
23          apparent transaction date of October 22nd, we have a  
24          line for PREM and then DISB which I'm assuming means  
25          premium disbursement.  Does that sound correct?

1           A.    Yes, it does.

2           Q.    Can you explain that line on this transaction  
3 history to me?

4           A.    Yes.  On October 22nd, there was a disbursement  
5 of \$2,157.81.

6           Q.    Do you know what that was for?

7           A.    I believe that was for force placed flood  
8 insurance.

9           Q.    Okay.  Do you know why the first line says May  
10 23rd, 2003?

11          A.    That's the original -- when the loan  
12 originated.

13          Q.    Okay.  How is it that on October 22nd, 2003  
14 there is a payment made for flood insurance that is  
15 retroactive to May?

16          A.    Well, if proof of flood insurance had not been  
17 received, then the force placed policy would take  
18 effect.

19          Q.    Take effect as of May?

20                   MR. TOBIN:  Objection.  Mr. Haughton is  
21 not here to testify about insurance issues and scope of  
22 insurance --

23                   MR. BARTHOLOW:  He can testify if he knows  
24 about the payment history.

25                   MR. TOBIN:  I understand that.  Mr.

1 Haughton is --

2 Q. (BY MR. BARTHOLOW) Mr. Haughton, if you know,  
3 you can testify.

4 MR. TOBIN: -- the witness on the  
5 insurance. To the extent this disbursement effects  
6 payment history, Bill is qualified to testify.

7 Q. (BY MR. BARTHOLOW) And, Mr. Haughton, to the  
8 extent that you are aware, you are allowed to testify.  
9 And so the question was: How is it that a payment in  
10 October is applied to May several months previous?

11 A. That I don't -- I do not know.

12 Q. Okay. Have you seen that before in other pay  
13 histories?

14 A. I believe so.

15 Q. Okay. How many times have you seen that  
16 before?

17 A. I don't know. I couldn't say that. I look at  
18 many, many pay histories.

19 Q. Would you say you've seen it more than five  
20 times before?

21 A. Yes.

22 Q. Okay. More than 20?

23 A. Most likely, yes.

24 Q. More than 100?

25 A. Probably.

1 Q. More than 1,000?

2 A. I don't know if it's that -- I've seen more  
3 than 1,000, no.

4 MR. TOBIN: Counsel, could you just -- I  
5 want to make sure Mr. Haughton understands the question.  
6 Are you saying a retroactive payment of insurance only  
7 or --

8 MR. BARTHOLOW: Yeah, the question is  
9 retroactive payment on insurance.

10 MR. TOBIN: Not just a retroactive payment  
11 in general.

12 THE WITNESS: Oh. I've seen that before  
13 in payment histories.

14 Q. (BY MR. BARTHOLOW) Would you say more than 100  
15 times?

16 A. I don't think I can give you a number. I mean,  
17 I look at payment histories all the time. Some have  
18 insurance; some don't. Some are retro. Some people,  
19 the insurance --

20 Q. Okay. I guess if insurance has been force  
21 placed, is it -- have you ever seen it where it has not  
22 been applied retroactively?

23 A. Yes.

24 Q. Okay. Do you know what the circumstances would  
25 be for that?

1           A.    That doesn't mean this was applied  
2 retroactively.

3           Q.    Okay.  Can you explain what you mean by that?

4           A.    Well, this is -- this is the due date except in  
5 a case like that, I believe, where they're just making  
6 note of the -- when this loan originated.

7           Q.    So that's just a note of when the loan  
8 originated and not a note of when the policy was  
9 effective?

10          A.    I believe so.

11          Q.    Okay.  Now, there appears to be two notations  
12 of a negative \$2,157.81 for this line regarding premium  
13 disbursement.  One is in this first column, and then  
14 three columns over to the right, there's another  
15 notation.

16                           Do you know what that is for?

17          A.    No, I don't know --

18          Q.    That far right-hand column.

19          A.    I don't know what that column is for.

20          Q.    Might it be for an escrow account?

21          A.    It could be.  I don't know, though.

22          Q.    Okay.  Fair enough.

23          A.    Excuse me.

24          Q.    The next line is November 1st, 2003 mortgage  
25 payment?

1           A.    Correct.

2           Q.    Appears to have been received on November 10th?

3           A.    Correct.

4           Q.    And appears to be in the amount of 2,302.63  
5 with no curtailment?

6           A.    Correct.

7           Q.    Okay.  And then also in an entry with the date  
8 of November 1st, 2003 but an application date, if that's  
9 what the second column is of November 17th, we have a  
10 notation for hazard refund.

11                         Can you explain what "hazard refund"  
12 means?

13           A.    So they would have discontinued that coverage  
14 and the refund would have repaid the account.

15           Q.    Okay.  Now, my understanding is that there's a  
16 difference between hazard insurance and flood insurance.  
17 Is that your understanding as well?

18           A.    Yes.

19           Q.    Okay.  So would you -- does it make sense that  
20 this would -- if the first entry was for forced placed  
21 flood insurance, does it make sense that this would say  
22 "hazard refund"?  And, again, this isn't --

23           A.    I don't know.

24           Q.    -- meant to be a trick question.  I guess it's  
25 conceivable that any insurance would be defined as

1 hazard, whether it be flood or normal casualties.

2 A. It could be coded to automatically --

3 Q. Have you seen a different code for flood  
4 insurance before?

5 A. I don't believe so.

6 Q. Okay. And then we've got on December 1st, 2003  
7 another mortgage payment that was apparently received on  
8 December 11, correct?

9 A. Correct.

10 Q. And apparently no curtailment there?

11 A. Right.

12 Q. Okay. Now let's turn back to the coupons or  
13 statements. All right. We were just looking at the  
14 statement dated August 11, 2003.

15 If you would turn to the statement dated  
16 November 10th, 2003. Now, as we mentioned before, this  
17 was originally set up as a no escrow loan, correct?

18 A. That's right.

19 Q. Okay. Would you agree that on this November 10  
20 statement, we have a line that indicates a current  
21 escrow balance of negative \$2,157.81?

22 A. That's right.

23 Q. Okay. And over on the right-hand side, the  
24 details of amount due, slash, paid column, is there any  
25 amount included in this statement for escrow?

1           A.    No.

2           Q.    Okay.  Now let's also look down at the account  
3 activity box in the lower third of the page.  It appears  
4 that a mortgage payment was paid on November 1st with a  
5 transaction date of November 10th; is that correct?

6           A.    That's right.

7           Q.    Full principle and interest payment, no  
8 curtailment?

9           A.    Correct.

10          Q.    Okay.  And then the next line would be hazard  
11 insurance paid --

12          A.    Correct.

13          Q.    -- correct?  Okay.  Now, on an account activity  
14 statement, would it -- in your experience, have you seen  
15 this labeled anything other than hazard insurance  
16 before, for example, flood insurance?

17          A.    I don't believe so.

18          Q.    Okay.  So as a customer, what information would  
19 this have provided to Mr. Kirkley that this amount is  
20 for flood insurance?

21          A.    Well, it doesn't say "flood insurance."  It's a  
22 general statement of hazard insurance.

23          Q.    Okay.  And, again, looking at the details of  
24 amount due and paid, does it indicate that any  
25 additional amount needs to be paid for the flood

1 insurance?

2 A. No.

3 Q. Okay. Let's go ahead and turn to the next  
4 page, please. All right. This appears to be a  
5 statement dated December 11, 2003, correct?

6 A. Correct.

7 Q. And it also indicates that the current escrow  
8 balance is \$0; is that correct?

9 A. That's right.

10 Q. And looking at the bottom third of the page, we  
11 have a regular mortgage payment that came in on  
12 December 11, 2003?

13 A. Right.

14 Q. And then below that, we have a line for what's  
15 spelled HAZ, H-A-Z, INS refund which I take to mean  
16 hazard insurance refund. Is that what you see there?

17 A. Yes.

18 Q. And do you agree that that's what that would  
19 mean?

20 A. Yes.

21 Q. Okay. And it appears that the entire amount of  
22 the insurance from the previous statement has been  
23 removed; is that correct?

24 A. That's correct.

25 Q. Okay. In looking at the details of amount due,

1 slash, paid column on the right-hand side, we still see  
2 \$0 in the escrow column; is that correct?

3 A. That's right.

4 Q. Okay. Do you know why they removed the  
5 insurance from the account at that time?

6 MR. TOBIN: Objection. It's outside the  
7 scope of Mr. --

8 Q. (BY MR. BARTHOLOW) If you know, you can answer.

9 MR. TOBIN: -- Mr. Haughton's --

10 THE WITNESS: No, I do not know.

11 MR. BARTHOLOW: And, Mr. Tobin, I  
12 understand your objection. And we will note that  
13 anything that's outside the scope of his knowledge is  
14 outside the scope of his knowledge.

15 But I would like you to refrain from  
16 leading the witness. And I'm not suggesting that was  
17 necessarily your intention, by making that objection  
18 every time I ask a question. If he doesn't know, he can  
19 tell me he doesn't know.

20 MR. TOBIN: I'm suppose to state my  
21 objection and the concise reason for the objection. I  
22 don't want to create a situation where I have  
23 conflicting testimony when you've already deposed an  
24 insurance witness. If you'll agree that Mr. Haughton's  
25 testimony on the insurance issues is not binding on

1 GMAC, you can ask all the questions you want.

2 MR. BARTHLOW: He's a representative of  
3 GMAC that's been produced pursuant to my deposition  
4 notice; and to the extent he has knowledge on issues  
5 that are GMAC information, he is obligated to testify to  
6 it.

7 MR. TOBIN: That he's been produced for  
8 the express purpose of payment history and you know  
9 that. If you want to take this up with the Court --

10 MR. BARTHLOW: We've got a deposition  
11 notice that I sent, and if you want to take it up with  
12 the Court, we can.

13 MR. TOBIN: The deposition notice doesn't  
14 include payment -- or insurance issues.

15 MR. BARTHLOW: It absolutely include --  
16 well, I don't know what it includes.

17 MR. TOBIN: It doesn't include insurance  
18 issues. And you know that Mr. Haughton is here for the  
19 purpose of payment history.

20 I won't sit there and object every time if  
21 you'll just agree that any testimony he has is not  
22 binding as the corporate representative of GMAC on  
23 insurance issues.

24 MR. BARTHLOW: To the extent he doesn't  
25 have knowledge, he needs to tell me that he doesn't have

1 knowledge. If he does have knowledge and he testifies,  
2 then I think GMAC is bound by it.

3 MR. TOBIN: We're gonna have to go off the  
4 record for a minute.

5 THE REPORTER: Thad?

6 MR. BARTHLOW: That's okay.

7 (Recess from 11:14 a.m. to 11:17 a.m.)

8 Q. (BY MR. BARTHLOW) So, Mr. Haughton, we were  
9 last looking at the statement dated December 11, 2003,  
10 and I believe my question for you was whether you were  
11 familiar with any distinction between a hazard insurance  
12 refund being listed on a statement versus specifically a  
13 flood insurance refund being listed on a statement?

14 A. No, I'm not.

15 Q. Okay. Have you ever seen the term "flood  
16 insurance refund" on a statement before?

17 A. Not that I can -- not that I can remember, no.

18 Q. Okay. Have you seen these statements that  
19 you're looking at today before?

20 A. For this account?

21 Q. For this account.

22 A. No, I have not.

23 Q. You've not, okay. All right. Well, then, I'd  
24 like you to go ahead and turn the page. Would you agree  
25 that we're looking at a statement dated February 18,

1           2004 here?

2           A.     Yes.

3           Q.     Okay.  And would you agree that once again we  
4           have a current escrow balance listed of \$2,157.81?

5           A.     Yes, we do.

6           Q.     Okay.  And would you agree that there is an  
7           amount past due listed in the right-hand column in the  
8           amount of \$2,302.63?

9           A.     Yes.

10          Q.     Okay.  Now, if you would return to the  
11          Qualified Written Request Response that will be Exhibit  
12          8 and the payment history that we were looking at  
13          previously.

14                         I believe it looks like a fax page number  
15          2 of 16 is where I'd like you to look.  Okay.  And this  
16          is Exhibit 8, the Qualified Written Request Response; is  
17          that correct?  If you could just verify that for me.

18          A.     Yes.

19          Q.     Now, looking at this payment history, it would  
20          appear that there was a payment posted on  
21          February 19th here in the amount of \$2,400?

22          A.     Yes.

23          Q.     Okay.  And it appears that of that payment  
24          amount, \$97.37 were applied to repay late fees; is that  
25          correct?

1           A.     That's right.

2           Q.     Okay.  And then on the next line with a --  
3           again, it looks like a payment date of February 04 with  
4           a posting date of February 25th, it looks like the 2,157  
5           is once again backed out; is that correct?

6           A.     That's correct.

7           Q.     But then on the next line, it would appear that  
8           on March 15th, but apparently retroactive to the  
9           February date, there was an amount of \$1,308.71 that was  
10          added back to the late charge, slash, fees column; is  
11          that correct?

12          A.     That's correct.

13          Q.     Do you know what that amount is for?

14          A.     No, I do not.

15          Q.     Turning to the spreadsheet that was generated  
16          under the loan audit, can you help me find that amount  
17          on this spreadsheet?  And the spreadsheet would be  
18          Exhibit 5.  Maybe I could direct your attention to Line  
19          16.

20          A.     Yes, that amount is on Line 16.

21          Q.     Okay.  Can you tell me what's happening there?

22          A.     That's a credit against that \$2,157.81 charge  
23          leaving a balance in the next column over of 849.10.

24          Q.     Okay.  Now, let's go back to the QWR, which I  
25          believe is Exhibit 8; is that right?

1           A.    Is that this one?  Yes, 8.

2           Q.    Okay.  I'm just looking at the dates when all  
3 of this took place.  It appears that on  
4 February 25th was the posting date for the funds that  
5 appear to have backed out the flood insurance; is that  
6 correct?

7           A.    Well, I mean, there's a February 25th, there's  
8 two entries.

9           Q.    Okay.  Could you explain them to me?

10          A.    It says "escrow paid."  In the escrow paid  
11 column, it's 2,157.81.  In the late charge, slash, fees  
12 column, it's a negative 2,157.81.

13          Q.    And I guess I was leaping to a conclusion, but  
14 it appears to me that that's where the flood insurance  
15 was backed out; is that accurate?

16          A.    It looks that it crosses each other out because  
17 one's a positive and one's a negative.

18          Q.    Okay.  And then the next entry which still  
19 appears to apply to the February 04 date but appears to  
20 be posted March 15th is 1,308.71?

21          A.    Correct.

22          Q.    Okay.  Can you tell me why about 20 days later  
23 this money would have been added on to the account?

24          A.    No, I cannot tell you from this.  I don't know.

25          Q.    Okay.  And then returning back to Exhibit 5,

1 the spreadsheet, can you tell me how based on this  
2 spreadsheet I could tell when these transactions were  
3 occurring?

4 A. No. There's not a date on here.

5 Q. Okay.

6 A. They are from the payment change column, you  
7 can see it is going in chronological order.

8 Q. Okay. In reviewing the notes in this file --  
9 well, let me ask. Did you review the notes for the  
10 history of this account?

11 A. Yes.

12 Q. Okay. Did you see any notes relating to this  
13 \$1,308.71 amount?

14 A. Well, I know I read about it, so it's having to  
15 do with the flood insurance credit.

16 Q. Okay. But if it had to do with flood  
17 insurance, isn't flood insurance typically included in  
18 the escrow balance, the escrow portion?

