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1 LOUISIANA REAL ESTATE APPRAISERS BOARD

2 STATE OF LOUISIANA

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5 \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

REAB \*

6 \* CASE NO. 2014-1500

VERSUS \*

7 \*

iMORTGAGE SERVICES, LLC \*

8 \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

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12 The Public Adjudicatory Hearing held in the

above-entitled matter before the Louisiana Real Estate

13 Appraisers Board at their offices at 9701 Interline

Avenue, Baton Rouge, Louisiana, 70809, on Tuesday, the

14 8th day of December, 2015, commencing at 9:10 a.m.

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23 REPORTED BY: Ellen Jolly Tanner, CCR #82014

Registered Professional Reporter

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7 James R. Purgerson, Jr.

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Bruce Unangst, Executive Director

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23 at the back of the transcript.)

24

25

26

0005

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. HALL:

3 Okay. I'm going to call the hearing to order.

4 The hearing will be pursuant to the Administrative

5 Procedures Act, and I'm going to ask Ms. Edwards to

6 call the case. Let's see. I'm not sure if I have a

7 number.

8 MS. EDWARDS:

9 I have it, Mr. Hall.

10 MR. HALL:

11 Okay. So we will turn it over to Ms. Arlene

12 Edwards.

13 MS. EDWARDS:

14 Okay. Arlene Edwards on behalf of the Louisiana

15 Real Estate Appraisers Board. This is case number

16 2014-1500, Louisiana Real Estate Appraisers Board

17 versus iMortgage Services, LLC.

18 Rob, do you want to introduce yourself?

19 MR. RIEGER:

20 I will. May it please the board, my name is Rob

21 Rieger. I practice law with Adams and Reese. With me

22 are my colleagues, Kellen Mathews and Rebecca

23 Helveston. We proudly represent iManage Mortgage --

24 iMortgage Services. Excuse me. I would like to take

25 the opportunity to quickly introduce some of the

0006

1 people that the board will hear as part of our case,

2 Arlene, if that's okay with you.

3 MS. EDWARDS:

4 Sure.

5 MR. RIEGER:

6 First of all, this is our company witness, Mr.

7 Dean Kelker, Vice President, Chief Compliance Officer.

8 We also have Mr. Bill Matchneer, who is an expert in

9 certain regulatory proceedings, and the law at the

10 federal level. He's a former CFPB member, and is a

11 lawyer. And also, Mr. Jeff Dickstein. Mr. Dickstein

12 is a member of REVAA. He is appearing on behalf of

13 REVAA, and is Vice President and Senior Compliance

14 Officer for Pro-Teck Services, also an AMC. He has

15 flown in from California, and Mr. Kelker is in from

16 Pittsburgh, and Mr. Matchneer is in from Washington,

17 D.C.

18 I just want to let the board know that our

19 client is very, very serious about this, takes these

20 proceedings very seriously. We want to put our best

21 foot forward, and let you all understand some questions

22 we have about all of this.

23 MS. EDWARDS:

24 And Judge White --

25 MR. RIEGER:

0007

1 And also, Judge White, good morning.

2 MS. EDWARDS:

3 -- will be presiding. Judge White, I'm going to

4 ask that -- I think Mr. Matchneer is the expert?

5 MR. RIEGER:

6 Yes.

7 MS. EDWARDS:

8 Other than Mr. Matchneer, I'm going to ask for

9 an order of sequestration for the witnesses.

10 JUDGE WHITE:

11 Is there any objection to that, Mr. Rieger, the

12 order of exclusion of witnesses?

13 MR. RIEGER:

14 I see no reason why sequestration is required,

15 Your Honor. I think that this is not any matter of

16 life and death. We're not talking about sums of money.

17 We're basically saying as witnesses of a hearing that I

18 think has a lot to do with the public interest and how

19 the public is perceived in this particular area, and as

20 I understand it, maybe among the first of its type, I

21 think it's important that the witnesses get a flavor

22 for what other witnesses may say, and that there is no

23 need for sequestration in this -- in this instance.

24 JUDGE WHITE:

25 Do you have any legal authority to oppose it,

0008

1 Mr. Rieger?

2 MR. RIEGER:

3 I just feel like this is more of a quasi -- this

4 is more of an administrative procedure than it is a

5 quasi judicial, if you will, Your Honor, and I would

6 argue that the sequestration rules don't necessarily

7 apply.

8 JUDGE WHITE:

9 It's an interesting issue. Ms. Edwards, do you

10 have anything that you can cite The Court?

11 MS. EDWARDS:

12 No, Your Honor. I'm not aware of anything that

13 would disallow the sequestration. The meeting is

14 public. It's open to the public. The public is

15 welcome to sit in here, but I think that an order of

16 sequestration is appropriate for witnesses who will be

17 testifying. I don't believe it's in the public

18 interest for one witness to necessarily get the flavor

19 of the hearing or to hear what another witness has to

20 say. So it certainly is an open public meeting, but I

21 think it's imperative that the witnesses be

22 sequestered, the witnesses other than an expert, which

23 is the law are allowed to sit in here. The expert is

24 allowed to sit, but the others, I'm asking for an order

25 of sequestration. I know nothing in the law that would

0009

1 require that they be allowed to stay in here just

2 because it's an administrative hearing.

3 JUDGE WHITE:

4 Okay. And you can't cite anything in the

5 Administrative Procedures Act on sequestration of

6 witnesses --

7 MR. RIEGER:

8 No, Your Honor, I cannot other than --

9 JUDGE WHITE:

10 -- Ms. Edwards or Mr. Rieger, on the issue

11 particularly?

12 MS. EDWARDS:

13 I'm not aware of anything that would disallow

14 it.

15 JUDGE WHITE:

16 Well, then the question is, should we look at

17 other bodies of law for the purpose of analyzing this

18 issue? I'm going to grant the request, and assign

19 error, Mr. Rieger, if you wish to note that, but let's

20 have -- you want to have these witnesses sworn, Mr.

21 Chairman, at this time?

22 MR. HALL:

23 That will be fine.

24 JUDGE WHITE:

25 Okay. Would all of the witnesses who may

0010

1 testify, would you, please, stand and raise your right

2 hand if you may testify? Do you solemnly swear or

3 affirm the testimony you may offer in the matters

4 before this board shall be the truth and nothing but

5 the truth so help you God?

6 (THE WITNESSES RESPOND I DO IN UNISON).

7 JUDGE WHITE:

8 All right. Then let's have with the exception

9 of the expert witness -- you have your first witness

10 ready to go?

11 MS. EDWARDS:

12 My first witness is Robert Maynor. He's right

13 here, Your Honor.

14 MR. RIEGER:

15 Your Honor, on that -- we have a little bit of

16 administrative housekeeping. We have got some

17 stipulations, I think, that we can state to try to

18 streamline this a little bit, so...

19 JUDGE WHITE:

20 Okay. Those witnesses then will step outside

21 pending when you will be asked to come back in and

22 testify.

23 Proceed, Ms. Edwards and Mr. Rieger.

24 MR. RIEGER:

25 Thank you, Your Honor. Arlene, you want to

0011

1 start?

2 MS. EDWARDS:

3 Yes. We have some stipulations that are being

4 entered into between the Louisiana Real Estate

5 Appraisers Board and iMortgage Services, LLC.

6 Documents will be provided to you which will make this

7 -- make a little bit more sense, but the transactions

8 represented by the entries on the appraisal spreadsheet

9 attached which will be exhibit -- Attachment A

10 represent transactions that form the basis for the

11 allegations against iMortgage in Case Number 2014-1500

12 as set forth in the November 17, 2015, preliminary

13 notice of adjudication which will be Attachment B.

14 The transactions represented by the entries on

15 the appraisal order spreadsheet attached hereto as

16 Attachment A are covered transactions as contemplated

17 under 12 CFR Section 226.42(b)(2). Of the transactions

18 set forth in Attachment A, three of them listed are

19 outside of the scope of the pertinent time period which

20 was set forth in the preliminary notice that was

21 December 1, 2013, through June 30, 2014, where these

22 three transactions were actually created November 26th,

23 2013, several days before the dates that were contained

24 within the preliminary notice; therefore, we have

25 removed those. Those are order number 331195513, order

0012

1 number 331196623, and order number 331193644. Lastly,

2 with regard to three additional transactions, the fees

3 paid were equal to or exceed the median residential

4 appraisal fee by region as set forth in the 2014

5 Louisiana Residential Real Estate Appraisal Fees, a

6 study conducted by the board -- for the board by

7 Southeastern Louisiana University Business Center.

8 Those transactions are 331196623, 3321298400,

9 3401202131.

10 To summarize so that's not confusing, and Mr.

11 Rieger will have the opportunity to address you on

12 this, there were additionally or originally many more

13 transactions that were going to come before the board.

14 After meeting with iMortgage attorneys, we have then

15 removed those that are not what we call covered

16 transactions, we have removed those that are outside of

17 the time period, so what will be presented today really

18 are nine separate appraisals that are covered

19 transactions that the position is going to be of the --

20 of the staff that those transactions are in violation

21 of the law and/or rules of the Louisiana Real Estate

22 Appraisers Board, and iMortgage will take issue with

23 that and present their case.

24 So basically, what we are saying by the

25 stipulation is we have culled it down to nine

0013

1 particular transactions.

2 MR. RIEGER:

3 On that, if I could be heard, Ms. Edwards, the

4 original allegation letter that came out in July and

5 then the original notice of -- preliminary notice of

6 adjudication of November 2014 cited iMortgage with 150

7 separate instances of having not paid reasonable and

8 customary. Because of the discussions that we had with

9 the staff, and based on information that had previously

10 been submitted to the staff with some fine tuning by

11 us, over 135 were dismissed. There were also five

12 separate allegations alleging that iMortgage had not

13 paid the appraisers on a timely basis as required by

14 the statute and Louisiana regs. After further

15 investigation by the board, those five allegations

16 were, in fact, dismissed as well coming down to the 15

17 that we have got in our November 17th notice of

18 preliminary investigation. What Ms. Edwards just went

19 through is further investigation and further proof and

20 persuasion by iMortgage that another six of those

21 allegations are, in fact, either outside the

22 investigatory period, or outside of the period that the

23 allegations were to be brought in, the time period, and

24 second of all were, in fact, paid a customary and -- a

25 reasonable and customary fee that was substantiated by

0014

1 the Southeastern 2014 fee study.

2 So we are going to trial again as she said on

3 nine different allegations. We have defenses to each

4 one of those that we believe firmly, firmly demonstrate

5 that we pay customary and reasonable on all of that.

6 We paid it timely. We took into a fact all things

7 required under Louisiana and federal law to do such.

8 Other stipulations, Arlene?

9 MS. EDWARDS:

10 No, that's it. I think those are the only

11 stipulations unless there is something else that you

12 are aware of.

13 MR. RIEGER:

14 Okay. I think that's it for now.

15 MS. EDWARDS:

16 And I would like to just make a brief opening

17 statement. We have explained to you basically that we

18 are now down to nine particular transactions that they

19 have -- iMortgage has agreed are covered transactions.

20 And what we are here for today is to show that

21 iMortgage violated the Louisiana real estate appraisal

22 law and/or rules and regulations, not federal but

23 Louisiana law. This is based on the customary and

24 reasonable fees. We're not here to pick apart each

25 appraisal and show you that that particular appraisal

0015

1 was not a reasonable and customary fee paid for. What

2 we are here to show is that consistent with the

3 Louisiana Real Estate Appraisers Board rules and regs,

4 iMortgage deviated from what our rules state.

5 Basically, they violated our rules. Our rules state

6 that the licensee shall compensate fee appraisers at a

7 rate that is customary and reasonable for appraisal

8 services performed in the market area of the property

9 being appraised, and as prescribed by

10 R.S. 37:3415.15(A). For the purposes of this chapter,

11 market area shall be identified by ZIP code, parish or

12 metropolitan area.

13 Evidence for fees may be established by

14 objective third-party information such as government

15 agency fee schedules, academic studies, and independent

16 private sector surveys. Fee studies shall exclude

17 assignments ordered by appraisal management companies.

18 The board, at its discretion, may establish a

19 reasonable and customary rate of compensation schedule

20 for use by licensees electing to do so.

21 And licensees electing to compensate fee

22 appraisers on any basis other than the established fee

23 schedule as set forth in paragraphs one or two above

24 shall, at a minimum, review the factors listed in

25 Section 31101.B.1-6 on each assignment made, and make

0016

1 appropriate adjustments to recent rates paid in the

2 relevant geographic market necessary to ensure that the

3 amount of compensation is reasonable.

4 And what we intend to prove is that iMortgage

5 failed to provide evidence that they -- the fee was

6 established by objective third-party information such

7 as a government agency fee schedule, academic study,

8 and independent private sector survey. In fact,

9 iMortgage was sent a letter outlining what the -- that

10 there was an investigation going on about their failure

11 to pay reasonable and customary. They were given an

12 opportunity to respond. They asked for an extension of

13 that time within which to respond, and when they

14 ultimately responded, their response clearly showed,

15 and you will be given a copy of their letter, their

16 response clearly showed that they did not follow our

17 laws. Their response indicated that they sometimes use

18 what an appraiser would agree to accept. They also

19 used what they called, I believe, a fee study done by

20 one of their own clients.

21 So what we are here to prove is that -- not that

22 they are in violation of federal law, but they are in

23 violation of Louisiana law and our own rules and regs

24 because their own response showed that they failed to

25 follow what is required under Louisiana law and rules.

0017

1 Thank you.

2 MR. RIEGER:

3 May it please the board, a couple of responses.

4 First of all, iMortgage takes its obligations staying

5 in compliance with Louisiana and federal law very,

6 very, very seriously, and that's why we're here, and

7 that's why we have vigorously defended our client's

8 interest in this measure. Our client utilized for five

9 of the nine remaining transactions a fee study that was

10 performed by its client, Flagstar Bank. And Mr. Kelker

11 will testify how he understood that fee study was put

12 together. He'll testify that was the set of rates that

13 they were obligated to use, that they had no discretion

14 with regard to which fees they could use, and those

15 Flagstar fees because they were an independent third

16 party, then are totally allowable under Louisiana law.

17 Here is the problem that iMortgage has in this

18 instance and any agency does. If use of a third-party

19 fee study is not allowed for an AMC's client, the rules

20 need to say that. Louisiana's rules and regs need to

21 say that, and they don't. Okay? Under federal law --

22 okay -- you may use a third party, a client, a lender,

23 someone else, a third-party's fee study if that's what

24 someone wants you to do, and that study does the things

25 it is supposed to do. Okay? So that's a business

0018

1 practice that is common, and one that is in -- pandemic

2 all over this market. And should this board decide --

3 no. Excuse me. This board should understand that if

4 that is something that you're going to discourage, then

5 you need to tell someone about this prior to it coming

6 up in a contested adjudicatory hearing. Our notion

7 would be there needed to be regulatory guidance in

8 additional rules, in letters, in anything. In this

9 whole discussion that we have had during the pendency

10 of this adjudication, there has not been one

11 indication, no anything that the use of a third-party

12 fee study by a client bank is not a qualifying fee

13 study. Okay? Nothing whatsoever.

14 Now, if this board were to determine that is

15 such a problem, we would decide whether or not, you

16 know, that is an appropriate deal. We would see. That

17 is for you all to decide, but up to now, there has been

18 absolutely no indication anywhere that this sort of

19 use, a common business practice in the AMC industry, in

20 the appraiser industry and everyone else, the lending

21 industry, that this is something that is wrong. Banks

22 have to do fee studies for Office of Comptroller of

23 Currency reasons because that is one of the indicia of

24 how their bank's soundness is, and you will hear Bill

25 Matchneer and also Dean Kelker testify on that. So

0019

1 these are things that lenders have to do to make sure

2 that they are staying abreast and staying in compliance

3 with their own regulatory compliance, things that the

4 federal regulators come in and take a look at to decide

5 whether or not these banks are safe and sound. So it

6 is an important ingredient of how the lending process

7 works.

8 With regard to the other four transactions, we

9 will demonstrate clearly that the Louisiana rules are

10 not exclusive in terms of what can be allowed in

11 calculating reasonable and customary. If they were,

12 the rules would have said that, that these are the only

13 ways you can calculate customary and reasonable, but

14 they don't say that. Okay?

15 But the most important thing is if you go back

16 to Louisiana law, the statute says pay customary and

17 reasonable consistent with the presumptions of

18 compliance under federal law. Consistent with the

19 presumptions of compliance under federal law, what that

20 means is that if -- it doesn't matter if you don't hit

21 one of the compliances under federal law, the

22 presumptuous part I mean, under either federal law or

23 under Louisiana law because as long as you pay

24 reasonable and calculated -- customary and reasonable

25 -- excuse me -- then you're covered, and how you get

0020

1 there, whether you use an appraiser's agreement to take

2 -- to take a fee, that's part of the negotiating

3 process. That's part of the competitive process that

4 comes into all of that. There is no prohibition in

5 Louisiana state law that does not allow that to happen,

6 and I charge the staff to show us that there is because

7 it is not present. Again, if you can comply with

8 federal law, and the list in the rules is not

9 exclusive, I submit the staff will not have satisfied

10 its burden of proof, and therefore, iMortgage should

11 not be found that they have violated Louisiana law at

12 all. Thank you very much.

13 MS. EDWARDS:

14 If y'all have no objection, I would like to sit

15 while I question the witnesses.

16 JUDGE WHITE:

17 Sure.

18 MS. EDWARDS:

19 Okay. I call Mr. Robert Maynor. You have

20 already been sworn.

21 JUDGE WHITE:

22 The witness had already been sworn. I'm not

23 sure I know where the witness stand is.

24 MS. EDWARDS:

25 We will put the witness right here (indicating).

0021

1 That's the best we can do, and I will move back some so

2 y'all can see him.

3 JUDGE WHITE:

4 Okay. Please identify yourself and your

5 capacity.

6 MR. MAYNOR:

7 My name is Robert Maynor, the director of

8 investigations for the Louisiana State Real Estate

9 Commission and Appraisal Board.

10 JUDGE WHITE:

11 Would you spell your name for the record,

12 please?

13 MR. MAYNOR:

14 R-O-B-E-R-T M-A-Y-N-O-R.

15 \* \* \* \* \* \*

16 ROBERT MAYNOR,

17 after having previously been sworn did testify on his

18 oath as follows:

19 BY MS. EDWARDS:

20 Q. Mr. Maynor, how long have you held that

21 position?

22 A. Since July of 2012.

23 Q. And were you involved in an investigation

24 regarding iMortgage Services?

25 A. Yes, ma'am.

0022

1 Q. Okay. I'm going to show you a document that is

2 marked as "#1," and I'm going to ask you -- just a

3 moment, please.

4 (DISCUSSION OFF THE RECORD).

5 BY MS. EDWARDS:

6 Q. I'm going to ask you if you can identify this

7 document that is marked as "S-1."

8 A. Yes. This is the notice of adjudication that I

9 mailed Mr. Rieger on November 17, 2015.

10 Q. Okay. And does this preliminary notice of

11 adjudication set forth the charges against iMortgage?

12 A. Yes, ma'am.

13 MS. EDWARDS:

14 I have marked this as "Exhibit S-1" for

15 introduction into evidence.

16 JUDGE WHITE:

17 Is there any objection, Mr. Rieger?

18 MR. RIEGER:

19 No, no objection, Your Honor.

20 BY MS. EDWARDS:

21 Q. Tell me briefly, Mr. Maynor, how you got

22 involved with this investigation.

23 A. The executive director received an E-mail from

24 the licensee and provided that to me with the request

25 for me to open an investigation. The E-mail was

0023

1 regarding a fee that was submitted to him by iMortgage

2 Services for a 1004 form at $200.

3 Q. Was iMortgage licensed as an AMC during the

4 period of time that you were investigating?

5 A. Yes, ma'am.

6 Q. I'm going to show you a document that is marked

7 as "Exhibit S-2" and ask you if you can identify this

8 document.

9 A. This is the licensing history of iMortgage

10 Services from 2011 to present.

11 Q. So iMortgage Services has been licensed as an

12 AMC since January 1st, 2011, to present?

13 A. Yes, ma'am.

14 MS. EDWARDS:

15 Okay. I have marked this as "Exhibit S-2."

16 It's five pages. I've marked it as "S-2" in globo for

17 introduction.

18 JUDGE WHITE:

19 Is it a stapled set?

20 MS. EDWARDS:

21 It is stapled, Your Honor.

22 JUDGE WHITE:

23 Is there an objection?

24 MR. RIEGER:

25 No objection, Your Honor.

0024

1 JUDGE WHITE:

2 Without objection, the exhibit will be published

3 to the board.

4 BY MS. EDWARDS:

5 Q. Mr. Maynor, in conducting your investigation,

6 was there anything different done with the

7 investigation of the case with iMortgage than is

8 normally done by staff for investigations of appraisal

9 investigations?

10 A. No.

11 Q. What procedure did you take? In other words,

12 when you got the information, what did you do?

13 A. When I got the information from the executive

14 director, I wrote a memo to him providing him some

15 data. He agreed that an investigation could be opened.

16 It was assigned to an investigator. That investigator

17 left the agency, and was reassigned to another

18 investigator.

19 Q. Okay. I'm going to show you a document marked

20 "S-3." I'm going to show you a document that is marked

21 as "S-3," a two-page document, and ask you if you can

22 identify that.

23 A. This is a January 29, 2014, E-mail that was sent

24 to the executive director from John Panzavecchia where

25 he provided Bruce a copy of an order that was sent to

0025

1 him for a 1004 form.

2 Q. Was this the initial E-mail that you mentioned

3 that opened -- that caused the complaint to be opened?

4 A. Yes, ma'am.

5 Q. An investigation to be opened?

6 MS. EDWARDS:

7 Okay. I have marked this as "Exhibit S-3" for

8 introduction.

9 JUDGE WHITE:

10 Have you offered it at this time?

11 MS. EDWARDS:

12 I am offering it at this time.

13 JUDGE WHITE:

14 Is there an objection?

15 MR. MATHEWS:

16 No objection, Your Honor.

17 JUDGE WHITE:

18 Without objection, the exhibit will be published

19 to the board.

20 BY MS. EDWARDS:

21 Q. Now, this is a two-page document. Tell me what

22 the second page is if you know.

23 A. The second page is where the order was presented

24 to the appraiser for either acceptance or decline. It

25 looks like it's for a 1004 MC with a FHA appraiser for

0026

1 LaPlace.

2 Q. I am going to ask you to speak loudly so she can

3 hear you. Why don't you go ahead and read that E-mail,

4 if you will, and tell me who it is from?

5 A. It's from Advanced Appraisal Services, but it's

6 signed by John Panzavecchia, P-A-N-Z-A-V-E-C-C-H-I-A.

7 Q. And read that E-mail, if you will.

8 A. "Hi, I hope you are doing well in this cold

9 weather --"

10 MR. MATHEWS:

11 Objection as to the relevance. This isn't a

12 covered transaction, one of the ones that we are

13 proceeding forward with.

14 MS. EDWARDS:

15 This is what started the initial -- in other

16 words, this is what started the investigation, so

17 certainly, I think it is relevant. Whether it is one

18 of the covered transactions or not, I don't think is

19 relevant. The fact that we got a complaint is what

20 started the whole process.

