

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE:

ROY HENRY SCHRAMM AND

DALPH LOUISE SCHRAMM, Case No. 01-11026

Debtors.

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ROY HENRY SCHRAMM, ET AL.,

Plaintiffs,

vs. Adversary Proc.

No. 05-1613

TMS MORTGAGE, INC., NKA

HOMEQ SERVICING CORP.,

Defendants.

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Deposition of

ELIZABETH KORGAR

May 3, 2006

9:17 a.m.

Taken at:

Nemeth & Associates Co., L.P.A.

526 Superior Avenue, Suite 410

Cleveland, Ohio

1 APPEARANCES:

2

3 On behalf of the Plaintiffs:

4 Nemeth & Associates Co., L.P.A., by

5 RICHARD H. NEMETH, ESQ.

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12 Lerner, Sampson & Rothfuss, by

13 CYNTHIA M. ROSELLE, ESQ.

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I N D E X

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4	EXAMINATION OF ELIZABETH	4	6
5	KORGAR		
6	BY MR. NEMETH		
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9	Exhibit A was marked	45	23
10	Exhibit B was marked	76	13
11	Exhibit C was marked	83	18
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1 ELIZABETH KORGAR, of lawful age,
2 called for examination, as provided by the
3 Federal Rules of Civil Procedure, being by me
4 first duly sworn, as hereinafter certified,
5 deposed and said as follows:

6 EXAMINATION OF ELIZABETH KORGAR

7 BY MR. NEMETH:

8 Q. Ms. Korgar, could you state your
9 name and spell it for the record, please?

10 A. Elizabeth Korgar, K-o-r-g-a-r.

11 Q. And where do you live?

12 A. I live in Raleigh, North Carolina.

13 Q. Are you currently employed?

14 A. Yes.

15 Q. Who is your employer?

16 A. Wachovia Mortgage.

17 Q. How long have you worked for
18 Wachovia Mortgage?

19 A. I have worked for a total of 16
20 years.

21 Q. Before we get started on the
22 substantive questions, I just wanted to go
23 through the rules.

24 Have you ever had your deposition
25 taken before?

1 A. Yes.

2 Q. How many times?

3 A. Once.

4 Q. And what kind of a lawsuit was
5 that?

6 A. You need to know what type?

7 Q. Can you tell me what Court it was
8 in?

9 A. It was in Charlotte, North
10 Carolina.

11 Q. Was it a State Court or Federal
12 Bankruptcy Court or Federal Court?

13 A. It was Federal.

14 Q. Did it involve servicing issues?

15 A. Some of it.

16 Q. Were you an expert in that case or
17 a fact witness?

18 A. Expert.

19 Q. You were testifying on behalf of
20 someone other than Wachovia?

21 A. No. I apologize.

22 Q. You were a fact witness?

23 A. I was testifying on behalf of
24 Homeq.

25 Q. In a deposition what happens is the

1 attorney that scheduled the deposition, that
2 would be me, asks a series of questions.
3 This is part of what we call the discovery
4 phase of litigation.

5 Litigation is initiated by the
6 filing of a lawsuit, and then the Defendant
7 files an answer typically and then you go into
8 the discovery portion of the lawsuit.

9 We're able to ask oral questions at
10 a deposition. We're also able to ask written
11 questions, which we call interrogatories.
12 But this is a deposition so I will be asking
13 you oral questions.

14 I'm going to be asking you
15 questions, and I want to make sure that the
16 answers you're giving me are the answers that
17 I'm looking for.

18 So if you don't think that the
19 question I'm asking you is clear, I want you,
20 instead of answering the question, just to let
21 me know. It's perfectly okay to say, "I don't
22 understand what you're asking me," and ask me
23 to clarify, and I would be happy to do that.

24 Is that okay?

25 A. Yes.

1 Q. Of course, we have the court
2 reporter here, and I'm sure you know this, but
3 you have to answer out loud because the court
4 reporter cannot pick up body gestures like a
5 nod or shake of the head.

6 Do you understand that?

7 A. Yes.

8 Q. And you're not on any medications
9 that would make it difficult for you to
10 understand the questions that I'm asking you;
11 is that true?

12 A. That's correct.

13 Q. Prior to your employment at
14 Wachovia, where did you work?

15 A. Nowhere.

16 Q. Your entire career has been with
17 Wachovia?

18 A. Yes.

19 Q. What did you do prior to working at
20 Wachovia?

21 A. I was in college.

22 Q. What college did you attend?

23 A. St. Augustine's College.

24 Q. Where is that?

25 A. That's in Raleigh, North Carolina.

1 And I do need to correct something.

2 I had a part-time position, and that was at
3 Eckert's pharmacy in Raleigh, North Carolina.

4 Q. When did you work there?

5 A. During my college years.

6 Q. Did you get a degree from St.
7 Augustine's College?

8 A. Yes.

9 Q. What is your degree?

10 A. Business administration.

11 Q. Is that a Bachelor of Science
12 degree?

13 A. Yes.

14 Q. What was your major?

15 A. Business.

16 Q. Have you taken any courses since
17 graduating from college, like continuing
18 education courses or training courses in
19 order to help you do your job?

20 A. No.

21 Q. What is your current position at
22 Wachovia Mortgage?

23 A. Bankruptcy team leader.

24 Q. And how long have you had that
25 position?

1 A. Since 2003.

2 Q. What does a bankruptcy team leader
3 do?

4 A. I manage the bankruptcy support
5 team with the monitoring of Homeq's bankruptcy
6 portfolio.

7 Q. Your employer is Wachovia; is that
8 correct?

9 A. Yes.

10 Q. When you say you manage Homeq's
11 team, do you manage employees of Wachovia or
12 employees of Homeq?

13 A. Employees of Homeq.

14 Q. Homeq and Wachovia are separate
15 companies, are they not?

16 A. Correct.

17 Q. And Wachovia is the owner of Homeq;
18 is that true?

19 A. Correct.

20 Q. Does Homeq service loans owned by
21 others?

22 A. Yes.

23 Q. And who would the other holders of
24 notes that Homeq services be?

25 A. I do not have that information.

1 Q. Does Homeq service any loans that
2 it holds itself?

3 A. Yes.

4 Q. Does Homeq service any loans that
5 are held by Wachovia Bank?

6 A. No.

7 Q. Does Homeq only service loans that
8 it originated?

9 A. Could you rephrase the question?

10 Q. Do you know what it means to
11 originate a loan?

12 A. Yes.

13 Q. And what do you understand that to
14 mean?

15 A. Actually originating a loan, I mean
16 --

17 Q. Could you describe it to me without
18 using the word originating?

19 A. Basically starting a loan,
20 underwriting a loan.

21 Q. What I'm asking you then is, does
22 Homeq service loans that were originated by
23 Homeq itself?

24 A. No.

25 Q. It does not. Okay.

1 Does Wachovia maintain a bankruptcy
2 department?

3 A. Are you asking separate from Homeq?

4 Q. Yes.

5 A. Yes, they do.

6 Q. And do you have any involvement
7 with Wachovia's bankruptcy department?

8 A. No.

9 Q. So you're an employee of Wachovia
10 that manages a bankruptcy support team that
11 employs only Homeq employees; is that
12 correct?

13 MS. ROSELLE: Objection to the
14 extent it rephrases or summarizes testimony
15 that the record already reflects.

16 MR. NEMETH: Can she answer the
17 question?

18 MS. ROSELLE: If you understand it,
19 yes. And if you would like him to rephrase
20 it --

21 A. I would like for you to rephrase
22 it.

23 Q. It's my understanding from your
24 testimony that, although you're an employee
25 of Wachovia, that you manage a support team

1 that employs, other than you, only employees
2 of Homeq?

3 A. I still do not understand the
4 question.

5 Q. Is it true that you have management
6 responsibilities for a team of employees?

7 A. Yes.

8 Q. Do any of those employees work for
9 Wachovia Bank?

10 A. I need that question rephrased and
11 broken down a little bit more.

12 Q. How many employees do you
13 supervise?

14 A. A total of ten.

15 Q. And do all of those ten employees
16 work for Homeq?

17 A. Yes.

18 Q. And what are the responsibilities
19 of the bankruptcy support team that you manage?

20 A. To provide supporting documentation
21 for Homeq bankruptcy files, to also monitor
22 borrower accounts within the bankruptcy
23 portfolio.

24 Q. Does the bankruptcy department
25 administer accounts that are in bankruptcy?

1 A. Could you rephrase your question?

2 Q. What is it about my question you
3 don't understand, the word "administer"?

4 A. Yes.

5 Q. Let's say, for example, you've got
6 a mortgage loan that Homeq is servicing, and
7 the borrowers file a Chapter 13 proceeding.

8 Would it be the responsibility of
9 the bankruptcy department to receive and
10 account for payments that are made on that
11 account during the bankruptcy proceeding?

12 A. No.

13 Q. Who has that responsibility?

14 A. Our cash department.

15 Q. Do you have any responsibilities
16 with regard to the cash department?

17 A. No.

18 Q. Where is the cash department
19 located physically?

20 A. Sacramento, California.

21 Q. When a homeowner who's in
22 bankruptcy submits a payment to Homeq, the
23 check is sent to Sacramento, California?