19 A. Well, what do you mean "included in the escrow  
20 portion"?

21 Q. Well, I guess my understanding of mortgage  
22 accounting is that generally insurance is something that  
23 is treated as an escrow amount; and if insurance even  
24 when force placed is added to an account, it creates an  
25 escrow balance; is that correct?

1           A.     That's correct.

2           Q.     Okay.  And then, so looking at the pay history  
3           and the QWR, Exhibit 8, we have a column for what  
4           appears to be LTC HRG, slash, fees.  Would you agree  
5           that means late charge, slash, fees?

6           A.     I would think so, yes.

7           Q.     Can you tell me why this \$1,308 amount would  
8           have been added to the late charge fees account?

9           A.     I cannot tell you that.  I don't know.

10          Q.     Okay.

11          A.     I don't know if it was input error or -- I  
12          can't tell you that.

13          Q.     Okay.  And then we're jumping around a whole  
14          bunch, but going back to Exhibit 6, looking at the --  
15          well, let's go ahead and turn the page to the May 2004  
16          statement.

17                         Would you agree that the May 2004  
18          statement reflects a receipt of a payment in the amount  
19          of \$2,305 on April 1st, 2004 -- or I'm sorry -- on May  
20          12, 2004?

21          A.     Yes.

22          Q.     And that payment was applied to the April 2004  
23          payment?

24          A.     That's right.

25          Q.     Okay.  Would you also agree that there is now a

1           \$0 escrow balance being reflected in the statement?

2           A.     Yes.

3           Q.     Okay. And would you also agree that there is a  
4           \$0 amount due in the escrow field on the right-hand side  
5           details of amount due, slash, paid?

6           A.     Yes.

7           Q.     Okay. Would you agree that a payment made on  
8           or before the 15th of the month on this loan is not  
9           subject to a late charge?

10          A.     If the due date is on the 1st, yes.

11          Q.     Okay. And in this loan, is the due date on the  
12          1st?

13          A.     Yes.

14          Q.     Okay. And was this payment made before the  
15          15th of May?

16          A.     It was made on May 12.

17          Q.     Okay. Can you tell me why -- well, I guess was  
18          there a late charge added then for this account for this  
19          payment?

20          A.     For this payment made on the 12th?

21          Q.     Yes.

22          A.     I don't believe so, but there was an  
23          outstanding late charge.

24          Q.     Okay. Well, and then let's go back, then, to  
25          the Exhibit 8, the QWR. Okay. And let's look at the

1 payment made -- let's see. It appears that there's a  
2 payment with a posting date of March 17th; is that  
3 accurate?

4 A. Yes.

5 Q. Okay. I don't see any late charge or fee added  
6 at that time, do you?

7 A. No.

8 Q. Okay. And then there's a payment made on  
9 April 12th which appears to have been applied to the  
10 April '04 payment, correct?

11 A. Yes.

12 Q. Okay. And then if you look three columns over  
13 in the late charge, slash, fees column, it appears that  
14 \$132.89 is added?

15 A. Correct.

16 Q. Is \$132.89 the amount of a late charge for this  
17 loan?

18 A. I don't know. It's a percentage of the  
19 payment.

20 Q. Does it vary?

21 A. I'd have to multiply it.

22 Q. Does it vary over the life of the loan or is it  
23 always the same amount?

24 A. No. If you have a standard payment, it's gonna  
25 be the same unless rules in your state change.

1 Q. Okay. So can you tell me why the payment in  
2 April appears to include \$132.89 in late charges?

3 A. No. Unless that's just when it hit the  
4 account. The payment in February was late as well,  
5 February 19th.

6 Q. Okay. And it appears that there was a late  
7 charge in fees -- I guess what may be confusing me here  
8 is looking at the late charge, slash, fees column, would  
9 it be accurate to say that that's not a running total  
10 but rather an application by transaction?

11 A. Most likely, yes. I don't know, but it's not a  
12 running total.

13 Q. Okay. Which is why it appears on some lines  
14 and not on others, right?

15 A. Correct. Excuse me, correct.

16 Q. Let me just say, if you need to take a break at  
17 any time, feel free to ask me.

18 MR. BARTHOLOW: Of course, the court  
19 reporter is also welcome to do so.

20 Q. (BY MR. BARTHOLOW) As of the April 2004 payment  
21 posted on April 12th, is Mr. Kirkley behind at all?

22 A. No. He would be -- he would have made his  
23 current month's payment.

24 Q. Okay. And then returning to the May  
25 18th statement at Exhibit 6.

1           A.    May, okay.

2           Q.    Same page we were on a moment ago.  We've got a  
3           payment that appears to have been received on May  
4           12th being applied to the April 2004 payment?

5           A.    Well, it was put into miscellaneous.

6           Q.    Tell me what you mean by that.

7           A.    It says "miscellaneous" on this Exhibit 8.  It  
8           says on the May 12 postdate.

9           Q.    Uh-huh.

10          A.    \$22,305 it says in the far left-hand column  
11          miscellaneous receipt.

12          Q.    Uh-huh.  Why was it put in miscellaneous?

13          A.    I do not know.

14          Q.    Would you agree that it should have been  
15          applied?

16          A.    I can't say that.

17          Q.    Do you agree -- well, then, do you agree that,  
18          in fact, as of May 18, 2004 Mr. Kirkley was \$2,482 past  
19          due?

20          A.    Well, that's what this statement says.

21          Q.    I understand that's what this statement says.  
22          I'm asking you whether the statement is accurate?

23          A.    Yes, I would say it is.  We're missing  
24          statements in between.  We have one for February and  
25          then we go to May, so we're missing March and April

1 statements.

2 Q. I understand, but we're, you know, going  
3 between the pay history produced on Exhibit 8 by GMAC,  
4 we can see when payments were received, correct?

5 A. Uh-huh.

6 Q. Okay. And I think we are in agreement that  
7 payments were, in fact, received on -- starting in  
8 March, March 17th, April 12th, May 12th. The March  
9 payment was two days late, right?

10 A. Well, two days past the date you get assessed a  
11 late fee. It's 16 days late.

12 Q. Okay. Two days after the grace period, agreed?

13 A. Correct.

14 Q. Okay. The other two payments were within the  
15 grace period, correct?

16 A. Which ones?

17 Q. That would be the April and May payments.

18 A. Yes, they were.

19 Q. So what I still don't understand is how is it  
20 that as of May 18th, GMAC Mortgage has Mr. Kirkley  
21 \$2,482.45 past due?

22 A. Because from my researching this account, he  
23 was now being escrowed for that portion of the  
24 nonrefunded flood insurance.

25 Q. Okay. And yet, here it is May 18, 2004, and

1 would you agree that under the account information  
2 column, the current escrow balance is \$0?

3 A. Yes.

4 Q. Okay. And the amount due for escrow on the  
5 right-hand side is \$0?

6 A. Yes.

7 Q. So how would Mr. Kirkley have known based on  
8 this statement that that's what was happening?

9 A. Well, he needs -- where is the previous month's  
10 statement? That would probably show it.

11 Q. Okay. Well, we'll -- would GMAC be able to  
12 produce that? I've got what my client has in his  
13 possession. These are very old statements.

14 A. I don't know.

15 MR. TOBIN: We've produced all the letters  
16 GMAC sent. I looked for the statements, so yeah. Does  
17 that make sense? We produced the default letter, but  
18 not the --

19 MR. BARTHOLOW: The statements.

20 MR. TOBIN: -- the statements.

21 MR. BARTHOLOW: Yeah, if you guys can get  
22 the statements, that would be great.

23 Q. (BY MR. BARTHOLOW) But it still doesn't -- I  
24 mean, if there's an escrow account, Mr. Haughton, you  
25 would agree that it would appear as an escrow balance,

1 right?

2 A. Right, but he's -- he didn't set up an escrow  
3 account. It was force placed. And being that it was  
4 849.10, they're just going to spread that out over  
5 several months to make it -- to pay it back.

6 Q. Would Mr. Kirkley have gotten some kind of  
7 statement explaining to him that that's what had  
8 happened?

9 A. I don't know that he'd get a statement.

10 Q. How would he have known that that's what had  
11 happened?

12 A. If he called in and asked anyone, they could  
13 have told him that or --

14 Q. So he would have had to call in?

15 A. Or he could have received a letter. I don't  
16 know. I'm not sure.

17 Q. Have you seen a letter in your view of the file  
18 relating to that?

19 A. Not that I recall. I'm not sure.

20 Q. Okay. And now returning to the Exhibit 8 pay  
21 history, can you tell how the payments labeled  
22 miscellaneous receipt were applied, the payments with  
23 the post-date of -- specifically the ones with  
24 post-dates of May 12 and June 21st?

25 A. They're put in the far right-hand column, funds

1 transaction, and that's the running total column.

2 Q. Is that an unapplied funds column?

3 A. It would be. It would be like a suspense.  
4 Suspense and unapplied is the same thing.

5 Q. Okay. And did GMAC have a policy -- or  
6 actually, let's talk about your recollection. Did, in  
7 2004, GMAC have a policy for application of funds,  
8 unapplied funds, suspense funds?

9 A. Oh, I'm sure that we did.

10 Q. Okay. And do you -- do you know what it was?

11 A. No, I couldn't tell you exactly.

12 Q. Do you know whether it --

13 A. I'm not in that department.

14 Q. -- whether it provided a timeline for the  
15 application of funds?

16 A. I don't know that.

17 Q. Okay.

18 A. I'm not sure.

19 Q. Do you know -- similar, but I think a little  
20 bit different question. Do you know whether there is  
21 any limitation on how long funds could be held or  
22 segregated into an unapplied funds account?

23 A. I believe there is a time limit.

24 Q. Okay. Currently there is?

25 A. Yes.

1 Q. Okay. Do you know what the current time limit  
2 is?

3 A. No, I do not. I'm not sure.

4 Q. Okay.

5 A. I'd have to find that out.

6 Q. Okay. That would be within the scope of the --  
7 you know, the payment history and the payment  
8 application issues, correct?

9 A. Since there's unapplied funds, yes.

10 Q. Okay.

11 MR. BARTHOLOW: So I would like GMAC to  
12 produce a witness that would be able to testify  
13 regarding the payment application procedures.

14 MR. TOBIN: Okay. Mr. Haughton -- yeah,  
15 we -- I mean, you asked for the payment history on this  
16 loan. In terms of policy and procedures, we'll  
17 certainly produce someone.

18 MR. BARTHOLOW: I think that's in the  
19 specifics of the deposition notice. Do you have the  
20 deposition notice?

21 MR. TOBIN: It's not because I made darn  
22 certain that Mr. Haughton -- he disclosed to me that he  
23 could not testify to the general policies and  
24 procedures, and I told him it's okay. As long as you  
25 know the payment history for this loan, you're fine.

1                   MR. BARTHOLOW: Okay. I mean, at Number  
2                   12 of our Exhibit A, it says the application of payments  
3                   received from Plaintiff on this loan so...

4                   MR. TOBIN: Whether or not GMAC's  
5                   application in this case violated their own policies and  
6                   procedures, Mr. Haughton can't answer that. I'm not  
7                   trying to be squirely on you. I'm just telling you he's  
8                   --

9                   MR. BARTHOLOW: We may have to renotice  
10                  another deposition of somebody that's confident to  
11                  testify as to their policies and procedures for  
12                  applications.

13                 Q.     (BY MR. BARTHOLOW) And, Mr. Haughton, I don't  
14                 mean any offense by that. It's just we need to know  
15                 that.

16                 MR. TOBIN: No, no. He'll freely tell you  
17                 that he can't testify to this stuff.

18                 Q.     (BY MR. BARTHOLOW) Okay. So then I guess just  
19                 to clarify, your testimony is that you do not know why  
20                 they placed these funds into an applied funds account?

21                 A.     No.

22                 Q.     Okay. Who would know that?

23                 A.     I don't know if anyone would. I mean, the  
24                 general for every mortgage servicing company, a  
25                 transaction history is simply numbers and dates. It's

1 not gonna be -- there's no column to put your --

2 Q. Is there a way to figure out who coded those  
3 transactions?

4 A. Let me think. There could be. There would  
5 probably be some sort of teller ID.

6 Q. It would be a teller most likely who would have  
7 done that?

8 A. No, not a teller. I'm not saying a teller.  
9 It's called a teller ID. I have a teller ID. If you  
10 work for GMAC, everybody has a teller ID now.

11 Q. Okay.

12 A. In 2004, there was some kind of information  
13 that would determine who it was, what department it was.

14 Q. Okay.

15 A. Now, again, if a payment comes in and it's the  
16 exact amount, which in this -- for example, the 5/12,  
17 May 12 payment, 2,305, that wasn't exactly his normal  
18 payment.

19 His normal payment is 2,302.63. Then it  
20 would have had human intervention.

21 Q. Okay. What about the one on June 21st?

22 A. That -- it is his exact payment, but it might  
23 have had human intervention as well.

24 Q. What would have triggered human intervention on  
25 an exact payment?

1           A.    If he has an escrow -- if his payments  
2           increased because of escrow, then that would be short.

3           Q.    Okay.  And it would have been short in what  
4           sense?

5           A.    They would have divided that balance of the  
6           flood insurance out over most likely six months to pay  
7           that back.

8           Q.    Okay.

9                         MR. TOBIN:  Thad, whenever you finish your  
10           line of questioning, I've got to use the restroom, but I  
11           can hold it.

12                        MR. BARTHOLOW:  Why don't we go ahead and  
13           take a break right now.  That's okay.  Off the record.

14                                 (Recess from 11:46 a.m. to 11:52 a.m.)

15           Q.    (BY MR. BARTHOLOW) Mr. Haughton, just sort of  
16           returning to a general issue here.  You're here and able  
17           to testify, I guess, about what happened to the money  
18           that was received by GMAC; is that correct?

19           A.    Through the payment history.

20           Q.    Okay.  But you're not able to testify as to why  
21           GMAC applied the money the way that it was applied; is  
22           that correct?

23           A.    Correct.

24           Q.    Okay.

25                         MR. BARTHOLOW:  We can go back off the

1 record for right now.

2 THE REPORTER: Is that okay?

3 MR. TOBIN: Oh, yeah.

4 (Recess from 11:53 a.m. to 12:10 p.m.)

5 Q. (BY MR. BARTHOLOW) Okay. Mr. Haughton, in  
6 preparation for the deposition today, did you review  
7 GMAC's production to the plaintiff, the documents that  
8 were produced?

9 A. Yes.

10 Q. Did you look at all of it?

11 A. I glanced through all of it, yes.

12 Q. Okay. Did you see any letters to the plaintiff  
13 notifying him that his payment amount had changed?

14 A. I saw letters. I'd have to look at each one  
15 individually.

16 Q. Letters -- well, I guess the question is: Did  
17 any of the letters that you saw indicate that  
18 plaintiff's payment amount had changed?

19 A. I believe they did, yes.

20 Q. Okay. Do you recall when those letters were  
21 from, what time period?

22 A. No.

23 Q. No. And why wouldn't the plaintiff's statement  
24 reflect changes in the payment amount if he was also  
25 receiving letters telling him the amount of his payments

1 had changed?

2 A. I don't -- I don't know why this didn't show  
3 it.

4 Q. When you say "this," you're pointing to Exhibit  
5 No. 6? And I guess specifically right now, are you  
6 looking at the May 18, 2004 statement?