21 MR. MATHEWS:

22 And I don't quibble with the fact that this is

23 how this process started, but the fact that the E-mail

24 was sent is probably sufficient to establish that. I

25 really don't see a need to go into the substance of the

0027

1 E-mail if it is not, in fact, one of the transactions

2 that we're here discussing today.

3 JUDGE WHITE:

4 Are we talking about "S-3"?

5 MR. MATHEWS:

6 Yes, sir.

7 JUDGE WHITE:

8 "S-3"?

9 MS. EDWARDS:

10 Yes.

11 JUDGE WHITE:

12 From Mr. Panzavecchia, I believe?

13 MR. MATHEWS:

14 Yes, sir.

15 JUDGE WHITE:

16 With no objection -- I thought it was admitted

17 without objection?

18 MS. EDWARDS:

19 It was.

20 MR. MATHEWS:

21 To the admission, but to the fact -- I mean, as

22 for the fact that the E-mail was sent. Anything beyond

23 that, I think is beyond the scope of what we are doing

24 here.

25 JUDGE WHITE:

0028

1 You want to be heard further on response to

2 that?

3 MS. EDWARDS:

4 Well, I'd like to be heard on two issues. One

5 is I would like to know who is trying the case. Is it

6 Mr. Rieger, or is it Mr. Mathews?

7 MR. MATHEWS:

8 It's both.

9 MS. EDWARDS:

10 If they're both going to be trying the case, it

11 is news to me, but I would like to know. I would think

12 that just one attorney should be handling it for

13 iMortgage.

14 JUDGE WHITE:

15 Well, it's Mr. Kevin Mathews; right?

16 MR. MATHEWS:

17 Kellen, K-E-L-L-E-N.

18 MS. EDWARDS:

19 Kellen.

20 JUDGE WHITE:

21 K-E-L-V-I-N?

22 MR. MATHEWS:

23 K-E-L-L-E-N.

24 JUDGE WHITE:

25 K-E-L-L-E-N? And M-A-T-T-H-E-W-S?

0029

1 MR. MATHEWS:

2 One T.

3 JUDGE WHITE:

4 And okay. Well, it's not uncommon to have

5 co-counsel, and I'm going to overrule that objection,

6 so why don't you gentlemen, though, identify yourself?

7 If you are going to both be speaking for the record,

8 for the lady who is making the record, state your name

9 before you speak and address the board.

10 MR. RIEGER:

11 May it please the board and Judge White, Mr.

12 Mathews deposed Mr. Maynor and Mr. Henk, two witnesses,

13 so he will be the one who will cross both of those

14 individuals, and take care of objections. I will try

15 the balance of the case. I'm sorry. We should have

16 made that clear going forth.

17 JUDGE WHITE:

18 As to the objection to the reading, Ms. Edwards,

19 I'm not sure you -- your first prong objection, I

20 overruled that. What is your --

21 MS. EDWARDS:

22 My second prong -- my second prong is the E-mail

23 that started the -- this was introduced without

24 objection, so the board is going to get to see it. The

25 board is going to get to read it. So what I did was I

0030

1 asked Mr. Maynor to read it into the record.

2 Additionally, it is what started this entire

3 investigation, so I don't think that it's of concern

4 whether or not it's one of the nine transactions that

5 are covered. The fact of the matter is iMortgage was

6 investigated, and those nine transactions are an issue

7 based upon this initial complaint, this E-mail, which

8 was introduced into evidence without objection.

9 JUDGE WHITE:

10 And after he reads it, if he is allowed an

11 opportunity to read it, you may have other questions

12 with reference to it? Is that what you are leading up

13 to?

14 MS. EDWARDS:

15 I don't believe I will have any questions unless

16 he knows more about the E-mail than just the fact that

17 it is an E-mail that he was given in order to open this

18 investigation.

19 JUDGE WHITE:

20 All right. You closed on your objection, Mr.

21 Mathews?

22 MR. MATHEWS:

23 In that case, Your Honor, again, the document

24 speaks for itself. The board is presented with a copy.

25 If they care to read it, they can. The fact that it is

0031

1 presented as being the catalyst of the investigation,

2 I think that has been established. And any further

3 questioning as to the actual substance of the complaint

4 if it is not one of the ones we are discussing today,

5 it is highly prejudicial, and it should not be read any

6 further with this witness.

7 JUDGE WHITE:

8 Well, your objection will be noted but

9 overruled. Go ahead, Witness, and read the document.

10 BY MS. EDWARDS:

11 Q. Okay. Mr. Maynor, please read the E-mail.

12 A. "Hi, I hope you are doing well in this cold

13 weather we are having. I remember that Joe Mier said

14 that we need to keep you and the board informed of

15 companies that offer fees far below C&R rates so I

16 wanted to share this one with you. I often receive

17 orders from this company, iMortgage Services, that

18 offer the lowest fees I have seen. The funny thing is

19 usually when I click on them to decline, they are

20 already gone. This time, I stopped at the

21 accept/decline screen to show the product requested and

22 the fee. As a 'test,' I actually did a conditional

23 accept of the order at a fee of $375 since I am

24 familiar with the LaPlace neighborhood this is located

25 in and go there about three to four times a week

0032

1 anyway. I seriously doubt that the order will be

2 accepted, but felt I need to at least counter to show

3 where they need to be in terms of fees. I have

4 attached a screenshot of the order as it came to me

5 this morning. Regards, John Panzavecchia."

6 Q. And so the second page of this document is what,

7 to your knowledge?

8 A. He provided a screenshot of the order.

9 Q. Okay. Well, let's get back to the

10 investigation. I believe you testified you got it and

11 then you handed it off to an investigator?

12 A. Yes, ma'am.

13 Q. And who was that?

14 A. Tad Bolton.

15 Q. Okay. And was it later sent to another

16 investigator?

17 A. Yes.

18 Q. What was the reason for sending it to another

19 investigator?

20 A. Mr. Bolton left the agency to work for another

21 company.

22 Q. Okay. Was this -- and I believe I asked you

23 this. Was this investigation with iMortgage handled

24 any differently than any other investigation that the

25 staff does?

0033

1 A. No.

2 Q. Was a report of investigation prepared in this

3 particular case?

4 A. Yes.

5 Q. Are reports of investigation done in every case

6 that the board's staff investigates?

7 A. No.

8 Q. Is there any mandate that a reported

9 investigation be completed?

10 A. No.

11 Q. Who was the investigator that ultimately handled

12 the case?

13 A. Henk vanDuyvendijk.

14 Q. And did at any time the investigative materials

15 come back to you?

16 A. Yes. Ms. Stafford left the agency and retired

17 in June. When Mr. Stafford left, the executive

18 director assigned me her role, and the case file came

19 back to me.

20 Q. And did you ultimately make a conclusion as to

21 whether or not the case should go forward?

22 A. Yes.

23 Q. And what was that based on?

24 A. It was based on the information that was in the

25 file, in Henk's ROI.

0034

1 Q. And Mr. vanDuyvendijk was the one that did the

2 entire investigation?

3 A. Tad collected certain documents; however, Henk's

4 was the conclusion.

5 Q. Did anybody else assist in the investigation?

6 A. Yes.

7 Q. Who else?

8 A. Marsha Stafford and myself.

9 Q. And Ms. Stafford has since retired and gone?

10 A. Yes, ma'am.

11 MS. EDWARDS:

12 Okay. That's all the questions I have. Thank

13 you.

14 JUDGE WHITE:

15 Cross-examination?

16 MR. MATHEWS:

17 Sure. Thank you.

18 MR. MATHEWS:

19 Your Honor, if I may, I think I will do the same

20 and sit.

21 JUDGE WHITE:

22 Certainly.

23 BY MR. MATHEWS:

24 Q. Good morning, Mr. Maynor.

25 A. Good morning.

0035

1 Q. I'm Kellen Mathews. We met a couple of weeks

2 back. And you mentioned that you are the -- what is

3 your job title again?

4 A. Director of investigations.

5 Q. Okay. And you have been in that role since you

6 said July of 2012?

7 A. Yes, sir.

8 Q. And prior to that, did you work for the

9 Louisiana Real Estate Appraisers Board?

10 A. Yes, sir.

11 Q. In what capacity?

12 A. I was a Compliance Investigator 4, or a

13 supervisor investigator.

14 Q. And you say Compliance Investigator 4. Is there

15 a 1, 2 and 3 before that?

16 A. Yes, sir.

17 Q. And did you move up from a Compliance

18 Investigator 1 on up to the 4, and then now, you are

19 director of investigations?

20 A. Yes, sir.

21 Q. Okay. And can you just describe that

22 progression for us briefly?

23 A. Compliance Investigator 1 handles real estate

24 investigations. A Compliance Investigator 2 handles

25 real estate investigations and starts handling

0036

1 appraisal investigations. A Compliance Investigator 3

2 handles appraisal investigations. The Compliance

3 Investigator 4A or 4B is the supervisor over Compliance

4 Investigators 1 through 3. And then the director

5 supervises everyone in the section.

6 Q. Okay. And how does that progression work? How

7 long would it take for one to start from a compliance

8 investigator on to reach --

9 A. A Compliance Investigator 1 is one year of

10 service, and then after that one year of service, if

11 you have met all of the requirements and your

12 supervisor feels you meet the requirements, they can

13 recommend that you move up to a Compliance Investigator

14 2.

15 Q. Okay. And then after that?

16 A. From a 2 to a 3, you have to attend some

17 appraisal courses, the 15-hour USPAP, some other

18 investigative course at work, and you must be a

19 Compliance Investigator for three years before you can

20 be recommended to Compliance Investigator 3.

21 Q. Now, you say recommend. Who is the

22 recommendation made to?

23 A. The supervisor makes it to the executive

24 director.

25 Q. Okay. And then the executive director

0037

1 ultimately determines whether you move into that

2 Compliance Investigator 3 role?

3 A. Correct.

4 Q. And typically, to get from that Compliance

5 Investigator 2 level to the Compliance Investigator 3

6 level, am I understanding that the investigator would

7 have conducted some appraisal investigations with the

8 help of another staff member?

9 A. Or they can have years of service, employment

10 services, so if the individual was military or had some

11 other previous background, they could come in as a

12 Compliance Investigator 3.

13 Q. Okay.

14 A. But from inhouse.

15 Q. So let's assume -- assuming one does not have

16 the background and had to go from the start, is there a

17 set number of appraisal investigations that one would

18 have to handle or be part of in order to make that next

19 level?

20 A. No, sir.

21 Q. Now, when we talked back a couple of weeks ago,

22 you mentioned a number of ten investigations that would

23 be completed before they move to that next level. Is

24 that --

25 A. There is --

0038

1 MS. EDWARDS:

2 Let him finish.

3 BY MR. MATHEWS:

4 Q. I was just about finished. Again, you know from

5 our deposition, you kind of have to let me finish the

6 question. You're doing pretty well.

7 I think you understood my question. You can go

8 ahead and answer.

9 A. Yes. There is no statute or requirement or

10 agency requirement that the individual makes ten

11 investigations. It's up to me to determine or the

12 director to determine if the individual has met what he

13 or she feels they are obligated to.

14 Q. But that ten number you mentioned to me, is that

15 kind of a benchmark that you internally use maybe?

16 A. For me, the individuals that I have recommended

17 have completed at least ten other investigations.

18 Q. And you mentioned that Mr. vanDuyvendijk -- I'm

19 just going to call him Henk for ease of reference. You

20 mentioned that --

21 JUDGE WHITE:

22 Does the reporter -- excuse me. Does the

23 reporter need that name spelled out?

24 MS. EDWARDS:

25 I will get it for her.

0039

1 JUDGE WHITE:

2 Okay.

3 MR. MATHEWS:

4 And Henk is H-E-N-K. So you can spell that one.

5 BY MR. MATHEWS:

6 Q. Now, Henk was one of the people that had the

7 experience and background and came in as a Compliance

8 Investigator 3; correct?

9 A. Yes, sir.

10 Q. And do you know what his experience and

11 background consisted of?

12 A. He was a certified residential appraiser, and he

13 had at least, I think, ten years of appraisal service.

14 Q. Okay. So Henk would not have had to go up

15 through the ranks and have the prior appraisal

16 investigations before assuming his position as

17 Compliance Investigator 3?

18 A. No.

19 Q. And, Mr. Maynor, are you familiar with the

20 Louisiana Real Estate Appraisers Board's processes for

21 AMC investigations?

22 A. Yes.

23 Q. And are these procedures generally similar to

24 those used by the board for appraiser investigations?

25 A. Yes.

0040

1 Q. And I will ask you to turn to -- we've got a

2 binder there for you. It's an exhibit book. And I

3 will ask you to turn to tab number four in that binder,

4 and the board as well.

5 MR. MATHEWS:

6 Judge White, as a matter of housekeeping --

7 Arlene, did you get to review that binder?

8 MS. EDWARDS:

9 No. You just gave it to me when the hearing

10 started.

11 MR. MATHEWS:

12 I know. And since the board has it, I guess we

13 should -- I mean, if you would look through that and

14 see if there is anything that you object to.

15 MS. EDWARDS:

16 Do you want to take like a five-minute break?

17 MR. MATHEWS:

18 Sure. We might want to do that because they

19 actually have the binder.

20 MS. EDWARDS:

21 Yes. Let me just take a couple of minutes to

22 look. I was handed it when we started the hearing. I

23 haven't seen it --

24 JUDGE WHITE:

25 You want to go off the record momentarily?

0041

1 MS. EDWARDS:

2 Yes. Let's do that.

3 MR. RIEGER:

4 Yes. Thank you.

5 MS. EDWARDS:

6 I'm assuming it is everything that I already

7 have.

8 JUDGE WHITE:

9 Let's take a break.

10 (A RECESS WAS TAKEN AT THIS TIME).

11 JUDGE WHITE:

12 We are back on the record, and are all parties

13 present after the recess?

14 MR. RIEGER:

15 Yes, Your Honor.

16 BY MR. MATHEWS:

17 Q. Mr. Maynor, when we went off the record, I had

18 directed you to tab number four in that binder that is

19 marked iMortgage exhibit book. Actually, look at that

20 document. Do you recognize the document that is in tab

21 four?

22 A. Yes, sir.

23 Q. And what is it?

24 A. It's a standard operating procedure for the

25 complaint process.

0042

1 MR. MATHEWS:

2 Okay. At this time, I would like to mark for

3 identification "Respondent's Exhibit #1," "R-1," which

4 is provided to the judge and the board, and that's tab

5 four of their binders.

6 MS. EDWARDS:

7 I have no objection, Your Honor.

8 JUDGE WHITE:

9 Okay. It will be admitted then for

10 consideration by the board, and that's all of the

11 contents. I don't know how many pages that is of tab

12 four.

13 MR. MATHEWS:

14 From Bates number IMS 45 to IMS 84, 39 pages

15 total. And as a matter of housekeeping, we are just

16 going to collect all of the exhibits and mark them as

17 they are identified, and we will just hand a packet to

18 the reporter if that is okay.

19 JUDGE WHITE:

20 All right.

21 BY MR. MATHEWS:

22 Q. And is this standard operating procedure used

23 with respect to AMC investigations, or is there another

24 operating procedure for those?

25 A. No, it's the same procedure.

0043

1 Q. Okay. And we see if you look on the first page

2 -- it's basically IMS 45 -- that it was approved by

3 director Bruce Unangst it looks like on January 16th of

4 2014; is that correct?

5 A. Yes, sir.

6 Q. And is this the most current version of the

7 board's Standard Operating Procedure for

8 investigations?

9 A. Yes.

10 Q. Okay. And when you were talking to Ms. Edwards

11 earlier, she mentioned or asked you as to whether the

12 investigation of iMortgage was any different than any

13 other investigation. I guess I would like to go

14 through how an investigation comes about, so let's

15 start from the beginning. How was a complaint against

16 an AMC initiated?

17 A. There are three ways in which an AMC complaint

18 can be initiated, in writing from an individual,

19 authorization from the appraisal board, or by the

20 executive director.

21 Q. And in this instance, which of those three

22 vehicles was used? I think we talked about it a little

23 bit, but not in those terms.

24 A. The executive director received an E-mail and

25 requested that I open an investigation.

0044

1 Q. Okay. So when you receive the authority or the

2 go ahead to do an investigation, what is your next

3 step?

4 A. I open the case in CAVU and assign it to an

5 investigator.

6 Q. Okay. And CAVU, what is that?

7 A. It's our compliance, or it's our licensing

8 software.

9 Q. And when we talked a couple of weeks ago, you

10 mentioned something called an initial assessment. Can

11 you describe that for us?

12 A. An initial assessment is when we receive a

13 complaint, and we are trying to determine whether or

14 not the agency has jurisdiction.

15 Q. Okay. Would an initial assessment be conducted

16 in an instance where the complaint starts from the

17 director's office?

18 A. Yes, it could.

19 Q. And you say it could. Is that the typical

20 practice, or if it is not the typical practice, what is

21 it dependent upon?

22 A. Dependent on the issue.

23 Q. Okay. Who conducts the initial assessment in a

24 case where there is one?

25 A. An investigator.

0045

1 Q. And if I'm recalling correctly, the way that the

2 roles are defined, would it have to be at the very

3 least a Compliance Investigator 3?

4 A. For an AMC, yes.

5 Q. I'm sorry. You finished my question for me. In

6 the case of an AMC, it would have to be a Compliance

7 Investigator 3 at least?

8 A. Yes, sir.

9 Q. And as part of the initial assessment process,

10 if you look with me to Section 4.3.2 of that. Well,

11 actually, if you look at Bates number page IMS 50, I

12 will represent to you that it has a heading that says,

13 4.3 Initial Assessment, and then I am directing you now

14 to 4.3.2, and as part of the initial process, it

15 appears that the investigator is supposed to review all

16 documentation submitted with the complaint, and

17 complete the assessment within 30 days; is that

18 correct?

19 A. Should complete the investigation within 30

20 days.

21 Q. Okay. And once an investigation has been opened

22 in CAVU as you mentioned, what happens next?

23 A. A case file is generated, and it's assigned to

24 an investigator.

25 Q. All right. And then what does the investigator

0046

1 do next in the case of an AMC investigation?

2 A. They should review the documentation contained

3 in the case file and collect whatever evidence they

4 feel is necessary.

5 Q. And if you would look back to the SOP that we

6 were looking at -- well, first, let me go back. You

7 mentioned the CAVU system. What kind of information is

8 contained in the system?

9 A. It's a journal system.

10 Q. Okay. And what types of entries would go into

11 that journal?

12 A. Action items.

13 Q. Action items? And would these be action items

14 entered or performed by the investigator, and then

15 entered into the system?

16 A. Yes, sir.

17 Q. And if we look at Bates number IMS 57, and it's

18 Section Number 7.2 of the SOP, and we see that it

19 indicates that CAVU entries are to be made in a timely

20 fashion. So understood in that statement is that

21 entries are to be made in the CAVU system; correct?

22 A. Yes.

23 Q. And then if we look at 7.2.1, the CAVU entries

24 must be made within 72 hours of completion of the

25 action item. Do you see that?

0047

1 A. Yes.

2 Q. And so we see that there is at least an

3 expectation that an investigator will enter action

4 items into the system within 72 hours. Is that a

5 performance of the action?

6 A. Yes.

7 Q. And then we see at 7.2.2 on the same page, the

8 director of investigations will review investigator

9 case spreadsheet on a monthly basis with each

10 investigator. What is the investigator case

11 spreadsheet a reference to?

12 A. The spreadsheet is a printout from CAVU that

13 shows all the open cases that an investigator has.

14 Q. And what does the review that is described in

15 the section entail?

16 A. Usually, I sit down with the case investigator.

17 I give them the case number and respondent and ask them

18 the status of the case.

19 Q. And it says it is done on a monthly basis. Is

20 that something that you are typically able to conduct

21 on a monthly basis?

22 A. It's usually bi-weekly. When they bring their

23 timesheets in, we sit down and go over their cases.

24 Q. And there is also a mention of random audits of

25 CAVU to ensure compliance. Compliance with what are we

0048

1 talking about here?

2 A. With -- compliance with the previous statement

3 that you stated, with the 72 hours.

4 Q. Okay. Do you conduct these random audits in

5 your role as director of investigations?

6 A. Not as well as I should.

7 Q. Thanks for your candor. In any case, they are

8 intended to be random, but typically speaking, how

9 often would you say you conduct these audits?

10 A. Once every three months.

11 Q. And how many investigators are you currently

12 tasked with supervising?

13 A. I have four Compliance Investigator 3s and one

14 Compliance Investigator 2.

15 Q. Getting back to the process, once the

16 investigator has initially reviewed the information,

17 what, if anything, does he do next in the investigation

18 process?

19 A. He would again collect data that he feels or she

20 feels is relevant, and once they have collected enough

21 data, they would send an allegation letter to the

22 respondent.

23 Q. And what does this allegation letter consist of?

24 A. It would depend on what the investigator found,

25 and what they alleged the licensee violated.

0049

1 Q. In that answer, you mentioned that there is an

2 allegation of a violation. Would that be a violation

3 of the board's rules and/or Louisiana law?

4 A. Correct.

5 Q. And in that allegation letter, would there be a

6 request for information from the respondent?

7 A. Yes.

8 Q. And presuming that the AMC provides the

9 information in response to the allegation letter, what,

10 if anything, would the investigator do with that

11 information received from the AMC?

12 A. They would -- they would review it and put it in

13 CAVU and determine if they needed additional

14 information.

15 Q. And then skipping ahead a little bit, assuming

16 that the investigator feels he needs additional

17 information, after he received that additional

18 information, what would the investigator do next?

19 A. He would determine whether or not the individual

20 was in compliance with the law and rules, or if he

21 feels that they violated a law or a rule.

22 Q. And based on that determination, what action, if

23 any, would the investigator take?

24 A. They would write a report of the investigation

25 and forward it to me.

0050

1 Q. I think earlier, and I am confused as to whether

2 it was your testimony with me or with Ms. Edwards, you

3 mentioned that sometimes there is no report of an

4 investigation created?

5 A. Correct.

6 Q. Okay. And what would be the determining factor

7 as to whether to create or not create a report of

8 investigation?

9 A. There is many factors.

10 Q. Okay.

11 A. It could be because of an emergency or a firing

12 of an employee or a termination of an employee. It

13 could be because the hearing examiner determined that

14 the information contained in the file was sufficient

15 enough to bring charges. It could be any number of

16 things.

17 Q. You mentioned the hearing examiner. Who is

18 that?

19 A. Currently, it's me.

20 Q. Okay. Prior to you, who was the hearing

21 examiner?

22 A. Marsha Stafford.

23 Q. Am I to understand that Ms. Stafford is no

24 longer with the board?

25 A. Correct. Ms. Stafford retired in June.

0051

1 Q. What is the hearing examiner's role? You

2 mentioned possibly a decision to bring a complaint.

3 What else does the hearing examiner do?

4 A. The hearing examiner reviews all of the

5 information within the case file and determines whether

6 or not a violation in their mind occurred enough to

7 adjudicate.

8 Q. So assuming that a report of an investigation is

9 created by the investigator, who receives that report?

10 A. It would be me as the director.

11 Q. And upon receipt of that report, what, if

12 anything, do you do?

13 A. I review the report, determine its accuracy as

14 it relates to the information contained in the case

15 file. If I believe additional information or

16 documentation must be collected, or additional

17 allegations need to be made, I provide it back to the

18 case investigator.