24 A. Yes.

25 Q. Does the cash department in

1 California then accept that check and make an
2 accounting entry with regard to the receipt of
3 that check?

4 A. Yes.

5 Q. And is that information kept
6 separately from the information that's
7 maintained by the bankruptcy department at
8 Homeq?

9 A. No.

10 Q. How is the information that is
11 entered by the cash department in Sacramento
12 transmitted to the bankruptcy department in
13 Raleigh?

14 A. Through computers.

15 Q. And is each payment monitored by
16 the bankruptcy department?

17 A. Yes.

18 Q. And can you tell me how that works?

19 A. Through reporting.

20 Q. And who generates the reports?

21 A. Our systems, computer systems.

22 Q. I don't understand what you mean by
23 that so let me ask you some more questions.

24 If a payment is made by a homeowner
25 who is in bankruptcy and it's received and an

1 entry is made on a computer account in
2 California, does each payment then generate
3 some sort of a report or are the reports
4 generated periodically or who determines when
5 a report is generated?

6 A. The reports are generated
7 periodically.

8 Q. Who decides what period generates a
9 report?

10 A. Management.

11 Q. Who is management?

12 A. Myself.

13 Q. Are all accounts handled in the
14 same way, in other words, do they all have the
15 same reporting period?

16 A. Yes.

17 Q. And what is that period?

18 A. The period is based on the account
19 status of the loan. The account status of
20 the loan determines the reporting periods.

21 Q. How many different account statuses
22 are there?

23 A. 91 days and 61 days.

24 Q. There's only two?

25 A. Yes.

1 Q. When you say 91 days, what does
2 that refer to?

3 A. Chapter 7 loans.

4 Q. So no Chapter 13 loan would be a
5 61-day loan?

6 A. Yes. The Chapter 13s are 61-day
7 loans.

8 Q. I think I misphrased that. I
9 apologize.

10 No Chapter 7 loans would be a 61-day
11 loan?

12 A. Correct.

13 Q. And no Chapter 13 loans would be a
14 91-day loan?

15 A. Correct.

16 Q. When you say 91-day loan, what
17 exactly does the 91 day refer to?

18 A. Payment status.

19 Q. Is it possible for someone to file
20 Chapter 13 when their loan is current?

21 A. Yes.

22 Q. So if someone filed Chapter 7 and
23 their loan was current, you would designate it
24 a 91-day loan?

25 A. No.

1 Q. So, again, what does that 91 day
2 mean?

3 A. The delinquency of the loan, the
4 loan status.

5 Q. Is a 91-day loan a loan that is 91
6 days or more past due?

7 A. Yes.

8 Q. If it's a Chapter 13 bankruptcy and
9 the loan is 91 days or more past due, it still
10 would not have 91-day status?

11 A. Yes, it would.

12 Q. It would?

13 A. It would.

14 Q. And what are the consequences of
15 having, if you're a homeowner, of having a
16 loan with 91-day status?

17 A. We start legal proceedings.

18 Q. Such as what?

19 A. Motion to lift stay.

20 Q. How is that accomplished, I mean,
21 who makes that determination?

22 A. Homeq.

23 Q. If Homeq makes a determination that
24 the motion to lift stay should be filed, how do
25 they communicate that to counsel?

1 A. Through a referral program.

2 Q. And how does the referral program
3 work?

4 A. It is computerized.

5 Q. And how does the communication get
6 from the computer to the attorneys?

7 A. Our system applications communicate
8 with the attorneys' system applications.

9 Q. Are you suggesting to me that
10 there's no human involvement, that the computer
11 programs automatically generate some sort of
12 a notice to the law department or to the
13 lawyers that relief from stay should be
14 filed?

15 A. That is correct.

16 Q. What attorneys does Homeq use to
17 handle its legal work with regard to delinquent
18 loans?

19 MS. ROSELLE: Objection.

20 Where?

21 MR. NEMETH: In the United States.

22 A. I do not have that information with
23 me.

24 Q. Does Homeq limit the law firms that
25 it uses to law firms that are members of the

1 United States financial network?

2 A. I am not sure.

3 Q. You don't have that information?

4 A. No, I do not.

5 Q. Have you ever worked in the cash

6 department?

7 A. No.

8 Q. Have you ever received any training

9 with regard to what the cash department does?

10 A. No.

11 Q. Do you have any personal knowledge

12 as to the facts and circumstances of this case?

13 A. Define personal.

14 Q. Do you personally know what the

15 issues are in this lawsuit?

16 A. Yes.

17 Q. Did you have any personal

18 involvement with this account prior to the

19 lawsuit being filed?

20 A. No.

21 Q. Did any of the people over whom you

22 have management responsibilities have any

23 personal knowledge of this account --

24 A. Yes.

25 Q. -- prior to it being filed?

1 Who were those people?

2 A. Avis O'Connor, that is the only
3 name that I can recall at this particular time.

4 Q. To your knowledge were there
5 others?

6 A. That is the only name that I can
7 recall at this particular time.

8 Q. I understand that.

9 To your knowledge were there other
10 people that had personal knowledge of this
11 account prior to the filing?

12 A. I am not sure.

13 Q. And what personal contact did Avis
14 O'Connor have with regard to this account?

15 A. Okay. The reviewing of the case at
16 the discharge of the Chapter 13.

17 Q. Anything else?

18 A. No.

19 Q. Is that something that's normally
20 done by your department at the time a Chapter
21 13 case is discharged?

22 A. Partially.

23 Q. Can you explain what you mean by
24 that?

25 A. Some of the review is done by our

1 outsource firm and then a portion of the
2 final review is completed by Homeq's
3 bankruptcy support team.

4 Q. What portion is outsourced?

5 A. The portion that reviews the
6 trustee ledgers and completes an audit on the
7 payments received from the trustee.

8 Q. What outsourcing firm was used to
9 audit the Schramm case upon discharge?

10 A. Fidelity National.

11 Q. Where are they located?

12 A. In Minnesota.

13 Q. Why are the discharge review tasks
14 divided among in-house and out-house units?

15 MS. ROSELLE: Objection.

16 Could we go off the record for one
17 second?

18 MR. NEMETH: Sure.

19 (Discussion off the record.)

20 MS. ROSELLE: We can go back on the
21 record.

22 I would like to object to the
23 extent that Fidelity has attorneys, and this is
24 protected by the attorney-client privilege.

25 MR. NEMETH: I didn't ask her about

1 any communications between attorneys. I asked
2 her if she had any knowledge as to why Wachovia
3 would outsource a portion of the discharge
4 review procedure to an outside entity.

5 I don't see how that can possibly
6 be covered under attorney- client privilege.
7 I'm not asking her to divulge any conversations
8 she's had with any attorneys.

9 MS. ROSELLE: To the extent that
10 this relates to recommendations provided by
11 your attorneys, you don't have to answer, but
12 you can answer to the extent that there's a
13 business or other reason.

14 A. Your question, as far as Wachovia
15 does not outsource work to Fidelity National,
16 Homeq does.

17 Q. Same question with regard to Homeq
18 then?

19 A. That was a Homeq company decision.

20 Q. I understand.

21 What was the basis of the decision?

22 A. I do not have that knowledge.

23 Q. You don't have that knowledge?

24 A. No, sir.

25 Q. I don't want you to disclose to me

1 any information that you got within the
2 attorney-client privilege because that would be
3 privileged, and you're not required to
4 divulge that.

5 Are you stating that you don't know
6 what the reason is that a portion of that
7 work is outsourced to an outside party?

8 A. I was not a part of that decision.

9 Q. I see.

10 Who was a part of that decision?

11 A. I am not sure.

12 Q. How do you know that decision was
13 made?

14 A. That is the policy and procedure
15 that we practice.

16 Q. And how did you become aware of
17 that policy?

18 A. After being hired by Homeq.

19 Q. Was it part of a written policy
20 manual?

21 A. There are contracts.

22 Q. Could you provide me with a copy of
23 those contracts?

24 A. I do not have that.

25 MR. NEMETH: Would you see if you

1 can get me a copy of those contracts?

2 MS. ROSELLE: I may object as to
3 relevance of any -- to the extent they're
4 irrelevant and to the extent that there's
5 privileged information in the contracts, we'll
6 object, but I can see what's available.

7 What information exactly are you
8 looking for?

9 MR. NEMETH: I've asked about why
10 Homeq outsources discharge review to an outside
11 firm.

12 If you can provide me with
13 information related to that and if it's in some
14 sort of a writing, I would like to have a
15 writing.

16 If you feel that's privileged, I
17 would expect that you would redact whatever you
18 believe is privileged.

19 Then she indicated that there was a
20 policy that they outsource discharge review
21 responsibility to an outside firm. If there's
22 a policy that says that, some sort of a policy
23 manual, I would like to have a copy of it.

24 Again, you know, if there's
25 privileged communication in it, then certainly

1 I would expect that you would redact. Okay?

2 Q. How many loans is the bankruptcy
3 unit that you are managing currently
4 responsible for?

5 MS. ROSELLE: Objection.

6 Time period. You said currently.
7 That's all right.

8 A. Approximately 14,000.

9 Q. And if you recall correctly, there
10 are 11 of you that handle these accounts?

11 A. No, ten.

12 Q. I thought that you had
13 responsibility for ten people, and so I thought
14 that those were people that worked for you; is
15 that incorrect?