7 A. Yes.

8 Q. Okay. What other record would show a payment  
9 change amount besides these letters that were in the  
10 production?

11 A. That would -- I'm not really following your --  
12 what other what?

13 Q. Record in GMAC's system would show a change in  
14 the payment amount?

15 A. Notes in our system.

16 Q. Okay. So --

17 A. When we talked to the homeowner.

18 Q. But the only way that your system would reflect  
19 a change in the payment amount is through notes and a  
20 letter that was sent out to my client?

21 A. No. If an escrow account was set up, if he was  
22 going to -- some homeowners don't escrow and then they  
23 decide they want to. I'm not saying this is that case  
24 here.

25 But in general, somebody doesn't escrow

1 and then they decide, yes, we want you, mortgage  
2 company, to escrow, then the escrow account would be set  
3 up, an analysis would be run to see what the payment  
4 should be monthly for their taxes and/or insurance.

5 Q. Did that happen in this case?

6 A. I don't believe so because he didn't request  
7 that an escrow account be set up to pay his taxes.

8 Q. Okay. And so why didn't the statements reflect  
9 a change in the payment amount?

10 A. I'm not sure why.

11 Q. Okay. And why don't the pay histories reflect  
12 a change in the payment amount?

13 A. Because a pay history is the history of the  
14 payment, not a history of what to do.

15 Q. Okay. Tell you what, turning back to Exhibit  
16 8, I need you to flip forward a few pages to the copy of  
17 the Deed of Trust that is attached to Exhibit 8. You  
18 there?

19 A. Yes.

20 Q. Okay. Have you seen this document before?

21 A. Yes.

22 Q. Do you recognize it as the Deed of Trust  
23 applicable to my client Doug Kirkley's mortgage loan?

24 A. Yes, I do.

25 Q. Do you agree that it includes provision at

1 Section 2 entitled Application of Payments or Proceeds?

2 A. Yes.

3 Q. Okay. And if you would begin reading that  
4 paragraph.

5 A. "Application of Payments or Proceeds. Except  
6 as otherwise described in this Section 2, all payments  
7 accepted and applied by lender shall be applied in the  
8 following order of priority: (a) interest due under the  
9 Note: (b) principle due under the Note: (c) amounts  
10 due under Section 3.

11 Such payments shall be applied to each  
12 periodic payment in the order in which it became due.  
13 Any remaining amounts shall be applied first to late  
14 charges, second to any other amounts due under the  
15 security instrument, and then to reduce the principle  
16 balance of the note."

17 Q. Please continue.

18 A. Oh. "If lender receives a payment from  
19 borrower or a delinquent periodic payment, which  
20 includes a sufficient amount to pay any late charge due,  
21 payment may be applied to the delinquent payment and the  
22 late charge.

23 If more than one periodic payment is  
24 outstanding, lender may apply any payment received from  
25 borrower to the repayment of the periodic payment, if

1 and to the extent that each payment can be paid in full.

2 To the extent that any excess exist after  
3 the payment is applied to the full payment of one or  
4 more periodic payments, such excess may be applied to  
5 any late charge due.

6 Voluntary prepayment shall be applied  
7 first to any prepayment charges and then as described in  
8 the note."

9 Q. Okay. And then would you agree that the  
10 Section 3 that was referenced in the first paragraph is  
11 funds for escrow items?

12 A. Right.

13 Q. Okay. And we've also already discussed that  
14 this loan was originally set up as a no escrow loan; is  
15 that correct?

16 A. That's right.

17 Q. Okay. And would you agree that in the  
18 application of payments or proceeds paragraph that we  
19 just read, the only permissive language in there about  
20 how payments may be applied other than to interest and  
21 principle and escrow amounts when there are delinquent  
22 payments is that the lender can apply them to late  
23 charges?

24 A. Well, it says any remaining amount shall be  
25 applied first to late charges, second to any other

1 amounts due under the security instrument and then to  
2 reduce the principle balance of the note.

3 Q. Okay. Fair enough. So any remaining amounts,  
4 right? That would be after payments for each periodic  
5 payment; is that correct?

6 A. Yes.

7 Q. Okay. And each periodic payment under this  
8 provision includes, A, interest, B, principle and, C,  
9 escrow, right? Interest --

10 A. Yes.

11 Q. -- due, principle due and escrow due, that  
12 would mean outstanding, right?

13 A. Right.

14 Q. Okay. And in looking at the -- earlier in this  
15 same exhibit -- yeah, Exhibit 8, the Page 2 of 16 or the  
16 fax Page 2 of 16, which is the label 2004 history  
17 statement of mortgage account that we were looking at a  
18 minute ago with those miscellaneous receipts, from April  
19 of 2004 -- or actually, rather, May 12, 2004 and  
20 June 21st of 2004?

21 A. Right.

22 Q. Would you agree that there is no indication in  
23 this, in those lines of any amount being applied or  
24 required for escrow?

25 A. Well, this is a history of the payments. It's

1 not gonna show escrow due.

2 Q. Okay. What would show the escrow due? Would  
3 that spreadsheet that we were looking at before as  
4 Exhibit 5 show escrow due?

5 A. Let's see. Well, this is an audit of the  
6 account of what was paid, the payment history.

7 Q. Uh-huh. One of those columns, though, is for  
8 escrow balance; is that right?

9 A. Yes.

10 Q. Okay. Presumably that would be a running  
11 total, correct?

12 A. Well, that's if there's a disbursement. Like  
13 on Line 10, it says "escrow," but on Line 6, it says  
14 "escrow disbursement."

15 Q. Uh-huh.

16 A. And over there is 2,157.08.

17 Q. Uh-huh.

18 A. So that's what was disbursed.

19 Q. Okay. Well, let's go to Line 10, which you  
20 mentioned, through 13. Can you tell me why there  
21 continues to be a running total of 2,157.8 in there?

22 A. No, I don't know why the individual that did  
23 this audit put that in there, unless he was just  
24 carrying down the balance.

25 Q. Which would be consistent with a column labeled

1 escrow balance, right?

2 A. Right.

3 Q. Okay. So I just want to clarify your testimony  
4 here. Are you testifying that the escrow balance column  
5 does or does not reflect a running total of the escrow  
6 balance?

7 A. I believe it does because then line -- I can't  
8 tell. Line --

9 Q. Well, let me ask a different question.

10 A. Fourteen is a reversal.

11 Q. Right.

12 A. So it balances out to zero.

13 Q. And then Lines 15 through 39 show a \$0 escrow  
14 balance; is that right?

15 A. Yes, it does.

16 Q. Okay. Would you agree that at least the date  
17 in the PMT CHG column on the far left between Lines 15  
18 and 39 runs from, I guess, the first one that I see is  
19 March 1st, 2004?

20 A. Right.

21 Q. Through the last one I see is August 1st, 2004?

22 A. That's right.

23 Q. Okay. So would you agree that there appears to  
24 be a \$0 escrow balance during that time period?

25 A. It does show zero.

1 Q. And, again, we're looking at Exhibit 5, the  
2 first page of the loan transaction spreadsheet, right?

3 A. No. This is an audit.

4 Q. Or payment history audit spreadsheet; is that  
5 correct?

6 A. Correct.

7 Q. Okay. So can you tell me why GMAC's audit does  
8 not reflect any escrow balance at a time when GMAC was  
9 sending my client letters allegedly telling him that his  
10 payments are higher?

11 A. No, I don't know why the person that did this  
12 audit manually doesn't have that on there.

13 Q. Okay. So are you saying that the audit is not  
14 accurate?

15 A. It doesn't show an escrow balance.

16 Q. Okay.

17 A. I don't know.

18 Q. Where would we look for accurate information  
19 about this?

20 A. We have to look to the system of record.

21 Q. What is the "system of record?"

22 A. Mortgage Serve.

23 Q. Mortgage Serve, okay. Does Mortgage Serve go  
24 by any other computer name?

25 A. No.

1 Q. For example, are you familiar with Fidelity or  
2 MSP? Have you heard of those systems before?

3 A. Yes.

4 Q. Okay. Does GMAC use those systems?

5 A. MSP, I don't think so.

6 Q. Mortgage Servicing Platform?

7 A. People call it different things and different  
8 offices. Most people -- everybody calls this Mortgage  
9 Serve.

10 Q. Mortgage Serve, okay. Is that a Fidelity  
11 system or is that a system that GMAC created?

12 A. Oh, no, we didn't create it. It is a Fidelity  
13 system, I believe.

14 Q. Okay. That may be just their more -- their  
15 latest generation term for it, I think.

16 A. Right.

17 Q. Okay. Going back to Exhibit 8, it's Exhibit 8,  
18 Qualified Written Request Response, Page 2 of 16, the  
19 2004 history -- I'm sorry, the fax Page 2 of 16, the  
20 2004 history statement of mortgage account dated  
21 July 31st, 2006.

22 Is this something that was produced from  
23 Mortgage Serve?

24 A. In '06, yes, it would have been.

25 Q. Would have been, okay. And does Mortgage Serve

1 contain accurate escrow information, escrow balance  
2 information?

3 A. It should.

4 Q. It should. So is the escrow balance  
5 information contained on this page accurate?

6 A. I can't -- I can't say that for sure. I can't  
7 say that it is accurate for sure. There is balance and  
8 then there's a credit, so I can't say that for sure.

9 Q. Okay. Would Mortgage Serve have been used to  
10 generate the letters that GMAC sent or alleged that they  
11 sent to my clients regarding payment changes?

12 A. Some letters are created out of Mortgage Serve.  
13 (Exhibit No. 9 marked.)

14 Q. (BY MR. BARTHOLOW) Okay. Well, I want to  
15 introduce now what I've designated as Exhibit 9, and  
16 this is some excerpts from GMAC's production in this  
17 case which you testified earlier you did review,  
18 correct?

19 A. Correct.

20 Q. And let's go ahead and flip forward to Bates  
21 Label 313. Actually, let's go ahead and flip past that  
22 to 315. I will represent to you that this is what  
23 appears to be a computer-generated printout of a letter  
24 dated June 14, 2004. Have you seen this letter before?

25 A. Yes.

1 Q. Okay. And what is this letter?

2 A. It's a letter indicating that the homeowner's  
3 past due and what they need to pay to cure the past due  
4 amount.

5 Q. Okay. And was he past due at that time?

6 A. Well, actually, this isn't all of the pages of  
7 this.

8 Q. When you say "this," which exhibit are you  
9 looking at right now?

10 A. I'm looking at 8.

11 Q. Okay. And that Exhibit 8 would be the detail  
12 by transaction that only goes back to January of '06,  
13 right? Or no, I'm sorry. You're looking at the --

14 A. I'm looking at the second document in it.

15 Q. Okay. So Exhibit 8 is the Qualified Written  
16 Request Response?

17 A. Right.

18 Q. And the second document is described as history  
19 for account. Is that what you're looking at?

20 A. Right.

21 Q. And it's dated December 11, 2008?

22 A. Yes.

23 Q. Okay. And it appears to commence in December  
24 of '05; is that right?

25 A. Right.

1 Q. Okay. Yeah. So let's go back to the Page 2 of  
2 16, transaction history, the 2004 history statement of  
3 account that was produced.

4 A. Uh-huh.

5 Q. Is there any way to tell from this whether  
6 Mr. Kirkley was past due or not on June 14, 2004?

7 A. Let's see. I'm sorry, what date, June 14?

8 Q. Uh-huh.

9 A. This makes it appear that he was because a  
10 payment was received on June 21st of '04 and the last  
11 paid is 4 of '04. The date in the last paid column is 4  
12 of '04.

13 Q. So how far past due do you show that he is?

14 A. I can't really tell by this document.

15 MR. BARTHOLOW: Yeah, I think it's time to  
16 break for lunch. Is that okay, Dan?

17 MR. TOBIN: Yeah, sure. How long do you  
18 want to break for?

19 MR. BARTHOLOW: An hour.

20 MR. TOBIN: An hour? Come on. Why do we  
21 have to break for that long? All right. We'll break  
22 for an hour. It's your deposition.

23 THE REPORTER: Are we off?

24 MR. TOBIN: We can go off the record.

25 MR. BARTHOLOW: We're off the record.

1 (Recess from 12:32 p.m. to 2:00 p.m.)

2 Q. (BY MR. BARTHOLOW) Mr. Haughton, what I'm  
3 handing you today is Exhibit 2. Do you recognize that  
4 document?

5 A. I do. I've seen it.

6 Q. What is it?

7 A. It's a mortgage loan history prepared by  
8 somebody that you requested to prepare it.

9 Q. Okay. And have you had a chance to take a look  
10 at this before and compare it with GMAC's record?

11 A. I have looked at it, yes.

12 Q. Okay. And would you agree that it accurately  
13 reflects GMAC's records in terms of how payments were  
14 processed and that sort of thing?

15 A. Well, I haven't compared it line by-line, so I  
16 can't say that totally.

17 Q. What I'd like to do is hopefully this provides  
18 us with an easier-to-read format for the accounting  
19 history.

20 A. Okay.

21 Q. And so I'd like to kind of refer to this; and  
22 if we need to cross-check it or if there's something  
23 that you can't confirm or verify, I'd like you to let me  
24 know what you can and cannot confirm and verify and  
25 either we can try to do that while we're here or

1 identify things where we need to follow-up and get  
2 confirmation.

3 A. Okay.

4 Q. Because hopefully, this is a little bit easier  
5 to go through. So let's see. Where we left off is it  
6 appears in March of '04, and I've got it at Line 18 on  
7 this document.

8 A. Right.

9 Q. It appears that there was a transfer to  
10 corporate advances and earned flood premium. Do you see  
11 that line?

12 A. Uh-huh, I do.

13 Q. And in reviewing the pay history and the other  
14 notes, do you agree that that's what happened on March  
15 15, 2004?

16 A. Yes. There was a credit earlier for the  
17 1,308.71.

18 Q. Uh-huh.

19 A. And it left a balance -- would have left a  
20 balance of 849.10.

21 Q. Okay. Do you know what that 849.10  
22 represented?

23 A. That would have been the period of the flood  
24 policy from the time of the loan closing to the time  
25 that Mr. Kirkley showed his policy that he purchased.

1 Q. Okay. Is that -- in industry parlance, is that  
2 called an earned premium?

3 A. Yes.

4 Q. Okay. And then let's look at Line 23 which is  
5 in red here.

6 A. Okay.

7 Q. We see that the transaction date on that is May  
8 12, 2004?

9 A. Correct.

10 Q. And the amount received is 2,305?

11 A. That's right.

12 Q. Okay. What happened to that money?

13 A. It was put into suspense.

14 Q. Okay. Now I would like to have you refer back  
15 to the Exhibit 8, Qualified Written Request. It looks  
16 like you're looking at it right now, at Page 2 of 16  
17 that we were looking at before.

18 A. Right.

19 Q. It looks like that is the same May 12 payment  
20 that was applied to suspense on this transaction  
21 history. Does that seem right?

22 A. Yes, it does.

23 Q. Okay. Now, when I look at the Line 21 on my  
24 Exhibit 2.

25 A. Uh-huh.

1           Q.    The mortgage loan history prepared by my  
2 expert, we've got an April 12th payment that came in,  
3 right, on Line 21?