19 Q. If you feel there is sufficient information, and

20 you agree that the adjudication of that should move

21 forward, what is the next step in the process?

22 A. I provide the case file to the hearing examiner.

23 Q. And what, if anything, does the hearing examiner

24 do upon receipt of the case file?

25 A. They review the case file again to determine if

0052

1 the allegations levied in the ROI or if any allegations

2 of licensing rules or regs happened.

3 Q. And what actions can the hearing examiner take

4 at that point?

5 A. The hearing examiner can return the file to the

6 director of investigations with a recommendation for

7 additional documentation or statements, whatever he or

8 she feels is necessary, or they can refer it for

9 adjudication.

10 Q. And does the hearing examiner produce any sort

11 of documentation indicating his or her reasoning for

12 deciding to move forward with adjudications?

13 A. Not to me.

14 Q. Okay. You say not to you. Are you aware of any

15 documentation produced to anyone?

16 A. Not to my knowledge.

17 Q. And prior to Ms. Stafford's retirement, you had

18 never served as a hearing examiner; correct?

19 A. Correct.

20 Q. And so do you know what considerations go into

21 the hearing examiner's decision of whether to move

22 forward with adjudication or not?

23 A. No.

24 Q. You mentioned that now since Ms. Stafford's

25 departure, you are currently serving in that role. In

0053

1 that capacity, what factors would you consider with

2 regards to whether to move forward with adjudications?

3 A. I would look at the case file information, what

4 is alleged by the case investigator, what laws or rules

5 are covered for the licensee, and determine if any

6 additional violations may have occurred.

7 Q. But nowadays, practically speaking, a step is

8 taken away with you being both the director of

9 investigation and now serving as the hearing examiner;

10 correct?

11 A. Correct.

12 Q. Now, going back to the iMortgage complaint for

13 which we are here, you have already discussed that it

14 was initiated by E-mail to the executive director;

15 correct?

16 A. Correct.

17 Q. And are you familiar with the person or party

18 that sent the E-mail to Director Unangst?

19 A. No, I've never seen the man or talked to him.

20 Q. And with regard to the specific allegations in

21 the E-mail that we mentioned earlier, have you made any

22 kind of recommendation with regard to that specific

23 allegation?

24 A. Yes.

25 Q. Okay. And where was that contained?

0054

1 A. I created a memo and sent it to the executive

2 director.

3 Q. Okay. And this memo would have been your

4 determination or recommendation that an investigation

5 be opened?

6 A. He authorized an investigation to be opened, but

7 for something to be in our file, I produce a memo to

8 him.

9 Q. Okay. And looking back at the E-mail that was

10 marked as "S-3" --

11 A. Yes, sir.

12 Q. -- I'm just going to point to the E-mail so you

13 can look at it. Do you know if the complainant, the

14 sender of this E-mail is an appraiser or a member of

15 the public at large?

16 A. If you look down to his signature, he lists his

17 appraisal license number.

18 Q. Okay. So that would indicate that he is an

19 appraiser?

20 A. Yes, sir.

21 Q. All right. And I am going to direct you now to

22 tab ten in the binder. All right. Are you with me?

23 A. Yes, sir.

24 Q. And do you recognize this document?

25 A. Yes.

0055

1 Q. And what is it?

2 A. This is a Case View Screen, Case 2014-1500.

3 Q. And this would be a printout from the CAVU

4 system that we discussed earlier?

5 A. Yes, sir.

6 MR. MATHEWS:

7 At this time, I would like to offer this Case

8 View Screen which consists of pages from Bates label

9 IMS 141 to 142 as "Respondent's Exhibit #2."

10 JUDGE WHITE:

11 Is there an objection?

12 MS. EDWARDS:

13 No, Your Honor.

14 JUDGE WHITE:

15 That will actually be admitted. It is already

16 before the board.

17 BY MR. MATHEWS:

18 Q. And let's look at this screen. The first entry

19 that we see is it looks like a June 18th, 2014, entry.

20 I guess, for my purposes -- I am not familiar with the

21 system -- would that June 18th, 2014, be when the

22 action item was entered into the system?

23 A. Yes, sir.

24 Q. And I guess, if you could, just take a look at

25 it and tell me what is going on or what is the

0056

1 investigator indicating in that note.

2 A. He's supposed to be putting his preliminary

3 review of the case.

4 Q. Okay. And you said "he's supposed to," do you

5 have any doubts as to whether this is sufficient to

6 serve as a preliminary review, or his note of his

7 preliminary review?

8 A. They are his notes. I don't want to testify on

9 someone else's notes.

10 Q. Sure. We have established that as part of your

11 job, you review the investigator's notations into the

12 CAVU system?

13 A. Correct.

14 Q. And do you review the substance of what is

15 entered?

16 A. No, sir.

17 Q. So you just review it to see that there were

18 things entered?

19 A. Correct.

20 Q. And you make no determination as to the

21 propriety of the steps the investigator is taking in

22 his investigation?

23 A. Unless I'm asked.

24 Q. You said unless you're asked?

25 A. Uh-huh (affirmative response).

0057

1 Q. All right. And the next note we see here is a

2 7-1-2014 note, and the action item appears to be

3 initial letter to respondent, and it appears that it

4 references the allegation letter. Do you see that?

5 A. Yes, sir.

6 Q. And then there is another entry beneath the one

7 that I just mentioned that is also dated July 1 of

8 2014, and it indicates initial letter to respondent.

9 Can you tell us what is going on here, what this entry

10 represents?

11 A. It appears that he copied and pasted his

12 allegation letter into CAVU, the text of it.

13 Q. Going back to our discussion of the process,

14 this would be the letter that is sent to the respondent

15 once the investigator has reviewed materials that he

16 had, and then decided what violations, if any, may

17 exist and ask for information?

18 A. Correct.

19 Q. Okay. And the entries that we have discussed,

20 the June 18th entry and the two July 1 entries, who

21 made these entries into the CAVU system?

22 A. On the right side, you can see the user, Tad

23 Bolton.

24 Q. Okay. And then if you turn to the very next

25 page, IMS 142 in the binder, the only other entry that

0058

1 we see on this page from Mr. Bolton is dated July 11th

2 of 2014, and it says -- well, if you can, just read

3 that -- it is a pretty brief note -- at the section

4 there with his comments.

5 A. "We received and granted a request for a 15-day

6 extension for the delivery of the information required

7 in the allegation letter until July 30, 2014, from

8 Gerald J. Simson, the general counsel and SVP for

9 iMortgage."

10 Q. Okay. And it appears that here Mr. Bolton has

11 noted that there was a request for an extension of time

12 by iMortgage to respond to the allegation letter. Is

13 that your understanding of that notation?

14 A. Correct.

15 Q. Okay. And if you would, turn back real quick

16 for me to tab four, more specifically IMS 53.

17 A. (Witness complies).

18 Q. And I would direct your attention to Section

19 4.4.5.2, and we see here that -- and we are referencing

20 back to the standard operating procedure -- it requires

21 that the investigator is required to make detailed

22 notes of respondent's response to allegation letter and

23 a list of any documentation supplied in CAVU. And in

24 looking at the Case View Screen that was on IMS 141 and

25 142, does it appear that Mr. Bolton made any notation

0059

1 of the response received from iMortgage?

2 A. No, sir.

3 Q. And do you know whether iMortgage provided a

4 response to Mr. Bolton's allegation letter?

5 A. Yes.

6 Q. So this would be a case where Mr. Bolton did not

7 properly document his activity into the CAVU system?

8 A. Yes.

9 Q. And this would be not in compliance with Section

10 4.4.5.2 of the standard operating procedure that we

11 just went through?

12 A. No, it wouldn't be in compliance with that.

13 Q. Okay. And you mentioned that at some point, Mr.

14 Bolton left the board, and the case was ultimately

15 reassigned to another investigator; correct?

16 A. Correct.

17 Q. And that investigator was Henk; correct?

18 A. Correct.

19 Q. Do you remember when Henk started working at the

20 Real Estate Appraisers Board?

21 A. In September, in the middle of September.

22 Q. Of what year?

23 A. 2015.

24 Q. Of 2015?

25 A. I'm sorry. 2014.

0060

1 Q. Okay. Thank you. And do you know when Henk was

2 assigned to investigate the iMortgage matter?

3 A. When Henk came on board and Tad left the agency,

4 I took over all of the open appraisal investigations.

5 Henk was assigned all of the open AMC cases -- was

6 assigned all the open AMC cases, and instructed to use

7 Ms. Stafford to help him with them.

8 Q. Do you know why the, I guess, the work flow was

9 divided in that manner?

10 A. Part of the reason was I went on a medical

11 emergency. I was out of the agency for two months, so

12 Henk is the only full-time employee of the appraisal

13 board. Ms. Stafford's previous role was the chief

14 investigator. It logically implies that she would help

15 him directly.

16 Q. At that time, had you conducted or assisted in

17 an AMC investigation?

18 A. Yes.

19 Q. How many would you estimate?

20 A. Two.

21 Q. All right. And logically, the assignment of all

22 of the AMC investigations to Henk included the

23 iMortgage matter; correct?

24 A. Correct.

25 Q. So this would have been assigned to Henk pretty

0061

1 much when he first started with the board; correct?

2 A. Yes. Yes, sir.

3 Q. And in September of 2014; correct?

4 A. Yes, sir.

5 Q. And given that he was just starting out, it was

6 logical that Henk would not have completed an AMC

7 investigation for the Louisiana Real Estate Appraisers

8 Board; correct?

9 A. Correct.

10 Q. And to your knowledge, was Henk provided any

11 additional support or help in his investigation of the

12 iMortgage matter?

13 A. Other than Ms. Stafford?

14 Q. Well, let's go through that. What kind of

15 support would Ms. Stafford offer to an investigator

16 such as Henk?

17 A. If he had any questions or requested any

18 guidance or a review of any documents, he would request

19 it from her.

20 Q. But the onus would be on Henk to recognize that

21 he needed guidance and seek it out from Ms. Stafford?

22 A. Part of the protocol when an individual is hired

23 is for them to work directly with the chief

24 investigator, so since he was brand new, anything he

25 did would have to have been reviewed by her, or me,

0062

1 but I wasn't here.

2 Q. Right. So you mentioned you weren't here. Do

3 you know, in fact, whether Henk consulted Ms. Stafford

4 in relation to the iMortgage matter?

5 A. I can't recall.

6 Q. Okay. And what kind of training would Henk have

7 received at this point in first starting out?

8 A. New investigators are given copies of old closed

9 cases for review to show the chain of how events

10 happen, copies of closed CAVU screens to show how long

11 it should be entered, copies of the licensing law, the

12 rules and regs, things like that.

13 Q. All right. Are these new investigators provided

14 with this SOP that we have been discussing so far

15 today?

16 A. Yes, sir.

17 Q. And are these new investigators provided with

18 training or instruction on the use of the CAVU system?

19 A. Yes.

20 Q. And is there any training as to the fact that

21 they are supposed to make certain entries, and entries

22 of action items into the CAVU system?

23 A. Yes.

24 Q. And in connection with his, I guess, ongoing

25 process, would Henk have received any form of training

0063

1 on the laws and regs of the Louisiana Real Estate

2 Appraisers Board that he is charged with enforcing?

3 A. We would give him again closed copies of cases

4 which would show him ROIs, we would give him a copy of

5 the licensing laws and regs. He would review it, and

6 we would go over it.

7 Q. Okay. I'm looking back at IMS 142, the CAVU

8 notes, and we see the first entry by Henk in this

9 matter is August 13 of 2015; is that correct?

10 A. Correct.

11 Q. And as we just discussed, the file was assigned

12 to Henk in September of 2014; correct?

13 A. Correct.

14 Q. And as we mentioned, according to the standard

15 operating procedure for AMC investigations, all

16 investigator activity is supposed to be logged into the

17 CAVU system; correct?

18 A. Correct.

19 Q. And if we look back at that note that Henk made

20 on August 13th of 2015, if you can look at the comments

21 and just kind of tell me what you see Henk noting in

22 this particular note.

23 A. It appears he E-mailed some witnesses regarding

24 payments.

25 Q. Okay. And would that indicate to you that the

0064

1 investigation was still ongoing?

2 A. He is still collecting information, yes.

3 Q. Okay. And I'm looking back at IMS 51, back to

4 the standard operating procedure, look at -- well, on

5 51, I was just showing you there the header is 4.4,

6 conducting formal investigation of the Louisiana Real

7 Estate Appraisers Board. If you look at the next page,

8 IMS 52, Section 4.4.1, and it looks like it provides

9 that a formal investigation should be concluded no

10 later than 120 --

11 MR. McMORRIS:

12 Excuse me. Could you speak into the mike?

13 MR. MATHEWS:

14 Yes, sir.

15 MR. McMORRIS:

16 Because we cannot hear what you're saying.

17 MR. MATHEWS:

18 I'm sorry about that.

19 BY MR. MATHEWS:

20 Q. It appears that this particular section

21 indicates that an investigation should be completed no

22 later than 120 days from assignment. Do you see that?

23 A. Yes, sir.

24 Q. And it's apparent from what we just went through

25 that for this case having been assigned in September of

0065

1 2014, and then we have a note that the investigation,

2 or Henk is still collecting information in August of

3 2015, that this investigation was not completed within

4 120 days, that it was not complete within 820 days;

5 correct?

6 A. Correct. The SOP is written as "should." There

7 is always instances in which it may take more than 120

8 days to investigate something.

9 Q. Sure. And just so we are on the same page,

10 when do you consider an investigation complete?

11 A. For me, when it is given to the hearing officer,

12 it's complete from my end. It can always be given back

13 to me. So from the day I give it to the hearing

14 officer, I consider it complete.

15 Q. Okay. In this particular instance, though, in

16 the matter of iMortgage, was the file given back to you

17 after being referred to the hearing officer?

18 A. Correct.

19 Q. Okay.

20 A. Well, no, sir. The file was given to the

21 hearing officer without ever being given to me.

22 Q. But did it ultimately come back to you?

23 A. Yes, when Ms. Stafford retired.

24 Q. And at that point, would the investigation still

25 be considered ongoing in your mind?

0066

1 A. Since I was not here when the initial notice

2 went out, I reviewed the file and requested additional

3 documents, so it was not because I had a second review

4 of it.

5 Q. I appreciate that, sir, but your testimony is

6 that at the time that you reviewed the documents that

7 the investigation had been completed?

8 A. At the time that I received the file from Henk

9 or from Ms. Stafford, it was complete up and to that

10 point. Now, as the hearing officer, I have the

11 authority to say, hey, there is additional allegations,

12 I need additional documents, I need additional

13 statements, things like that. So I have the authority

14 as the hearing officer to say, the case is back open,

15 please go collect these additional documents or

16 statements.

17 Q. And to your knowledge, is there any stopping

18 point to where you cannot request additional

19 information and/or additional documents?

20 A. No.

21 Q. So theoretically, you could have requested

22 additional information as late as yesterday in this

23 matter?

24 A. Yes.

25 Q. Now, we just mentioned the 120 days that you go

0067

1 for completion of an investigation, is there any

2 penalty or consequences for not completing an

3 investigation within this time frame?

4 A. For who?

5 Q. Let's parse that out. For the investigator,

6 first?

7 A. Yes.

8 Q. Okay. What is it?

9 A. Their penalties would be I would write on their

10 standard performance that they need to make sure that

11 they need to timely put in journal entries and things

12 like that.

13 Q. And with respect to the investigator in this

14 matter, Henk, have you ever made such a journal entry

15 in his report?

16 A. To my knowledge, no.

17 Q. And why is that?

18 A. Because you're looking at one file, and I'm

19 looking at the 15 files that he has, and if one of the

20 files doesn't follow the SOP, but the majority of them

21 do, then it's more of a coaching thing on my end unless

22 it is his fault. I have a duty to ensure that he is

23 doing what he was supposed to. Unfortunately, for me,

24 I didn't do what I was supposed to.

25 Q. And back to where we parsed out the question,

0068

1 was there any penalty or consequence for you as the

2 director if the benchmarks are not met?

3 A. I would assume the executive director would put

4 it on my performance rating.

5 Q. And Ms. Edwards and you mentioned that the

6 iMortgage investigation was pretty standard, no

7 different than other AMC investigations. Do you recall

8 that?

9 A. Yes, sir.

10 Q. And you just mentioned that you look kind of at

11 the body of the work for an investigator like Henk.

12 Would this delay of, I mean, at a minimum -- we know

13 the file was assigned to Henk in September of '14. It

14 was actually -- the investigation was opened as early

15 as May or June of '14. Would a delay of roughly a year

16 or more be common practice for AMC investigations?

17 A. I think all AMC investigations are over or

18 completed after 120 days, so it is common.

19 Q. Okay. And I appreciate that. If there is one,

20 what is the typical completion time frame for an AMC

21 investigation?

22 A. I would say within a year.

23 Q. So likely, if we looked at the body of Henk's

24 files, there would be more than just this one where he

25 did not meet the 120-day investigation time frame;

0069

1 correct?

2 A. Correct.

3 Q. I mentioned earlier that Henk ultimately issued

4 a report of investigation in this matter; correct?

5 A. Correct.

6 Q. And would that be an action item that should be

7 logged into the CAVU system?

8 A. Correct.

9 Q. And are there any consequences, I guess again

10 for the investigator, for failing to log items into the

11 CAVU system?

12 A. It would be on their performance review if it

13 was a number.

14 Q. And in looking back at the Case View Screen that

15 we looked at for this, I don't see on the pages that we

16 have here, IMS 141 and 142, a notation of a report of

17 investigation. Do you see one?

18 A. No, sir.

19 Q. And am I correct in my understanding that this

20 is the complete CAVU notes for this matter?

21 A. Correct.

22 Q. So there was no notation made of the report of

23 investigation in this matter; correct?

24 A. Correct.

25 Q. All right. If you could, turn to tab three in

0070

1 your binder.

2 A. Yes, sir. (Witness complies).

3 Q. Are you there?

4 A. Yes, sir.

5 Q. And have you had a chance to kind of review that

6 document?

7 A. Yes, sir.

8 Q. And do you recognize this document?

9 A. Yes, sir.

10 Q. And what is it?

11 A. It is the written response received by Mr.

12 Bolton from iMortgage Services, from Dean Kelker.

13 Q. And what is the date on that document?

14 A. July 28th, 2014.

15 MR. MATHEWS:

16 And at this time I would like to offer this as

17 an exhibit, "Respondent #3."

18 JUDGE WHITE:

19 Is there an objection?

20 MS. EDWARDS:

21 That's the iMortgage response?

22 MR. MATHEWS:

23 Yes, ma'am.

24 MS. EDWARDS:

25 I have no objection, Your Honor.

0071

1 JUDGE WHITE:

2 Admitted as published.

3 MS. EDWARDS:

4 What is included in it, though? The entire

5 thing? All of the attachments?

6 JUDGE WHITE:

7 Well, for the record, tab three --

8 MR. MATHEWS:

9 Yes.

10 JUDGE WHITE:

11 -- contains from pages 20 to 44 inclusive.

12 MS. EDWARDS:

13 Okay. I have no objection, Your Honor.

14 JUDGE WHITE:

15 Okay. That is what you are seeking, Counsel?

16 MR. MATHEWS:

17 Yes, sir.

18 BY MR. MATHEWS:

19 Q. And did you ever review this information that

20 iMortgage submitted in response to Mr. Bolton's

21 allegation letter?

22 A. Yes.

23 Q. And when did you first review this information?

24 A. In June of 2015 when I took the file back from

25 Ms. Stafford.

0072

1 Q. You said June of 2015?

2 A. Correct.

3 Q. And that was the first time you reviewed this

4 information?

5 A. Correct.

6 Q. And you're certain that this would have been the

7 first time that you ever reviewed the information that

8 is in there?

9 A. Reviewed, yes.

10 Q. You make the distinction "reviewed." Had you

11 ever seen it before then?

12 A. I received the information. When Mr. Bolton

13 received it from Mr. Kelker, I was CC'd in it, but I

14 never opened the document.

15 Q. Okay. And when we met a couple of weeks ago

16 back on November 24th, I think I had asked you about

17 when and if you had reviewed this document. Do you

18 recall that? It's not a pop quiz. I will just hand

19 you the page that I'm referring to. I will represent

20 that this is a full copy of Mr. Maynor's deposition,

21 and I'm handing you and I'm directing you to page 59 of

22 your deposition testimony. If you can, look down at

23 around line 18.

24 A. (Witness complies).

25 MS. EDWARDS:

0073

1 Would you like him to read that into the record?

2 MR. MATHEWS:

3 Yes, ma'am. I would.

4 MS. EDWARDS:

5 Read the question and the response.

6 MR. MAYNOR:

7 The question is --

8 BY MR. MATHEWS:

9 Q. Well, you can start from the beginning. It will

10 probably make more sense if you start from line ten.

11 A. We talked a little bit about your involvement

12 with the iMortgage investigation which as I appreciate

13 it, you made the recommendation that an investigation

14 be opened, and then reassigned the file or assigned it

15 to Tad Bolton, and assigned it to Henk once Tad left,

16 and you mentioned a little bit of guidance to Henk on

17 additional information received. Did you ever review

18 the information that iMortgage submitted in response to

19 Mr. Bolton's allegation letter?

20 Answer: The original, yes.

21 Q. And continue on.

22 A. Okay. When would you have reviewed that?

23 When Mr. Bolton left the agency. So -- okay.

24 Question: When Mr. Bolton left the agency? Answer:

25 Okay.

0074

1 MS. EDWARDS:

2 That's the question.

3 MR. MAYNOR:

4 Okay. Question: Okay. What, if anything, did

5 you do based on the information? Nothing at that time.

6 BY MR. MATHEWS:

7 Q. And we talked about this. When did Mr. Bolton

8 leave the agency?

9 A. In August of 2014.

10 Q. Okay. And in your testimony there, you

11 indicated that you reviewed the information provided by

12 iMortgage in response to the allegation letter at the

13 time that Mr. Bolton left which was August of 2014; is

14 that correct?

15 MS. EDWARDS:

16 I'm going to object. I'm not sure if he's

17 trying to impeach him, but if he is, that's not -- I

18 think he needs to read it again because he didn't say

19 at the time Mr. Bolton left the agency. He says when

20 Mr. Bolton left the agency, so that could be at any

21 point if you want to ask him specifically, but if you

22 are trying to impeach him, you are doing it

23 incorrectly because you are not asking him whether or

24 not this particular statement is contradictory to what

25 he is saying today. You're just asking him to read it

0075

1 and trying to get the board to assume that he's

2 testifying differently.

3 JUDGE WHITE:

4 Counsel?

5 MR. MATHEWS:

6 I appreciate it. I'm getting there, Your Honor,

7 if you will give me a little bit of leeway.

8 JUDGE WHITE:

9 Well, it's your objection, Ms. Edwards. You

10 want to close on it?

11 MR. MATHEWS:

12 And I would object to her objection in that she

13 is characterizing the difference between when and at

14 the time, and the problem is she is casting a spin on

15 the testimony.

16 JUDGE WHITE:

17 Well, she will have an opportunity to redirect.

18 MR. MATHEWS:

19 Sure.

20 JUDGE WHITE:

21 And ultimately, it's up to the board to decide

22 what weight if any to give to any of this.

23 I'm wondering at this point, Mr. Chairman, if a

24 short recess is in order.