16 A. Yes, they are.

17 Q. Yes, that's incorrect?

18 A. No. Yes, there are ten people that
19 work under me.

20 Q. For you?

21 A. For me.

22 Q. Did you hire these people?

23 A. Not all of them.

24 Q. Did you hire some of them?

25 A. Yes.

1 Q. How many did you hire?

2 A. Five.

3 Q. Are these people required to have
4 college degrees?

5 A. It's preferred.

6 Q. Did the five that you hired have
7 college degrees?

8 A. No.

9 Q. None of them do?

10 A. No.

11 Q. What are the responsibilities of
12 the people that work for you?

13 A. We handle phone volumes, the calls
14 from borrowers, counsels, we complete
15 account --

16 Q. Let me interrupt you for a second.

17 I apologize.

18 I understood what you meant when
19 you said that you handled calls from borrowers.
20 I didn't understand what you meant when you
21 said cancels.

22 Can you explain that to me, keeping
23 in mind that I have never worked at a bank and
24 I really don't know the lingo?

25 A. Counsel, our bankruptcy attorneys.

1 Q. I'm sorry.

2 Are you saying that you handled
3 calls from attorneys?

4 A. Yes.

5 Q. That would be attorneys that
6 represent the homeowners, the borrowers?

7 A. Homeowners and our own attorneys as
8 well.

9 Q. What sort of information do you
10 provide to them or do your employees provide to
11 them?

12 MS. ROSELLE: Objection to the
13 extent it's privileged communications, but you
14 can answer generally.

15 A. We answer any question that's
16 asked.

17 Q. What types of questions are
18 typically asked?

19 A. Questions regarding their account
20 status.

21 Q. How do your employees know what to
22 say to callers?

23 A. Through training.

24 Q. Who trains them?

25 A. I do.

1 Q. Do you have a training manual that
2 you use when you train them?

3 A. No.

4 Q. Do you have any training literature
5 that you use?

6 A. No.

7 Q. Are they given any tests to see if
8 they're adequately trained?

9 A. Phone monitoring test.

10 Q. How long is their training?

11 A. An average of 60 days.

12 Q. Of that 60-day period, are they
13 just observers of other employees in your
14 department during that time?

15 A. Observers and then participants.

16 Q. At what point are they able to
17 participate?

18 A. Usually about day 35.

19 Q. What determines when they're ready
20 to start participating?

21 A. Their abilities to answer the
22 questions that are being asked.

23 Q. Do you make the determination about
24 when they're ready to participate in
25 answering calls?

1 A. I do.

2 Q. Are they paid a salary or are they
3 paid by the hour?

4 A. They're paid hourly.

5 Q. Is there any sort of bonus
6 structure for them?

7 A. Yes.

8 Q. And how is their bonus determined?

9 A. It's determined based on key
10 performance indicators.

11 Q. What are those key performance
12 indicators?

13 A. I do not have that information.

14 Q. You don't know what the key
15 performance indicators are that would qualify
16 your own employees for a bonus?

17 A. I don't have them with me.

18 Q. Can you recall any of them?

19 A. I can only recall a few.

20 Q. What are those?

21 A. Foreclosures that are foreclosed
22 within a time frame.

23 Q. What's the time frame?

24 A. The Fannie-Mae standards.

25 Q. What are the Fannie-Mae standards?

1 MS. ROSELLE: Objection to the
2 extent that it's privileged attorney-client
3 information.

4 MR. NEMETH: Fannie-Mae standards
5 would be public information.

6 Q. Can you answer that question,
7 please?

8 MS. ROSELLE: You can go ahead and
9 answer.

10 A. 45 days.

11 Q. Are there any other standards or
12 indicators that you can recall?

13 A. Bankruptcy resolution time frames.

14 Q. What does bankruptcy resolution
15 mean?

16 A. The resolution of a legal action
17 pertaining to the motion to lift stay.

18 Q. Does that mean obtaining an order
19 lifting the stay?

20 A. Yes.

21 Q. If one of your employees is
22 proficient in causing a foreclosure to be
23 completed in a timely manner and is proficient
24 in getting stays lifted in a timely manner,
25 that employee would be eligible for a

1 performance bonus?

2 MS. ROSELLE: Objection to the
3 extent it's summarized testimony already given.

4 Q. Is that true?

5 A. No.

6 Q. Can you explain where I went wrong
7 because I thought that's what you told me?

8 A. We have a foreclosure team that is
9 responsible for the foreclosure time frames.
10 However, the bankruptcy and foreclosure teams
11 are a combined unit which shares the same KPI
12 indicators, key performance indicators.

13 Q. Are you telling me that the
14 performance of the individuals is not rated on
15 an individual basis but as a team?

16 A. Correct.

17 Q. Are there any performance
18 indicators that individuals are rated on?

19 A. No.

20 Q. If a team is effective in causing
21 foreclosures to be completed in a timely
22 manner and if a team is effective in
23 obtaining orders lifting stays in a timely
24 manner, would the team members then be
25 eligible for a performance-based bonus?

1 A. Define team.

2 Q. The team that you just described to
3 me, you said there was a foreclosure department
4 and your people and that those teams worked
5 together?

6 A. Correct.

7 Q. So the answer to my question is
8 that if those two indicators were met, that the
9 team would qualify for a bonus?

10 A. Correct.

11 MS. ROSELLE: Can we go off the
12 record for one minute?

13 MR. NEMETH: Sure.

14 (Discussion off the record.)

15 MS. ROSELLE: Back on the record.

16 We would like to make a continuing
17 objection to the extent that there's any
18 proprietary information asked and answered that
19 we object and reserve the right to file a
20 motion to seal the record to protect Homeq,
21 Wachovia, First Union's proprietary
22 information.

23 Q. I would like to switch gears here a
24 little bit and ask you this, did you have an
25 opportunity to review the documents that were

1 submitted to me in response to my request for
2 production of documents?

3 A. Yes.

4 Q. And are all of the documents that
5 were submitted to me documents that Homeq keeps
6 in the regular course of business?

7 A. Yes.

8 Q. And all of the documents to me were
9 authentic copies of original documents that
10 are kept by Homeq; is that true?

11 A. Yes.

12 Q. Can you tell me where you looked in
13 order to find the documents that I requested?

14 A. In your request for the production
15 of documents?

16 Q. Yes.

17 MS. ROSELLE: If you would like to
18 see the stuff, because it was two big stacks.

19 Q. Would you like to see the stuff?

20 A. Yes.

21 Q. Here's one stack. Take your time
22 and go through those.

23 MR. NEMETH: Go off the record.

24 (Discussion off the record.)

25 MR. NEMETH: Can we go back on the

1 record?

2 Q. The question I think I asked you
3 is, where did you look to find the documents
4 that were responsive to my request for
5 production of documents?

6 A. Through the majority of information
7 that we have here.

8 Q. Where did you look in your place of
9 business to find these documents?

10 A. I did not prepare the documents of
11 production.

12 Q. Who prepared them?

13 A. Our special assets department.

14 Q. Another department?

15 A. Yes.

16 Q. What does the special assets
17 department do?

18 A. They handle our litigation files.

19 Q. Where are they located?

20 A. In the same office.

21 MR. NEMETH: Go off the record.

22 (Discussion off record.)

23 MR. NEMETH: We're back on the
24 record.

25 Q. I think the last question I asked

1 you is, where is the special assets department
2 physically located, and your response was in
3 the same office; is that correct?

4 A. Yes.

5 Q. How many people work for the
6 special assets department?

7 A. I don't know.

8 Q. Can you estimate for me?

9 A. I would say approximately 17.

10 Q. Are they in charge of collecting
11 documents that are responsive to discovery
12 requests?

13 A. Yes.

14 Q. Where do they go to get that
15 information?

16 A. I do not have that information.

17 Q. Is there one person from the
18 special assets department that was in charge of
19 assembling the documents that were responsive
20 to this discovery?

21 A. Yes.

22 Q. Who was that person?

23 A. Lynn Jarvis.

24 Q. Could you spell that, please?

25 A. Yes. L-y-n-n, last name Jarvis,

1 J-a-r-v-i-s.

2 Q. Do you know whether or not she left
3 anything out of the discovery responses that
4 may have been responsive?

5 A. Not that I can recall.

6 Q. Did you help her assemble the
7 documents that were responsive to my discovery
8 requests?

9 A. No.

10 Q. Did you have any communication with
11 her when she was in the process of assembling
12 the documents that were responsive to my
13 discovery request?

14 A. No.

15 Q. Let me ask you about your practices
16 and procedures within the bankruptcy
17 department.

18 When Homeq or Wachovia receives
19 notice that a homeowner's account is in
20 bankruptcy, what specific changes are noted on
21 the account?

22 A. The loan is set up in the
23 bankruptcy work station.

24 Q. What is the bankruptcy work
25 station?

1 A. It is a separate system from the
2 normal system that is used to service normal
3 loans.

4 Q. When you say system, are you
5 talking about a computer program?

6 A. Yes. A system application.

7 Q. What steps are taken in order to
8 accomplish that?

9 A. This function is both automated and
10 manually dependent upon how the notice was
11 received.

12 Q. What portion is automated?

13 A. The part where we receive the
14 information electronically from the
15 Bankruptcy Courts.

16 Q. Does that electronic notification
17 come to the cash department or to the
18 bankruptcy department?

19 A. It comes to the bankruptcy
20 department.

21 Q. It comes directly from the Courts?

22 A. Yes. Through reporting.

23 Q. What's reporting?

24 A. The information is captured
25 electronically from the Bankruptcy Courts and

1 then captured into a reporting format that
2 feeds to the bankruptcy work station.