4           A.    Right.

5           Q.    It appears to have been applied for the April  
6 payment. Does that seem right?

7           A.    Well, that shows on yours on --

8           Q.    And then looking back at the Exhibit 8, that  
9 Page 2 of 16, 2004, is that the same information?

10          A.    That's right, 2,435.52 on 4/12.

11          Q.    So would you agree that as of April 2004, as of  
12 April 12th, 2004, Mr. Kirkley was current on his  
13 mortgage loan?

14          A.    Yes, it appears that he was.

15          Q.    Okay. And would you agree that by making a  
16 payment on May 12, 2004, Mr. Kirkley made a payment  
17 within the allowable grace period and that the payment  
18 was actually in excess of his monthly mortgage payment  
19 amount?

20          A.    On May 12?

21          Q.    Yes.

22          A.    Just by a couple of dollars.

23          Q.    And by that, you mean the payment was 2,305 and  
24 the actual payment amount was 2,302.63 correct?

25          A.    Right.

1           Q.    Okay.  And yet that payment was applied to  
2   suspense?

3           A.    It was.

4           Q.    And your testimony before lunch was that you  
5   don't know why it was applied to suspense, correct?

6           A.    I am surmising because the payment had gone up  
7   due to the balance on the flood premium.

8           Q.    Okay.  And as we were discussing before  
9   lunch --

10          A.    Which he made the previous month in April.  He  
11   made the 2,435.52.

12          Q.    Okay.  And let's go ahead and do that.  Let's  
13   go -- let's look at the April -- you're looking at the  
14   Line 21, is that correct, on the mortgage loan history,  
15   Exhibit No. 2?

16          A.    Correct.

17          Q.    On the first page.  And that payment, 2,435,  
18   let's talk about what happened to the funds in that  
19   payment.

20          A.    Okay.  To principle was 446.49.  This is  
21   according to Exhibit 2.  To interest was 1,856.14.  
22   Let's see.  I don't -- I'm not -- I'm trying to add this  
23   in my head, but I don't know if I can.  And then the  
24   132.89 to late charge.

25          Q.    Were there any other funds applied at that

1 point?

2 A. No, I don't believe so.

3 Q. Okay. So as I read this, it looks like the  
4 2,435.52 payment was what he needed to pay to pay off  
5 all outstanding late charges; would you agree?

6 A. Let's see, 315. I don't know if that was all  
7 the outstanding late charges, but it did pay 132.89 of  
8 it.

9 Q. Well, if you'll go one line above to Line 20  
10 and then one line over to the right, could you read the  
11 figure there?

12 A. Oh, right, 132.89.

13 Q. Okay. And is that the column for late charge  
14 balance?

15 A. Yes.

16 Q. Okay. What other document could we look at  
17 that would be a GMAC document to confirm that, in fact,  
18 was the late charge balance at the time?

19 A. Go back to -- we can look to this Exhibit 8.

20 Q. Okay.

21 A. Page 2 of 16.

22 Q. Okay.

23 A. It shows 4/12, 132.89 under late charge, slash,  
24 fees.

25 Q. Okay. And that would be monies applied to late

1 charge, slash, fees?

2 A. Right. Fees can be any type of fee.

3 Q. Okay.

4 A. A fee for foreclosure, a fee for property  
5 inspection, a fee for any fee associated with the  
6 account.

7 Q. Okay.

8 A. So this isn't late charge fees. It's late  
9 charge, slash, fees. In this system, fees can go in  
10 here and then they can move over to what they were -- to  
11 the actual fee.

12 Q. Uh-huh.

13 A. So it could move. For example, there's a few  
14 lines up on 2/25, the postdate of 2/25.

15 Q. Uh-huh.

16 A. The negative 2,157.81, that would be an escrow  
17 fee. And then you see where it's moved over to the  
18 escrow paid column.

19 So this printout is from a system that's  
20 used to load the previous year's data in because  
21 Mortgage Serve can't hold all the data for the entire  
22 life of the loan and to keep the data for the number of  
23 years after the loan pays off that you're suppose to  
24 that goes into this system, and that's how this works.

25 So each year say sometime in this month or

1 next month, 2009's data will role into this system.

2 Q. Okay. And so this system is independent of  
3 Mortgage Serve? It's not Mortgage Serve that produces  
4 this report?

5 A. No.

6 Q. Okay.

7 A. Mortgage Serve produces this report  
8 (indicating).

9 Q. And could you -- where --

10 A. I'm looking further down in Exhibit 8.

11 Q. Exhibit 8. And is it -- what's that report  
12 entitled? Do you have a title of that?

13 A. History For Account at the very top.

14 Q. And what's the date of that?

15 A. This is dated 12/11/08.

16 Q. Okay. Yeah. How far back does the Mortgage  
17 Serve system maintain data?

18 A. Well, they went on to Mortgage Serve in  
19 Waterloo, Iowa in 2000 -- I think they went on in 2004.

20 Q. Okay. So anything from before 2004 would not  
21 be on Mortgage Serve?

22 A. We would just have to look and see if they  
23 poured it over previous --

24 Q. Okay.

25 A. -- data.

1 Q. Okay. Well, so then --

2 A. They used another system before that.

3 Q. I just want to point out any issue where we  
4 might have disagreement about how we've listed things in  
5 here versus what you can confirm based on GMAC's  
6 records.

7 What we've listed at Lines 20 and 21 is  
8 late charge in Line 20 being added -- or not being  
9 added, sorry. A late charge balance of 132.89.

10 A. Uh-huh.

11 Q. Based on -- let's see. If you go up a few  
12 lines in the To Late Charge category, you have late  
13 charge assessment in Line is it 15?

14 A. Fifteen.

15 Q. Of 115.13. Would you agree that's the amount  
16 of the late charge on this loan?

17 A. Yes, it is.

18 Q. Okay. And then we have a payment on  
19 February 19th that appears to have been \$97.37 above the  
20 payment amount?

21 A. Right.

22 Q. And so the \$115.13 in the late charge balance  
23 from Line 15 is reduced to \$17.76; is that correct?

24 A. That's right.

25 Q. Okay. So for purpose of Lines 15 and 16, would

1           you agree that that is accurate in terms of what was  
2           applied to the late charge balance and then what was  
3           removed from it?

4           A.     Yes.

5           Q.     Okay.  And then moving down again to -- let's  
6           see.  It looks like Line 19, there's a late charge  
7           assessment on March 17, 2004?

8           A.     Correct.

9           Q.     And so another \$115.13 is added on to that  
10          \$17.36?

11          A.     Right.

12          Q.     Which then puts the late charge balance at  
13          \$132.89?

14          A.     Correct.

15          Q.     And would you agree that the payment that was  
16          made on April 12, 2004 was exactly \$132.89 in excess of  
17          a regular interest and principle payment amount?

18          A.     Well, I'd have to add up these numbers, but it  
19          looks like it.  It looks like it totals.

20          Q.     Okay.  And so I guess from that, can you  
21          conclude that it was used to reduce the late charge  
22          balance as opposed to some other fee balance --

23          A.     Yes.

24          Q.     -- on the loan?

25          A.     Yes.

1           Q.    Okay.  So at that point as of April 12, 2004,  
2   was Mr. Kirkley current on his loan?

3           A.    Yes, he was.

4           Q.    Okay.  Now, actually, it looks like on Line  
5   22 --

6           A.    Yeah, there was some extra.

7           Q.    -- there was a little extra, yeah, \$64.48 in  
8   principle curtailment?

9           A.    Right.

10          Q.    Okay.  And then so at Line 23 if he was current  
11   as of April and he made a payment on May 12th, which was  
12   within his grace period, we don't know why that payment  
13   went to suspense, right?

14          A.    Well, nothing says it right here, but most  
15   likely it was because of the new escrow remaining  
16   balance, over here the 849.10 for the portion -- of the  
17   policy when he didn't have his coverage.

18          Q.    Okay.

19          A.    Through his --

20          Q.    And then I guess whether it's with reference to  
21   GMAC's records or a letter that GMAC produced, can you  
22   show me something that would have notified Mr. Kirkley  
23   that he needed to be paying any additional monies to  
24   cover that \$849 that is listed in the corporate advance  
25   balance?

1           A.    I can look to these letters.

2           Q.    And for the record, you're looking at which  
3 exhibit?

4           A.    Nine.

5           Q.    Exhibit 9. And those are Bates stamped  
6 records. I believe what you're looking at in particular  
7 are GMAC 00315 and forward; is that correct?

8           A.    Yes.

9           Q.    Okay.

10                   MR. TOBIN: I just want the record to  
11 reflect that GMAC has produced over 1,100 documents.  
12 The Plaintiff has produced a lot as well.

13                   I'm not sure Mr. Haughton can testify to  
14 all those documents off the top of his head. If you  
15 would like him to go through them all, he can, but I  
16 don't know if that's wise as far as time.

17                   MR. BARTHOLOW: I just -- if he is aware  
18 of anywhere either --

19           Q.    (BY MR. BARTHOLOW) If you're aware of anywhere  
20 in these letters, in the payment histories, in the  
21 servicing notes, where my client was informed in or  
22 before May of 2004 of an increase in his payment amount,  
23 I'd like to know where that is.

24           A.    I'd have to look through the payment -- to the  
25 history notes.

1 Q. Okay. And have you looked through those?

2 A. I have, but there's hundreds of pages of them.

3 Q. So as we sit here today, you're not aware of --  
4 and the payment history notes would have been where he  
5 was informed of a change in payment?

6 A. No. The notes of the history of the account.

7 Q. Okay.

8 A. Not the payment history notes.

9 Q. Okay. The history of the account notes. Is  
10 there anywhere else that would reflect a change in  
11 payment amount in GMAC's system?

12 A. Not that I know of, no.

13 Q. Okay. So when payments change, they're  
14 reflected in the notes on the history of account?

15 A. Well, they're gonna be in Mortgage Serve on  
16 various screens that the payment has been changed.

17 Q. But your testimony is that GMAC may not have  
18 adopted Mortgage Serve until after 2004, right?

19 A. They moved to Mortgage Serve, but I don't know  
20 the exact date.

21 Q. Okay.

22 A. In Waterloo. We moved later to Dallas.

23 Q. And that would be because Dallas was  
24 Homecomings, right?

25 A. Correct.

1           Q.    Okay. Well, so we've got as of Line 23 on  
2   Exhibit 2, which I think we're in agreement -- correct  
3   me in I'm wrong -- is accurately reflecting how the  
4   payments that Mr. Kirkley made or the payment  
5   Mr. Kirkley made on May 12, 2004 was treated by GMAC.

6                    Do you agree that that payment was moved  
7   to suspense as we've reflected here?

8           A.    Yes.

9           Q.    Okay.

10          A.    Excuse me. Yes.

11          Q.    Okay. And then but you also agree that the  
12   amount that was paid by Mr. Kirkley was sufficient to  
13   make a struggle -- a scheduled interest and principle  
14   payment under the mortgage note and Deed of Trust,  
15   correct?

16          A.    Correct.

17          Q.    Okay. And as we reviewed the Deed of Trust  
18   before, would you agree that the Deed of Trust requires  
19   that when funds are received sufficient to pay an  
20   interest and principle payment, that the funds be  
21   applied to interest and principle?

22          A.    Yes, if it meets that payment at that time.

23          Q.    For interest and principle, correct?

24          A.    Uh-huh.

25          Q.    That would be "yes"?

1           A.    Yes.

2           Q.    Okay.  And then it appears that, again, on  
3           June 21st, 2004 and then looking, again, at Exhibit 2  
4           here and Line 25.

5           A.    Yes.

6           Q.    There was another full payment received, the  
7           amount of \$2,302.63 that was also moved to suspense,  
8           correct?

9           A.    That's correct.

10          Q.    Okay.  And then two days later, it looks like  
11          that funds were pulled out of suspense to make the May  
12          payment; is that correct?

13          A.    That's correct.

14          Q.    Okay.  And then moving down to Line 26, we  
15          agree, I think, that the funds in suspense at that point  
16          are sufficient to pay two mortgage payments or were.

17                    One was applied on -- you know, one was  
18          from the Line 25 and the other was from Line 23, so that  
19          would be two full payments plus \$37.27, right?

20          A.    Wait.  Let me look here for just a minute.  So  
21          you're speaking of Line 26?

22          Q.    Well, I guess what I want to say first is  
23          between Lines 23 and 25, we have two full payments that  
24          were in suspense, right?

25          A.    Correct.

1 Q. Plus \$2.37 because Line 3 was \$2.37 more than  
2 the full payment?

3 A. Right.

4 Q. And then on Line 26, we have one payment being  
5 pulled out and applied to principle and interest?

6 A. Correct.

7 Q. As well as if you look all the way to the  
8 right, the second to last column.

9 A. Right.

10 Q. To, slash, from corporate advance.

11 A. Correct.

12 Q. And if you look at one up and one over to the  
13 right, the amount of the corporate advance balance prior  
14 to this was \$849.10?

15 A. That's right.

16 Q. And after this it is \$669.28?

17 A. That's correct.

18 Q. Which would appear to me to reflect a reduction  
19 of \$179.82?

20 A. Correct.

21 Q. Okay. Again, at this time, the account was  
22 behind according to GMAC due for June and May, right?  
23 And this one payment that was applied went to pay May?

24 A. Correct.

25 Q. And yet GMAC elected to pay for this corporate

1 advance balance before applying the funds in suspense to  
2 principle and interest, correct?

3 A. Well, they applied -- they applied -- they  
4 applied a full payment principle and interest and the  
5 179.82 to the outstanding on the insurance.

6 Q. Right. And if we go and look at the suspense  
7 balance after that application, we see that there is  
8 just \$2,125 remaining?

9 A. Correct.

10 Q. Would you agree that if the \$179.82 that was  
11 taken out of the corporate advance balance was added to  
12 \$2,125.18, that you would have more than 2,302.63?

13 A. Well, if I add those in my head -- I'd have to  
14 add it, but it's very close to that, yes.

15 Q. So had GMAC not applied those funds to the  
16 corporate advance balance, there would be sufficient  
17 money to make the June payment as well?

18 A. I believe so.

19 Q. Why did GMAC apply that money to the corporate  
20 advance balance rather than to the June payment?

21 A. I do not know because I wasn't posting the  
22 payments.

23 Q. Okay. Does that seem right to you?

24 A. It actually does because we've outlaid money on  
25 behalf of the homeowner and so we're getting our money

1 back.

2 Q. Okay. Referring back to the Deed of Trust that  
3 we -- you know, we read before about payment  
4 application.

5 A. Uh-huh.

6 Q. Is that what the Deed of Trust provides?

7 MR. TOBIN: Objection, calls for a legal  
8 conclusion. You can answer it.

9 THE WITNESS: Let's see. Where is it  
10 again?

11 Q. (BY MR. BARTHOLOW) That, also, is going to be  
12 in Exhibit 8, but it's several pages forward on Exhibit  
13 8. It's that Paragraph No. 2 that I had you read  
14 before.

15 A. Right. Well, it -- it lists interest,  
16 principle and amounts due under Section 3, which is  
17 funds for escrow items.

18 Q. Okay. And --

19 A. And then any money left over is post-delay  
20 charges and second to any other amounts due under the  
21 security instrument, then to reduce the principle.

22 Q. If that's the case, then, why did GMAC not take  
23 the entire \$849.10 out of what it was holding in  
24 suspense?

25 A. Well, because they do want to pay the payments

1 first.

2 Q. I'm confused. If they wanted to pay the  
3 payments first, we just agreed that there was enough  
4 money in there to make the June payment, right?