25 MR. HALL:

0076

1 You want to take a break? Yes. Let's take five

2 minutes, please.

3 JUDGE WHITE:

4 I will leave you in suspense and rule when we

5 get back.

6 MS. EDWARDS:

7 That will give me an opportunity to think about

8 it.

9 (A RECESS WAS TAKEN AT THIS TIME).

10 JUDGE WHITE:

11 I think we are going back on record, and for

12 everyone's backs, I think maybe the chairman is going

13 to take a break with some regularity.

14 MR. HALL:

15 Yes. It is my intention to take a five-minute

16 break every hour and to stay until it's -- as long as

17 we can.

18 JUDGE WHITE:

19 I appreciate that. And here we are on the first

20 witness, Counsel. I'm going to overrule the objection

21 and let you proceed giving wide latitude to

22 cross-examination, but ask you if you would, please,

23 let's move it forward mindfully. We really have quite

24 a bit of business to conduct today.

25 MR. MATHEWS:

0077

1 Yes, sir.

2 JUDGE WHITE:

3 So with that, proceed.

4 BY MR. MATHEWS:

5 Q. Mr. Maynor, when we went off, your response to

6 my question here today, you indicated that when you

7 first reviewed the information submitted by iMortgage,

8 it was June of '15, June of 2015 when you got the file

9 from Ms. Stafford, and I was comparing that to when we

10 spoke on November 24th, and your response to the

11 question of when did you review the information from

12 iMortgage, and you said when Mr. Bolton left the agency

13 which would have been in August of 2014. Would you

14 care to explain your testimony?

15 A. Yes. You further asked in the deposition, if

16 you flip to the second page, which is page 58 -- well,

17 not 58. I'm sorry. Page --

18 Q. Sixty?

19 A. -- 60. What was the purpose of your review of

20 that file material? To make sure that all

21 documentation was -- that we had all documentation up

22 until that date, to make sure that all documentation

23 was in the file and not scattered. I didn't look at

24 the content at the time when Mr. Bolton left. I only

25 looked at that we had received a complaint, and that

0078

1 the response, that it was in the file and not missing

2 someplace.

3 Q. Okay. Thank you for that. And based on the

4 nature of that review, you didn't make any notes in the

5 CAVU system; did you?

6 A. No, sir.

7 Q. And at the time that the investigation was

8 transferred from Mr. Bolton to Henk, did you have

9 occasion to review the CAVU notes?

10 A. No.

11 Q. All right. Let's take a look at the iMortgage

12 response which was in tab three in your binder.

13 A. Yes, sir.

14 Q. And I would direct you to IMS 20.

15 A. (Witness complies).

16 Q. It should be the first page.

17 A. All right.

18 Q. And you see that Mr. Kelker in this letter sets

19 forth a sort of index or road map for the documents

20 included in the response. Do you see that?

21 A. Yes, sir.

22 Q. And if you can, just really briefly, what

23 documents does Mr. Kelker indicate that are included in

24 iMortgage's response to Mr. Bolton's allegation letter?

25 A. Our response includes the engagement letter for

0079

1 each assignment which covers items one through five as

2 requested. The Louisiana Order Summary spreadsheet

3 covers items six through eight of your request. With

4 respect to item nine, our appraiser requirements are

5 identified in our vendor agreement that has been

6 attached for your reference. The vendor agreement

7 outlines the business terms between iMortgage Services

8 and our appraisers. In addition to the experience

9 requirements, iMortgage Services verifies the

10 appraiser's license and certification credentials with

11 both the ASC and the state of issue. It looks like

12 items 11 and 12 are the performance scores that were

13 provided. And payment information is included in the

14 Louisiana Order Summary.

15 Q. Okay. Thank you for that. And next, I would

16 ask you to look at IMS 22 which has a caption that says

17 Louisiana Investigation Response.

18 A. (Witness complies).

19 Q. That is the caption on page three of 12 at the

20 top. Can you, please, read through the first through

21 third sentences under the heading Appraiser Fee

22 Methodology. It starts at the bottom of IMS 22, and it

23 runs over to 23.

24 A. Yes, sir. "Appraiser Fee Methodology: Fees

25 paid to appraisers are determined through multiple

0080

1 methodologies. We have a large origination client that

2 works on a cost plus basis. This client has performed

3 their own fee study survey nationally and developed the

4 data on a county/parish basis for each state. We can't

5 speak to the details of the development of their survey

6 as it was completed without our involvement. They have

7 provided us with a minimum appraisal fee for each

8 geographic market that we pay appraisers. The AMC

9 service fee is a flat amount that we add to the

10 appraiser's fee to develop a client fee for that

11 assignment."

12 Q. Okay.

13 A. "Should --"

14 Q. And that's fine.

15 A. Okay.

16 Q. And in looking down to the third full paragraph

17 on that same page, IMS 23, starting with respect to.

18 A. "With respect to the two presumptions contained

19 in the Federal Reserve's Interim Final Rule, iMortgage

20 Services operates under both presumptions. Our

21 appraisal fee determination under the second

22 presumption is based on a national fee study performed

23 by the previously referenced client."

24 Q. Okay. Thank you for that. And when you

25 reviewed this response once you received the file back

0081

1 from Ms. Stafford, what did you understand iMortgage to

2 be saying in this particular paragraph?

3 A. That they had no knowledge of how the -- their

4 lender client -- well, that their lender client

5 provided them with data, and they paid based on what

6 their lender client told them to.

7 Q. Okay. And that is what you gleaned from the

8 statement that their appraisal fee determination under

9 the second presumption is based on a national fee study

10 performed by the previously referenced client?

11 A. Yes. We can't speak to the details of the

12 development of their survey as it was completed without

13 our involvement.

14 Q. What is your understanding of the sentence that

15 I just repeated to you as far as our appraisal fee

16 determination is based upon a national fee study

17 performed by the previously referenced client?

18 A. That they used a national fee study to determine

19 their fees paid.

20 Q. Okay. And did you previously, or do you now

21 have any evidence in the materials that would refute

22 iMortgage's representation that with respect to this

23 large origination client there was a fee study?

24 MR. MATHEWS:

25 I see that this keeps happening, Your Honor.

0082

1 The witness looks to his counsel for -- well, I don't

2 know what for before answering some of my questions,

3 and I would ask that --

4 MS. EDWARDS:

5 Well, I asked him to look this way, so that you

6 can hear, but I'm not looking at him, nor am I

7 responding. The problem is that we have two court

8 reporters.

9 MR. MATHEWS:

10 Yes, but I'm saying --

11 MS. EDWARDS:

12 Excuse me. Sorry. I'm not finished. We have a

13 court reporter over here and a court reporter over here

14 (indicating), so I have asked him to look that way

15 (indicating) because I think it is disrespectful to

16 look that way (indicating). I keep moving back so he

17 can see you. So there's nothing going on. I don't

18 know how to handle this unless you want your court

19 reporter to move over here, and then -- your court

20 reporter is right there (indicating), and so he is

21 trying to look at you. Our court reporter is

22 there (indicating).

23 JUDGE WHITE:

24 It does not appear to my eye that there is

25 coaching going on, so let's move on.

0083

1 BY MR. MATHEWS:

2 Q. Okay. Back to the question on the table which

3 was, did you previously or do you now have any evidence

4 or materials that refute iMortgage's representation

5 that with respect to this large origination client that

6 there was a fee study?

7 A. No, sir.

8 Q. And have you or anyone else on the Real Estate

9 Appraisers Board staff requested this fee study

10 referenced by iMortgage?

11 A. I can't speak for the executive director or

12 counsel, but none of my investigators nor I requested

13 the information.

14 Q. And are you familiar with the two presumptions

15 utilized by the board with regard to customary and

16 reasonable fees?

17 A. Yes.

18 Q. And what are those two presumptions?

19 A. A lender or his clients should be in compliance

20 with the rules if they pay one of two ways. The first

21 way is using a third-party fee study from either an

22 academic institution or a federal agency as long as it

23 doesn't take into consideration fees paid through AMCs.

24 And the second way is if the individual -- the lender

25 uses the six methodologies for each assignment to

0084

1 determine the fee.

2 Q. Okay. Thank you for that. And where do these

3 two presumptions originate from?

4 A. I can't answer that. I think Dodd-Frank.

5 Q. Okay. And the presumption with regard to an

6 independent fee study, could that presumption be met by

7 presentation of a third-party fee study conducted by an

8 AMC's client?

9 A. Could you repeat the question?

10 Q. Let me formulate it better. Could this fee

11 study that is referenced by iMortgage in its response

12 to Mr. Bolton's allegation letter serve as an

13 independent fee study?

14 A. It could.

15 Q. Okay. And I would direct you to tab number two

16 in your packet.

17 A. (Witness complies).

18 Q. And I would further direct you to 2-B in your

19 packet.

20 A. (Witness complies).

21 Q. And do you see a document dated June 24th of

22 2015? Are you with me?

23 A. Yes, sir.

24 Q. And do you recognize this document?

25 A. Yes.

0085

1 Q. And what is it?

2 A. This is a notice of adjudication that was

3 drafted by Marsha Stafford, and I signed and mailed to

4 Shawn McCall, care of Mr. Rieger, on June 24th, 2015.

5 MR. MATHEWS:

6 And at this time, I would offer this as

7 "Respondent's Exhibit #4."

8 JUDGE WHITE:

9 "#4" would be the next serial number. You are

10 talking about --

11 MR. MATHEWS:

12 2-B in particular unless -- I mean, Arlene, do

13 you mind if we just do them in globo?

14 JUDGE WHITE:

15 That is six pages.

16 MS. EDWARDS:

17 I'm not sure. Maybe I missed it. Did you ask

18 him if he was the one that drafted it, or if he was

19 aware of it? In other words, I believe it is from Ms.

20 Stafford, so I do have an objection unless he can

21 testify that he has independent knowledge of that

22 document.

23 MR. MATHEWS:

24 Mr. Maynor just testified that he signed the

25 letter and sent it.

0086

1 MS. EDWARDS:

2 Okay. Then I have no objection to that one.

3 JUDGE WHITE:

4 The document, the letter itself is three pages.

5 There is several pages attached to it, three pages

6 additional under tab 2-B, so which are you seeking?

7 All six pages?

8 MR. MATHEWS:

9 The entirety of tab 2-B.

10 JUDGE WHITE:

11 No objection?

12 MS. EDWARDS:

13 I have no objection to that, Your Honor.

14 JUDGE WHITE:

15 Being that there is no objection, that will be

16 admitted as "Respondent's #4."

17 BY MR. MATHEWS:

18 Q. And this notice would have -- sorry. And you

19 just indicated that you signed off on this notice, but

20 that Ms. Stafford drafted it. Can you expound on that

21 a little bit for us?

22 A. Yes. Ms. Stafford retired at the end of June so

23 because of the fact that the hearing in this notice was

24 scheduled for July, she felt that it was imperative

25 that I sign it in the event that if they called, they

0087

1 would need to speak to someone that is still on staff,

2 so she prepared the document, put it in front of me,

3 and I signed it and mailed it to Mr. McCall, care of

4 Mr. Rieger.

5 Q. And if you could look to -- or do you know when

6 Henk issued his report of investigation in connection

7 with the iMortgage matter?

8 A. In September of 2015.

9 Q. Okay. And logically, that comes after June of

10 2015; correct?

11 A. Correct.

12 Q. And so this notice that we are looking at now,

13 the June 24th notice, would not have been issued based

14 on Henk's report of investigation; correct?

15 A. No. It would have been issued under Marsha

16 Stafford.

17 Q. And before Ms. Stafford retired, did you and she

18 have occasion to discuss her reasoning for issuing this

19 notice at this time?

20 A. No.

21 Q. Did you independently do any investigation or

22 research to satisfy yourselves with the substance of

23 the June 24th letter that you ultimately signed?

24 A. No.

25 Q. All right. And we will briefly look through

0088

1 this, the contents of this letter, and I'm going to

2 represent to you there is an indication that there will

3 be a hearing to determine whether the respondent has

4 violated the Appraisers Board laws, and there is

5 citation of certain laws and regs, and then there is

6 further information with regard to the hearing, and

7 there are certain attachments to the letters, including

8 rights and procedures, and following that on IMS 9,

9 you see the complaint itself against iMortgage with the

10 caption of the case. This is the standard form for the

11 notice of adjudication letters?

12 A. Yes.

13 Q. And this one is marked, or the first page is

14 marked as a preliminary notice of adjudication. Is

15 there any significance to the designation as

16 "preliminary"?

17 A. To my knowledge, no.

18 Q. So there would not be an instance where there

19 would be a final notice of adjudication?

20 A. To my knowledge, no.

21 Q. And in looking at IMS 10 --

22 A. Uh-huh (affirmative response).

23 Q. -- on that page, there is a letter b, and this

24 is in the complaint section setting forth the charges

25 by the board against iMortgage. Can you kind of

0089

1 summarize what the charge is in this letter?

2 A. Basically, there is a provision in the law that

3 requires appraisers to be paid within 30 days of the

4 completion of the assignment, or if there is another

5 agreement, and apparently, these are ones that Ms.

6 Stafford felt weren't paid within the required time

7 frame.

8 Q. Okay. But you wouldn't have reviewed that or

9 made any kind of determination at this point?

10 A. No, sir.

11 Q. Okay. And I am going to direct you to tab 11 in

12 your packet.

13 A. (Witness complies).

14 Q. Are you there?

15 A. Yes, sir.

16 Q. And what is this document?

17 A. This is a report of investigation completed by

18 Henk.

19 Q. And have you had occasion to review this

20 document before today?

21 A. Yes, sir.

22 MR. MATHEWS:

23 Okay. I will go ahead and offer and introduce

24 this as "Respondent's Exhibit #5."

25 MS. EDWARDS:

0090

1 I have no objection, Your Honor.

2 JUDGE WHITE:

3 Okay. Under tab 11, I notice there is a tab A

4 under 11; is that right?

5 MR. MATHEWS:

6 Yes, sir.

7 JUDGE WHITE:

8 You are offering what is behind tab A as well?

9 MR. MATHEWS:

10 Yes, sir.

11 MS. EDWARDS:

12 Or just the report of investigation?

13 MR. MATHEWS:

14 Yes, just the report of investigation. Tab A is

15 an exhibit thereto. I am not there yet so we are just

16 offering the first part of tab 11.

17 JUDGE WHITE:

18 Without objection, it will be admitted. And

19 that is "Respondent #5."

20 MR. MATHEWS:

21 Thank you.

22 BY MR. MATHEWS:

23 Q. And if you can, very briefly, Mr. Maynor, turn

24 to what is marked IMS 151.

25 A. Yes, sir.

0091

1 Q. All right. And there is a number three. And I

2 guess, can you summarize what the investigator is

3 stating in this section?

4 A. The investigator is stating that based on the

5 information he obtained from witnesses and the vendor

6 agreement, that iMortgage Services wasn't in compliance

7 with the --

8 MS. EDWARDS:

9 I'm going to object. We are going into

10 allegations that are not before the board. I

11 understand there may be a reason for it, but there were

12 some -- and we stipulated to what transactions are

13 before the board and what we are here for. There were

14 additional allegations in the original notice of

15 adjudication. Those have been thrown out. Counsel for

16 iMortgage knows that. I know we are trying to get this

17 thing moving. I see no purpose in hashing out the fact

18 that there were additional allegations that are no

19 longer before this board, and having the witness

20 discuss those.

21 JUDGE WHITE:

22 So you are saying it is irrelevant, and in the

23 interest of time and --

24 MS. EDWARDS:

25 Well, it is irrelevant, irrelevant. I mean, it

0092

1 is like having ancillary charges that are thrown out,

2 and now we are prosecuting them on -- we are putting in

3 evidence on charges that are not before the board.

4 These are not charges before the board.

5 JUDGE WHITE:

6 Mr. Mathews?

7 MR. MATHEWS:

8 Yes, Your Honor. We would contend that it is

9 very relevant to the due process aspect. A party

10 coming before this board that is subject to

11 investigation is entitled to due process. We have

12 shown in several aspects the investigation of iMortgage

13 has been faulty. It is still not necessarily complete.

14 As Mr. Maynor testified, it could be -- they could have

15 requested information as late as yesterday. This is

16 just another example of an instance where iMortgage was

17 charged before an investigation was even complete. And

18 I don't have much more on this particular one. Really,

19 I just wanted to make the point that this investigation

20 -- this adjudication was noticed before the report of

21 the investigation was submitted.

22 JUDGE WHITE:

23 Ms. Edwards, anything further?

24 MS. EDWARDS:

25 Yes. The report was sent originally because

0093

1 counsel for iMortgage had in prior instances for cases

2 before this exact body repeatedly asked for

3 continuance, and Mr. Rieger knows that the preliminary

4 notice was sent out so we could coordinate dates. This

5 thing was continued and continued and continued because

6 counsel could not get a date where he and his client

7 could be here, so in the interest of judicial economy,

8 we sent it as a courtesy to Mr. Rieger, so he would

9 know that we were trying to get a hearing date. There

10 are numerous E-mails between the executive director,

11 Mr. Rieger, and myself. I didn't know that was an

12 issue, or I would have had all of them here, and if I

13 need to, I can get them all, and I can have the

14 executive director testify. But the reason that it was

15 sent out early, and the investigation was continuing is

16 because iMortgage continued through their counsel to

17 submit documents to us, and we were trying to get a

18 date because we didn't want this thing continuing as,

19 Judge, you know you've been called to sit before this

20 board for these hearings, and we've had to continue it

21 at least three times all because of counsel. So we did

22 it in that respect. If it is not a charge that is

23 before this board today, I don't think it is relevant.

24 It is not only judicial economy, but I don't think it

25 is relevant, and I don't think that we ought to waste

0094

1 anyone's time sitting here. We've been in this hearing

2 for two and a half hours, and we are not past the first

3 witness.

4 JUDGE WHITE:

5 Well, the Administrative Procedures Act in

6 Section 956 provides that agencies may admit and give

7 appropriate effect to evidence which possesses, and

8 this is the language from the statute, probative value

9 commonly accepted by reasonably prudent men in the

10 conduct of their affairs. Counsel, if these charges

11 have been dismissed, or are not before the board right

12 now, that would seem to me to be irrelevant to what we

13 are here to adjudicate today, the board is going to

14 have to adjudicate today. So due process is important.

15 There is no doubt about that, and if you want to make

16 an offer of proof of this to preserve your record, you

17 may do that, but I'm going to sustain the objection to

18 keep it on the issues immediately before the board.

19 MR. MATHEWS:

20 Yes, sir. We would appreciate the opportunity

21 to make such an offer, an open proffer if we can.

22 JUDGE WHITE:

23 Well, let's see if you can do it with dispatch.

24 MR. MATHEWS:

25 Okay.

0095

1 JUDGE WHITE:

2 So I am sustaining the objection, though, and

3 whatever further that you want to talk about this is by

4 way of offer of proof. And let me know when you are

5 done with this particular phase of it, and we will move

6 back on the record.

7 (A PROFFER WAS MADE AT THIS TIME AND IS ATTACHED IN AN

8 ENVELOPE AT THE BACK OF THE TRANSCRIPT. THE TRANSCRIPT

9 WILL BE CONTINUED ON THE NEXT PAGE TO SHOW THAT THERE

10 IS TESTIMONY MISSING.)

11

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0096

1 JUDGE WHITE:

2 Okay. Back on the record.

3 BY MR. MATHEWS:

4 Q. And the notice that we were just talking about,

5 June 24th, 2015, notice of adjudication, are you aware

6 that it has since been superseded by a subsequent

7 notice of adjudication?

8 A. Correct. Because I drafted it.

9 Q. Okay. So I would direct you to tab number 2-C.

10 And we see this is a notice of adjudication dated

11 September 16th, 2015. Do you see that?

12 A. Yes, sir.

13 JUDGE WHITE:

14 Which tab, counsel?

15 MR. MATHEWS:

16 2-C, Your Honor.

17 BY MR. MATHEWS:

18 Q. And I think you mentioned that you were familiar

19 with this, and you actually drafted this notice of

20 adjudication?

21 A. Yes, sir.

22 Q. And would this have been after you had occasion

23 to review the material submitted in response to Mr.

24 Bolton's allegation letter?

25 A. Yes, sir.

0097

1 MR. MATHEWS:

2 At this time, I would like to offer this

3 September 16th, 2015, notice of adjudication as

4 "Respondent's Exhibit #5."

5 JUDGE WHITE:

6 "#6."

7 MR. MATHEWS:

8 "#6."

9 MS. EDWARDS:

10 I have no objection, Your Honor.

11 JUDGE WHITE:

12 And that is one, two, three, four, five pages.

13 Admitted.

14 MR. MATHEWS:

15 Thank you, Your Honor.

16 BY MR. MATHEWS:

17 Q. Look at -- I will direct you to IMS 15.

18 A. Yes, sir.

19 Q. And I see here in Section 2a, a sentence that

20 reads, "The respondent, iMortgage, LLC, provided 150

21 separate real estate appraisal assignments on property

22 located in Louisiana during the time period of December

23 1, 2013, through June 30, 2014; that on each of the

24 separate instances wherein iMortgage provided the 150

25 assignments, iMortgage failed to use established fees

0098

1 set by an objective third party or to use the factors

2 set forth in Section 31101." And do you know where

3 that 150 appraisals number came from?

4 A. It was based on the spreadsheet that was

5 provided by iMortgage in their response.

6 Q. And prior to sending this letter, we established

7 that you had occasion to review the materials submitted

8 by iMortgage; correct?

9 A. Correct.

10 Q. And that included the spreadsheet that iMortgage

11 provided?

12 A. Correct.

13 Q. And at this time, it was your position that 150

14 of these appraisals were in violation of the board's

15 rules?

16 A. Based on the data that was in the file, yes.

17 Q. All right. And I will direct you to tab 2-D in

18 your binder.

19 A. (Witness complies).

20 Q. And actually, this has already been introduced

21 as "S-1." Are you familiar with this --

22 A. Yes, sir.

23 Q. -- documentation? And what is it?

24 A. This is an adjudicatory notice that was mailed

25 on November 17th to Dean Kelker, care of Mr. Rieger,

0099

1 for today's proceedings.

2 Q. And what prompted the issuance of this, I guess,

3 it's the third separate notice of adjudication?

4 A. I believe counsel requested it. Your staff

5 requested it.

6 Q. And now, am I correct that you drafted this

7 particular notice?

8 A. Yes, sir.

9 Q. And had anything changed with regard to the

10 substance of this notice between the September 16th

11 notice and this now November 17th notice?

12 A. Yes, sir.

13 Q. And what changed?

14 A. The counsel for iMortgage provided a spreadsheet

15 that detailed each assignment for whether they were

16 loan origination or for foreclosure or other purposes.

17 Q. Okay. And how did that additional information

18 change the notice of adjudication?

19 A. It lowered the number of assignments from 150 to

20 15?

21 Q. And this reduction was based on your review of

22 the spreadsheet submitted by counsel?

23 A. It was based on a review of a spreadsheet of

24 counsel plus a random sampling of the engagement

25 letters of the additional 100 assignments.