3 Q. When the system captures the fact
4 that a loan is in bankruptcy, does that
5 automatically change the account status in
6 the computer or is some intervention by an
7 employee required?

8 A. It automatically changes the system
9 through computers.

10 Q. What change does it make?

11 A. It separates that loan from normal
12 population into a bankruptcy maintenance work
13 station.

14 Q. How is a bankruptcy maintenance
15 work station different from the general
16 population system?

17 A. Payments are posted differently.
18 It eliminates the loan from call statuses and
19 notice status.

20 Q. Slow down.

21 When you say payments are posted
22 differently, in what way are they posted
23 differently?

24 A. They're listed in a post-petition
25 and pre-petition status.

1 Q. What does that mean?

2 A. That means payments are -- it's
3 distinguished as to what type of payment came
4 in, whether it's a trustee payment versus a
5 borrower payment.

6 Q. If it's a borrower payment, how is
7 it posted?

8 A. Post-petition.

9 Q. When you post a borrower
10 post-petition payment in the system, what's
11 required to do that?

12 A. That's a cash processing question.

13 Q. Do you know what the answer is?

14 A. No.

15 Q. When a borrower post-petition
16 payment is posted, does the bankruptcy
17 maintenance program change the ratio of
18 principal and interest for the first
19 post-petition payment that comes in?

20 A. No.

21 Q. Does the first post-petition
22 payment that comes in get credited to the next
23 payment due in the system?

24 A. I'm not understanding your
25 question.

1 Q. I didn't think so. I didn't ask it
2 very clearly.

3 Let me give you a hypothetical.
4 Let's say that the homeowner has a loan and the
5 homeowner was current through the end of 2005
6 but did not make payments for January,
7 February, March, or April of 2006, and then
8 filed on, let's say, April 30th filed a
9 Chapter 13 proceeding. Then let's say that
10 the homeowner sent a check to Wachovia or
11 Homeq dated May 1st for the normal installment
12 amount.

13 Would that installment amount get
14 credited to the January 1st, 2006 payment or
15 would it be deemed a current May 1st, 2006
16 payment?

17 A. Both, if I'm understanding your
18 question correctly.

19 Q. All right.

20 Tell me what you mean when you say
21 both.

22 A. The payment would be posted based
23 on the contractual due date but credited as a
24 post-petition payment.

25 Q. When you say it's credited as a

1 post-petition payment, when a payment is
2 credited as a post-petition payment, is it
3 treated differently than such a payment would
4 be treated if the account were not in
5 bankruptcy?

6 A. Yes.

7 Q. In what ways is it treated
8 differently?

9 A. Because the account would be
10 reflected as a current account even though it's
11 contractually delinquent.

12 Q. How does the bankruptcy maintenance
13 system handle payments that are received from
14 the trustee?

15 A. It is applied as pre-petition to
16 reduce the pre-petition balance.

17 Q. Who prepares the pre-petition proof
18 of claim in a Chapter 13 proceeding?

19 A. Our bankruptcy counsel.

20 Q. And are your bankruptcy attorneys
21 in-house at Homeq?

22 A. No.

23 Q. And how is the information provided
24 to bankruptcy attorneys for the purpose of
25 preparing pre-petition proofs of claim?

1 A. Through a referral.

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

4 A. Our system gathers the status of
5 the loan and prepares it and transmits that
6 information to the bankruptcy attorney all
7 through system reporting.

8 Q. Who chooses what law firm will be
9 handling any particular account?

10 A. Our outsource firms.

11 Q. I mean who within Wachovia chooses
12 which account goes to which outsource firm?

13 A. We have a referral logic that we
14 use based upon states.

15 Q. What is a referral logic?

16 A. Depending upon where the bankruptcy
17 case was filed at.

18 Q. I mean, is it a document or is it a
19 computer program?

20 A. It's programming.

21 Q. Where is that program maintained?

22 A. I don't know.

23 Q. It's not part of the bankruptcy
24 system?

25 A. It's IT.

1 Q. IT, a new department, right?

2 A. Yes.

3 Q. What does IT stand for?

4 A. Integrated technology.

5 Q. Where are they physically located?

6 A. That's a two-part question or I
7 have a two-part answer.

8 Q. Give me your two-part answer
9 because I think it was just a one-part
10 question.

11 A. We have business analysts that
12 communicate with our IT department that's
13 located in Sacramento, California to handle
14 our reporting functions.

15 Q. The business analyst is someone who
16 is on-site in the bankruptcy department?

17 A. No. They're not on-site. They are
18 remote employees.

19 Q. Walk me through then how Lerner,
20 Sampson & Rothfuss would end up with the
21 right to represent Wachovia in a bankruptcy
22 matter.

23 Let's say as a hypothetical, this
24 Schramm case is filed in May of 2000, and I
25 know now that the Federal Court apparently

1 generates some sort of a report that's
2 captured by your computer system, and so your
3 accounts are changed to reflect that this is
4 now a bankruptcy account.

5 I know that there are several firms
6 in the Northern District of Ohio that represent
7 lenders who have accounts in default.

8 And so what I'm getting at here is,
9 how is the decision made to choose one firm
10 over the other?

11 A. Homeq does not choose. The
12 outsourcing firm chooses counsel for Homeq.

13 Q. Is the outsourcing firm not a part
14 of Homeq, it's a third party?

15 A. They're a third party.

16 Q. I see.

17 Does Homeq have any involvement
18 whatsoever, other than providing account
19 information, with the preparation and filing
20 of a proof of claim for a pre-petition
21 arrearage?

22 A. Could you repeat your question
23 again?

24 Q. Do you know what a proof of claim
25 is?

1 A. Yes.

2 Q. Does Homeq have any involvement,
3 other than providing information to counsel, in
4 preparing a pre-petition proof of claim?

5 A. No.

6 Q. Homeq does not review a completed
7 proof of claim prior to its submission to the
8 Court?

9 A. No.

10 Q. Is that always the case?

11 A. Yes.

12 Q. Does Homeq review proofs of claim
13 that have been submitted to the Court after
14 they've been filed?

15 A. No.

16 MR. NEMETH: What did we use to
17 mark your exhibits?

18 MS. ROSELLE: 1 through 5.

19 MR. NEMETH: Could we mark that
20 Plaintiff's Exhibit A?

21 - - - - -

22 (Thereupon, Plaintiff's Deposition
23 Exhibit A was marked for purposes of
24 identification.)

25 - - - - -

1 Q. I'm now handing you a document
2 that's been marked for the record as
3 Plaintiff's Exhibit A, and can you take a look
4 at that and tell me whether or not you have
5 ever seen it before?

6 A. Yes.

7 Q. Can you describe to me what it is?

8 A. A transaction history.

9 Q. A transaction history of what?

10 A. It's a financial statement of a
11 borrower's account.

12 Q. Who created this document?

13 A. Hanan Iskander.

14 Q. Could you spell that, please?

15 A. H-a-n-a-n, last name
16 I-s-k-a-n-d-e-r.

17 Q. Who is Hanan Iskander?

18 A. She is in the special assets
19 department with Homeq.

20 Q. What's her title?

21 A. I do not have that information with
22 me.

23 Q. Do you know how she came to prepare
24 this document?

25 A. At the request of Lynn Jarvis, as a

1 result of the production request for
2 documents.

3 Q. Do you know when it was prepared?

4 A. I do not.

5 Q. Was it prepared after Homeq was
6 served with the request for production of
7 documents?

8 A. I do not know.

9 Q. Was it prepared after this
10 adversary proceeding was filed against Homeq?

11 MS. ROSELLE: Asked and answered.
12 Objection.

13 MR. NEMETH: They're different
14 questions.

15 MS. ROSELLE: She testified that
16 she doesn't know when it was prepared.

17 MR. NEMETH: I don't think that's
18 what her testimony was. I asked her if she
19 knew when it was prepared in relation to other
20 events, and she said she didn't know.

21 I took that to mean she didn't know
22 whether or not it was prepared before or after
23 that event.

24 So I'm trying to narrow the focus of
25 my question to see if there's any answer she

1 can give me as to when it was prepared.