5 A. Uh-huh.

6 Q. But instead, they paid some of the corporate  
7 advance balance, but not all of it?

8 A. Right.

9 Q. Would you also agree that there was enough  
10 money to pay the entire corporate advance balance?

11 A. There was.

12 Q. Okay. So I don't understand why they didn't  
13 pay all of one or all of the other.

14 A. I don't either because I did not apply these  
15 payments.

16 Q. Okay.

17 A. I cannot tell you that.

18 Q. Does that seem right?

19 A. Well, we don't want to pay all of the corporate  
20 advance. We're willing to get it back in increments if  
21 we need to, but we do need to get it back.

22 Q. Okay. And --

23 A. And, again, there was probably -- I'd have to  
24 look to the notes in the system. There was probably  
25 notes discussing the balance of the flood policy with

1 the homeowner, but I'd have to look to those.

2 Q. Okay. Give me just one second, please. What  
3 I'm doing right now is I am dividing \$849.00 by -- and  
4 10 cents by \$179.82 and I get 4.721944, et cetera. It's  
5 not an evenly divisible number.

6 A. Right.

7 Q. Would it normally, if it was going to be  
8 incrementally collected, be an evenly divisible number?

9 A. By a certain number of months.

10 Q. Right. But assuming I've entered all that in  
11 correctly into the calculator on my computer, that's not  
12 an evenly divisible number?

13 A. No.

14 Q. Are you aware of any policy that GMAC has that  
15 would provide for the number of months over which it  
16 would have collected this earned premium?

17 A. Many times they do it if they're talking with  
18 the homeowner and they see what they can -- what they  
19 feel like what they can afford based on their income.

20 Q. But it would be an even monthly amount, right?

21 A. Divided by a certain number of months.

22 Q. Right, okay. But, again, I -- assuming my math  
23 is correct, that's not evenly divisible?

24 A. No.

25 Q. Okay.

1 MR. BARTHLOW: Can we go off the record  
2 for just a second? Is that okay, Dan?

3 MR. TOBIN: Yeah.

4 (Recess from 2:31 p.m. to 2:33 p.m.)

5 (Exhibit No. 10 marked.)

6 Q. (BY MR. BARTHLOW) Mr. Haughton, what I'm  
7 handing you is marked as Exhibit 10. Do you recognize  
8 that?

9 A. Yes.

10 Q. What is it?

11 A. This is the history of notes on the account.

12 Q. Okay.

13 A. Speaking with the homeowner and attempted calls  
14 out to the homeowner.

15 Q. Okay. And on that first page, are there  
16 entries for April 20th?

17 A. There are.

18 Q. Okay. And do those discuss payment application  
19 or a workout for the flood insurance?

20 A. Yes, it does.

21 Q. What do those notes reflect?

22 A. Let's see. "Talked to Dawn about amount added  
23 to account. Found that we originally spread forced  
24 placed insurance over 12 months, \$179.80 to a month.  
25 Received funds back, new amount would be more since

1           should be spread over three months, but will leave at  
2           the \$179.82. Will just take longer to pay back."

3           Q.     Okay. Now, what I want to do, now, is, it's  
4           \$179.82?

5           A.     Uh-huh.

6           Q.     I'm gonna multiply that by 12. And I get --  
7           that can't be right. I'm sorry. Give me the number,  
8           again, please.

9           A.     \$179.82.

10          Q.     Okay. And I arrive at the number of \$2,157.84.

11          A.     Okay.

12          Q.     Does that number ring a bell?

13          A.     What it was, again, you got?

14          Q.     I got \$2,157.84. I would refer you to Line 9  
15          on our Exhibit 2.

16          A.     Right. It's \$2,157.81, so it's 3 cents  
17          difference.

18          Q.     Okay. But that would be for the flood  
19          insurance disbursement?

20          A.     Correct.

21          Q.     Okay. So what it would appear to me is that  
22          what was being collected was 1/12th of the flood  
23          insurance disbursement?

24          A.     Of the whole premium.

25          Q.     Okay. And yet you would agree, wouldn't you,

1           that at least \$1,308.71 of that premium had been  
2           refunded?

3           A.     Correct.

4           Q.     Okay. So in any event, \$179.82 would not have  
5           been a correct amount to be recouping as an additional  
6           amount of the payment at that time, right?

7           A.     No, not necessarily. It's not set in stone  
8           that you have to do it over 12 months. You can do it  
9           over 3 months, 6 months, 9 months, 12 months.

10          Q.     Well, okay. Do we agree that \$179.82  
11          represents a 12-month payout of the entire premium?

12          A.     Right.

13          Q.     And do we agree that the premium that was owed,  
14          if any was owed, would have been no more than \$849.10?

15          A.     Right.

16          Q.     And so a 12-month payout of \$849.10 would be  
17          substantially less than \$179.82, correct?

18          A.     It would be, but we wouldn't have collected  
19          \$179.82 for 12 months.

20          Q.     Okay. So tell me based on those notes how I  
21          can understand that?

22          A.     This would be spread over -- amount would be  
23          more since it should be spread over three months, but  
24          will leave at the \$179.82.

25          Q.     Okay. What I don't understand from those notes

1 is how it addresses \$849.10?

2 A. Well, they say, "Talk to Dawn about amount  
3 added to account. Found that we originally spread  
4 forced placed insurance over 12 months, \$178.80 to a  
5 month. Received funds back." That's the \$1,380.

6 Q. Okay.

7 A. "New amount would be more since should be  
8 spread over three months." So if it's \$849, they would  
9 normally spread that over three months and that would be  
10 rough just under \$300.

11 Q. Now, can you tell me why \$849 would have been  
12 spread over three months, whereas the -- what's the  
13 number, the \$2,157 would have been spread over 12  
14 months?

15 A. Well, if we spread \$2,157 over 12 months, it  
16 would be this \$179. But if it's a smaller amount,  
17 they're trying to get the homeowner to pay it back in a  
18 shorter amount of time.

19 Q. Certainly, I understand wanting to collect  
20 money more quickly. What I'm trying to figure out is --

21 A. Because it's a delay of the company.

22 Q. -- how the decision is made between paying  
23 the -- spreading the repayment out over 12 months versus  
24 3 months?

25 A. That's the -- whomever is talking to the

1 homeowner or is working on this would make that  
2 decision.

3 Q. Okay. And is there a policy or procedure that  
4 would -- that would determine whether it's a 3- or a  
5 12-month payout?

6 A. I don't know. I'd have to go and look at that  
7 policy and procedure and see if there's a breakdown in  
8 matrix.

9 Q. Okay. And does that notation mean that GMAC  
10 spoke with Mr. Kirkley or does that just mean that  
11 people internally at GMAC discussed this change?

12 A. I don't know because I don't know who "Dawn"  
13 is.

14 Q. Okay. We'll agree that --

15 A. Insurance at that point was managed Assurant,  
16 so you're dealing with the placement of the insurance  
17 through Assurant Insurance Company. Now it's through  
18 Balboa.

19 And actually, this was at Balboa at this  
20 point because this says -- there's another note that  
21 says transferred Mr. -- meaning Mr. Kirkley -- to Balboa  
22 for info on the ancillary fee.

23 Q. Okay.

24 A. And another entry on 5/4, Mr. is calling  
25 regarding fee on account.

1 Q. Okay. And then would you mind if I took a look  
2 at that?

3 A. Sure. It's right towards the bottom.

4 Q. All right.

5 MR. TOBIN: Here's an extra copy.

6 MR. BARTHLOW: Oh, thank you.

7 Q. (BY MR. BARTHLOW) And based on this entry, Mr.  
8 calling regarding fee on account, does it tell you which  
9 account -- which fee he was calling about?

10 A. No, it doesn't.

11 Q. Okay. Can you tell me what the entry two  
12 entries down, where it says early IND, colon, score 068  
13 Model E1 -- or EL16C or EI61C, what does that mean?

14 A. I do not know.

15 Q. Okay. Now, returning to our Exhibit 6 and the  
16 statement dated June 18, 2004, is there an escrow  
17 balance on here?

18 A. No.

19 Q. Is there an amount due to be paid for escrow?

20 A. No.

21 Q. Are there \$230.26 in outstanding late charges?

22 A. Yes, there are.

23 Q. Now, returning back to our Exhibit 2 and  
24 looking at the late charge balance, can you show me  
25 anywhere in that column all the way through Line 49

1 where the balance exceeds \$115.13?

2 A. For late fees?

3 Q. Right. And I'm looking specifically at the  
4 column entitled "Late Charge Balance."

5 A. Right. No, not on your spreadsheet.

6 Q. Okay. Let's move to your spreadsheet, Exhibit  
7 5. I'm looking at combined Pages 1 and 2 of this which  
8 appear to encompass payments running all the way through  
9 May of '05. I don't see the late charge balance ever  
10 exceeding \$115.13 here either, do you?

11 A. No, I don't.

12 Q. Why did Mr. Kirkley get a statement that told  
13 him he had outstanding late charges of \$230.26 on  
14 June 18th, 2004?

15 A. His May payment went to suspense because it  
16 wasn't -- well, it went to suspense, and so by the May  
17 15th or 16th, there would have been a late fee accessed.

18 Q. Is that right? I mean, is that how it should  
19 have gone?

20 A. Depending on what his -- what the amount due  
21 was with that insurance, yes. Any payment from any  
22 homeowner that's not enough to make their normal  
23 payment, whatever their normal payment is, would go to  
24 suspense until such time as the funds are more than  
25 what's due.

1 Q. Okay. And --

2 A. And there was one for -- there would have been  
3 one for May 15th or 16th and then there was one assessed  
4 for June 15th.

5 Q. Okay. So we don't have the May statement here  
6 today, but we do have the June statement. And on the  
7 June statement, I don't see anywhere where it tells him  
8 that he needs to make more than a regular principle and  
9 interest payment?

10 A. When you say you don't have the May statement,  
11 this is a current statement date on this. This is May  
12 18th.

13 Q. I'm probably a page ahead of you, sorry. I do  
14 have a May statement here. I still don't see where it  
15 tells him that he needs to make a payment in excess of  
16 the \$2,302.

17 I see that it says the total amount due is  
18 \$2,775.03, but that the escrow portion and the principle  
19 interest portions total just \$2,302.63, correct?

20 A. Right. The amount past due is \$2,482.45.  
21 That's the payment plus \$179.82. Do you see where I am  
22 on the May 18th statement, "details of amounts due paid,  
23 amount past due \$2,482.45?"

24 Q. Uh-huh.

25 A. I believe if we added \$179.82 and \$2,302.63,

1           that would equal \$2,482.45.

2           Q.    Okay.  And --

3           A.    So --

4           Q.    -- so that would have been reflected in the  
5    April statement that we don't have?

6           A.    Yeah, I don't think we have March or April  
7    statements.

8           Q.    But that's based on \$179.82 that would be  
9    1/12th of the \$2,157?

10          A.    Right.

11          Q.    And what was the date of the notes on the  
12    April --

13          A.    The date of what?

14          Q.    The notes regarding the --

15          A.    "Talk to Dawn about amount."

16          Q.    Yes.

17          A.    That one?  4/20/2004.

18          Q.    Okay.  And that's Exhibit 10 that you're  
19    looking at right now?

20          A.    Yes, uh-huh.

21          Q.    On the first page of Exhibit 10?

22          A.    Correct.

23          Q.    So that exhibit begins with February 1st, 2004;  
24    is that right?

25          A.    It does.

1           Q.    Okay.  Do you see where between the note about  
2           talking to Dawn and February 1st, 2004 it says anything  
3           about changing the payment amount?

4           A.    Let me see.  No, that's the first entry.

5           Q.    So for two months, there's no entry about  
6           changing the payment amount, and, in fact, as we already  
7           reviewed, it appears that the March and April payments  
8           were received and accepted, correct, Lines 20 and 21 of  
9           Exhibit 2?

10          A.    On your exhibit?

11          Q.    Uh-huh.

12          A.    Yes.

13          Q.    So have you ever heard of a statement going out  
14          after the -- on or after the 20th of a month?

15          A.    I don't know.  I mean, I can't think of --

16          Q.    Wasn't your testimony this morning that they're  
17          usually right around the 11th?

18          A.    Uh-huh.

19          Q.    Okay.

20          A.    Unless there might -- unless there could  
21          potentially be some kind of system issue or something  
22          that would preclude it.

23          Q.    Okay.  Are you aware of any system issue that  
24          happened around April of 2004?

25          A.    No.  No, I have no recollection of that.

1 Q. Okay.

2 A. I didn't work in this system, though.

3 Q. Understood. Did you -- have you seen an  
4 April 2004 statement for this account before?

5 A. No.

6 Q. Okay. And does GMAC's system retain the  
7 information that's shown on each monthly statement  
8 received by its customers, so even if you couldn't  
9 produce a -- an exact copy of what my client received as  
10 illustrated in Exhibit 6, would you be able to show me  
11 some kind of data printout that has all of these lines  
12 and information that's contained in them for every  
13 statement that was ever sent to my client?

14 A. I guess that would be stored. I don't -- I  
15 don't have access -- I personally don't have access to  
16 that list, but I'm sure that can be retrieved.

17 Q. Okay. How would you go about trying to  
18 retrieve that?

19 A. I'd have to go to another department.

20 Q. Do you know what department that would be?

21 A. I might go to risk servicing or fraud because  
22 they have the ability to get into other systems.

23 Q. Okay.

24 MR. BARTHOLOW: Mr. Tobin, if you would,  
25 put that on a list of things that we would like as --

1           you know, even if it's not an exact copy, a breakdown of  
2           all the information from every statement from the life  
3           of the loan.

4                         MR. TOBIN:    Sure.

5                         MR. BARTHOLOW:  Thank you.

6                         Q.    (BY MR. BARTHOLOW) Based on the notes that you  
7           have in front of you in Exhibit 10, do you have any  
8           reason to believe that the determination to spread the  
9           payment amount out over 12 months or based on the \$179  
10          figure was made prior to April 20th of 2004?

11                        A.    Do I have any knowledge that it was decided to  
12          do that before?  I couldn't answer that.  I don't know.

13                        Q.    Okay.  Have you ever seen any notes that  
14          indicate anything about that from before then?

15                        A.    No.

16                        Q.    Okay.  And then returning to our Exhibit 6 and  
17          the May 18, 2004 statement, if a payment was received on  
18          May 12, why does it say that it was applied to  
19          April 1st?  Because looking at Line 21 of Exhibit 2, it  
20          looks like the April 12th payment was applied to April.

21                        A.    Well, the May 12th payment was put into  
22          suspense.  That's where you see on the far right, it  
23          says other -- other column.

24                        Q.    Okay.

25                        A.    On the statement.

1 Q. Okay. So the due date, doesn't that normally  
2 reflect the -- for example, on this May 18, 2004  
3 statement, it says, "Due April 1, 2004." Wouldn't that  
4 mean that Mr. Kirkley was actually owed April and May at  
5 this time?

6 Isn't that -- I'm not asking what the  
7 other records reflect; but when you say a "due date,"  
8 doesn't that mean that you owe -- if it says April 1,  
9 2004, doesn't that mean you owe the April payment and  
10 the May payment?