0100

1 Q. All right. What exactly did this review entail?

2 A. So with their original response, they provided

3 an Excel spreadsheet. Included in that Excel

4 spreadsheet was 150 engagement letters, so with the

5 documentation that was provided by counsel, we could

6 narrow it down to ones that they felt were covered

7 transactions. With the other ones, we would randomly

8 select appraisal assignments and print their engagement

9 letter, and depending on what the order was for,

10 determine whether or not we believed it was a loan

11 origination, or a second mortgage, or something that

12 may have been a covered transaction.

13 Q. Okay. So based on your review of the sampling

14 of appraisals, you discarded or did away with some of

15 the appraisals that had been previously included in the

16 number in the notice of adjudication?

17 A. Correct.

18 Q. And the ones that you discarded were items that

19 you did not see as coming under the purview of the

20 rules cited in the adjudication?

21 A. As I recall the engagement letters, they didn't

22 specifically say for purchase transaction, for sales

23 transaction, second mortgage, HELOC, or whatever the

24 terms that they used. I don't recall them actually

25 having a specific statement on them. I'll look.

0101

1 Q. Well, let's look at -- they are at tab eight in

2 your binder.

3 A. Yes.

4 Q. Now, what were you just relaying to me?

5 A. If you look at tab eight under the contact

6 information, if you go to the far right, it says, loan

7 type, refinance. In each engagement letter, there is

8 some word there, and for the other ones, there's

9 nothing from what I recall. It doesn't say refinance.

10 It doesn't say sale. It doesn't say purchase. It is

11 left blank.

12 Q. "The other ones," what do you mean by that?

13 A. The other 140 assignments, engagement letters

14 of the original 150.

15 Q. So I guess my question is, how did this

16 additional material help you in your decision to reduce

17 the number of appraisals the board is considering?

18 A. Could you rephrase the question or restate the

19 question?

20 Q. How did this information, the engagement letters

21 and tax information that was received, help you in

22 determining whether to discard the appraisals that were

23 initially included in the 150?

24 A. I presented the information to the executive

25 director as this is the information that was provided,

0102

1 and his direction was to only include the 15 for loan

2 origination.

3 Q. Look back at tab three in your binder.

4 A. (Witness complies).

5 Q. And I will direct you to IMS 31.

6 A. Yes, sir.

7 Q. And I will represent to you that this is part of

8 iMortgage's response to Mr. Bolton's allegation letter

9 back in July of 2014; is that correct?

10 A. Correct.

11 Q. And if you look at the third column on the

12 spreadsheet that we're looking at on IMS 31, there is

13 an indication -- the column is headed Customer Product.

14 A. What page, sir?

15 Q. IMS 31.

16 A. I'm sorry.

17 Q. And the third column is entitled Customer

18 Product. What do these entries represent to you?

19 A. The type of report that was ordered.

20 Q. And why would this information be pertinent to

21 the board's investigation of customary and reasonable

22 fees?

23 A. Their appraisal assignments ordered in

24 Louisiana.

25 Q. So specifically, the type of product that was

0103

1 ordered, how would that assist the board in its

2 determination of whether there has been a violation of

3 the rules?

4 A. For me, it's any appraisal assignment ordered in

5 Louisiana by an appraisal management company, whether

6 it's covered transactions or not. The law is kind of

7 specific. It doesn't say 1004s, 2055s, 1004 AMCs, you

8 have to use the -- you have to follow the rules.

9 Drive-bys, desktop reviews, you don't have to follow

10 the rules. So any appraisal assignment ordered in the

11 state of Louisiana by an AMC should follow the rules,

12 the law and rules.

13 Q. So it is your testimony that it makes no

14 difference as to whether the transaction is covered or

15 not as to whether it is under the purview of the

16 board's rules and regs?

17 A. I can't -- legally, I can't determine what is a

18 covered or noncovered transaction. What I can say is

19 an AMC in the state of Louisiana ordered an appraisal

20 report, sent it to an appraiser, and did they follow

21 the statute? Whether it's a covered transaction or

22 not is different.

23 Q. It's different? So in your role as the director

24 of investigations for the Louisiana Real Estate

25 Appraisers Board, you cannot distinguish between a

0104

1 covered and noncovered transaction; is that your

2 testimony?

3 A. There is nothing in the law that distinguishes

4 between them.

5 Q. Nothing in the law that distinguishes between

6 them. Which law is that?

7 A. Our own rules.

8 Q. Are you familiar with the federal laws and

9 rules?

10 A. No, sir.

11 Q. So you are not familiar with Dodd-Frank or the

12 Interim Final Rule?

13 A. As familiar as they exist, yes. To the content

14 of them, no.

15 Q. And in your familiarity with the Louisiana laws

16 and rules, are you familiar with Louisiana Revised

17 Statute 37:3415.15?

18 A. Yes.

19 Q. And what does that section provide with regard

20 to a customary and reasonable fee?

21 A. That they follow the presumptions of compliance.

22 Are you talking about --

23 Q. No, that's where I wanted to go. And

24 presumptions of compliance, and there is three more

25 words after that, and this is not a pop quiz, under

0105

1 federal law.

2 A. Under federal law.

3 Q. But it is your testimony that you are not

4 familiar with the federal law other than the fact that

5 it exists; is that correct?

6 A. Correct.

7 Q. And do you know when the board's rules relative

8 to AMCs went into effect?

9 A. Originally or the -- the end of November of 2013

10 is what I recall.

11 Q. Okay. And are you aware of whether the staff at

12 LREAB or the board issued any guidance, directives, or

13 any information that would assist licensees in

14 complying with the statutes and regs?

15 A. No, not to my knowledge. Other than we did send

16 out each fee study that -- each fee study that has been

17 completed by the Southeastern Louisiana University, I

18 think we E-mail all appraisers and AMCs that there is a

19 new study available.

20 Q. And you mentioned a fee study by Southeastern

21 Louisiana. Is it the board's position that this is not

22 the board's fee study?

23 A. It is not the board's fee study.

24 Q. This fee study was commissioned by the board?

25 A. Correct.

0106

1 Q. And funded by the board?

2 A. Correct.

3 Q. And utilized by the board?

4 A. No. Well, I mean --

5 Q. I'll rephrase. Is this something that you have

6 known your investigators to reference in their

7 investigation process?

8 A. Yes.

9 Q. And in your position as director of

10 investigation, it would be helpful for you to know if

11 there was any guidance or directive or anything sent to

12 licensees to give them direction as to the regs and

13 statutes?

14 A. Can you repeat?

15 Q. Sure. In your position as director of

16 investigations and supervising your investigators in

17 investigations of AMCs, would it be useful for you to

18 know if the board had issued any kind of guidance or

19 directives to assist licensees in compliance with the

20 statutes and regs at issue?

21 A. Yes.

22 Q. But you are not aware of any such thing?

23 A. Not to my knowledge.

24 Q. Okay. And if you look at the notice of

25 adjudication that was marked "S-1" and look to the very

0107

1 last page where it says Complaint.

2 A. What page, sir?

3 Q. Oh, I'm sorry. I skipped back to your exhibits.

4 The last page of the --

5 A. C or D?

6 Q. D.

7 A. (Witness complies). Yes, sir.

8 Q. And you see down toward the bottom, there is a

9 date range of December 1, 2013, through June 3rd, 2014?

10 A. Yes, sir.

11 Q. And remind me again, when were the most recent

12 AMC rules and regs passed?

13 A. In November of 2013.

14 Q. Okay. So this date range that is being examined

15 in this investigation, in this adjudication now would

16 begin, I guess, right after the regs and rules went

17 into effect?

18 A. Correct.

19 Q. And to your knowledge, given that short time

20 between the implementation of the regs and rules and

21 the beginning of this period at issue, was any

22 consideration given to allowing iMortgage a chance to

23 update its practices to comply with the new regs?

24 A. To my knowledge, no.

25 Q. And to your knowledge, did the board provide or

0108

1 did anyone, to your knowledge, provide any guidance as

2 to what written documentation means as it is stated in

3 the board's rule of 31101.B?

4 A. Could you repeat the question?

5 Q. Yes. To your knowledge, did the board provide

6 any guidance as to what written documentation means as

7 set forth in the board's rule 31101.B?

8 A. No.

9 Q. And again, in your position as director of

10 investigations, if such a guidance had been issued,

11 this is something that you would be aware of; correct?

12 A. Correct.

13 Q. And to your knowledge, did iMortgage ever

14 indicate that it refused to come into compliance with

15 the board's rules and regs?

16 A. No, sir.

17 Q. Did you or anyone on your staff communicate with

18 iMortgage personnel as to their understanding of

19 Louisiana's regs and statutes relative to AMCs?

20 A. I can't speak for anyone else, but I did not.

21 Q. Okay. And you are not aware of any

22 documentation of any such communication in the file?

23 A. No, sir.

24 Q. And we talked a while back now about the E-mail

25 that started this investigation. Are you aware of, I

0109

1 guess, what came of that specific situation where the

2 appraisal was offered for a certain fee?

3 A. Based on the documentation that was provided by

4 iMortgage, it appears that they changed the assignment

5 from a 1004 to I think a drive-by or something else.

6 Q. And was this acceptable? Let me rephrase. And

7 so would a drive-by as you referenced it be a covered

8 transaction?

9 A. As far as -- any -- again, any appraisal ordered

10 in the state of Louisiana through an AMC has to follow

11 the provisions. Whether it's a covered transaction or

12 not, nothing in our statute talks about that.

13 Q. Okay. To your knowledge, did any of the

14 appraisals that we are here discussing today which is

15 now nine, the appraisals that we are talking about

16 today, did any of those originate with a consumer -- a

17 borrower? I'm sorry.

18 A. Yes.

19 Q. Were they ordered by a borrower? Were any of

20 the transactions that you reviewed that are currently

21 before the board ordered by a borrower?

22 A. Not that I recall.

23 Q. Okay. And based on your review of the case file

24 and the investigation, has iMortgage cooperated with

25 the board and your staff in conjunction with this

0110

1 investigation?

2 A. Yes.

3 MR. MATHEWS:

4 If I can have a second, I'm going to confer with

5 Rob.

6 MS. EDWARDS:

7 Uh-huh (affirmative response).

8 MR. MATHEWS:

9 We have nothing further at this time.

10 MS. EDWARDS:

11 I have just a couple of follow-up questions. I

12 will make it less than five minutes.

13 JUDGE WHITE:

14 All right. Redirect.

15 BY MS. EDWARDS:

16 Q. Mr. Maynor, you were asked originally whether or

17 not iMortgage provided a response, and I believe a

18 response from iMortgage exhibit was introduced by

19 counsel for iMortgage; is that correct?

20 A. Yes, ma'am.

21 Q. Okay. You were questioned about CAVU and the

22 fact that the response information was not listed in

23 CAVU. That's correct?

24 A. Correct.

25 Q. Did that in any way affect your investigation?

0111

1 A. No, ma'am.

2 Q. Was the response from iMortgage included in the

3 file materials?

4 A. Yes, ma'am.

5 Q. There is a file that y'all have; correct?

6 A. Yes, ma'am.

7 Q. So when that information was collected, it was

8 put in the file; is that right?

9 A. Yes, ma'am.

10 Q. What is the purpose of CAVU?

11 A. CAVU is just a journal system to show action

12 items and basically a log of activities that have been

13 done and need to be done and things like that.

14 Q. Can the same information be gleaned by looking

15 at the file itself?

16 A. Yes, ma'am.

17 Q. Is every piece of information that comes in on a

18 particular file pursuant to an investigation included

19 in that file for that respondent?

20 A. Yes.

21 Q. Now, you were asked whether or not there was any

22 guidance given to iMortgage or AMCs regarding these

23 rules; correct?

24 A. Correct.

25 Q. Are you aware of any guidance that the board is

0112

1 required to give to licensees regarding the law and/or

2 rules and regs?

3 A. I know of no such statute.

4 Q. You were also asked whether or not the

5 investigation covered a period of time shortly after

6 the law and the rules were put into effect; is that

7 correct?

8 A. Yes, ma'am.

9 Q. Are you aware of any grace period once a law

10 goes into effect to give a respondent an opportunity to

11 come into compliance?

12 A. No, ma'am.

13 Q. Are you obligated to investigate once a

14 complaint comes in?

15 A. Yes, ma'am.

16 Q. Now, you were also asked about an ongoing

17 investigation in the fact that you were continuing to

18 collect information after a preliminary notice of

19 adjudication was sent out; correct?

20 A. Yes, ma'am.

21 Q. Were you continuing to collect information even

22 from iMortgage counsel within the last week?

23 A. Yes, ma'am.

24 Q. So they were providing information as well; were

25 they not?

0113

1 A. Yes, ma'am.

2 Q. And did you take that information and include it

3 in the file for iMortgage?

4 A. Yes, ma'am.

5 Q. Did at any point you tell iMortgage counsel that

6 you would not accept any of their information?

7 A. No, ma'am.

8 Q. And you also said that originally, you had 150

9 particular appraisals that the board was looking at; is

10 that right?

11 A. Yes, ma'am.

12 Q. And I believe you said that was whittled down

13 based upon information that iMortgage's counsel

14 provided to you; is that correct?

15 A. Correct.

16 Q. Did you go through 150 of those and determine

17 whether or not they would be part of this

18 investigation, or did you take the word of iMortgage

19 counsel and whittle it down along with a random

20 sampling that you did?

21 A. Correct. I took the spreadsheet that was

22 provided by iMortgage counsel and a random sampling of

23 the other appraisal assignments that were ordered.

24 Q. So did you go through 150 of them?

25 A. No, ma'am.

0114

1 Q. Now, you were asked about the fee study that is

2 referenced in iMortgage's response. Have you ever seen

3 that fee study?

4 A. No, ma'am.

5 Q. And I knew you said that you did not request a

6 copy of it; correct?

7 A. Correct.

8 Q. Were you aware that iMortgage was going to

9 provide a copy and did not?

10 MR. MATHEWS:

11 Objection, Your Honor.

12 JUDGE WHITE:

13 What is the nature of your objection?

14 MR. MATHEWS:

15 It assumes facts not in evidence.

16 JUDGE WHITE:

17 State again.

18 MR. MATHEWS:

19 It assumes and presents facts not in evidence.

20 JUDGE WHITE:

21 Ms. Edwards?

22 MS. EDWARDS:

23 Well, I asked him whether or not he was aware.

24 It is not a fact. I am asking him if he was aware

25 whether or not it was requested and not provided. I

0115

1 think that's a fair question.

2 JUDGE WHITE:

3 Counsel?

4 MR. MATHEWS:

5 Again, it assumes that it was not offered or not

6 provided. It's based on that presumption, and then he

7 was asked if he was aware of the fact that she has now

8 presumed.

9 MS. EDWARDS:

10 Well, my question was, were you aware that it

11 was requested and not provided?

12 JUDGE WHITE:

13 I'll permit it. Let the objection be noted and

14 overruled, and recross can --

15 BY MS. EDWARDS:

16 Q. Okay. Were you aware that the fee study was

17 requested and was not provided?

18 A. Yes, ma'am.

19 Q. And in iMortgage's response, I believe you said

20 that iMortgage said that they were not aware of the

21 particulars, and I'm paraphrasing, but let me pull

22 their response. Okay. I believe you read the letter,

23 their response into evidence. Can you read that

24 particular sentence again at the top of page four?

25 This is tab number three, page four of 12.

0116

1 A. "We can't speak to the details of the

2 development of their survey as it was completed without

3 our involvement. They have provided us with a minimum

4 appraisal fee for each geographic market that we pay

5 appraisers."

6 Q. Okay. Had you seen that survey, would that have

7 maybe helped you make a determination regarding the

8 allegations that are here before this board?

9 A. Yes.

10 MS. EDWARDS:

11 That's all the questions I have, Your Honor.

12 JUDGE WHITE:

13 Recross?

14 MR. MATHEWS:

15 Thank you. Yes, a few, Your Honor.

16 BY MR. MATHEWS:

17 Q. Mr. Maynor, Ms. Edwards asked you whether you

18 reviewed the entire 150 appraisals contained in the

19 spreadsheet. Do you recall that?

20 A. Yes, sir.

21 Q. And you indicated that you had not. Was there

22 anything preventing you from reviewing the whole 150

23 appraisals?

24 A. No, sir.

25 Q. You just opted not to for whatever reason?

0117

1 A. Correct.

2 Q. Okay. And there was a question about whether

3 you were aware that the fee study referenced by

4 iMortgage was requested and not ever presented. Do you

5 recall that?

6 A. Yes.

7 Q. How did you become aware of this information?

8 A. I believe counsel, Mr. Rieger, had a meeting

9 with our executive director after the deposition of Mr.

10 VanDuyvendijk, and he requested the information.

11 Q. Were you present in that meeting?

12 A. No.

13 Q. So am I correct that you would have gotten this

14 information secondhand from someone telling you this?

15 A. Yes.

16 Q. And who told you this?

17 A. The executive director and counsel.

18 Q. Okay. Mr. Maynor, on redirect, Ms. Edwards

19 asked you about whether there was any requirement that

20 the board provide guidance to, I guess, AMCs with

21 regard to new statutes or rules. Do you remember that?

22 A. Yes, sir.

23 Q. Mr. Maynor, I have handed you what I represent

24 to you is a post from an Internet publication called

25 the Appraisal Buzz. Are you familiar with this

0118

1 publication?

2 A. No.

3 Q. I will represent to you that it is a publication

4 for the appraisal industry. This particular post

5 indicates that it is written by Bruce Unangst who is

6 the director of the Real Estate Appraisers Board;

7 correct?

8 A. Yes, sir.

9 Q. And I really just have one piece, and I will

10 provide it to the judge so he can look at it, and I'm

11 looking at the second full paragraph on the second page

12 after the two bullet points. It starts with Louisiana

13 values broad participation.

14 MS. EDWARDS:

15 I am going to ask that he read the entire

16 paragraph if you aren't going to introduce this.

17 MR. MATHEWS:

18 No, we're just going to discuss it.

19 MS. EDWARDS:

20 Well, I'm going to ask him then to read the

21 entire paragraph because -- Your Honor, I believe their

22 intent is to have him read one sentence out of an

23 entire paragraph, and I know we don't want to keep

24 going back cross, recross, but I would just ask out of

25 fairness that he read -- if they're not going to

0119

1 introduce the document that he read the entire

2 paragraph.

3 JUDGE WHITE:

4 Counsel?

5 MR. MATHEWS:

6 I have no problem with that.

7 JUDGE WHITE:

8 Okay.

9 BY MR. MATHEWS:

10 Q. You can read it.

11 MS. EDWARDS:

12 Read it slowly, but loudly.

13 MR. MAYNOR:

14 "Louisiana values broad participation of

15 appraisal management companies in our industry and has

16 worked quietly with many entities in bringing them into

17 compliance with our regulatory requirements. Our

18 primary goal is compliance versus confrontation, and

19 adherence to our rules versus adjudication. However,

20 it is not fair to the majority of our 140 quality AMCs

21 doing business here to allow the few who choose to

22 ignore or flaunt our requirements to continue business

23 as usual. Consequently, we have recently signed off on

24 a stipulation order with one AMC, and now have seven

25 active AMC investigations moving towards formal

0120

1 adjudication."

2 BY MR. MATHEWS:

3 Q. And in that statement, there is an indication

4 that the board is working quietly with many entities to

5 bring them into compliance. You were asked on redirect

6 about whether there is a certain set grace period. Why

7 was iMortgage, if you know, not permitted to come into

8 compliance as the goal is stated here?

9 A. Could you restate the question?

10 Q. Sure. Why, if you know, was no attempt to

11 provide iMortgage a chance to come into compliance with

12 the rules afforded?

13 A. I have no knowledge.

14 Q. And the process in this investigation now in

15 adjudication, would you characterize this as

16 confrontation or compliance to use the director's words

17 here?

18 MS. EDWARDS:

19 I'm going to object. I think first of all,

20 we're going past cross, and now we're asking a witness

21 to interpret what somebody else wrote in this document.

22 JUDGE WHITE:

23 Mr. Mathews?

24 MR. MATHEWS:

25 And I'm going to say it is within the scope of

0121

1 redirect in that Ms. Edwards went over the fact that

2 there is no built in grace period, there is no

3 requirement that the board allow an AMC or respondent

4 to come into compliance with new laws and regs.

5 MS. EDWARDS:

6 Right. But now he's asking him whether or not

7 this is a confrontational situation or a compliance

8 situation. And again, this was language from someone

9 other than the witness, and I think everybody can take

10 notice that we are not in a -- we are in a

11 confrontational situation. I mean, we are here for a

12 hearing, but I don't think this witness is the

13 appropriate person to answer that.

14 JUDGE WHITE:

15 And I'm going to sustain the objection and let

16 the words speak for themselves, and whatever import the

17 board may draw from those words, that's appropriately

18 within the board's findings. To that extent, the

19 objection will be sustained.

20 MR. MATHEWS:

21 Thank you, Your Honor. With that, we're done.

22 MS. EDWARDS:

23 I have nothing further.

24 JUDGE WHITE:

25 Nothing further of this witness.

0122

1 MR. HALL:

2 I would like to take a recess, and I understand

3 there is some food here.

4 JUDGE WHITE:

5 For how long, Mr. Chairman? When do you want to

6 reconvene I guess is what I'm asking you.

7 MR. HALL:

8 Thirty minutes ought to be enough.

9 (A RECESS WAS TAKEN AT THIS TIME).

10 MR. HALL:

11 Let's come back to order. And like I say, every

12 hour, we're going to take a five-minute break so we can

13 move around. What we're going to do now is we're going

14 to give any board member an opportunity to ask

15 questions to our first witness, Robert. Does any board

16 member have any questions for this witness?

17 JUDGE WHITE:

18 It might do well to state your name for the

19 record before you ask the question so the reporter can

20 get it correct.

21 MR. HALL:

22 Thank you. I'm Roland Hall. Does anybody have

23 any questions for the first witness? Okay. If we

24 don't have any, I don't have any either. Thank you.

25 JUDGE WHITE:

0123

1 The witness can step down.

2 MR. MAYNOR:

3 Thank you, sir.

4 JUDGE WHITE:

5 Next witness?

6 MS. EDWARDS:

7 I'm going to call my next -- and I'm going to

8 ask Mr. Maynor to step out. I'm not sure, but I may

9 need to call him in rebuttal.

10 JUDGE WHITE:

11 Okay. Mr. Maynor, step out, and don't discuss

12 what went on in here out there.

13 MS. EDWARDS:

14 I call Mr. Henk VanDuyvendijk.

15 MR. MATHEWS:

16 Your Honor, at this time, I would like to offer

17 -- we have already introduced these exhibits, "R-1"

18 through "#6" into the record.

19 JUDGE WHITE:

20 I have a set up here, and I have already marked

21 them, and I think I have uttered the words, but they

22 are in the record, so the court reporter --

23 MR. MATHEWS:

24 I will provide these to the court reporter.

25 JUDGE WHITE:

0124

1 Are they properly marked Respondent's "#1"

2 through "#6."

3 MR. MATHEWS:

4 Yes, sir.

5 JUDGE WHITE:

6 Okay. Do you need to be sworn?

7 MS. EDWARDS:

8 I think they were already sworn.

9 JUDGE WHITE:

10 You have already been sworn?

11 MS. EDWARDS:

12 Yes.

13 MR. vanDUYVENDIJK:

14 Yes. This morning. I was sworn in this morning

15 before we left.

16 JUDGE WHITE:

17 Please be seated, and state your name and your

18 capacity.