2 MS. ROSELLE: You can answer.

3 A. I do not know.

4 Q. Do you know whether or not it was
5 prepared after October 11th, 2005?

6 A. I do not know.

7 Q. Do you know how this document was
8 prepared?

9 A. Please rephrase your question.

10 Q. How was this document prepared?

11 A. I still do not understand the
12 question.

13 Q. Where did the information in this
14 document come from?

15 A. Homeq's payment history.

16 Q. Is it Mr. Or Ms. Iskander?

17 A. Ms.

18 Q. Where would she obtain Homeq's
19 payment history?

20 A. From the system application.

21 Q. Did you assist her in the
22 preparation of this document?

23 A. No, I didn't.

24 Q. Did you review this document after
25 it was prepared?

1 A. No. Not after it was prepared.

2 Q. Did you review it at any time
3 during its preparation?

4 A. No.

5 Q. Do you have any personal knowledge
6 about the methodology that was used to
7 prepare this document?

8 A. Yes.

9 Q. Can you tell me what you know about
10 the methodology that was used to prepare this
11 document?

12 A. It's a standard format for a
13 payment history.

14 Q. Are you suggesting that this was
15 just printed right off the computer in its form
16 as entered?

17 A. No. I'm not suggesting that.

18 Q. Explain what you mean by the
19 response to the last question.

20 A. It's a standard reconciliation that
21 Homeq uses.

22 Q. What is a standard reconciliation?

23 A. It's a revised method to
24 understanding the payment history clearly.

25 Q. Revised from what?

1 A. The standard payment history.

2 Q. In what ways is it revised?

3 A. It is placed in a reconciliation
4 format to make the history more easier to be
5 read.

6 Q. Can any of the data be changed when
7 you're doing that?

8 A. Yes.

9 Q. Do you know whether or not any of
10 the data in this document was changed?

11 A. I do not know.

12 Q. Is it normal for data to be changed
13 when these are created?

14 A. No.

15 Q. Was any information sought from you
16 during the process of creating this document?

17 A. No.

18 Q. Who participated in the creation of
19 this document other than Hanan Iskander?

20 A. I'm not sure. I was not present.

21 Q. Do you know what the data in this
22 reconciliation report means?

23 A. Yes, I do.

24 Q. Let's go through it date by date.

25 The first item on here is dated, you correct me

1 if I'm wrong, I'm looking at the transaction
2 date, but it's dated September 29th, 1998.
3 The description at the far right says,
4 "Origination." Can you tell me what that
5 means?

6 A. That's the balances at the time the
7 loan was originated.

8 Q. Does that mean that the lender
9 loaned the borrower \$95,200?

10 A. Yes.

11 Q. The next item on this list is dated
12 November 12th, 1998, and in the far right it
13 says, "Late charge assessment." Can you
14 explain to me what that means?

15 A. A late charge was assessed on the
16 account.

17 Q. Why?

18 A. Payment was late.

19 Q. Do you know whether or not the
20 borrowers executed a coupon that gave them
21 the right to miss two payments?

22 A. Yes, they did.

23 Q. And when was the first payment due
24 under this note?

25 A. May I look through the documents?

1 Q. You may.

2 A. September 1st, 1998 was the first
3 payment due according to the adjustable rate
4 note.

5 Q. What was the first payment that was
6 received by the borrowers?

7 A. On 11-25-98.

8 Q. Is that the date that Homeq
9 received the payment?

10 A. Yes.

11 Q. I wonder if you could go down to
12 the line that's dated June 7th, 1999.

13 A. Okay.

14 Q. On the right-hand column, I believe
15 I'm reading this correctly, it says, "Deferral
16 balance." Do you know what that means?

17 A. Yes, I do.

18 Q. What does that mean?

19 A. Payment is being deferred to the
20 end of the loan.

21 Q. Why would a payment be deferred to
22 the end of the loan?

23 A. That was an option available to the
24 borrowers.

25 Q. Did that have to do with the coupon

1 they signed?

2 A. Yes, it did.

3 Q. Would this entry have been made on
4 June 7th, 1999?

5 A. Yes.

6 Q. Could it have been made on some
7 other date?

8 A. Rephrase your question.

9 Q. Could this entry have been entered
10 on this spreadsheet on some date other than
11 June 7th, 1999?

12 A. This entry was placed on this
13 spreadsheet based upon the actual date that
14 was on Homeq's standard payment history.

15 Q. That's not what I'm asking you.

16 I mean, if this line item did not
17 exist on here today, would it be possible for
18 someone to add it in now?

19 A. On this reconciliation sheet?

20 Q. Yes.

21 A. Yes.

22 Q. Thank you.

23 Can you take a look at the line
24 that's dated August 30th, 1999?

25 A. Okay.

1 Q. In the description column it says,
2 "Payment plus other allocations, reallocation
3 of suspense funds to late." Do you know what
4 that means?

5 A. Yes.

6 Q. Can you explain that to me?

7 A. \$36.96 was applied towards late
8 charges from funds in suspense.

9 Q. Where did the funds in suspense
10 come from?

11 A. The \$900 transaction amount
12 received on 8-30 of '99.

13 Q. Is that because the homeowners paid
14 more than what was due at that time?

15 A. Yes.

16 Q. I see.

17 Let's go down to the line item that
18 says October 4th, 1999. The note says that's
19 a suspense credit reallocation of suspense
20 funds. Can you explain to me what that
21 means?

22 A. \$853.09 went into suspense.

23 Q. Why was that?

24 A. That would be a cash explanation.

25 I'm not a cash expert.

1 Q. So you don't have an explanation as
2 to why it was not applied to a payment?

3 A. That is correct.

4 Q. Who would be able to provide me
5 with that information?

6 A. Our account -- I mean, our cash
7 manager.

8 Q. Do you know what that person's name
9 is?

10 A. Rhonda Barrow.

11 Q. How do you spell Barrow?

12 A. B-a-r-r-o-w.

13 Q. Thank you.

14 Let's look at the line item that's
15 dated -- the first of two that's dated
16 November 12th, 1999. You will see it says,
17 "NSF fee assessed," and it's got a bunch of
18 question marks.

19 Can you explain that note to me,
20 please?

21 A. I can't explain the question marks,
22 but it appears that \$15.95 was assessed as an
23 NSF fee.

24 Q. Let's now go down to the third one
25 from the bottom, it's dated July 3rd, and in

1 the description column it says, "Property
2 inspection fee." Do you see that?

3 A. Yes, I do.

4 Q. Can you explain to me what that
5 means?

6 A. Property inspection fee was
7 assessed to the account.

8 Q. Why was a property inspection fee
9 undertaken at that time?

10 A. The account was in a delinquent
11 status.

12 Q. How delinquent was it?

13 A. Correction. The account was
14 current.

15 Q. Do you know why the property
16 inspection fee was assessed at that time?

17 A. No.

18 Q. Do you know what standards Homeq
19 uses to determine when a property inspection is
20 required?

21 A. No.

22 Q. Who makes that decision?

23 A. I'm not able to answer that at this
24 particular time.

25 Q. Do you know whether or not it's

1 someone in the bankruptcy department?

2 A. It is not.

3 Q. Who would you go to to find the
4 information that would be responsive to that
5 question?

6 A. I would consult with my Homeq's
7 manager listing.

8 Q. Is there a particular manager that
9 you have in mind that would have that
10 information?

11 A. Yes.

12 Q. Who is that?

13 A. John Holton.

14 Q. What's John Holton's job?

15 A. He is responsible for our breach
16 letter program.

17 Q. I didn't hear you.

18 A. Breach letter program, foreclosure
19 referrals, that is all that I can recall at
20 this particular time.

21 Q. What department does he work in?

22 A. I do not have that information at
23 this time.

24 MS. ROSELLE: May I interrupt? Can
25 we plan on taking a break around 11:00?

1 MR. NEMETH: Sure. We can take a
2 break whenever you want.

3 Q. On the next page the third item
4 down is dated July 28th, and that's another
5 property inspection fee.

6 What was the status of the account
7 at that time?

8 A. At that particular time the account
9 was due for the June 1st, 2000 payment.

10 Q. So the account was delinquent at
11 that time; is that correct?

12 A. Yes.

13 Q. Please look at the following line
14 dated August 11th, 2000. It's indicated as a
15 late charge assessment, correct?

16 A. Correct.

17 Q. But below it it says, "Tax
18 disbursement to Lorain County tax," and I
19 assume that relates to the August 15th payment
20 immediately below; is that correct?

21 A. That relates to the date that a
22 check was cut to the Lorain County tax office.

23 Q. On what date was the check cut to
24 Lorain County?

25 A. August 15, 2000.

1 Q. I notice in the description there
2 that it has a check number. Would that be the
3 check that was sent to the Lorain County
4 Treasury?

5 A. Yes, it would.

6 Q. On the following line, August 29th,
7 there's \$100 charge for a broker's price
8 opinion.

9 What is a broker's price opinion?

10 A. It's an evaluation of the property.

11 Q. What's the purpose of obtaining
12 that?

13 A. To establish a value.

14 Q. What's the purpose of establishing
15 a value?

16 A. To determine whether there has been
17 a drop in value of the property.

18 Q. How would Homeq use that
19 information?

20 A. In assessing its interest in the
21 property.

22 Q. When does Homeq order broker's
23 price opinions with regard to a property?

24 A. Every six months.

25 Q. Regardless of whether the loan is

1 in default?

2 A. No. The loan has to be in default.

3 Q. Does it matter whether or not the
4 loan is in Chapter 13?

5 A. No.

6 Q. Just to make sure I understand you,
7 if there is a loan that's in default but is
8 current post-petition in a Chapter 13 case,
9 nevertheless, Homeq would have semi-annual
10 broker's price opinions ordered for that
11 property?

12 A. Yes. Based upon contractual due
13 date.

14 Q. If you would, can you please jump
15 down to a transaction date of February 27th,
16 2001? That appears to be a broker's price
17 opinion for \$100, would you agree?