11 A. Yes.

12 Q. Is that correct or is that what the records  
13 reflect?

14 A. Well, let's see. This does show he made a  
15 payment on the 12th that went -- paid April.

16 Q. The 12th of?

17 A. April.

18 Q. And by "this," you're referring to Exhibit 8,  
19 the Page 2 of 16 --

20 A. Yes.

21 Q. -- fax? Can you explain this to me because I'm  
22 confused?

23 A. From this audit, it shows that that April  
24 payment in April time frame between April 1 and 5/1, 4/1  
25 and 5/1, shows the suspense \$2,305.

1 Q. In the audit?

2 A. Uh-huh.

3 Q. Why is -- and the audit would be the hand  
4 key --

5 A. Correct.

6 Q. -- item? So the audit differs from the  
7 computer printout?

8 A. Yes.

9 Q. Why would the audit differ from the computer  
10 printout?

11 A. I do not know that. I'd have to look at the  
12 Mortgage Serve history since this is from the storage  
13 system.

14 Q. Since we're looking at Exhibit 5, which is the  
15 audit, and comparing it with the Page 2 of 16 from  
16 Exhibit 8, I'd like to refocus our attention on Exhibit  
17 5 and Lines 26 and 31 and 34.

18 A. I'm sorry.

19 Q. On the audit, 26, 31 and 34.

20 A. Okay.

21 Q. It says payment received on Line 26, 7/15/04,  
22 and then -- and a late charge accessed 6/1/04 payment,  
23 okay?

24 A. Right.

25 Q. So that was a late charge for the June payment.

1 And then on 3/1, we have a payment received August 11th,  
2 '04 and late charge was accessed for the July payment?

3 A. Uh-huh.

4 Q. And then on 3/4, there's a late charge accessed  
5 on September payment?

6 A. On the August payment.

7 Q. I mean on the August payment based on a payment  
8 received on September 13th. Would you agree that the  
9 15th, 11th and 13th of the month are all within the  
10 grace period for a timely payment?

11 A. For that current month.

12 Q. Is it GMAC's policy --

13 A. But a payment on 9/13 for the 8/1 is not within  
14 the grace period.

15 Q. Is it GMAC's policy to treat payments  
16 received -- let's say I miss a payment and I make every  
17 other payment for the rest of the life of my loan on or  
18 before the grace period, the end of the grace period, am  
19 I gonna pay a late fee for every payment for the rest of  
20 the loan?

21 A. No.

22 Q. Isn't that what's happening here?

23 A. No. This is -- for example, Line 34 is saying  
24 "late charge accessed for the 8/1/04 payment received on  
25 9/13/04."

1 Q. What's different about -- again, let's look  
2 at -- let's see. The May payment we agree was made May  
3 12th, right, but it was put into suspense?

4 A. Right, uh-huh.

5 Q. We agree it was timely, but placed into  
6 suspense.

7 A. Right.

8 Q. But because it was in suspense, when the next  
9 payment came in in June, it was late. According to  
10 these records, it was applied to the May payment, right?

11 A. Right.

12 Q. Okay.

13 A. When there was enough money to make a payment.

14 Q. I'm sorry. Explain what you're clarifying  
15 there. I'm not sure I follow.

16 A. If the payment is short of being a full  
17 payment, it's put into suspense until such time as you  
18 have enough money to make that payment.

19 Q. Okay.

20 A. The farthest past due payment.

21 Q. Excuse me. Okay. Okay. But how is that  
22 different from what I was just explaining where if you  
23 miss a payment and then you make the next month's  
24 payment timely and every other payment after that timely  
25 but you never catch up that first missed payment, how is

1           that -- you would get assessed a late fee every month  
2           because you'd be perpetually one month behind?

3           A.    Oh, if you never made that -- ever paid that  
4           payment up?

5           Q.    Right. Right.

6           A.    You would be paying --

7           Q.    A late fee every month?

8           A.    Right.

9           Q.    Okay. And in industry or at least in my  
10          industry parlance, we call that a rolling late fee,  
11          which means that even if you're timely in subsequent  
12          months, as long as you haven't caught up a previous  
13          month, you end up paying a late fee every month.

14                            Is that GMAC's policy?

15          A.    Well, you wouldn't be timely. If you missed  
16          May and you paid May's payment in June, you're not  
17          timely. If you paid June and July, you're not timely.

18          Q.    Okay.

19          A.    If you missed that payment and never made it  
20          up, you're not timely.

21          Q.    Okay. So the method that you're talking about  
22          is GMAC's policy for how they receive and apply funds?

23          A.    I would say any mortgage servicer is going to  
24          apply to the farthest past due payment first.

25                            But if you skip a payment and never make

1           that payment up in any way through making a double  
2           payment or having a repay plan or however you can do it,  
3           you're gonna be paying late. That only make sense,  
4           right?

5           Q.     Okay. And that's what GMAC does with every  
6           loan?

7           A.     Yes. If you're not -- you don't pay your  
8           payment on time, you're assessed a late fee.

9           Q.     Is there a policy or procedure that we could  
10          reference that -- that would show us that rule of  
11          payment application?

12          A.     I'm sure there is in our policy and procedures.

13          Q.     Do you know what portion of the policy and  
14          procedures you would look to to find that rule of  
15          application?

16          A.     You would have to search, but probably under  
17          payment processing or payment application.

18          Q.     Okay.

19                   MR. BARTHLOW: Dan, I'd also like to put  
20          that on the list of things that we'd like to request is  
21          the policy and procedure for payment processing  
22          application.

23                   MR. TOBIN: Okay.

24                   MR. BARTHLOW: And, of course, any  
25          version that was in effect at that time as well as

1 anything that's in effect currently, that is, between?

2 MR. TOBIN: Right.

3 Q. (BY MR. BARTHOLOW) So a 30-year loan is 360  
4 payments, right?

5 A. Correct.

6 Q. So if you miss your first payment and made  
7 every other payment within the grace period for that  
8 month, not -- and you had a late fee of \$115.13, GMAC  
9 would make \$41,331 in late fees alone?

10 MR. TOBIN: Objection to the question,  
11 leading and hypothetical.

12 MR. BARTHOLOW: He's an adverse witness,  
13 so I can lead him. And it's not hypothetical, it's \$359  
14 times \$115.13.

15 MR. TOBIN: I'm not instructing him not to  
16 answer. I objected to the question. Let him answer.

17 THE WITNESS: And what was your question?

18 Q. (BY MR. BARTHOLOW) The question was: Then if  
19 he missed the first payment in a 360-payment loan where  
20 the late fee was \$115.13, I just typed it into my  
21 computer calculator and got \$41,331 in late fees. Does  
22 that sound more or less accurate?

23 MR. TOBIN: I'm objecting. Assumes facts  
24 are not in evidence, calls for narrative, hypothetical,  
25 calls for speculation and leading. You can answer.

1 THE WITNESS: If that's the  
2 multiplication, yes, that's what it is.

3 Q. (BY MR. BARTHOLOW) Okay.

4 MR. TOBIN: And irrelevant, throw that in  
5 there too.

6 MR. BARTHOLOW: I think we need to check  
7 the rules. I'm pretty sure you just get to object to  
8 form but...

9 MR. TOBIN: You have to look at  
10 Mr. Kirkley's depo because I remember numerous  
11 objections I received.

12 MR. BARTHOLOW: Can we take a quick break?  
13 Is that all right?

14 MR. TOBIN: Oh, yeah.

15 (Recess from 3:05 p.m. to 3:20 p.m.)

16 MR. BARTHOLOW: We're back on the record.  
17 And let the record reflect that Mr. Tobin is not in the  
18 room and has indicated that we can continue with  
19 questioning you.

20 Q. (BY MR. BARTHOLOW) Mr. Haughton, is that okay  
21 with you if we continue?

22 A. Yes, it is.

23 Q. Okay. All right. Well, it appears that that  
24 \$179.82 amount is, as we discussed, 1/12th of the -- or  
25 roughly 1/12th of the forced placed flood insurance

1 premium that was continuing to be charged, not  
2 withstanding the reduction or the refund of some of that  
3 premium, correct?

4 A. Correct.

5 Q. Okay.

6 A. It would have only been charged until it was  
7 paid, of course.

8 Q. Understood. Now, I'd like you to look at  
9 Exhibit No. 2, Line Number 37. It would appear that --  
10 we're at Exhibit 2, Line 37, which is labeled Corporate  
11 Advance Transfer to Escrow dated October 11th, 2004.

12 A. Correct.

13 Q. Can you explain to me what that transaction  
14 represents?

15 A. This is a corporate advance for an escrow  
16 payment.

17 Q. Okay. And I guess, looking at 36, does that  
18 tell you what it is?

19 A. Let me see. Hazard insurance.

20 Q. Hazard insurance?

21 A. Corporate advance of \$5,462.

22 Q. Okay. That would be \$5,462, right?

23 A. Correct.

24 Q. Okay. And as between Lines 36 and 37, it  
25 appears to me that that \$5,462 was moved to the escrow

1 account in October of 2004?

2 A. Yes.

3 Q. And it would appear that by that time, the  
4 \$849.10 of the remaining earned premium of the forced  
5 placed flood insurance had been paid down to zero?

6 A. Yes.

7 Q. In the previous month, which would have been  
8 September 2004, correct?

9 A. Yes.

10 Q. Okay. And then immediately in October of  
11 2004 -- I mean, as in, it appears about seven days  
12 later, this hazard insurance is forced placed?

13 A. Correct.

14 Q. Do you know why that was?

15 A. From looking at this, no.

16 Q. Do you know from looking at anything else why  
17 that hazard insurance was forced placed?

18 A. I can see.

19 Q. And right now you're looking at Exhibit No. 10?

20 A. Ten.

21 Q. And that would be the -- the notes?

22 A. Correct. Let's see. 10/11/2004?

23 Q. Uh-huh.

24 A. It says, "Adjusted escrow payment for lender  
25 placed insurance \$5,462, reversed misapplied."

1 Q. What does that mean?

2 A. Well, they took an action to adjust the escrow  
3 payment for lender placed insurance, then it says,  
4 "reversed misapplied."

5 Q. Same day?

6 A. Well, I don't -- well, it's just in one note on  
7 the October 11th.

8 Q. Now, would you agree that from Line 37 through  
9 49 on Page 1 of Exhibit 2 there is a listed escrow  
10 balance of \$5,462 for dates ranging from October 11th,  
11 2004 through March 1st, 2005?

12 A. Yes, there is.

13 Q. Okay. And then if you'll turn the page to Page  
14 2 of Exhibit 2, Line 50 at the very top, there appears  
15 to be a -- what is Line 50 reflecting?

16 A. Well, on your form it says "default fee  
17 billed."

18 Q. Okay.

19 A. \$5,462.

20 Q. And the escrow balance column, it still says  
21 \$5,462. The only thing that I see other than that is in  
22 the far right-hand second to the right, I see a \$95  
23 entry in the to/from corporate advance?

24 A. Correct. And the corporate advance balance in  
25 the far-right column.

1           Q.    Right.  And if you flip back to Page 1, it  
2           would appear that that \$95 increases the amount in the  
3           corporate advance balance from --

4           A.    Right.

5           Q.    -- \$746.65 to the \$841.65; is that right?

6           A.    That's right.

7           Q.    Okay.  So on March 8th, 2005, what was that  
8           default fee?

9           A.    It was probably a foreclosure cost.

10          Q.    Foreclosure cost.  This is where I start to get  
11          a little confused with the pay history also.

12                        If you look -- turn back to Page 1 of  
13          Exhibit 2, we have a line for -- on Line 42 says,  
14          "Payment to P and I and LC", which is principle and  
15          interest and late charge?

16          A.    Correct.

17          Q.    And indicates that as of December 15th, the  
18          loan was due for November of 2004; is that right?

19          A.    That's right.

20          Q.    Okay.  At what point does GMAC initiate  
21          foreclosure proceedings?  How far behind does somebody  
22          need to be?

23          A.    There's a range of dates, but around 85 days  
24          past due.

25          Q.    Okay.  According to Line 42 here, was

1 Mr. Kirkley 85 days past due?

2 A. On what line?

3 Q. Line 42, Page 1 of Exhibit 2.

4 A. Well, he was due for 11/1/04.

5 Q. So at most, he was 45 days past due, right?

6 A. Right.

7 Q. Why, on Lines 43 and 44, did GMAC place  
8 Mr. Kirkley's funds into suspense accounts on  
9 January 14th and February 15th of 2005?

10 A. Let me look. Let's see. I'm not sure. I  
11 cannot tell from this. I don't know why the person did  
12 that.

13 Q. When you say you "can't tell from this", you're  
14 also looking at Exhibit 8, the history of account?

15 A. Yes.

16 Q. And those are fax page numbers what at the top?

17 A. Four of sixteen.

18 Q. Four of sixteen. Okay. So it's unclear why  
19 the funds were placed into suspense. Do you know why on  
20 Line 45 the suspense funds were refunded to Mr. Kirkley?

21 A. No, I do not.

22 Q. Would you agree that the suspense funds are  
23 enough to make two principle and interest payments?

24 A. It has to do with the \$5,426.

25 Q. The forced placed hazard insurance?

1           A.    Well, whatever that -- whatever that escrow  
2   was -- whatever that represents, the \$5,426.

3           Q.    Okay.  And then how -- what would we look at?  
4   I'm looking at Exhibit 5, the hand-keyed audit.  Would  
5   that be a good place to look?

6           A.    Let's see.  Let's see here.  Fee paid.  Fee  
7   paid of \$5,462.

8           Q.    Where are you looking right now?

9           A.    I'm on the second page on the very top entry.

10          Q.    Of Exhibit 5?

11          A.    Yes.

12          Q.    Okay.  Do we have a date for that?  I don't see  
13   one.

14          A.    No, I don't see one on here.

15          Q.    It would appear to be sometime before October  
16   14th most likely because the next entry indicates  
17   payment received on October 14th?

18          A.    Right.  It goes back to the corporate advance  
19   to escrow in October, so this is either for lack of  
20   proof of hazard insurance or --

21          Q.    What I'm seeing --

22          A.    -- nonpayment of taxes.

23          Q.    What I'm seeing on this Page 2 top line is the  
24   fee paid is going to the flood insurance.  Is that what  
25   you see?

1           A.    Fee paid?

2           Q.    And for the record, I'm looking at the both  
3 halves of the Page 2 of Exhibit 5. I've got the  
4 majority of the spreadsheet on one page, and then five  
5 columns; one is late charge balance.

6                    The next is flood insurance. The next is  
7 flood insurance balance. And then fee and then fee  
8 balance are the final two columns. And the flood  
9 insurance column has an entry here at Line 1 in the  
10 amount of \$5,462.

11          A.    Yes, that's on there.

12          Q.    Is that flood insurance?

13          A.    I do not know.

14          Q.    And isn't it accurate, though, that the notes  
15 that we just looked at indicate hazard insurance?

16          A.    Right.

17          Q.    Okay. And the loan history that I've prepared  
18 and brought here today as Exhibit 2 indicates hazard  
19 insurance as well, right?

20          A.    Yes.

21          Q.    Okay. And I'm sorry, did you testify you don't  
22 know why hazard insurance was force placed?

23          A.    Hazard insurance would be force placed if we  
24 didn't have evidence of the homeowner having their own  
25 policy.

1           Q.    Okay.  And do you know whether you had evidence  
2           or not?

3           A.    I don't know.

4           Q.    Okay.  Why was the loan placed into foreclosure  
5           in March of 2005?

6           A.    The account was past due for the November  
7           payment.

8           Q.    Now, you already testified that the January and  
9           February payments were placed into suspense and  
10          ultimately refunded?