19 MR. vanDUYVENDIJK:

20 My name is Hendrik vanDuyvendijk, and I'm an

21 investigator for the Louisiana Real Estate Appraisers

22 Board.

23 \* \* \* \* \* \*

24 HENDRIK vanDUYVENDIJK,

25 after having previously been duly sworn, did testify on

0125

1 his oath as follows:

2 BY MS. EDWARDS:

3 Q. Okay. I'm going to call you Henk --

4 A. That's fine.

5 Q. -- for the benefit of the court reporters. It

6 is easier for her to type that. It is H-E-N-K.

7 MR. HALL:

8 And please speak into the microphone.

9 MR. vanDUYVENDIJK:

10 Okay.

11 MR. HALL:

12 Thank you.

13 BY MS. EDWARDS:

14 Q. Henk, how long have you held a position with the

15 Louisiana Real Estate Appraisers Board?

16 A. Since September 15th of 2014.

17 Q. And prior to coming to the board, were you

18 employed?

19 A. Yes.

20 Q. And where were you employed?

21 A. I was an independent contractor for Scoggin

22 Appraisal, and worked for myself as well.

23 Q. What is your educational background?

24 A. Two and a half years of college.

25 Q. And after that, did you attend any other

0126

1 vocational training or any other training at all?

2 A. Appraisal training.

3 Q. And are you an appraiser?

4 A. Yes, I'm a certified residential appraiser.

5 Q. And how long have you been so?

6 A. Since January of 2007.

7 Q. And prior to coming here, with your previous

8 employer, did you perform appraisals?

9 A. Yes, I did.

10 Q. Now, when you came here to the appraisers board,

11 what were you assigned to do?

12 A. To investigate both appraisals -- appraisal

13 complaints, and also AMC complaints.

14 Q. Okay. After you began your employment with the

15 board, did you receive any additional training?

16 A. I have received training from Mr. Maynor, and I

17 have also attended two classes as well as two appraisal

18 regulatory conferences.

19 Q. And do you recall about when those were done?

20 A. The first regulatory conference was October of

21 2014, and the second one was October of 2015.

22 Q. Okay. Were you asked to assist with the

23 investigation for the matter that we are here for

24 today, the iMortgage investigation?

25 A. Yes, I was.

0127

1 Q. And how did that come to your attention?

2 A. When I came to work for the appraisers board in

3 September of 2014, I was assigned Tad Bolton's old AMC

4 cases that were open, and that's how I received this

5 case.

6 Q. Did you take Mr. Bolton's place when you started

7 here?

8 A. Yes, I did.

9 Q. At any time did your work overlap with Mr.

10 Bolton's? In other words, was he here and you were

11 here both working on the case together?

12 A. No, we were not.

13 Q. And when you started investigating this case, do

14 you recall what you were provided with?

15 A. I was provided with the file that Mr. Bolton had

16 created, to my knowledge that he had created.

17 Q. I'm going to show you a document that has been

18 marked as "Exhibit S-1" which is the notice of

19 adjudication of November 17th, 2015.

20 MR. HALL:

21 Excuse me. Would you put the microphone just a

22 little closer?

23 MS. EDWARDS:

24 I'm sorry. I'm trying to stay back so they can

25 see him, but --

0128

1 BY MS. EDWARDS:

2 Q. Okay. November 15th, 2015, adjudication notice,

3 have you seen this document before?

4 A. Yes, I have.

5 Q. And were you involved at all in the preparation

6 of this document?

7 A. No.

8 Q. In your capacity as an investigator, when you

9 received the file, what did you do? What was your next

10 step?

11 A. I was asked to review the file and create a

12 timeline of what was in the file.

13 Q. Okay. Had you reviewed information that was

14 provided by Mr. Dean Kelker to Mr. Bolton?

15 A. Yes, I did.

16 Q. And I believe that was already introduced. I'm

17 going to show you a copy of it, and I'm going to ask

18 you if you can identify it. I believe it is marked as

19 "R-3." This is a July 28, 2014, letter. Have you seen

20 that document?

21 A. Yes, I have.

22 Q. And based on that information, did you do

23 anything further?

24 A. I reviewed the documents and the response to try

25 and determine whether or not iMortgage was in

0129

1 compliance with our rules and laws.

2 Q. Okay. And this document that was received from

3 iMortgage, did you go through this document and review

4 it?

5 A. Yes, I did.

6 Q. Okay. And in that letter, in that response, did

7 iMortgage respond to the methods that they use for

8 appraiser fee methodology.

9 A. Yes, they did.

10 Q. Okay. Can you look at that for me and tell me

11 -- I'm actually going to have you read it so there's no

12 confusion. Would you read for me what methodologies

13 they have listed in that response?

14 A. Yes. Under Appraiser Fee Methodology, it

15 states, "Fees paid to appraisers are determined through

16 multiple methodologies. We have a large origination

17 client that works on a cost plus basis. This client

18 has performed their own fee survey nationally and

19 developed the data on a county/parish basis for each

20 state. We can't speak to the details of the

21 development of their survey as it was completed without

22 our involvement. They have provided us with a minimum

23 appraisal fee for each geographic market that we pay

24 appraisers. The AMC service fee is a flat amount that

25 we add to the appraiser's fee to develop a client fee

0130

1 for that assignment. Should the scope of work on a

2 particular order be such that the fee is not viewed as

3 adequate, the appraiser can counter propose a revised

4 fee that we will take back to the client for approval.

5 Our experience is that when the scope of work is

6 explained, the fee increase is approved by the client.

7 "The second methodology that we use to determine

8 appraiser fees is our own experience in each market.

9 Our fee experience in each market around the country is

10 captured within our operating system, and that provides

11 a basis for making an offer to a specific appraiser for

12 a particular order. Additionally, some of our

13 auto-assign appraisers have established basic fee and

14 service delivery standards with us so that when orders

15 are auto-assigned to them, there is less probability of

16 it being kicked back to us. However, even in the

17 auto-assign environment, the appraiser can notify us

18 that the scope of work warrants a fee adjustment above

19 the level of the offer.

20 "The final and common methodology is that when

21 we contact an appraiser for an order, they quote their

22 fee to us for completing the assignment. That fee

23 becomes the amount that we will pay the appraiser for

24 the assignment. As was previously mentioned, this

25 information is captured in our system for use in future

0131

1 assignments. Complex and unusual assignment fees are

2 generally quoted by the appraiser based on the

3 additional work associated with the assignment, and we

4 contact our client for a fee adjustment."

5 Q. Okay. Are you familiar with the Louisiana Real

6 Estate Appraisers Board law and rules concerning

7 customary and reasonable fees and presumptions of

8 compliance?

9 A. Yes, I am.

10 Q. Have you studied those?

11 A. Yes, I have.

12 Q. Based on the response that iMortgage provided,

13 did you believe that they were in compliance with our

14 law and rules?

15 A. It does not appear that they are.

16 Q. And specifically, what did you take issue with?

17 A. They used -- under the first methodology, they

18 have a large origination client that has performed

19 their own survey which is not considered an independent

20 fee study. Since it was -- it would not appear to be

21 an independent study as it was provided by the client

22 ordering the appraisal.

23 The second methodology is they are using their

24 own experience which also is not covered under our

25 rules.

0132

1 And the final methodology, asking for a quote

2 from the appraiser is also not one of the methodologies

3 that we recognize.

4 Q. Okay. Now, looking at our rules, specifically

5 this is included in the November 17 adjudicatory

6 notice, looking at our rules, why don't you read for me

7 under A how evidence for fees may be established by

8 what pursuant to our rules?

9 MR. RIEGER:

10 Counsel, you are on "S-1"; is that right?

11 MS. EDWARDS:

12 "S-1." That is the preliminary adjudicatory

13 notice.

14 MR. vanDUYVENDIJK:

15 Hold on. I just want to make sure I'm in the

16 right spot.

17 BY MS. EDWARDS:

18 Q. More specifically, what I'm asking you is what

19 our rules in Section 31101 specify.

20 A. Okay. Under A, "Licensees shall compensate fee

21 appraisers at a rate that is customary and reasonable

22 for appraisal services performed in the market area of

23 the property being appraised and as prescribed by

24 37:3415.15(A). For the purpose of this chapter, market

25 area shall be identified by ZIP code, parish, or

0133

1 metropolitan area.

2 "Evidence for such fees may be established by

3 objective third-party information such as government

4 agency fee schedules, academic studies, and independent

5 private sector surveys. Fee studies shall exclude

6 assignments ordered by appraisal management companies.

7 "Two, The board, at its discretion, may

8 establish a customary and reasonable rate of

9 compensation schedule for use by any licensees electing

10 to do so.

11 "Three, Licensees electing to compensate fee

12 appraisers on any basis other than an established fee

13 schedule as described in paragraphs one or two above

14 shall, at a minimum, review the factors listed in

15 31101.B.1-6 on each assignment made, and make

16 appropriate adjustments to recent rates paid in the

17 relevant geographic market necessary to ensure that the

18 amount of compensation is reasonable."

19 Q. Okay. In the response by iMortgage, did they

20 provide to you objective, in your assessment of it,

21 objective third-party information? Did they provide

22 you a government agency fee schedule that they used?

23 A. No, they did not.

24 Q. Did they indicate that they used a government

25 agency fee schedule?

0134

1 A. No, they did not.

2 Q. Did they indicate to you or provide to you any

3 information regarding academic studies that they used?

4 A. No, they did not.

5 Q. And did they state that they used academic

6 studies?

7 A. No, they did not.

8 Q. Did they state to you that they used independent

9 private sector surveys?

10 A. No, they did not.

11 Q. And I believe they said that they used a fee

12 survey?

13 A. They used a fee survey from a large origination

14 client.

15 Q. And based upon your investigation, did you

16 believe that was an independent private sector survey?

17 A. From the way it's stated, it appears as though

18 the client had done their own fee study which would in

19 turn appear to be -- wouldn't be independent.

20 Q. When you say "client," a client of iMortgage?

21 A. The large origination client of iMortgage,

22 that's correct.

23 Q. And my understanding of the response from

24 iMortgage is they had no input and had no idea how that

25 study was done; is that correct?

0135

1 A. That's my understanding.

2 Q. And have you seen a copy of that fee study?

3 A. No, I have not.

4 Q. Was that provided to you?

5 A. No, it was not.

6 Q. To your knowledge, was it requested?

7 A. My understanding is it was requested.

8 Q. Okay. Now, has the board, the appraisers board

9 established a customary and reasonable rate for

10 compensation?

11 A. No, they have not.

12 Q. Now, if you look at number three under 31101, it

13 says that, and I'm just going to paraphrase it, at a

14 minimum, review the factors listed in 31101.B.1-6 on

15 each assignment made. Do you know what those six

16 factors are?

17 A. Yes.

18 Q. And what are those?

19 MR. GRAHAM:

20 I'm sorry. Is this an exhibit that we're

21 referring to?

22 MR. MATHEWS:

23 Yes.

24 MR. vanDUYVENDIJK:

25 This is just a copy of Chapter 311, Compensation

0136

1 of Fee Appraisers under the rules.

2 MS. EDWARDS:

3 It's our rules.

4 MR. GRAHAM:

5 Yes. Sure. Is there something -- I'm just

6 trying to make notes and go through there on the

7 exhibits.

8 MS. EDWARDS:

9 Have we introduced an exhibit of our rules? No.

10 MR. GRAHAM:

11 Okay.

12 MS. EDWARDS:

13 No.

14 JUDGE WHITE:

15 Well, the board is entitled to take judicial

16 notice of its own rules.

17 MS. EDWARDS:

18 Correct. Are you asking me -- would you like a

19 copy because we can make a copy?

20 MR. GRAHAM:

21 Yes, actually, I would, if you don't mind.

22 JUDGE WHITE:

23 Mr. Mathews, you need a copy of that as well?

24 MR. MATHEWS:

25 No, sir, Your Honor. I was just going to ask if

0137

1 I could -- the witness is referencing a set of

2 documents, and there is also another couple of

3 documents on top of those rules. Is that just a -- it

4 has some red writing on it.

5 MR. vanDUYVENDIJK:

6 It's just some notes.

7 MR. MATHEWS:

8 I mean, what is this document?

9 MS. EDWARDS:

10 I don't know if --

11 MR. MATHEWS:

12 If he is going to refer to it, I think we need

13 to --

14 MS. EDWARDS:

15 And I don't know that he will.

16 MR. MATHEWS:

17 I watched him refer to it, so --

18 MS. EDWARDS:

19 What he referred to --

20 MR. vanDUYVENDIJK:

21 What I pulled was the rules, but I mean --

22 MS. EDWARDS:

23 He didn't refer to this because he didn't even

24 testify about it.

25 MR. MATHEWS:

0138

1 He looked at it. He didn't refer to it in his

2 testimony.

3 MS. EDWARDS:

4 He can look at anything. If he is not

5 testifying about it, it's not -- do you want to argue

6 this?

7 MR. MATHEWS:

8 Yes.

9 MS. EDWARDS:

10 Okay. Apparently, Mr. VanDuyvendijk has on his

11 -- in front of him a document. He has not referenced

12 it. I don't know that he's going to testify about it.

13 Mr. Mathews said that he looked at it. He certainly

14 can look -- it's not part of what he's testifying to.

15 He hasn't referred to it in order to testify. If at

16 some point he does, then at that point if he wants to

17 make an objection, that's fine. But it's just a

18 document sitting on his desk. I don't believe he's

19 entitled to every document.

20 JUDGE WHITE:

21 Is it an internal memo you are contending, Ms.

22 Edwards?

23 MS. EDWARDS:

24 It's a memo of dates that Mr. vanDuyvendijk

25 obviously drafted at some point. He has not been asked

0139

1 questions about any dates. He has not referred to it

2 yet. The only thing he has looked at is the

3 preliminary notice of adjudication, and the rules which

4 we are going to have a copy made of.

5 JUDGE WHITE:

6 Mr. Mathews, do you want to contravene that?

7 MR. MATHEWS:

8 Your Honor, he is obviously looking at the

9 document. I don't know what it says on it, so I can't

10 know whether he's referring to it in his testimony

11 without having a copy of the document in front of me.

12 JUDGE WHITE:

13 Is there an objection, Ms. Edwards, to allowing

14 him --

15 MS. EDWARDS:

16 I just showed it to him. It's dates. It's

17 dates.

18 MR. MATHEWS:

19 Sure. What is the second one?

20 MS. EDWARDS:

21 It's dates of everything that has happened.

22 JUDGE WHITE:

23 Since it may be the subject of

24 cross-examination, is there any objection to having a

25 copy made for Mr. Mathews?

0140

1 MS. EDWARDS:

2 Well, yes, there is because if I'm not going to

3 ask him any questions about it. Maybe they want to

4 cross-examine him about something. If I'm not going to

5 introduce it and he is not going to testify about it,

6 then there's no reason for him to have it. The fact

7 that it's on his desk doesn't mean they have the right

8 to come over and look at it, or take it, or see it.

9 That's the bottom line.

10 JUDGE WHITE:

11 Mr. Mathews?

12 MR. MATHEWS:

13 We disagree strongly.

14 JUDGE WHITE:

15 Well, you're thinking he's referring to it?

16 MR. MATHEWS:

17 He is, Your Honor, and I'm looking at it. It's

18 not just dates, Your Honor. It's actually like a

19 synopsis of things that could be extracted through

20 testimony, but I mean, it's kind of something that the

21 witness is obviously using, or may use it further in

22 his testimony to refresh his recollection --

23 MS. EDWARDS:

24 And if he uses it --

25 MR. MATHEWS:

0141

1 -- which is fine, but I can't know if he is

2 doing that or not if I don't have a copy of it.

3 MS. EDWARDS:

4 Well, then we will turn it upside down, and he

5 won't refer to it. He has not referred to it yet. He

6 has only referred to the preliminary notice of

7 adjudication and to the rules. If he refers to it or

8 needs it to refresh his memory, I have no objection to

9 them having a copy.

10 JUDGE WHITE:

11 And on cross-examination, it would be right

12 there accessible to Mr. Mathews to cross-examine.

13 MS. EDWARDS:

14 If there's anything --

15 JUDGE WHITE:

16 Let's move forward with his testimony.

17 MS. EDWARDS:

18 Okay. We need to get a copy of the rules for

19 the board.

20 MR. GRAHAM:

21 And I'm sorry for interrupting, Ms. Edwards.

22 MS. EDWARDS:

23 That's okay. Not a problem.

24 (A RECESS WAS TAKEN AT THIS TIME TO GET A COPY OF THE

25 RULES).

0142

1 MS. EDWARDS:

2 Are y'all ready to proceed? Ready?

3 JUDGE WHITE:

4 Proceed.

5 MS. EDWARDS:

6 Okay.

7 BY MS. EDWARDS:

8 Q. Henk, you were discussing on Section

9 31101.B.1-6, the Louisiana Real Estate Appraisers Board

10 rules, and now everyone has a copy of it in front of

11 them. If you will, please tell me what one through six

12 on each assignment would be?

13 A. These are the minimum -- this is the minimum

14 written documentation that is supposed to be kept when

15 you are using the six factors: The type of property

16 for each appraisal performed; the scope of work for

17 each appraisal performed; the time in which the

18 appraisal services are required to be performed; fee

19 appraiser qualifications; fee appraiser experience and

20 professional record; and the fee appraiser work

21 quality.

22 Q. Okay. Were you provided any information by

23 iMortgage either in their initial response or at any

24 time later that these minimum elements were used in

25 setting the fees?

0143

1 A. They stated that they used, it appears, some of

2 the elements, but not all of them.

3 Q. Now, I believe you said that they used a fee

4 study conducted by one of their clients. Is there

5 anything in the Louisiana real estate law or rules

6 which would allow an AMC to have the lender or their

7 customer establish the fee in paying reasonable and

8 customary?

9 A. From reading the laws, the fee study is supposed

10 to be one from a government agency, an academic study

11 or an independent private sector survey, so if it was

12 performed by someone who had a part of the transaction,

13 I wouldn't think it would be independent.

14 Q. Okay. At the conclusion of your investigation,

15 was it ultimately your opinion that a violation did

16 occur?

17 A. Yes.

18 Q. And what was that based on?

19 A. It was based on the response provided by the

20 client under the appraisal fee methodology.

21 Q. I'm going to show you a document that I have

22 marked --

23 MS. EDWARDS:

24 I'm going to show you a document that I'm going

25 to mark as "S-5." Would that be right?

0144

1 MR. MATHEWS:

2 I think it's "#4."

3 JUDGE WHITE:

4 I have "S-1," "#2," "#3." If we stay in the

5 series, it will be "#4"

6 BY MS. EDWARDS:

7 Q. Okay. This will be "S-4." And ask you if you

8 have seen this document before.

9 A. This particular document in this state, I have

10 not.

11 Q. Okay. When you say in this particular state, is

12 this -- well, I tell you what. Let me ask you this.

13 I'm going to show you a document I've marked as "S-5"

14 and ask you if you can identify that document.

15 A. Yes.

16 Q. And what is that particular document?

17 A. This is a list of the appraisals that we felt,

18 the state, that fall outside of the fee study.

19 Q. That fell outside the fee study?

20 A. I shouldn't -- I'm sorry. That's not stated

21 right. These are the appraisals that were performed

22 that we feel are in violation of our state rules.

23 Q. Okay. Now, what information is contained on

24 that sheet?

25 A. It has a customer ID, the appraisal order

0145

1 number, the city, the county, the total customer fee,

2 the total vendor fee, product group, product, vendor

3 ID, date created, billed date, customer product,

4 engagement -- a column for the engagement letter, and

5 the vendor check name.

6 Q. And how many appraisals are listed on that

7 document?

8 A. Nine.

9 Q. Okay. And are these the nine that are before

10 the board for investigation? In other words, are these

11 the nine that we are here for today?

12 A. Yes.

13 Q. Now, I want you to take a look at the document

14 that's marked as "S-4" that is part of a stipulation.

15 I think it's Attachment A to a stipulation, and see if

16 these are the same appraisals on there.

17 A. (Witness complies). Yes, they are.

18 MS. EDWARDS:

19 Can we hang on just a moment, Judge?

20 JUDGE WHITE:

21 All right.

22 (DISCUSSION OFF THE RECORD).

23 MS. EDWARDS:

24 This is "Exhibit S-5."

25 JUDGE WHITE:

0146

1 Are you seeking to introduce "S-5"?

2 MS. EDWARDS:

3 Not yet. Not yet. I'm going to.

4 BY MS. EDWARDS:

5 Q. So you have looked at "S-4" and "S-5," or the

6 "S-4" is an attachment to a stipulation. "S-5," does

7 that appear to be -- the nine that are on here, do

8 those appear to be the ones that are also contained

9 within the attachment that is marked "S-4"?

10 A. Yes, yes.

11 Q. Now, "S-4" has additional ones; is that correct?

12 A. That's correct.

13 Q. And there are some marked in green. Are those

14 the ones that are deleted from this hearing today?

15 A. Yes, they are.

16 Q. Okay. I'm going to ask you to look at "S-4" and

17 see if there is additional information contained on

18 there that is not on "S-5."

19 A. It has the state. It has the region. It has

20 the median residential appraisal fee by region per 2014

21 Southeastern Fee Study. It has assigned, rejects, date

22 created, appraisal type (review, default, origination),

23 form type, products contained in Louisiana fee survey,

24 consumer credit transactions, Flagstar fee survey.

25 Q. Okay. Now, is it your understanding that the

0147

1 nine that are before the board today, it was

2 stipulated, too, that those are covered transactions?

3 A. Yes, it is.

4 Q. And did staff of thr Louisiana Real Estate

5 Appraisers Board prepare "Exhibit S-5"?

6 A. I mean, it came from the original submission

7 from iMortgage, but we condensed it to that.

8 Q. To limit it to the nine?

9 A. To limit it to the nine that we're here for.

10 MS. EDWARDS:

11 Okay. I have marked "S-4" which is an

12 attachment to the stipulation that was entered into,

13 and "Exhibit S-5" for introduction in evidence.

14 JUDGE WHITE:

15 Is there an objection?

16 MR. MATHEWS:

17 No objection.

18 JUDGE WHITE:

19 No objection?

20 MR. MATHEWS:

21 None, sir.

22 JUDGE WHITE:

23 They will be admitted and published to the

24 board.

25 MR. HALL:

0148

1 We do not have a copy of "S-4."

2 MS. EDWARDS:

3 "S-4" is --

4 JUDGE WHITE:

5 They don't?

6 MS. EDWARDS:

7 No, they don't. Do y'all have it?

8 MR. MATHEWS:

9 No, no.

10 MS. EDWARDS:

11 No? I need a copy of this. Yes, that was

12 attached to the stipulations that we agreed to and read

13 into the record, so if you hang on, they will get you a

14 copy of that.

15 And if you want, I'll continue to go. I don't

16 have much more. Do you want me to wait, or do you want

17 me to move on? I don't have much more.

18 JUDGE WHITE:

19 Go ahead. Proceed.

20 MS. EDWARDS:

21 I don't have much more. Okay.

22 BY MS. EDWARDS:

23 Q. I'm going to show you a document marked as

24 "Exhibit S-3." This is the E-mail.

25 MR. MATHEWS:

0149

1 Okay.

2 BY MS. EDWARDS:

3 Q. Have you seen that before?

4 A. Yes, I have.

5 Q. Okay. And did you do an investigation about

6 that particular complaint, in other words, that

7 particular appraisal that is contained within that

8 E-mail?

9 A. Mr. Bolton had actually started the

10 investigation, and I was brought into it.