18 A. Yes.

19 Q. And the following line appears to
20 be a broker's price opinion also for \$100 and
21 performed ten days later, would you agree, or
22 paid ten days later?

23 A. Yes.

24 Q. What would be the reason for
25 ordering two broker's price opinions within ten

1 days of one another?

2 A. That doesn't identify that a
3 broker's price opinion was ordered twice. It
4 identifies duplicate billing.

5 Q. We don't know when the broker's
6 price opinions were ordered, we only know when
7 they were paid?

8 A. According to the transaction
9 history.

10 Q. Where would we determine when those
11 broker's price opinions were ordered?

12 A. In Homeq's system applications.

13 Q. Could you provide me with that
14 information?

15 A. They have already been provided in
16 the production of documents request.

17 Q. The dates on which broker's price
18 opinions were ordered as opposed to paid?

19 A. No. I would not be able to furnish
20 you with that.

21 MS. ROSELLE: Objection.

22 The responses speak for themselves.
23 We've provided copies of everything.

24 MR. NEMETH: Okay. You have
25 provided copies of broker's price opinions, and

1 you have provided copies of when they were
2 paid.

3 What I'm asking is, is there
4 additional information as to when they were
5 ordered?

6 MS. ROSELLE: Can we look and see
7 if they say when they were ordered?

8 MR. NEMETH: In the broker's price
9 opinions?

10 MS. ROSELLE: Yes.

11 MR. NEMETH: Sure. It's 11:00 now.
12 While we're doing that, why don't we take a
13 break.

14 (Recess had.)

15 MR. NEMETH: Let's go back on.

16 Q. It's my understanding that during
17 the break you looked through the broker's price
18 opinions and they do not have information on
19 them as to when they were ordered. Again, I'm
20 going to ask the question, is there a place
21 that you could go to that would provide me with
22 the information as to when the BPOs were
23 actually ordered?

24 A. I'm sure that there is, but I don't
25 know that information or I do not have that

1 information.

2 Q. You don't personally know where
3 that information could be found right now?

4 A. No.

5 Q. Who would you go to to find out?

6 A. Probably the same individual, John
7 Holton.

8 Q. Getting back to the reconciliation
9 report, there's a line dated 4-24-01, and in
10 the explanation column or description column
11 it says that those are bankruptcy attorney's
12 fees?

13 A. Yes.

14 Q. And it's listed as \$200, and it's
15 in a sub-column labeled "Corporate advance."

16 Correct me if I'm wrong, but I
17 assume that that means that Homeq advanced from
18 its own funds \$200 to counsel for bankruptcy
19 attorney's fees?

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. Similarly, the next two columns are
24 foreclosure attorney's fees in the amount of
25 \$787.50 and foreclosure court costs in the

1 amount of \$560. Those are also in the
2 corporate advance column.

3 My conclusion is that those were
4 advances made from the corporation's own
5 funds to pay for those items; would that be
6 correct?

7 A. Yes.

8 Q. Please look at the last item on
9 this page, which is dated April 23rd, 2002.
10 Can you tell me what that entry relates to?

11 A. Escrow disbursement in the amount
12 of 1,213.

13 Q. Who was it paid to?

14 A. It was force place insurance.

15 Q. Where were the funds derived to pay
16 that?

17 A. From our escrow account.

18 Q. How was the escrow account funded?

19 A. Could you rephrase your question?

20 Q. Where did the money come from that
21 was in the escrow account?

22 A. That was an advance from the escrow
23 account. There was no money there.

24 Q. How can you tell that it was an
25 advance?

1 A. Simply by the brackets, that's an
2 indication, the brackets around 1,213.

3 Q. Wouldn't they just indicate that
4 it's a debit from an account?

5 A. Yes. In the description as well,
6 force place insurance disbursement.

7 Q. Why wouldn't that be included in
8 the corporate advance account?

9 A. That's not Homeq's policy.

10 Q. But it is an advance, it's made
11 with Homeq's own funds to pay for force place
12 insurance premiums; is that correct?

13 A. Yes.

14 Q. Do you know why there's a policy to
15 separate corporate advances for bankruptcy
16 attorney's fees, foreclosure attorney's fees,
17 and foreclosure court costs from advances for
18 force place insurance?

19 MS. ROSELLE: Objection to the
20 extent it calls for a legal conclusion. There
21 is law on treatment of escrow advances.

22 Q. Do you know the answer to that
23 question?

24 A. No.

25 Q. Can you turn to the next page,

1 please? The first item on the next page is
2 dated May 21st, 2002, and that appears to be
3 a corporate advance of \$75 for Bankruptcy
4 Court costs, would you agree?

5 A. Yes.

6 Q. I'm sorry. Can you go back to the
7 prior page? I have some more questions about
8 some of the entries on that page.

9 For example, two-thirds of the way
10 down or so there's an entry dated July 25th,
11 and it appears to be a \$700 payment from the
12 borrowers. Would you agree with that?

13 A. Yes.

14 Q. And it appears to me that it was
15 allocated to a forbearance suspense account
16 in full, would you agree with that?

17 A. Yes.

18 Q. And in the description column it
19 says that it's a suspense credit; is that
20 correct?

21 A. Yes.

22 Q. And that appears to be the first
23 dollar entry in an account that's labeled
24 "Forbearance suspense"; is that right?

25 A. I would need to look at the history

1 prior to answer that question.

2 MS. ROSELLE: I object to the
3 extent that the history speaks for itself.

4 MR. NEMETH: All right.

5 Q. Well, it appears I'm incorrect
6 because I see some entries in that column on
7 the prior page.

8 Could you look at the following
9 entry, which is also dated July 25th? I just
10 want to make sure I understand this.

11 Correct me if I'm wrong, but does
12 it appear to you that money was removed from
13 this forbearance suspense account and applied
14 to a payment in the amount of \$630.09?

15 A. Yes.

16 Q. Now we can go to the next page.
17 Could you look at the entry dated September
18 17th, 2002?

19 MS. ROSELLE: Objection to the
20 extent that there are five entries of that
21 date.

22 MR. NEMETH: Thank you for pointing
23 that out.

24 Q. Can you please look at the first
25 entry dated September 17th, 2002, and can you

1 tell me what that entry relates to?

2 A. We received a payment of \$4,650.

3 Q. And how was it applied?

4 A. One payment was applied, the
5 principal and interest, 50.66, 802.43, and the
6 remainder of the funds was placed in
7 forbearance suspense.

8 Q. And then the remainder that was
9 placed in forbearance suspense was subsequently
10 allocated to additional payments; is that
11 correct?

12 A. Yes.

13 Q. In fact, allocated to three
14 additional post-petition payments, right?

15 A. Yes. Three additional.

16 MS. ROSELLE: Objection.

17 MR. NEMETH: It speaks for itself?

18 MS. ROSELLE: It speaks for itself,
19 and I count four.

20 MR. NEMETH: You're right.

21 1, 2, 3, 4. Okay.

22 Q. Could we go down to a line dated
23 February 20th, 2003, do you see that line?

24 A. Yes, I do.

25 Q. Was that a corporate advance of

1 \$850 paid for foreclosure attorney's fees?

2 A. Yes.

3 Q. Can you please go to the next page?

4 This would be the fourth page of this

5 document. The first of three line items that

6 are dated July 18th, 2003, do you see that

7 line?

8 A. Yes.

9 Q. In the description column it says
10 that's an insurance refund. Can you explain

11 to me what that means?

12 A. Yes. A refund was received back

13 from a force place disbursement made in

14 insurance.

15 Q. Is that a refund of premiums paid
16 for insurance?

17 A. Yes.

18 Q. Why?

19 A. In cases such as this, it would be
20 due to borrower providing proof of insurance.

21 Q. Could you go now down to the first

22 of several lines that are dated March 2nd,

23 that's an \$842.36 transaction, do you see

24 that?

25 A. Okay.

1 Q. The description column says,
2 "Bankruptcy reclassification." Can you
3 describe to me what that means?

4 A. On 3-2-04 Homeq established a new
5 business policy to take the corporate advance
6 expenses within a bankruptcy case, divide the
7 expenses between pre-petition and post-
8 petition expenses, and to separate the late
9 charges and other fees.

10 Basically they were categorizing all
11 of the expenses incurred before and after the
12 bankruptcy case.

13 Q. Why did they develop that policy?

14 A. To ensure that Homeq was not
15 collecting corporate advance expenses from
16 borrowers that were not collectible.

17 Q. Is it possible to determine from
18 this particular line entry how this expense was
19 reclassified?

20 A. No.

21 Q. Would that information be available
22 from some other source?

23 A. Yes.

24 Q. Where would that source be?

25 A. Homeq system applications.

1 Q. Can you provide that to me?

2 A. Yes.

3 Q. When were these bankruptcy
4 reclassifications made?

5 A. Could you rephrase your question?

6 Q. Were these bankruptcy
7 reclassifications made on the dates indicated
8 on this reconciliation report or were they made
9 on some other date?

10 A. No. On the date on the transaction
11 history.

12 Q. Can you look at the line dated
13 March 19th, 2004?

14 A. Yes.

15 Q. Can you tell me what that is?

16 MS. ROSELLE: I'm going to make a
17 continuing objection that the document speaks
18 for itself, but you can still answer the
19 question.