11          A.    Correct, because there was an escrow balance at  
12          that time as evidenced by his statements that have an  
13          escrow amount due.

14          Q.    And this would be for the forced placed hazard  
15          insurance?

16          A.    I believe so.  I'd have to -- I'd have to do  
17          some more digging to see exactly what it was for.

18          Q.    Okay.  Turning back to Page 2 of Exhibit 2,  
19          Line 53.

20          A.    To line what?  I'm sorry.

21          Q.    Fifty-three.

22          A.    Oh, uh-huh.

23          Q.    Looks like there are, by my calculation, five  
24          late charges added to the late charge balance in Line  
25          53.  Does that look right to you?

1           A.     There is a late charge balance of \$575.65.

2           Q.     And prior to that, there is no late charge  
3 balance, right? Line 58, for example -- I'm sorry, Line  
4 50 -- I mean, Line 52.

5           A.     That's correct.

6           Q.     So if I told you that GMAC refused  
7 Mr. Kirkley's payments after refunding him the money in  
8 February and then allowed him to reinstate the loan  
9 prior to foreclosure in May, would it seem right to you  
10 that he should be required to pay five late charges for  
11 payments that were refused?

12          A.     State your question again.

13          Q.     Well, isn't it true that once a property is  
14 placed into foreclosure status and the loan has been  
15 accelerated, GMAC will not accept any further payments?

16          A.     Unless you have a workout in place or you  
17 reinstate in full.

18          Q.     Okay.

19          A.     You take less than the amount owed, it  
20 invalidates the foreclosure.

21          Q.     Right. And so in reinstating, does this  
22 reflect that GMAC charged Mr. Kirkley a late fee for  
23 effectively January through May?

24          A.     Well, there was a series of late charges. I  
25 don't know exactly what months they were for.

1 Q. Okay. But you'll agree that -- let's see --  
2 after December of '04, the late charge balance was zero,  
3 correct, December 15th, 2004?

4 A. What are you looking on?

5 Q. I'm sorry, I'm looking at Page 1 of Exhibit 2.

6 A. Well, this is off of your audit.

7 Q. Okay. Well, shall we look at yours?

8 A. Well, there's a late fee charged here in  
9 October, November, December. There's a late fee charged  
10 in August and a late fee charged in July.

11 Q. And you're looking at Exhibit 8?

12 A. This is Exhibit No. --

13 Q. Eight what, a fax page what?

14 A. Two of 16.

15 Q. Two of 16.

16 A. That's Exhibit 8.

17 Q. And what months were you saying there were late  
18 charges?

19 A. Well, I see a late charge in -- at the very  
20 bottom of this Page 2 of 16.

21 Q. Uh-huh.

22 A. There's a late -- in the late charge, slash,  
23 fee column, there's one. The post date is 12/15 and  
24 going up 11/15, 10/14.

25 Q. Okay. But if we turn to Exhibit 5, the audit

1 that was provided to the Kirkley's.

2 A. On Page 2, there's Line 2, a late charge  
3 assessed, 9/1. Full payment received on 10/14. Line 5,  
4 late charge assessed 10/1/04. Payment received on  
5 11/15/04. Line 8, late charge assessed 11/1/04.  
6 Payment received on 12/15/04.

7 Q. Okay. And then if you look over at the late  
8 charge balance column, which is gonna be on the other  
9 portion of Page 2, you see where those funds are getting  
10 paid?

11 A. In some cases, they are -- they are paid from  
12 this audit.

13 Q. In fact, looks like after 11/1/04, there's  
14 nothing else in the late charge balance; is that right?

15 A. That's right.

16 Q. Well, so I'm, again, kind of confused. Does  
17 that mean that -- why don't we go to Page 3 here.  
18 Between Pages 2 and 3 of Exhibit 5, we have several  
19 entries beginning at 41 through 49 on Page 2 and  
20 continuing to 1 and 2 on Page 3 for fees being paid?

21 A. Uh-huh.

22 Q. Can you tell me from looking at this what fees  
23 were being paid?

24 A. No, not exactly. Most likely they were for  
25 foreclosure fees and costs. On 39, it says "fee bill

1 title charges." On 38, it's "fee billed sale cost."

2 On 37 is "fee bill attorney", slash,  
3 "trust fees." 36 is "fee bill recorder, notice of  
4 sale." 35 is another fee bill sale cost.

5 Q. Okay.

6 A. So they're putting that money into suspense  
7 because that's what has been paid in the reinstatement.

8 Q. Explain that to me. If it was paid in the  
9 reinstatement, why would you put it into suspense?

10 A. Well, because we probably hadn't been billed  
11 yet for it. We got from what they were gonna be from  
12 the attorney firm, foreclosure firm.

13 Q. Uh-huh.

14 A. But maybe they hadn't billed us yet, so we have  
15 to collect it and put it into suspense. And when the  
16 bill comes, we pull it out and pay it.

17 Q. Okay. Let me ask you this: If a foreclosure  
18 is not initiated but not completed, is the charge to  
19 GMAC, is it a completed foreclosure?

20 A. If it's started but not finished, it depends on  
21 when they -- when you stop it.

22 Q. Okay. And what could be the variables in that  
23 situation?

24 A. Oh, I think that most -- a lot of the fees -- a  
25 lot of the costs of a foreclosure proceeding that you

1 pay to your foreclosure attorney is incurred up front by  
2 them, so they're doing title search and they're doing  
3 notification to all potential interested parties,  
4 putting it in the paper for sale depending on the time  
5 frame in that state.

6 Q. Okay.

7 A. Since Texas has a short-term time frame, a lot  
8 of your costs are born up front. I mean, early on in  
9 the foreclosure proceedings.

10 Q. Okay.

11 A. But if somebody's going to reinstate, we get  
12 a -- we find out when they're going to make their  
13 reinstatement payment and then we get the fees and costs  
14 to that date.

15 Q. Okay. And so the fees and costs would be less  
16 than a completed foreclosure because there's wrap-up to  
17 do after completed foreclosure; is that right?

18 A. Should be a little bit less.

19 Q. Okay. I'd like to move you along to Page 2 of  
20 Exhibit 2, and I'd like to take a look at Line 94.

21 A. Okay.

22 Q. Line 94 is the disputed April payment, correct?

23 A. Correct.

24 Q. And there it indicates that a payment was  
25 reversed and a late charge assessed on April 24, 2006,

1 correct?

2 A. Per your audit, yes.

3 Q. Okay. Is that what your records reflect as  
4 well?

5 A. Let me see. Let's see what date it was.

6 MR. TOBIN: April 24, 2006.

7 Q. (BY MR. BARTHLOW) What records would you be  
8 reviewing right now?

9 A. I'm looking at Exhibit 8.

10 Q. And what pages?

11 A. I'm looking at Page 1 of the History for  
12 Accounts.

13 Q. Dated December 11th, 2008?

14 A. Yes.

15 Q. Okay.

16 A. So let's see. A check -- a payment came in on  
17 4/17/06 for \$2,302.63, and then it was backed out on  
18 4/24/06.

19 Q. Okay. So then the record that we've got on our  
20 accounting is accurate?

21 A. Yes.

22 Q. Okay. And a late charge was assessed as a  
23 result, correct, on Line 95 of our accounting?

24 A. Yes.

25 Q. Okay. And then on May 12th of 2006, payment

1 was made and applied to April of '06, correct?

2 A. Yes.

3 Q. Now, before when we were talking about payments  
4 and late charges, our accounting had the payments and  
5 late charges listed together. Looking back at Page 1,  
6 looks like Lines 38, 39, 40, 41 all show payments and  
7 late charges, right?

8 A. Like 42 payment to P and I and LC?

9 Q. That would be one, then the one right before it  
10 is a late charge assessment?

11 A. Uh-huh.

12 Q. And actually, no, not 42. I'm looking more  
13 like 40 and 41, both processed on November 15th.

14 A. Uh-huh.

15 Q. 2004, one is a payment and then the other is a  
16 late charge.

17 A. Oh, okay, right.

18 Q. Okay. And when we were talking before, you  
19 said any time a payment came in and a previous month's  
20 payment had been unpaid, it was GMAC's policy to credit  
21 the payment to the previous months, you know, the month  
22 that was due, and charge a late fee for the -- the  
23 subsequent month?

24 A. Well, I don't think that's -- I think it's best  
25 with an example. If you're due for April 1st and you

1           pay on May 12, you're past April 15th, so you're going  
2           to get a late charge for your April payment.

3           Q.     Right.

4           A.     If you pay your May 1st payment on June 3rd,  
5           you're past May 15th, so you're gonna get a late charge  
6           for your May payment.  If you, then, made another  
7           payment on June 12th and you caught yourself up, you  
8           would not have a late fee, late charge assessed for  
9           June.

10          Q.     Okay.

11          A.     If you pay over 15 days behind, past -- I'm  
12          sorry.  If you pay over 15 days past the due date, you  
13          will have a late charge.

14          Q.     Okay.  So unless you have a repayment plan,  
15          would that be the only situation where you might be able  
16          to avoid rolling late charges?

17          A.     We don't -- we don't charge a late charge if  
18          you're on a repayment plan.

19          Q.     Okay.  Are there any other situations where you  
20          would not charge a late plan, any other standard  
21          criteria?

22          A.     No, nothing standard.  If the homeowners had,  
23          you know, a hardship and they -- you know, were trying  
24          to help them out, we're not -- you might have the  
25          ability to waive a late fee.

1           Q.    Okay.  And what would allow you to make that  
2           decision?  What kind of a hardship would be the sort of  
3           thing that would allow you to make a decision to waive a  
4           late fee?

5           A.    If they lost their job or if they got laid off  
6           temporarily or something like that, and they're having a  
7           hard time, we're going to try to help them out.  We're  
8           not going to assess them a late fee.  We're going to  
9           waive it.

10          Q.    What about, for example, wrongfully forced  
11          placed insurance, would that be something that you'd be  
12          allowed to waive a late fee over?

13          A.    Might be.

14          Q.    Do you know if any late fees were ever waived  
15          in this account?

16          A.    I think later on some late fees were waived.

17          Q.    Do you know why?

18          A.    No.  I'd have to go back and look at notes.

19          Q.    Do you know why GMAC decided to flat cancel and  
20          credit Mr. Kirkley's account for the forced placed flood  
21          insurance, even the earned premium portion?

22          A.    No, I don't.  I'd have to read on the notes and  
23          see.

24          Q.    Do you know if there was ever any accounting  
25          done that went back to retroactively correct the account

1 going back to the time of the forced placed earned  
2 premium for the flood insurance?

3 A. Do I know what now?

4 Q. Fair enough. For the period of time where  
5 there was that 800-and-some-odd dollars of the earned  
6 premium that was as added to the account and  
7 subsequently paid down, we agree that GMAC subsequently  
8 credited Mr. Kirkley's account for that amount, right?

9 A. Uh-huh.

10 Q. But we also agree, I think, that there were a  
11 number of late charges and insufficient payments that  
12 resulted from that, right?

13 A. From the \$849.10?

14 Q. Well, and the application of \$179.82 or the  
15 increase in his payments amount based on that because he  
16 continued to pay \$2,302 or thereabout and not the  
17 additional \$179.

18 Do you know if there was ever an audit or  
19 an account review to basically put back late charges or  
20 any other fees that he would have incurred as a result  
21 of that now that the \$849.10 earned premium has been  
22 added back. Does that make sense?

23 A. It makes sense, but I don't know that a review  
24 was done to do that. I'm not sure. I don't know.

25 Q. Okay.

1           A.     And he was dealing with -- he was talking with  
2           some people in our Waterloo office, and they might have  
3           done that, but I do not know.

4           Q.     Okay.  And then based on the account  
5           information that you've reviewed, have you seen anything  
6           to indicate that that happened?

7           A.     No.

8           Q.     Okay.  And that includes reviewing what the  
9           system reflects as of today, right?

10          A.     Right.  I mean, I didn't look at every single  
11          entry, but --

12          Q.     Okay.  At least --

13          A.     -- to see if we credited a late charge or  
14          waived it.

15          Q.     At least you can say with some confidence that  
16          you haven't seen that, right?

17          A.     No.  I mean, it could be in there.  I just --  
18          I'm not for sure.  I'd have to go line by line and look.

19          Q.     Okay.  So you did review the pay history prior  
20          to today's deposition?

21          A.     Yes.

22          Q.     Okay.  Take another break.  We may be just  
23          about done here, I think.

24                         MR. TOBIN:  Okay.

25                         MR. BARTHOLOW:  We can go off the record.

1 (Recess from 4:02 p.m. to 4:03 p.m.)

2 Q. (BY MR. BARTHOLOW) Okay. Mr. Haughton, when we  
3 were off the record, we were talking about if a fee had  
4 been charged improperly in the past, and it was  
5 subsequently discovered that other fees and charges had  
6 been incurred as an improper fee or charge that, I  
7 believe, what you were telling me was that one couldn't  
8 go back and actually change the entry in the past on the  
9 pay history; is that correct?

10 A. That's correct.

11 Q. Okay. But what one might be able to do or what  
12 GMAC has the ability to do is to provide some kind of  
13 credit in the -- in realtime, in current time, to make  
14 up for --

15 A. In realtime.

16 Q. -- improperly charged fees; is that correct?

17 A. That's correct.

18 Q. Okay. We can go back off the record.

19 (Recess from 4:04 p.m. to 4:15 p.m.)

20 Q. (BY MR. BARTHOLOW) Okay. Mr. Haughton, if you  
21 could grab Exhibit 7, please. This is one of the detail  
22 by transaction pay histories that we had looked at  
23 earlier on in the deposition.

24 A. Okay.

25 Q. And we quickly moved away from it because we

1           decided that we had other easier-to-read options. That  
2           said, I'd like to try to have an idea of how to read  
3           this particular document, and would you be able to help  
4           me to understand it?

5           A.    I can give it my best shot.

6           Q.    Okay.

7           A.    Since this is -- the way it's printed is very  
8           different so...

9           Q.    Different from what?

10          A.    It's just -- it doesn't look like -- I don't  
11          know if this is actually the way that it's printed or if  
12          this is always the way it comes out, but this doesn't  
13          look like the ones that normally that I see.

14          Q.    Okay.

15          A.    But it is from the system.

16          Q.    Okay. I guess I would look at the -- let's  
17          see. Looking at the first page, the bottom third of the  
18          page has a title line called Detail By Transaction. Do  
19          you see where I'm talking about?

20          A.    Yes.

21          Q.    And below that, there are five columns?

22          A.    Yes.

23          Q.    And in each column, there appear to be three  
24          lines?

25          A.    Yes.

1           Q.    The first one is -- I think, it's PD To DT  
2   description?

3           A.    Uh-huh.

4           Q.    And then below that is Post DT?

5           A.    Right.

6           Q.    And below that is EFF Date?

7           A.    Correct.

8           Q.    Okay. And then in the second column, we've got  
9   Total AMT which, I think, means total amount?

10          A.    Total amount.

11          Q.    And then under that, fee amount; and under  
12   that, unapplied balance?

13          A.    Correct.

14          Q.    And then in the next column, we've got  
15   principle amount, unapplied amount and principle  
16   balance. Does that look correct?