11 Q. Okay. Going back to the response from iMortgage

12 regarding their methodologies that they used, the

13 second methodology they do to determine appraiser fees

14 is our own experience in the market. Is there anywhere

15 in our law or rules that allows that to be a factor in

16 determining fees?

17 A. No.

18 Q. And they also say that they contact an

19 appraiser, and then they have the appraiser quote their

20 fee to us for completing the assignment. Is that one

21 of the manners in which a customary and reasonable fee

22 can be established?

23 A. No, it is not.

24 Q. So at the conclusion of your investigation, what

25 was your determination?

0150

1 A. That iMortgage was in violation of our rules

2 concerning compensation for appraisers.

3 Q. And why is that?

4 A. Because they did not follow our methodology in

5 determining their fees.

6 MS. EDWARDS:

7 I have no further questions.

8 JUDGE WHITE:

9 Cross-examination?

10 MR. MATHEWS:

11 Yes, Your Honor.

12 BY MR. MATHEWS:

13 Q. Good afternoon, Henk. I believe -- I know we've

14 met a couple of times.

15 A. We've met.

16 Q. I'm Kellen Mathews with Adams & Reese. I

17 represent iMortgage, and I have a few questions for

18 you.

19 Now, you mentioned just now that you started

20 working for the Louisiana Real Estate Appraisers Board

21 as an investigator in September of 2014; correct?

22 A. That is correct.

23 Q. Before that, had you any experience as a

24 compliance investigator for the Louisiana Real Estate

25 Appraisers Board?

0151

1 A. No, I did not.

2 Q. And did you work for the Real Estate Appraisers

3 Board in any capacity before then?

4 A. No, I had not.

5 Q. And when you received the assignment of the

6 iMortgage matter, you had never completed an

7 investigation of an AMC for the Louisiana Real Estate

8 Appraisers Board; had you?

9 A. No, I had not.

10 Q. And at that point, had you received any formal

11 training relative to the laws and regs that the board

12 is charged with enforcing?

13 A. I had read them previously, and I read through

14 them again when I became an investigator.

15 Q. But this would just be at your own leisure just

16 reading the regs?

17 A. That was more or less my -- I was told to do

18 that when I first came to work for the board.

19 Q. Okay. And to date, how many investigations of

20 AMCs have you conducted for the board?

21 A. Three that I have conducted, and we have, I

22 think, seven that are open.

23 Q. Okay. Would this investigation of iMortgage be

24 in the seven that are open, or would it be complete

25 already?

0152

1 A. This isn't complete. I mean, we are in the

2 hearing, so...

3 Q. So this would be included in the seven open

4 investigations?

5 A. That's correct.

6 Q. And to piggyback on that, when do you as an

7 investigator, a Client Investigator 3 for the Louisiana

8 Real Estate Appraisers Board consider an investigation

9 to be complete?

10 A. When I -- when I deliver the -- my results to

11 the hearing examiner or Mr. Maynor, my end of it is --

12 my investigation is complete, but that doesn't -- the

13 case still is in the process. You know, we may refer

14 it to adjudication, or we may state that, you know, my

15 recommendation is to close, so until there's a

16 disposition, I guess, of the case, it would be

17 considered open.

18 Q. Okay. And the end of your piece that you

19 described, would that be your report of investigation?

20 A. It would be the investigation, I guess, from

21 start to finish, the end. I conclude an investigation

22 normally with an ROI, you know, the report of

23 investigation.

24 Q. I believe you said in your role as a Client

25 Investigator 3, you investigate the conduct of both

0153

1 appraisers and AMCs; correct?

2 A. That is correct.

3 Q. And with regard to AMCs, how does the complaint

4 reach you as a Client Investigator 3?

5 A. It's assigned to me by the chief -- the director

6 of investigations, Mr. Maynor.

7 Q. Okay. And once it is assigned to you, what do

8 you do, you know, to investigate the matter?

9 A. I read through the complaint and try and

10 determine whether or not, you know, we have

11 jurisdiction, for one, and then for two, whether there

12 are any violations involved.

13 Q. And you mentioned you try to determine whether

14 there is jurisdiction. What factors do you consider

15 when reviewing materials for whether the board has

16 jurisdiction?

17 A. Whether it falls underneath our laws. If it's

18 something that we, you know, have no control over, you

19 know, I wouldn't proceed.

20 Q. And probably maybe a better way to do this is

21 can you give me an example of an instance where you may

22 review materials, and based on that review, determine

23 that the board does not have jurisdiction?

24 A. If an AMC -- if we got a complaint that an AMC

25 was no longer sending an appraiser business, that they

0154

1 just hadn't received any orders lately, that could be a

2 complaint, but if the AMC still has the appraiser on

3 their panel but just has decided not to send them work,

4 that's really not a violation. If they had removed the

5 appraiser, just simply said you're no longer going to

6 be a part of our panel, that would be a violation if

7 they didn't have just cause or reasons for doing so.

8 Q. Okay. And in addition to reviewing the

9 materials and documentation, what else do you do in an

10 investigation of an AMC?

11 A. Well, if we determine that it appears that there

12 may be a violation, then we send a letter requesting

13 additional information informing them that an

14 investigation has been requested and the data that we

15 need to review.

16 Q. And now, do you know when the iMortgage

17 investigation was opened?

18 A. Without having it in front of me --

19 Q. This is an instance where I wouldn't mind you

20 referring to your notes. If that's on there, I don't

21 know.

22 A. I think it might be. Is that okay?

23 MS. EDWARDS:

24 Yes. If you need it to refer to, sure.

25 MR. vanDUYVENDIJK:

0155

1 Let's see. I just have when the letter was sent

2 to -- an E-mail was sent to Mr. Unangst. I didn't have

3 the exact date the investigation was opened.

4 BY MR. MATHEWS:

5 Q. Okay. But if I told you it was in May of 2014,

6 would you have any reason to doubt that?

7 A. No, I think that that sounds correct.

8 Q. And you mentioned that initially, since this

9 predates your tenure with the board, this matter was

10 assigned to Mr. Tad Bolton?

11 A. That's correct.

12 Q. And I think you also mentioned that there was no

13 overlap in the time that you worked for the board and

14 when Mr. Bolton worked for the board?

15 A. That's correct.

16 Q. And am I correct that you didn't have any

17 conversations with Mr. Bolton about the iMortgage case?

18 A. I have not discussed any cases with Mr. Bolton.

19 Q. Okay. And when you first received the iMortgage

20 file, do you recall what the status of the case was at

21 that time? I guess at what point in the investigation

22 was Mr. Bolton at that time?

23 A. I think we had just received -- not time wise,

24 but we had received the response in July from Mr.

25 Kelker, and I think that was right before Mr. Bolton

0156

1 had left, so that's where it was, that we had received

2 the response.

3 Q. And what, if anything, did you do initially when

4 the iMortgage file was assigned to you?

5 A. As I said, I read through the file, and I put

6 together a timeline of kind of what had transpired to

7 my recollection.

8 Q. Okay. Now, as part of your training in your on

9 boarding with -- as an investigator with the Louisiana

10 Real Estate Appraisers Board, did you receive any

11 training on the CAVU system?

12 A. Yes.

13 Q. And can you briefly tell us what that system is,

14 and what -- well, first, what that system is?

15 A. It's our internal system for tracking files that

16 are open, or, you know, any file that comes in that we

17 have that can be opened as an initial assessment or

18 opened as a case.

19 Q. Okay. And as an investigator, are you expected

20 to make notations in the CAVU system?

21 A. Yes.

22 Q. And what kind of things are you supposed to note

23 in CAVU?

24 A. Any actions that are taken or contacts that I

25 have had with the complainant or the respondent.

0157

1 Q. And when you say "actions that are taken," would

2 review of the materials submitted by the respondent be

3 an action taken for purposes of CAVU reporting?

4 A. I would say it should be, yes.

5 Q. Okay. And, also, in your, I guess, on boarding

6 back last year, last September of 2014, did you receive

7 a manual or a guideline with regard to how to conduct

8 investigations of appraisal companies and AMCs, or

9 appraisers and AMCs?

10 A. We have standard operating procedures.

11 Q. And this was previously introduced as

12 "Respondent's Exhibit #1." It is at tab four in your

13 binder.

14 A. Yes.

15 Q. All right. Is this the standard operating

16 procedures that you would have received? And you can

17 take a second and review it just to make sure.

18 A. Yes. You know, I don't know the exact -- there

19 is numbers up at the top that state, you know, what the

20 current one is. It appears that this is the most

21 current, and that this would have been the one that I

22 received.

23 Q. And I am going to ask you to look down there

24 toward the bottom of the page, and I'm referring now to

25 tab four, IMS 45 is the Bates labeling on it, and you

0158

1 will see that there is an indication that it was

2 approved by and there is a signature of Bruce Unangst

3 dated January 16 of 2014.

4 A. Yes.

5 Q. Are you aware of any subsequent standard

6 operating procedures issued to investigators for the

7 board?

8 A. No.

9 Q. And have you read, or are you familiar with

10 these procedures?

11 A. I have read them. I wish I could tell you that

12 I knew them by heart, but I refer to them.

13 Q. And that was my next question. These are

14 available for you to reference should you feel the

15 need?

16 A. Yes.

17 Q. Okay. And that has been the case since you

18 started as an investigator at the board?

19 A. Yes.

20 Q. Okay. I'm going to refer you to what was marked

21 earlier today as "Respondent's #2." It is at tab ten

22 in your binder.

23 A. Yes.

24 Q. Okay. And do you recognize this document that

25 is two pages? You can take a look at it.

0159

1 A. Yes.

2 Q. Okay. And what is it?

3 A. It's the CAVU entry screens.

4 Q. Okay. And I guess let's just go through this

5 real quick. The first entry we see is dated June 18th

6 of 2014, and it is by Mr. Tad Bolton?

7 A. Yes.

8 Q. Would you have had occasion to review this CAVU

9 screen when you first received the assignment of the

10 iMortgage file?

11 A. Yes.

12 Q. And what was your purpose in reviewing this

13 screen?

14 A. Just to go through the file to -- you know, I

15 reviewed the file. I reviewed the notes on the file.

16 Q. All right. And in looking down at these notes,

17 I will ask you to turn to the second page which is IMS

18 142.

19 A. Yes. (Witness complies).

20 Q. You see that there is a July 11th, 2014, entry

21 by Mr. Bolton. And what is Mr. Bolton noting in this

22 entry?

23 A. Response received from respondent.

24 Q. Does he expound upon what the response is in the

25 comments section?

0160

1 A. We received and granted a request for a 15-day

2 extension for the delivery of the information required

3 in the allegation letter until July 30th, 2014, from

4 Gerald J. Simson, the general counsel and SVP for

5 iMortgage.

6 Q. And then what is the date on the next entry on

7 this IMS 142?

8 A. August 13th, 2015.

9 Q. Okay.

10 A. Am I --

11 Q. Yes.

12 MS. EDWARDS:

13 You're the witness.

14 MR. vanDUYVENDIJK:

15 I'm sorry. You looked like I went to the wrong

16 spot, so --

17 MR. MATHEWS:

18 Q. No. You are correct.

19 A. -- I apologize.

20 Q. You're fine. But as you mentioned just now,

21 iMortgage provided responsive materials to Mr. Bolton's

22 allegation letter in July of 2014; is that correct?

23 A. That's my understanding from the letter.

24 Q. And this is obviously not noted in this CAVU

25 case printout that we have here before us; correct?

0161

1 A. No, it is not.

2 Q. And to the best of your knowledge, is what we

3 have here, these two pages, the complete CAVU record?

4 A. To my knowledge, it is.

5 Q. Okay. Do you know why there is no entry from

6 July of 2014 until August of 2015?

7 A. No, I do not.

8 Q. During that time, did you take any actions in

9 furtherance of the investigation of iMortgage?

10 A. The only real action that I remember taking is I

11 put together a timeline for the hearing officer, Ms.

12 Stafford.

13 Q. And that's in addition to -- you already

14 mentioned that you reviewed the materials in the file?

15 A. I'm sorry. Can you repeat that one more time?

16 Q. Sure. In the timelines you just mentioned that

17 you prepared for Ms. Stafford, where is that in --

18 well, in the record, in the case file?

19 A. I think that was one of the documents you had

20 handed me during our deposition that it was just a list

21 of dates with, I think, information we received.

22 Q. And do you recall when you would have compiled

23 this timeline?

24 A. Probably sometime -- I wish I could tell you the

25 exact date, but sometime probably in the early part of

0162

1 2015.

2 Q. Okay. I'm going to refer you back to

3 "Respondent's #1" which is at tab four in your binder.

4 A. Tab four?

5 Q. Okay. And look at IMS 53 which is page nine of

6 fourteen of that particular document.

7 A. (Witness complies). Yes.

8 Q. And specifically, we're looking at 4.4.5.2, and

9 in particular the last sentence of that note. Can you

10 read that for me?

11 A. "Investigator makes detailed notation of

12 respondent's response to allegation letter and a list

13 of any documents supplied by the respondent in CAVU."

14 Q. Okay. And is this a directive under the

15 standard operating procedure that the investigator note

16 the responsive materials received from in this case

17 iMortgage in the CAVU system?

18 A. It's supposed to be.

19 Q. Okay. Yet Mr. Bolton did not make any kind of

20 notation of the response to the allegation in the CAVU

21 system; is that correct?

22 A. It does not appear that he did.

23 Q. And you did not make a notation of your review

24 of the response to the allegation letter in the CAVU

25 system; is that correct?

0163

1 A. No. I passed it to Ms. Stafford.

2 Q. You passed what to Ms. Stafford?

3 A. Just the timeline of what had been done.

4 Q. Okay. And if I can, I will direct you to

5 "Respondent's #5." I think it is tab 11 in your

6 binder.

7 A. Yes.

8 Q. And what is this document?

9 A. This is a report of an investigation.

10 Q. Okay. And does this document contain the

11 timeline that you have been referencing?

12 A. Yes, it does.

13 Q. Can you point us to that in your report?

14 A. I mean, it starts with the summary of the

15 investigation.

16 Q. Okay.

17 A. So it just has the dates and kind of what

18 documents were provided. That was the timeline that I

19 put together for Ms. Stafford.

20 Q. And you believe that you put this timeline

21 together as early as 2015?

22 A. Yes. Sometime I think, you know, before May. I

23 know we were working on the cases together, she and I,

24 because initially Mr. Maynor had been out due to

25 illness.

0164

1 Q. Okay. And was this timeline created at the

2 request of Ms. Stafford, or was it just something that

3 you did as part of your investigation?

4 A. I think it was requested by Ms. Stafford if I

5 remember.

6 Q. And what did you use to compile this timeline?

7 A. Our file with each document that we had.

8 Q. And did you use the CAVU system at all?

9 A. I probably looked at it as well.

10 Q. Okay.

11 A. I'm not 100 percent -- I think I did, but I'm

12 not 100 -- I can't swear to it.

13 Q. Okay. Just kind of looking at the

14 timeline because I think this timeline will help us

15 fill in some places where the CAVU notes that should

16 have been entered were not present, so we see 7-28 of

17 2014 on IMS 145.

18 A. Yes.

19 Q. Okay. It appears that the investigator received

20 an E-mail response from Dean Kelker?

21 A. Yes.

22 Q. And then what is this below it, to your

23 understanding? Well, on the next page.

24 A. On the next page, that was the, I guess, cover

25 letter to his response.

0165

1 Q. Okay. And in looking here, the next entry I

2 have still is August 12th, 2015. Do you see that?

3 A. Yes.

4 Q. Okay. And just to confirm, so the only action

5 -- well, two things. One, with this August 12th date

6 appearing here, could this timeline still have been

7 submitted earlier in 2015, or is this a case where this

8 document was supplemented at some point?

9 A. This was supplemented -- this was the final --

10 you know, when I wrote the ROI, this is the complete

11 ROI. I provided, I think, Ms. Stafford with a timeline

12 up until the initial response we received.

13 Q. And included with that submission to Ms.

14 Stafford, was there any kind of recommendation,

15 conclusion, or other opinion by you?

16 A. No. We had just discussed what we have kind of

17 talked about earlier today, going through the response

18 from Mr. Kelker and the fact that I felt that it did

19 not follow our rules, and you know it was just left up

20 to her.

21 Q. All right. And I will refer you back to tab

22 number one in your binder. If you can, please review

23 that document.

24 A. (Witness complies). Okay.

25 Q. All right. And do you recognize that document?

0166

1 A. This is the letter that Mr. Bolton sent, the

2 allegation letter Mr. Bolton sent to iMortgage.

3 Q. Okay. And had you seen this before?

4 A. Yes.

5 MR. MATHEWS:

6 Okay. At this time, I would like to offer and

7 introduce as "Respondent's #8," the allegation letter

8 by Mr. Bolton dated July 1, 2014.

9 JUDGE WHITE:

10 Is there an objection?

11 MS. EDWARDS:

12 No objection, Your Honor.

13 JUDGE WHITE:

14 I don't know what happened to "#7."

15 MR. MATHEWS:

16 Yes, it's "#7."

17 JUDGE WHITE:

18 Okay. It will be admitted without objection.

19 Where is it?

20 MR. MATHEWS:

21 Oh, it is at tab one in your binder.

22 JUDGE WHITE:

23 Two pages?

24 MR. MATHEWS:

25 Correct.

0167

1 BY MR. MATHEWS:

2 Q. And Henk, do you use a similar letter in your

3 investigation? I know this was drafted by Mr. Bolton,

4 but are you familiar with the formatting of this

5 letter?

6 A. Yes. I use something similar.

7 Q. Okay. And here essentially, we see the

8 investigator is putting iMortgage on notice that it is

9 under investigation for violations of the laws and

10 rules, and then there is a request for certain

11 information. Do you see that?

12 A. Yes. It's alleging that they are in violation,

13 and a request for additional information.

14 Q. Okay. And let's look at -- there's two bullet

15 points on the first page. Look at the second bullet

16 point at number two.

17 A. Under the second bullet point, number two?

18 Q. Right.

19 A. Okay.

20 Q. And what is Mr. Bolton asking for with this

21 particular request?

22 A. He is asking for the types of reports required

23 -- excuse me. The types of appraisal reports that were

24 performed.

25 Q. Okay.

0168

1 A. Specifically a 1004, a 1025, a 2055, Form 2000,

2 and Form 1073.

3 Q. And in your own investigations, are these the

4 same forms that you would generally ask for?

5 A. Probably not the 2000.

6 Q. And why not the 2000?

7 A. To my recollection, it's not on our fee study.

8 Q. Okay. When you say "our fee study," which fee

9 study?

10 A. Southeastern's Fee Study.

11 Q. Okay. So your answer is the Southeastern Fee

12 Study, and that would be a fee study commissioned by

13 the board and funded by the board, and something that

14 you use in your investigation work?

15 A. It's one of the fee studies that the board has

16 -- accepts as valid. Also, the Form 2000 is not on the

17 VA fee study either.

18 Q. Okay. And am I correct that you used the fee

19 studies -- you mentioned the Southeastern and the VA --

20 in your investigations of an AMC for reasonable and

21 customary fees in order to have something to compare

22 the AMC's fees to; is that correct?

23 A. Yes.

24 Q. And now you and Ms. Edwards were talking earlier

25 about the board's rule 31101?

0169

1 A. Yes.

2 Q. In particular A.1.

3 A. Okay.

4 Q. And one of the ways by which an AMC can show a

5 presumption of compliance is by setting its fees based

6 upon an independent private sector survey; is that

7 correct?

8 A. It states, an independent private sector survey.

9 Q. Okay. And you mentioned the Southeastern study,

10 and I think you also said the VA. What types of fee

11 studies are those?

12 A. The VA I think would be considered a government

13 agency fee schedule, and the Southeastern would be

14 considered an academic study.

15 Q. And were those two fee studies approved for use

16 by the board?

17 A. My understanding is the Southeastern is accepted

18 by the board, and we also accept the VA.

19 Q. Are you aware of whether there was a process by

20 which the board accepted and/or approved the

21 Southeastern Fee Study?

22 A. I was not here at that time.

23 Q. Okay. Fair enough.

24 MR. HALL:

25 Excuse me just a minute. Can you give me a

0170

1 guesstimate on time?

2 MR. MATHEWS:

3 We can take a break. I have got probably

4 another 35 or 45 minutes.

5 MR. HALL:

6 Okay. A five-minute break, please.

7 (A RECESS WAS TAKEN AT THIS TIME).

8 MR. HALL:

9 Okay. We're ready if you are ready to go.

10 JUDGE WHITE:

11 Mr. Chairman, you want to go back on the record?

12 MR. HALL:

13 Yes.

14 JUDGE WHITE:

15 Everyone who was present when we broke is

16 present now, so proceed, Counsel.

17 MR. RIEGER:

18 So stipulated, Your Honor.

19 JUDGE WHITE:

20 Thank you.

21 BY MR. MATHEWS:

22 Q. Henk, if you can, let me back up a second to

23 where we left off. You mentioned that that

24 Southeastern study was an academic fee study?

25 A. That's my understanding, yes.

0171

1 Q. And where do you gain that understanding?

2 A. That it was done by a university.

3 Q. And do you know if this Southeastern Fee Study

4 was peer reviewed?

5 A. I have no idea.

6 Q. Do you know who commissioned the Southeastern

7 Fee Study?

8 A. I think the state commissioned it or funded it.

9 Q. And is it your understanding that this is an

10 academic fee study simply because it was conducted by a

11 college or university?

12 A. Yes, I mean, that's what I think.

13 Q. And in your testimony earlier, you mentioned

14 upon review of the materials that iMortgage submitted

15 which I think is "Respondent's #3," and also tab three

16 in your binder, and you were reading from various

17 places in there, but the place I was looking to was on

18 IMS 23.

19 A. 23?

20 Q. Yes, sir. And iMortgage indicates that their

21 appraisal fee determination under the second

22 presumption is based on a national fee study survey

23 performed by --

24 A. I'm sorry. Where are you reading?

25 Q. Oh, I'm sorry. I'm reading on the third full

0172

1 paragraph down, the second line of that third full

2 paragraph. The paragraph starts, with respect to.

3 A. Okay. I got you. I'm sorry.

4 Q. And I think I just read, "Our appraisal fee

5 determination under the second presumption is based on

6 a national fee study performed by the previously

7 referenced client." And I mean, as you discussed,

8 there was a fee study conducted by a client of

9 iMortgage's. Do you recall that?

10 A. Yes.

11 Q. And I think you testified that -- I wrote it

12 down -- that you did not consider this fee study

13 referenced by iMortgage to be an independent fee study.

14 Do you recall that?

15 A. I think I stated that it appears that it's not

16 an independent study.

17 Q. Okay. And what is an independent study for

18 purposes of compliance with the board's reg 31101.A.1?

19 A. I don't know if I can necessarily speak to the

20 board's definition. I mean, I can read the rules and

21 my interpretation.

22 Q. Okay.

23 A. What they are looking for -- I'm sorry. I'm

24 going to go back to the rules for a second if that's

25 okay.

0173

1 Q. Okay.

2 A. Under 31101.A.1, evidence for such fees may be

3 established by objective third-party information such

4 as a governmental agency fee study, academic study,

5 and then an independent private sector. I'm just

6 reading that if you are part of the transaction, I

7 wouldn't think that that would be independent.