20 A. It's a corporate advance expense
21 for foreclosure cost in the amount of \$787.61.

22 Q. Who would that have been paid to?

23 A. That should also be in the
24 production of documents.

25 Q. Would it have been paid to counsel?

1 A. Yes.

2 Q. Can you take a look at the
3 following item and describe to me what that is?

4 A. That is also a part of the
5 bankruptcy reclassification.

6 Q. How is it being reclassified?

7 A. As a post-petition expense.

8 Q. How was it classified before that?

9 A. As a recoverable expense. It comes
10 in as a recoverable expense and then it moves
11 to the reclassification system.

12 Q. Can you take a look at the line
13 item dated August 5th, please, and describe to
14 me what that is?

15 A. It's an insurance refund in the
16 amount of \$1,023.

17 Q. And like the last one, would this
18 represent a repayment to Homeq from the force
19 place insurance provider of unused premium?

20 A. Yes.

21 MS. ROSELLE: Let the record
22 reflect that this is the first line item dated
23 August 5th, '04.

24 Q. Can you flip to the last page,
25 please, and can you go down to the line dated

1 June 17th, 2005? Can you tell me what that is?

2 A. It's a foreclosure disbursement for
3 attorney fees.

4 Q. Can you take a look at the first of
5 three lines dated June 22nd and can you tell
6 me what that relates to?

7 A. Yes.

8 Q. What does it relate to?

9 A. It's in relation to the
10 reclassification system at the closing of the
11 bankruptcy case.

12 Q. What's being reclassified?

13 A. The expenses that was currently
14 recategorized based on pre-petition, post-
15 petition, late charges and other fees. The
16 expenses that were remaining were then
17 combined back together and placed in the
18 recoverable corporate advance account.

19 Q. Would it be possible to identify
20 which expenses were being combined?

21 A. Yes.

22 Q. Would that information be contained
23 on this reconciliation report?

24 A. No.

25 Q. Where would that information be

1 contained?

2 A. In Homeq system applications.

3 Q. Can you provide me with that
4 information?

5 A. Yes.

6 Q. Can you look at the second entry
7 that's dated June 22nd, 2005? Can you explain
8 to me what that transaction involves?

9 A. Yes. The same process.

10 Q. How about the third transaction
11 dated June 22nd, 2005, what does that one
12 involve?

13 A. The same process.

14 Q. But appears to be a credit rather
15 than a debit?

16 A. It's not a credit. The reason why
17 it's shown as a credit on the corporate advance
18 here is because it's moving from one
19 classification to another.

20 Q. I see.

21 There's some item or items that
22 total \$837.50 that you're classifying from one
23 to another, and so you're debiting some account
24 somewhere and crediting another?

25 A. Exactly.

1 Q. Again, would you be able to provide
2 me with the information about the charges to
3 which those transactions apply?

4 A. Yes.

5 Q. The next item I want to ask you
6 about is the one dated July 6th. Can you
7 explain to me what that is?

8 A. That's the combination of all of
9 the reclassification transactions moving from
10 their categorized accounts back into the
11 recoverable corporate advance account.

12 Q. This was all done because of a
13 change of policy, not because of any change in
14 status of the Schramm's account; is that
15 correct?

16 A. Correct.

17 Q. Can you now look please at the line
18 item dated July 19th and describe to me what
19 that is?

20 A. That's a \$30 fee and the type of
21 fee is a demand fee.

22 Q. What's a demand fee?

23 A. It's a breach letter.

24 Q. What's a breach letter?

25 A. Breach letter is demanding payment

1 on an account.

2 Q. Why is there a fee for this letter?

3 A. That is a Homeq policy.

4 Q. Is that policy in writing?

5 A. I do not have that information. I

6 am not sure.

7 Q. Where would you go to find it?

8 A. Again, John Holton.

9 MR. NEMETH: I'm done with that
10 document.

11 - - - - -

12 (Thereupon, Plaintiff's Deposition
13 Exhibit B was marked for purposes of
14 identification.)

15 - - - - -

16 Q. This is a document that's been
17 marked Plaintiff's Exhibit B, although it's got
18 a stamp on it that says Exhibit C, so do not be
19 confused.

20 Do you recognize this document?

21 A. Yes.

22 Q. Have you ever seen it before?

23 A. Yes.

24 Q. When did you first see it?

25 A. When reviewing the production of

1 documents.

2 Q. When was that?

3 A. About two weeks ago.

4 Q. Who was reviewing this with you?

5 A. No one.

6 Q. Did your department generate this
7 correspondence?

8 A. No.

9 Q. What department would have
10 generated this correspondence?

11 A. This is an automated process.

12 Q. What do you mean by an automated
13 process?

14 A. It's system generated.

15 Q. What do you mean by system
16 generated?

17 A. It's produced at the time a payment
18 is received automatically.

19 Q. By who?

20 A. What does your question mean by
21 who?

22 Q. Who produces this?

23 A. The computer produces it.

24 Q. Whose computer?

25 A. Homeq's.

1 Q. Which department?

2 A. There is no department. It's
3 automated.

4 Q. Is there a sticker on this computer
5 that says, this computer belongs to such-and-
6 such a department at Homeq?

7 A. Not that I am aware of.

8 Q. Was this document mailed from
9 Homeq's facility in Raleigh?

10 A. No.

11 Q. Was it mailed from Homeq's facility
12 in California?

13 A. Yes.

14 Q. Did the bankruptcy department have
15 any involvement in providing Homeq's department
16 in California with information included in
17 this correspondence?

18 A. Repeat the question again.

19 Q. Did Homeq's bankruptcy department
20 have any involvement in providing information
21 contained in this letter to the department in
22 California that mailed the letter?

23 A. The expenses, the corporate advance
24 expenses that's listed here was placed in the
25 advance account by the bankruptcy department.

1 That information was automatically pulled
2 onto this payment coupon.

3 Q. How does that work, how does the
4 information actually make it from the
5 bankruptcy department to the California
6 department?

7 A. We all share the same account.
8 It's a Homeq system application.

9 Q. Is there any act required on the
10 part of an employee of the bankruptcy
11 department in order to cause that information
12 to get transmitted to the California
13 department?

14 A. Yes.

15 Q. What act is that?

16 A. The bankruptcy reclassification
17 process.

18 Q. What is the bankruptcy
19 reclassification process?

20 A. At the end of the bankruptcy a
21 manual review is done on the corporate advance
22 expenses, and then the processor determines
23 which account the expenses are moved in.

24 Q. Is the bankruptcy processor one of
25 the people who work for you?

1 A. Yes.

2 Q. Do you know who the bankruptcy
3 processor was that transmitted the
4 information contained in this letter?

5 A. I believe, but I'm not 100 percent
6 sure, that it was Surekha Mody.

7 Q. How do you spell Surekha?

8 A. S-u-r-e-k-h-a, last name is
9 M-o-d-y.

10 Q. Did you have any involvement in
11 transmitting that information?

12 A. No.

13 Q. How does the bankruptcy processor
14 determine which account expenses are to be
15 moved into other accounts?

16 A. It's based on how the bankruptcy
17 case is terminated, which determines which fees
18 are collectible and which are not.

19 Q. Do you know how the Schramm's
20 bankruptcy case was terminated?

21 A. Through a Chapter 13 discharge.

22 Q. When there's a Chapter 13
23 discharge, what expenses are moved and to which
24 accounts are they moved?

25 MS. ROSELLE: Objection.

1 Which jurisdictions are you
2 referring to?

3 MR. NEMETH: Well, let me ask a
4 more broad question.

5 Q. When a bankruptcy case is
6 terminated through a Chapter 13 discharge, are
7 the acts that are performed by the bankruptcy
8 processor determined on a state-by-state
9 basis?

10 A. Yes.

11 Q. And how does the processor get that
12 information?

13 A. Through our counsel, bankruptcy
14 counsel.

15 Q. Are those attorneys in-house?

16 A. No.

17 Q. Are those the same attorneys that
18 handled the bankruptcy case during the course
19 of the bankruptcy proceeding?

20 A. Yes.

21 Q. Did the processor call counsel to
22 determine how the expenses in each account
23 are to be handled?

24 MS. ROSELLE: Objection to the
25 extent there's attorney-client privileged

1 information in there, but you can answer as to
2 general.

3 A. No.

4 Q. How was that contact made?

5 A. We review the bankruptcy documents
6 that has been filed within the bankruptcy case.

7 Q. How do you acquire them?

8 A. We already have copies of all
9 documents filed by our attorneys.

10 Q. How do you get them?

11 A. Through our imaging system.

12 Q. Where does your imaging system get
13 them?

14 A. From the mail.

15 Q. Who sends them to you in the mail?

16 A. Our attorneys.

17 Q. So they come from your attorneys,
18 right?

19 A. Yes.

20 Q. Do you consult with your attorneys
21 in determining how the expenses are to be
22 treated?

23 A. No.

24 Q. How do you know how the different
25 expenses are to be treated then?

1 A. We have procedures.

2 Q. Are those written procedures?

3 A. Yes.

4 Q. May I have a copy of them, please?

5 MS. ROSELLE: For which

6 jurisdictions?