17          A.    That's right.

18          Q.    And then the next column is interest amount,  
19   late charge amount and uncollected items?

20          A.    Correct.

21          Q.    And then the final column is ESC which I'm  
22   thinking is escrow amount?

23          A.    Yes.

24          Q.    And then OPT amount. Do you know what OPT is?

25          A.    Options, optional.

1 Q. Optional amount?

2 A. Optional amount, if they have optional coverage  
3 like some people add on --

4 Q. Life insurance, that sort of thing?

5 A. Yes, yes.

6 Q. And then ESC balance?

7 A. Escrow balance.

8 Q. Okay. Okay. And so, I guess, let's begin with  
9 the transaction that we've got at -- the first  
10 transaction that we see here for 12/1/08.

11 A. Right.

12 Q. It says miscellaneous receipt of \$2.37?

13 A. Correct.

14 Q. And the second column. And then in the third  
15 column, it appears that on January 15th of 2009, there's  
16 \$2.37 that go into an unapplied amount?

17 A. Right.

18 Q. What does that mean?

19 A. So it's in -- it basically would be like in  
20 suspense, not applied to anything. Sometimes it can be  
21 if the homeowner -- if that's -- if they send in \$2.37  
22 over their normal payment but they don't say where to  
23 put it because on your -- on their -- the stuff that  
24 they send back with their payment, if they're sending a  
25 check, they can tell you where you -- where they want

1           those extra funds to go.

2           Q.     Okay.

3           A.     And if they don't do that, it can potentially  
4 go into suspense.

5           Q.     Okay. When would it go into -- I can't say the  
6 word, where it's applied to principle, curtailment?

7           A.     Curtailment?

8           Q.     Go to principle curtailment.

9           A.     Well, if they -- if they mark it as such, then  
10 it would.

11          Q.     Okay.

12          A.     So they would send extra money and don't say  
13 where to put it, it is likely to go into suspense.

14          Q.     Okay. When we were looking at the Exhibit 2  
15 earlier and the early transactions in this loan, we saw  
16 a few where there was -- there were funds put into  
17 principle curtailment.

18                         How would Mr. Kirkley have told GMAC that  
19 that's what he wanted them to do at that time?

20          A.     Filled in the space, which is an option on  
21 your -- on the receipt that you put in with your check.

22          Q.     Okay. But if all things being current and  
23 somebody overpays their loan, isn't the additional money  
24 typically added to principle curtailment rather than  
25 suspense?

1           A.    It -- they're probably gonna look for direction  
2           from the homeowner.

3           Q.    Okay.  Because, for example, when I close my  
4           loan, I was told to over pay my mortgage by a few  
5           hundred dollars every month and that would accelerate  
6           the completion of the loan, but I was never  
7           instructed --

8           A.    By a --

9           Q.    -- that I had to tell anybody what I was doing.  
10          Did GMAC have a form on their coupon or something where  
11          you would actually tell them, I'm paying you extra money  
12          because I want you to add it to curtailment?

13          A.    I do it every month.

14          Q.    You do?

15          A.    On my GMAC loan.

16          Q.    Okay.

17          A.    And it says "additional principle", and I put  
18          in the amount.

19          Q.    Okay.  So when they get a check that's greater,  
20          they know what to do with it?

21          A.    Correct.

22          Q.    All right.  Well, sounds like that's the best  
23          practice.

24          A.    I think so.

25          Q.    Okay.  And you would know.  Let's look at the

1 next line. There's another -- or the next, I guess,  
2 block on Exhibit 7, there's another December 1st, 2008  
3 unapplied \$2.37. So the first one says miscellaneous  
4 receipt, \$2.37. The next one says "unapplied."

5 Are those the same transaction? Are they  
6 different transaction?

7 A. Let's see. This is -- I mean, it's a different  
8 entry, but it could be dealing with the same \$2.37, I  
9 think.

10 Q. How would you determine that?

11 A. Well, the UPB is still the same in the  
12 principle balance, so it's not like they have applied --  
13 applied it and then got \$2.37 in again.

14 Q. Okay. So starting back with the first line?

15 A. Uh-huh.

16 Q. First line here says, "12/1/08, misc receipt."  
17 what does that mean?

18 A. Miscellaneous receipt.

19 Q. Okay. And the next column, it says \$2.37 in  
20 the top. What does that mean?

21 A. That was the total amount of the miscellaneous  
22 receipt.

23 Q. Okay. And when did they get the \$2.37?

24 A. The posting date was 1/15/09.

25 Q. Okay.

1           A.     But the 12/1/08 in the first line, that's the  
2     paid to date, so that would be the due date.

3           Q.     Okay. This is an account that was in  
4     bankruptcy in December of 2008; is that right?

5           A.     Yes. They filed in, I think, October '08.

6           Q.     Actually, they may have been not reinstated yet  
7     at that point. I think that was the dismissal  
8     reinstatement period, so I won't press that angle.

9                     Okay. Then the next line we were talking  
10    about it says 1/15/09, and that is the post-date, is  
11    that what you said?

12          A.     Posting date.

13          Q.     What does the posting date mean?

14          A.     That's the date that the funds are -- are  
15    posted or put on.

16          Q.     Okay. Is that equivalent of received?

17          A.     No, not necessarily. You might -- they might  
18    receive funds late in the day on the 25th and post them  
19    on the 26th, but they would make them effective as of --  
20    on the -- as of the receipt date.

21          Q.     Okay. So that would be a different date. And  
22    would that be the F date, EFF date, the effective date?

23          A.     Effective date.

24          Q.     Okay. That's the third row?

25          A.     The third one.

1 Q. Okay. And then in the second column, \$0 in the  
2 fee amount column. What does that mean?

3 A. That would be for any kind of a fee, like a  
4 foreclosure fee or a property inspection fee.

5 Q. Okay. And then the third column, the second  
6 row, we've got \$2.37 in the unapplied amount?

7 A. Right.

8 Q. We've discussed that. The fourth row in the  
9 second column, late charge amount. That would be the  
10 amount of any late charge, correct, for that --

11 A. Yes.

12 Q. -- particular payment?

13 A. Yes.

14 Q. And then we discussed the optional amount, and  
15 that's \$0 for this particular transaction?

16 A. Correct.

17 Q. Okay. And then the third row, the unapplied  
18 balance shows \$2.37. What does that mean?

19 A. Unapplied. It's an unapplied, so it would be  
20 like in suspense.

21 Q. Okay. Would that be the total amount in  
22 suspense?

23 A. Well, for this transaction.

24 Q. Okay. But not for the total unapplied balance  
25 necessarily?

1           A.    No, correct.

2           Q.    Okay.  And then the principle balance, that is  
3   the total principle balance, though, right?

4           A.    As of that date, yes.

5           Q.    Okay.  And then this shows no uncollected  
6   items.  Would that be the total amount of uncollected  
7   items?

8           A.    Yes.

9           Q.    Okay.  And then third -- or the fifth row --  
10   column, third row, escrow balance shows \$0.  That's  
11   probably because this is a no escrow loan, right?

12          A.    Correct.

13          Q.    Okay.  Let's look at the bottom entry on this  
14   first page, the description is LCHG -- excuse me.  
15   That's LCHG, slash, UNC INT.  What is that?

16          A.    I believe that's late charge uncollected  
17   interest.

18          Q.    Okay.  And we've got zeros all the way across?

19          A.    Right.

20          Q.    Okay.  I was hoping that you would have the  
21   same four or five entries for every payment date they --  
22   here, but evidently you can have several different  
23   entries for any given date.

24                        Because on December 1st, we've got  
25   description fields of miscellaneous receipt, unapplied

1 payment, late charge, uncollected interest, right? But  
2 then the next entry appears to be November 1st, 2008?

3 A. Correct.

4 Q. You've got entries for fee billed adjustment,  
5 late charge, uncollected interest, fee paid,  
6 miscellaneous receipt, blank, miscellaneous receipt,  
7 blank and payment.

8 A. Uh-huh.

9 Q. I guess, let's start with the blanks. Why  
10 would there be blanks there in the description field?

11 A. I am not for sure, but I think that's where  
12 they're putting money in and then moving it out. So fee  
13 paid, fee billed up there, \$375, that's most likely some  
14 sort of a foreclosure fee and then they --

15 Q. Might that have been a proof-of-claim fee or  
16 something like that? We're talking about a  
17 post-bankruptcy charge there?

18 A. Post-bankruptcy? Oh, it could have been. I  
19 just don't know. It can be any kind of fee. It can be  
20 any kind of fee.

21 Q. Okay.

22 A. And then down later, fee paid, \$258.76, so I  
23 believe that's where they paid a fee out, whatever the  
24 fee might be.

25 Q. Okay. And do those figures, \$375.00 and

1           \$258.76 mean anything to you? Are those numbers that  
2           you see with any regularity where you could say I know  
3           what this is?

4           A.    No, no.

5           Q.    Yeah. I guess, let's --

6                         MR. TOBIN: Can we go off the record for a  
7           minute?

8                         MR. BARTHLOW: Sure.

9                                 (Recess from 4:31 p.m. to 4:35 p.m.)

10           Q.    (BY MR. BARTHLOW) Let's go ahead and go to  
11           Exhibit 8 one more time. And Page 8 of the History for  
12           Account, which is right before the transaction codes.  
13           Are you there?

14           A.    Yes.

15           Q.    Okay. And actually, these don't overlap.  
16           These don't overlap so...

17                         MR. TOBIN: Let's just go to Page 7.

18                         MR. BARTHLOW: Which one are you on?  
19           That doesn't help. Okay.

20           Q.    (BY MR. BARTHLOW) Now, let's just go to Page 7  
21           of Exhibit 8, the History of Account attached to Exhibit  
22           8. And then Fax Page 3 of 13 on Exhibit 7. I think  
23           it's the second page of Exhibit 7.

24                                 What I'd like to do is see if using  
25           Exhibit 7 and then this page of Exhibit 8 if we can

1 match up any of the transactions on --

2 A. On the two?

3 Q. On the two, yeah. And I'm not trying to limit  
4 you to just these two pages of these two documents. If  
5 you think that there are other pages of either of these  
6 documents where you can, you know, sort of link up the  
7 transactions, feel free.

8 A. Let's see. I don't know how to even tell you  
9 where this is. I'm looking at Page 8 of this.

10 Q. That would be Page 8 of Exhibit 8, the History  
11 of -- the History for Account?

12 A. Right.

13 Q. Dated December 11, 2008?

14 A. Right. So I look at the -- in the due date  
15 column, which is the third column.

16 Q. Uh-huh.

17 A. And 11/1/08 correspond to Page 4 of 13 of this  
18 document titled Detail by Transaction right about --

19 Q. Which is Exhibit 7?

20 A. Oh, yes, it is. Right about in -- pretty much  
21 in the middle of the page.

22 Q. Okay.

23 A. The payment is \$2,302.63. And in the next  
24 column over, \$578.03, and it goes to the principle  
25 amount paid on the Exhibit 8. And then \$1,724.60 is the

1 interest paid.

2 Q. Okay.

3 A. And that lines up with the titles of the  
4 columns on the first page of Exhibit 7, but this Exhibit  
5 8, Exhibit 8 is out of Mortgage Serve.

6 Q. Okay. And Exhibit 7?

7 A. It looks to be out of Mortgage Serve, but it's  
8 not one that I have ever used. It's correct in that  
9 the -- you know, the original balance is correct.

10 It shows a current balance, so it has to  
11 be pulling from Mortgage Serve because that's the system  
12 of record that shows the balance.

13 Q. Okay. Could you use this Exhibit 7 to be able  
14 to tell us everything that happened for history of the  
15 account or would you require --

16 A. That would be very difficult. I would rather  
17 use this Exhibit 8.

18 Q. Okay. Now, does GMAC system show that letters  
19 were sent out and the information that was on the  
20 letters that were sent out to Mr. Kirkley?

21 A. What information on the letters?

22 Q. The words?

23 A. The words.

24 Q. Yeah. The contents of the letters, would you  
25 be able to access the system to see all of the letters

1 that were sent to Mr. Kirkley about this account?

2 A. Probably most -- most of them, maybe not all of  
3 them.

4 Q. Okay. What would be the --

5 A. If they're -- if they're generated to like  
6 massive amounts of homeowners of a letter -- the same  
7 for everybody --

8 Q. Uh-huh.

9 A. -- it would probably be very hard to get a copy  
10 of that letter.

11 Q. What would be --

12 A. Because the sheer volume, they can't be stored.  
13 There's so many accounts.

14 Q. What would be an example of that type of  
15 letter?

16 A. It would be a real generic letter. It might be  
17 like a -- it might be a letter regarding a natural  
18 disaster, so to speak. So Katrina, when Katrina  
19 happened, letters were sent in mass to people, not every  
20 copy is imaged.

21 Q. Okay. And so didn't the letters in the  
22 system -- or wouldn't the system show that a letter was  
23 sent and what the amount in the letter was that was  
24 being requested?

25 A. Not always, no.

1 Q. Okay. And what circumstances would it not show  
2 that a letter was sent?

3 A. If a letter's automatically generated, then  
4 it's not necessarily gonna port over and make a note to  
5 Mortgage Serve that it was sent.

6 Q. Okay. Yeah. I guess the last question would  
7 be: Is there nothing in the computer system that would  
8 show that a letter was sent or ordered or requested? Is  
9 there no record that that would have happened?

10 A. I believe you can -- I'd have to check with  
11 another department, but I think you can pull those  
12 letters. You can pull a copy of the letter in most  
13 cases.

14 But some letters, like I gave an example  
15 of for a natural disaster letter, that might not -- that  
16 could have gone -- might have gone to thousands of  
17 people at one time. The same letter, it might not be  
18 available for every individual.

19 Q. But a letter that's specific to an account?

20 A. Should be able to be retrieved.

21 Q. Okay. And where would that be retrieved or  
22 what department would you go to retrieve such a letter?

23 A. I'd probably go to servicing risk because they  
24 deal with everything across the board like that.

25 MR. BARTHOLOW: Okay. Well, I would like

1 the record to reflect that Mr. Haughton has been  
2 cooperative today, but that he also has been unable to  
3 answer many of the questions that we've asked of him and  
4 that we noticed the deposition for regarding the, you  
5 know, the policies and why certain payments had been  
6 applied the way that they've been applied, so I don't  
7 think we have anything further.

8 MR. TOBIN: No. I understand you have to  
9 say those things. I'm just gonna object to the sidebar.  
10 We obviously don't agree with that commentary and object  
11 to it being on the record. So we will withhold our  
12 questions till the time of trial.

13 MR. BARTHLOW: Okay. Off the record.  
14 Thanks.

15 (Proceedings concluded at 4:45 p.m.)  
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I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
BILL HAUGHTON

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by the witness, BILL HAUGHTON, on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

1 STATE OF TEXAS  
2 COUNTY OF DALLAS

3  
4 REPORTER'S CERTIFICATE  
5 ORAL DEPOSITION OF BILL HAUGHTON  
6 FEBRUARY 2, 2010  
7

8 I, the undersigned Certified Shorthand Reporter in  
9 and for the State of Texas, certify that the facts  
10 stated in the foregoing pages are true and correct.

11 I further certify that I am neither attorney or  
12 counsel for, related to, nor employed by any parties to  
13 the action in which this testimony is taken and,  
14 further, that I am not a relative or employee of any  
15 counsel employed by the parties hereto or financially  
16 interested in the action.

17 SUBSCRIBED AND SWORN TO under my hand and seal of  
18 office on this 8<sup>th</sup> day of February, 2010.



19 Sandy A. Trefl  
20 Sandy A. Trefl, CSR

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