7 MR. NEMETH: Certainly for the
8 Northern District of Ohio, Eastern Division.

9 Q. When you transmit the expense
10 information to the California department, in
11 what form is it received by them?

12 A. In a spreadsheet form.

13 Q. Does the spreadsheet form itemize
14 those expenses?

15 A. No.

16 - - - - -

17 (Thereupon, Plaintiff's Deposition
18 Exhibit C was marked for purposes of
19 identification.)

20 - - - - -

21 Q. I'm handing you now a document
22 that's been marked Exhibit C for our purposes,
23 it also has a big stamp on it that says Exhibit
24 D at the bottom. So, again, don't let that
25 confuse you.

1 Have you ever seen this document
2 before?

3 A. Yes.

4 Q. When's the first time you saw it?

5 A. Approximately two weeks ago.

6 Q. Have you seen it at any time before
7 that?

8 A. No.

9 Q. What is this document?

10 A. It is a payoff.

11 Q. Of what?

12 A. Of an account status.

13 Q. Whose account?

14 A. The Schramm's.

15 Q. How would this document have come
16 to be?

17 A. It would have to have been
18 requested by the Schramm's.

19 Q. And what department at Homeq issued
20 this document?

21 A. This document is also computer
22 generated.

23 Q. By what department?

24 A. Pay-off department.

25 Q. Pay-off?

1 A. Yes.

2 Q. Where is the pay-off department?

3 A. Sacramento, California.

4 Q. How does the pay-off department in
5 Sacramento, California get this information?

6 A. Can you elaborate a little bit more
7 in your question?

8 Q. Sure.

9 Does the Sacramento pay-off
10 department have the same access to the system
11 information that other departments do within
12 the company?

13 A. Limited.

14 Q. Does the Sacramento pay-off
15 department have to make inquiry of other
16 departments in order to provide a pay-off
17 figure to a homeowner?

18 A. Yes.

19 Q. And does the Sacramento pay-off
20 department normally inquire of the bankruptcy
21 department for information prior to sending
22 out a pay-off quote?

23 A. Only on active bankruptcy accounts.

24 Q. When is an account active in the
25 Homeq bankruptcy department?

1 A. When the bankruptcy case is still
2 active.

3 Q. When the case has been discharged,
4 is it no longer active?

5 A. Correct. It's no longer active.

6 Q. There's an itemization in the
7 middle of this letter and the third item down
8 is "Suspense balance."

9 Did that information come from your
10 department?

11 A. No.

12 Q. The line below that says, "Attorney
13 outsourcing fees, \$3,045," did that line come
14 from your department?

15 A. No.

16 Q. What department did that come from?

17 A. It didn't come from the bankruptcy
18 department, but it came from the foreclosure
19 department.

20 Q. The last item that's listed there
21 is "Advances." Did that information come from
22 your department?

23 A. Previously it did.

24 Q. Did the advances that your
25 department passed along to Sacramento include

1 any attorney's fees?

2 A. Yes.

3 Q. And which attorneys fees were
4 included in that figure?

5 A. A combination of pre-petition and
6 post-petition.

7 Q. Do you know how much of the
8 \$5,203.60 included attorney's fees?

9 A. All of it.

10 Q. All of it did?

11 A. Yes.

12 MS. ROSELLE: Could I ask for
13 clarification in that question?

14 I guess I'll let the record stand.
15 I was a little confused about the question.

16 Q. Let's go back to Exhibit B. You
17 indicated that the advances that are shown on
18 this letter were generated by the bankruptcy
19 department and transferred in some way to the
20 Sacramento department; is that correct?

21 A. Yes.

22 Q. And this also says, "Advances,
23 \$5,203.60," just as Exhibit C does; is that
24 correct?

25 A. Yes.

1 Q. And since all of the advances set
2 forth in Exhibit C are for attorney's fees, I
3 assume that that means all of the advances
4 that are set forth in Exhibit B relate to
5 attorney's fees, also, right?

6 MS. ROSELLE: Objection.

7 First, there was summarization of
8 testimony that I don't think was accurate.
9 That's my objection.

10 And I think that if you listen to
11 your question, you did not ask if the advances
12 were all attorney's fees and so we object.

13 MR. NEMETH: Can you go back and
14 read the question that I asked her about the
15 \$5,203 advances?

16 (Record read.)

17 MS. ROSELLE: What portion
18 included? I mean, it wasn't how many
19 fees were there.

20 MR. NEMETH: Let's go off the
21 record for a second.

22 (Discussion off the record.)

23 MR. NEMETH: Let's go back on the
24 record.

25 Q. Does Homeq service loans that are

1 not originated by Homeq, Wachovia, or First
2 Union?

3 A. Yes.

4 Q. What percentage of the loans
5 serviced by Homeq would you say are loans that
6 are not originated from those three entities?

7 A. I don't have that information.

8 Q. Are loans that are serviced by
9 Homeq administered any differently if they
10 originate from Wachovia, Homeq, or First
11 Union?

12 A. Repeat your question again.

13 Q. Are the administration policies and
14 procedures identical for loans that originate
15 with Wachovia, Homeq, and First Union as with
16 other loans?

17 Did I lose you?

18 A. Yes.

19 Q. Was there any difference in the way
20 Homeq services loans based on where they
21 originate?

22 A. No.

23 Q. Are you paid a salary or a wage?

24 A. I'm salaried.

25 Q. Are you eligible for any bonuses?

1 A. Yes.

2 Q. Are they performance-based bonuses?

3 A. Yes.

4 Q. What are the bonuses, what sort of
5 performance would generate a bonus for you?

6 A. The same performances I gave you
7 earlier in the key performance indicators.

8 MR. NEMETH: I don't think I have
9 any further questions.

10 MS. ROSELLE: Sounds good.

11 MR. NEMETH: Do you want to explain
12 to her about the right to read?

13 MS. ROSELLE: You have the right to
14 read the transcript and sign off to make sure
15 that it's accurate or you can waive your
16 signature. The transcript will just be kind of
17 authenticated without your review first.

18 It's completely up to you about
19 whether you want to read it before it is kind
20 of circulated or not.

21 THE WITNESS: I would like to
22 review it.

23 MS. ROSELLE: We will not waive
24 signature.

25

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Grace M. Hilpert, a Notary
Public within and for the State of Ohio, duly
commissioned and qualified, do hereby certify
that the within named witness, ELIZABETH
KORGAR, was by me first duly sworn to testify
the truth, the whole truth and nothing but the
truth in the cause aforesaid; that the
testimony then given by the above-referenced
witness was by me reduced to stenotypy in the
presence of said witness; afterwards
transcribed, and that the foregoing is a true
and correct transcription of the testimony so
given by the above-referenced witness.

I do further certify that this
deposition was taken at the time and place in
the foregoing caption specified and was
completed without adjournment.

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SIGNATURE OF WITNESS

The deposition of ELIZABETH KORGAR,
taken in the matter, on the date, and at the
time and place set out on the title page
hereof.

It was requested that the
deposition be taken by the reporter and that
same be reduced to typewritten form.

It was agreed by and between
counsel and the parties that the Deponent will
read and sign the transcript of said
deposition.

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AFFIDAVIT

The State of Ohio,)
) SS:
County of Cuyahoga)

Before me, a Notary Public in and for
said County and State, personally appeared
ELIZABETH KORGAR, who acknowledged that he/she
did read his/her transcript in the
above-captioned matter, listed any necessary
corrections on the accompanying errata sheet,
and did sign the foregoing sworn statement and
that the same is his/her free act and deed.

In the TESTIMONY WHEREOF, I have hereunto
affixed my name and official seal at this _____
day of _____ A.D 2006.

Notary Public

My Commission Expires:

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DEPOSITION ERRATA SHEET

RE: ROY HENRY SCHRAMM AND DALPHA LOUIS
SCHRAMM, DEBTORS

Job File No.: 1456
Deponent: ELIZABETH KORGAR
Deposition Date: MAY 3, 2006

To the Reporter:

I have read the entire transcript of my
Deposition taken in the captioned matter or the
same has been read to me. I request that the
following changes be entered upon the record
for the reasons indicated. I have signed my
name to the Errata Sheet and the appropriate
Certificate and authorize you to attach both to
the original transcript.

ELIZABETH KORGAR

1 Date: May 11, 2006 Job File No.: 1456

2 To: CYNTHIA M. ROSELLE, ESQ.

3

4 In Re: ROY HENRY SCHRAMM AND DALPHA LOUIS
5 SCHRAMM, DEBTORS

6

7 Deposition of: ELIZABETH KORGAR

8

9 X Counsel of Record - Transcript Enclosed:
10 Signature of the Deponent is required.
11 Please have the deponent make any
12 corrections/changes necessary on the
13 Errata Sheet ONLY, sign name on the form
14 where indicated and sign the Certificate
before a Notary. Please return ONLY the
original executed, notarized Certificate
and completed, signed Errata to our
offices within ___ 7 days _x_ 30 days
from the date of this memorandum.

14

15 Counsel of Record - No Copy Ordered:
16 Signature of the Deponent is required
within ___7 days ___30 days from the date
17 of this memorandum. Since you did not
18 request a copy of the transcript from the
19 deposition, it will be necessary for you
to call our offices to arrange for an
appointment for the Deponent to come in
to read and sign the transcript of the
Deposition.

20

21 cc: RICHARD H. NEMETH, ESQ.

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