8 Q. Okay. And do you have any documentation or

9 anything that bears out this thought of what is

10 independent for the purposes of this reg?

11 A. I'm sorry. Could you ask that one more time?

12 Q. Yes. Is your understanding of independence

13 based on any written documentation provided by the

14 board or otherwise?

15 A. No. It would just be my understanding of the

16 term "independent."

17 Q. Okay. And just going back to the same provision

18 31101.A.1, it says that evidence for such fees may be

19 established by objective third-party information.

20 A. Right.

21 Q. So am I correct that this is not the exclusive

22 way to comply with the board's -- with this particular

23 rule?

24 A. Based on what it states, I mean, I wouldn't

25 think so. It's above my pay grade, really.

0174

1 Q. Okay. Do you have any personal knowledge as to

2 how iMortgage's client as referenced in its response to

3 the allegation letter formulated the fee study?

4 A. In their response, it states that they have a

5 large origination client that works on a cost plus

6 basis, the client has performed their own fee survey

7 nationally, and developed the data on a county/parish

8 basis for each state, and it states that we cannot

9 speak, meaning iMortgage, to the details of the

10 development of the survey as it was completed without

11 our involvement. And I think we also requested or were

12 told that we were going to receive a copy of the fee

13 study, but I don't think we did.

14 Q. Did you request the fee study as part of your

15 investigation?

16 A. I did not, but I think it was part of the, if

17 I'm not mistaken, the -- not the -- the witness list

18 and exhibits I think you all were going to provide.

19 Q. So your answer is no, this was not requested --

20 this fee study was not requested as part of your

21 investigation?

22 MS. EDWARDS:

23 I think he said -- I'm going to object. He

24 asked and answered. He said no.

25 MR. MATHEWS:

0175

1 Okay. But there was some follow-up. I just

2 wanted to make sure the record is clear.

3 MS. EDWARDS:

4 Well, he has the right to explain.

5 JUDGE WHITE:

6 What is your objection?

7 MS. EDWARDS:

8 My objection was he asked him, and the witness

9 responded no, but it was my understanding, and he went

10 on to explain it. And so then Mr. Mathews said, so

11 your answer is no? And his answer was no. I think he

12 has asked and answered the question.

13 MR. MATHEWS:

14 Our position is that everything following no was

15 nonresponsive. If we are going to do that, we can

16 strike it from the record.

17 JUDGE WHITE:

18 Well, you're going to get the witness again, Ms.

19 Edwards, to clear up anything that -- this is cross,

20 so I'll let him have some latitude on cross.

21 MS. EDWARDS:

22 Right. But so are we saying that if he asks him

23 a yes or no answer, he can't explain his answer?

24 JUDGE WHITE:

25 He does get an opportunity to explain.

0176

1 MS. EDWARDS:

2 Thank you.

3 JUDGE WHITE:

4 But it must distinctly refer to that response,

5 and -- actually, I'm going to let him question the

6 witness on cross, and let you clarify and expand, Ms.

7 Edwards.

8 MR. MATHEWS:

9 Okay.

10 JUDGE WHITE:

11 Go ahead.

12 MR. MATHEWS:

13 Thank you very much.

14 BY MR. MATHEWS:

15 Q. One more time. So your answer is no, the fee

16 study was not requested as part of your investigation;

17 correct?

18 A. I did not request it.

19 Q. And do you know how iMortgage's client conducted

20 the fee study referenced in the response to the

21 investigation?

22 A. No, I do not.

23 Q. So you have no way of knowing whether the client

24 of iMortgage that had this fee study done had a third

25 party separate and apart from that client itself

0177

1 conduct the fee study; do you?

2 A. No. Just from their response, though, it stated

3 that this client has performed their own fee study at

4 the bottom of page IMS 22.

5 Q. Sure.

6 A. The client has performed their own fee survey

7 nationally and developed the data on a county/parish

8 basis for each state, and it states we can't speak to

9 the details of the development of their survey as it

10 was completed without our involvement.

11 Q. Sure. So from that, we can gather that

12 iMortgage itself is not aware of necessarily the

13 methodologies used in compiling the client's fee study;

14 is that correct?

15 A. That would be my interpretation, yes.

16 Q. Okay. And do you know the methodology for

17 composing the Southeastern fee study that we just

18 discussed?

19 A. No, I do not.

20 Q. Okay. And do you know the methodology for

21 compiling the VA study that we discussed?

22 A. No, I do not.

23 Q. Okay. Yet, I think you have testified that both

24 of those are fee studies that you view as valid, I

25 guess, in your investigation; is that correct?

0178

1 A. It's my understanding that the board accepts

2 those two fee studies.

3 Q. But again, you are not aware of any kind of

4 official action by the board approving or adopting

5 these fee studies?

6 A. I think that they adopted the Southeastern fee

7 study, but I was not here at the time, so it is my

8 understanding if that study is used that we assume that

9 they are somewheres in compliance, or if they use the

10 VA.

11 Q. And in your time as an investigator for the

12 board, have you ever seen the board address an

13 independent private sector survey or a survey other

14 than the VA or Southeastern fee studies?

15 A. I haven't been in any meetings where any surveys

16 have been presented to be accepted or approved.

17 Q. In the course of your investigation, have you

18 been presented with a fee study other than the

19 Southeastern or VA fee studies in efforts to comply

20 with 31101.A.1 for the board's rules?

21 A. Are you speaking for iMortgage?

22 Q. No, no. In your investigations of any AMCs.

23 A. Not to my knowledge.

24 Q. Okay.

25 A. That I can think of.

0179

1 Q. Do you know the procedure and/or proper protocol

2 for receiving an independent private sector survey as

3 compliance with 31101.A.1?

4 A. If I received that, I probably -- if it was sent

5 directly to me, I would probably make a copy, give it

6 to legal counsel, give it to the hearing officer, a

7 copy to Mr. Maynor, and a copy to Mr. Unangst.

8 Q. So it is your testimony that if presented with

9 an independent private sector fee survey, you would not

10 make a determination that the responding party has

11 complied with 31101.A.1?

12 A. I think that's above my pay grade. Again, if I

13 was asked to look at it, to render an opinion, but it's

14 not my job to approve or disprove a fee study.

15 Q. Okay. Well, let me back up. In your role as an

16 investigator for the Louisiana Real Estate Appraisers

17 Board, what do you understand your duties to be in an

18 investigation of an AMC as to the customary and

19 reasonable fees?

20 A. To determine -- to send out an allegation letter

21 if it appears that it's warranted, to receive the

22 response and review it, put together -- put together a

23 report of investigation, and submit it with an opinion.

24 Q. Okay.

25 A. That's briefly.

0180

1 Q. Sure. I appreciate that. As you understand in

2 particular the 31101.A.1, it's possible among other

3 mechanisms for compliance for an AMC to comply with

4 this particular provision by providing an independent

5 private sector fee survey; correct?

6 A. I'm sorry. If you could -- just one more time.

7 I'm just trying to make sure I understand the question.

8 Q. All right. It's possible under 31101.A.1 that

9 we have been discussing here for an AMC to comply with

10 this particular provision by providing an independent

11 private sector fee study; correct?

12 A. Yes, if it was accepted.

13 Q. And you say "if it was accepted." If it was

14 accepted by whom?

15 A. The board.

16 Q. And what would be the mechanism for the board to

17 accept? Would it have to come before the board on an

18 actual adjudication?

19 A. That, I don't know. As I said, if I received

20 the study, I would pass it to legal counsel, to the

21 director -- Mr. Maynor, the director of investigations,

22 Mr. Unangst, and that's really their decision on

23 whether or not a study is acceptable.

24 Q. Okay. But earlier, you testified that you did

25 not consider the study as referenced by iMortgage in

0181

1 response to the allegation letter to be an independent

2 fee survey; is that correct?

3 A. If you're asking my opinion, my opinion is that

4 if you're telling me that it's, as stated here, that

5 it's done by the client because that appears to be what

6 this is stating, the client has performed their own fee

7 study, it does not appear to be independent, and it may

8 not be objective, and my opinion is that then,

9 therefore, it may not be valid. I don't make the final

10 say-so on that.

11 Q. You don't make the final say-so, but you made a

12 recommendation ultimately that the fee study was not

13 sufficient to comply with the rules. That seems to be

14 a recommendation. Is that not a recommendation?

15 A. We don't have a copy of the fee study, so I

16 don't know what the fee study is, so to ask me to

17 blindly accept something, I --

18 Q. Fair. And you have the right and arguably a

19 duty in your investigation to, if you feel you need

20 more information, to make the recommendation or

21 determination to request additional information from

22 the respondent; correct?

23 A. Yes.

24 Q. And, yet, I think we have established -- it has

25 been asked and answered -- you did not request the fee

0182

1 study referenced by iMortgage in its response to the

2 allegation letter; correct?

3 A. Did I request it? No, I did not.

4 Q. And I would ask you now to look to tab three in

5 your binder.

6 A. Okay.

7 Q. And in your earlier testimony with Ms. Edwards,

8 you mentioned that iMortgage in response to the

9 allegation letter provided a great number of things, a

10 packet. What did iMortgage not provide, I guess, in

11 response to the allegation letter? And you can look --

12 I mean, if you look at the first page of the tab three,

13 it kind of gives you an overview of what was provided.

14 A. I guess one of the things they didn't provide

15 was the fee study.

16 Q. Okay. And do you know if that fee study was

17 requested in the allegation letter? And you don't have

18 to guess. It's at tab one.

19 A. I don't see that it was requested.

20 Q. Okay. And looking back to the iMortgage

21 response that is at tab three --

22 A. Okay.

23 Q. -- and, I guess, we can look through -- look at

24 -- I'm sorry. Can you look at "R-5" which is at tab 11

25 in your binder?

0183

1 A. Tab 11?

2 Q. Yes, sir.

3 A. Okay. And then --

4 Q. And then if you turn specifically to IMS 150 at

5 number two.

6 A. (Witness complies). Okay.

7 Q. And you see it looks like in this part number

8 two, you recount the methodology set forth by iMortgage

9 in setting fees including a reference to a fee survey,

10 and then it looks like there is a conclusion based on

11 the response and the documents provided that it appears

12 that they have failed to utilize the proper methodology

13 to determine the fees they are paying to appraisers or

14 at a rate which is customary and reasonable. What was

15 your basis for this conclusion?

16 A. The information they provided.

17 Q. I guess then what basis under the law did you

18 have for this conclusion?

19 A. Based on our rules of how reasonable and

20 customary fees are determined, it does not appear that

21 they were following our rules when they -- when they --

22 in the way that they were determining how they were

23 calculating fees.

24 Q. Okay. And then staying with the report of

25 investigation for a moment, you conclude that by

0184

1 failing to utilize the correct methodology, they are in

2 violation of R.S. 37:3415.15 and Chapter 311,

3 Subsection 31101 of the rules and regulations. I

4 guess, let's look back at those provisions which I

5 think you have in your --

6 A. Yes.

7 Q. You have got the reg. Do you have the statute?

8 Do you have a copy of the statute as well?

9 A. No, I just have a copy of the rules.

10 Q. I was trying to hunt you up a clean copy, but we

11 have got one that Rob wrote on.

12 A. That's okay. Okay.

13 Q. And I just handed you a copy of Louisiana

14 Revised Statute 37:3415.15, and I'm going to ask you,

15 if you will, to look at Section A.

16 A. Yes, sir.

17 Q. Okay. I guess my question is, how did you

18 conclude that iMortgage failed to comply with either

19 the statutes or the reg that I have provided you when

20 iMortgage indicated in its response that its fees were

21 based on a fee survey conducted by its client on behalf

22 of his client?

23 A. Like I said, you know, my understanding is that

24 it's supposed to be an independent private sector

25 survey or objective third party. If it was done by

0185

1 someone party to the transaction, then it's not.

2 Q. In looking at the law or the reg that we just

3 referenced, is that definition that you just provided

4 us included anywhere in that law or reg?

5 MS. EDWARDS:

6 In the reg?

7 MR. MATHEWS:

8 Either one.

9 BY MR. MATHEWS:

10 Q. Mainly the reg.

11 A. Wait. You are talking about consistent with --

12 what --

13 Q. You gave me -- let's see. In response to my

14 last question, you said, my understanding is that it is

15 supposed to be an independent private sector survey or

16 objective third party. If it was done by some party to

17 the transaction, then it's not. And I was asking you

18 to point me to that definition or requirement in the

19 reg or the law, either one.

20 A. I mean, in our rules, it states what I have read

21 about the independent -- I'm sorry. Established by an

22 objective third-party information such as government

23 agency fee schedules, academic studies, and independent

24 private sector surveys.

25 Q. Okay. And what I have asked is if you can point

0186

1 me to any definition of independent private sector

2 surveys such as you provided in your earlier testimony.

3 A. I'm not trying to be flip, but independent, my

4 understanding is someone that is not associated with

5 the transaction. Objective means you are putting

6 yourself -- you can act, and it's not going to affect

7 the outcome you being party to it if you can be

8 objective and do something like that. If the client is

9 part of the transaction, it would appear to me that

10 they -- that it would be very hard to be independent.

11 Q. And I appreciate that, but my question was

12 whether there is anything in the reg -- I guess, we are

13 focusing on the reg -- that sets forth the definition

14 that you just provided.

15 A. Not that I can see, but this is talking it

16 appears about fee disclosure, and not just customary

17 and reasonable fees. I could be wrong.

18 MR. HALL:

19 Do you have any further questions?

20 MR. MATHEWS:

21 Yes, sir. I do.

22 MR. HALL:

23 Can you give me an idea on how long it is going

24 to take for you to complete your questions, sir?

25 MR. MATHEWS:

0187

1 I'd say 25 minutes or so.

2 MR. HALL:

3 Excuse me. I asked you a specific question.

4 MR. MATHEWS:

5 Yes, sir. And I said about 25 minutes, I think.

6 These are all estimates.

7 MR. HALL:

8 Thirty-five minutes ago, you said 30 minutes.

9 MR. MATHEWS:

10 Yes, sir. These are estimates. These are not

11 -- I can't provide you with a specific time because my

12 questions are obviously going to be based on the

13 responses that I get from the witness.

14 MR. HALL:

15 Perhaps maybe you should define what you mean by

16 estimate.

17 MR. MATHEWS:

18 Well, you're asking me for a time that you think

19 I'm going to wrap, and it is all going to be dependent

20 upon the witness' testimony, so I can give you my best

21 guess, but I can't provide a definitive answer. I can

22 try to wrap as quickly as possible, but I do believe I

23 need to make the most complete record possible, and I

24 have the utmost respect for the proceedings and y'all's

25 time.

0188

1 MR. HALL:

2 Proceed, please.

3 BY MR. MATHEWS:

4 Q. All right. In looking back to iMortgage's

5 response at tab three --

6 A. Yes.

7 Q. -- specifically IMS 24 --

8 A. Kellen, do you need this sheet back?

9 Q. Oh, thank you.

10 A. IMS 24?

11 Q. Yes. There is a statement that appraiser fee

12 development is driven by current market data associated

13 with --

14 A. Hold on. I'm sorry. I'm just trying to find

15 out where you are.

16 Q. It is the last sentence in the first full

17 paragraph on page IMS 24.

18 A. Okay. Page 24, the last full sentence?

19 Q. Yes, sir.

20 A. Therefore?

21 Q. Yes.

22 A. Okay.

23 MS. EDWARDS:

24 Do you want him to read it?

25 MR. vanDUYVENDIJK:

0189

1 You want me to read it?

2 BY MR. MATHEWS:

3 Q. You can just read it to yourself. That's fine.

4 A. (Witness complies). Okay.

5 Q. And I guess thinking back to your conclusion

6 that iMortgage failed to utilize the correct

7 methodology in violation of the law and/or board Rule

8 31101, how did you arrive at that conclusion when

9 iMortgage indicated that its fees were driven by

10 current market data?

11 A. The three options under 31101.A, evidence of

12 such fees may be established by objective third-party

13 information. That's number one. Two, the board at its

14 discretion may establish a customary and reasonable

15 rate. That is not -- we haven't done that. You know,

16 the board has not done that. I shouldn't say "we."

17 Licensees electing to compensate fee appraisers on any

18 basis other than an established fee schedule as

19 described in paragraphs one and two above shall, at a

20 minimum, review the factors listed in 31101.B.1-6 on

21 each assignment made, and make appropriate adjustments

22 to recent rates paid in the relevant geographic market

23 necessary to ensure that the amount of compensation is

24 reasonable.

25 Q. Okay. And is it your understanding that these

0190

1 three mechanisms under 31101.A as you just described

2 are exclusive means of compliance with the board's

3 rules and regs?

4 A. That's my understanding.

5 Q. And what is your understanding based upon?

6 A. What I've been told by my supervisor, Mr.

7 Maynor.

8 Q. Mr. Maynor? Okay. In looking -- I'm going to

9 direct you to IMS 31.

10 A. Okay.

11 Q. And we see that there is a spreadsheet. The

12 third column of that spreadsheet says customer product.

13 A. Yes.

14 Q. And as far as you understand, what information

15 is contained in this column?

16 A. Which product was ordered by iMortgage for the

17 appraiser to complete.

18 Q. Okay. And I see one in here that says FNMA 2000

19 field review. Do you see that? There are several

20 entries.

21 A. It's about five down or so?

22 Q. Yes. There is one.

23 A. Yes, I see it.

24 Q. And does the board currently have a fee study

25 that it uses or that you use in your investigation with

0191

1 regard to this product?

2 A. Not that I'm aware of.

3 Q. So is this something that you would investigate

4 in your role as a Compliance Investigator 3 for the

5 board?

6 A. That particular product?

7 Q. Yes, sir.

8 A. I don't have anything to go by to determine

9 whether or not the fee is reasonable and customary.

10 Q. And to your knowledge, is this a covered

11 transaction as that term is used under federal law?

12 A. I do not believe it is.

13 Q. Okay. And would this fall under the

14 jurisdiction of this board, this particular

15 transaction?

16 A. I wouldn't think it would.

17 Q. Okay.

18 A. If we're talking about the one for the 2000.

19 Q. Yes, FNMA 2000. And if you look, there is

20 another entry that -- and just going back, if you look

21 at that chart and that column that we were just looking

22 at, there are several entries that are listed FNMA

23 2000; correct?

24 A. That's correct.

25 Q. And then further down, there's another -- it's a

0192

1 Form 2006 Desktop Review. Do you see that?

2 A. Yes, I do.

3 Q. And does the board currently have a fee study

4 that it recognizes or that you use in your

5 investigation with regard to this product?

6 A. Not that I'm aware of.

7 Q. And would this product be something that would

8 be under the jurisdiction of this board?

9 A. I don't believe it would be. And may I add that

10 we're talking about customary and reasonable fees.

11 Q. Sure. I'm sorry. And that was my next

12 question.

13 A. I just wanted to make sure.

14 Q. So the board would not review these particular

15 products and transactions that we looked at for

16 customary and reasonable fees; correct?

17 A. That's correct.

18 Q. Okay. And I will direct you back to tab number

19 2-B in your binder.

20 A. (Witness complies). Okay.

21 Q. And did you have any input in the issuance of

22 this notice of adjudication?

23 A. I think this is the one that my ROI was based

24 off of.

25 Q. Okay. What do you --

0193

1 A. For -- wait. Let me look.

2 MS. EDWARDS:

3 What was your question? Did he draft it?

4 BY MR. MATHEWS:

5 Q. Did you have any input in the issuance of this

6 notice of adjudication?

7 A. This one, I think was based off my timeline, if

8 I'm not mistaken, but I think it was prior to the

9 conclusion of the ROI that I did.

10 Q. Okay. And you are aware that this particular

11 notice included allegations of untimely payments by

12 iMortgage?

13 A. Yes.

14 Q. And subsequently, in your report of

15 investigation, you found that the payments that were

16 made were timely?

17 A. Yes, they were made based off of a prior

18 agreement iMortgage had with the appraiser vendor or

19 vendee.

20 Q. And are you aware that this notice, this June

21 24th notice has subsequently been superseded by another

22 notice of adjudication?

23 A. Yes.

24 Q. And in that notice, are you aware that the

25 charge for the time has been removed?

0194

1 A. Yes, I am.

2 Q. And let's look at the September 16th notice and

3 look specifically --

4 A. What page?

5 Q. It's on the next tab, and look at IMS 15.

6 A. Okay.

7 Q. And down in the complaint, we see that there is

8 a reference to 150 separate real estate appraisal

9 assignments. Do you see that?

10 A. Yes.

11 Q. And are you aware that that number of 150 real

12 estate appraiser assignments has subsequently been

13 reduced, and I think now, we're down to nine?

14 A. Yes.

15 Q. Okay. And were you involved in the process that

16 caused the number to be reduced from 150 real estate

17 appraisals to nine? I know it's kind of broad.

18 A. I didn't establish the 150, and I think you all

19 had provided us with a spreadsheet showing originations

20 for I think originally 15 reports. One was a second

21 mortgage which I think we removed, and then there were

22 three that I think dealt with prior dates, and then I

23 think there were three that were discussed for a

24 reasonable fee, and there's a fourth one that is

25 actually outside of the date and I think the reasonable

0195

1 and customary fee. So I have seen it and I know it,

2 but I didn't create it.

3 Q. Okay. And the spreadsheet that was sent along

4 with iMortgage's initial response back in July of 2014,

5 which we were just looking at back at tab three, does

6 this contain the necessary information to determine

7 whether these particular appraisals should have been

8 subject to adjudication?

9 MS. EDWARDS:

10 I'm going to object before he answers. Again,

11 this is really irrelevant. We have culled it down. We

12 have actually done a stipulation with the other side

13 that we are focusing on nine, so to continue to go into

14 the other 100 and something is just a waste of the

15 board's time. I understand they're trying to make a

16 record, but we have actually stipulated that these are

17 the ones that we're here for. And there has been prior

18 testimony by Mr. Maynor, yes, it was 150. If they want

19 us to stipulate to a number, yes, we will say it was

20 150.

21 JUDGE WHITE:

22 So your objection is that this is duplicative,

23 it is not --

24 MS. EDWARDS:

25 Duplicative and irrelevant because we're not

0196

1 here on these remaining ones.

2 JUDGE WHITE:

3 What's your response, Mr. Mathews?

4 MR. MATHEWS:

5 If they want to stipulate to the fact that the

6 investigators were provided with the information

7 necessary to make a determination that these charges

8 should have never been noticed, then I'm fine with

9 that. I mean, that's all I'm really trying to show.

10 MS. EDWARDS:

11 No.

12 JUDGE WHITE:

13 I'm not sure that's what she's saying.

14 MR. MATHEWS:

15 Okay. Well, then I need to go down this line of

16 questioning then. There's not a whole lot left,

17 honestly.

18 JUDGE WHITE:

19 Well, what is your response to the duplicative,

20 that's it's a duplication of what has already been

21 stipulated to?

22 MR. MATHEWS:

23 No, sir, Your Honor. This is showing the

24 materials necessary to determine that the board is not

25 bringing these charges were with the investigators from

0197

1 day one. If there is no stipulation to that point,

2 then I think I need to finish making that illustration.

3 JUDGE WHITE:

4 Ms. Edwards?

5 MS. EDWARDS:

6 Well, we're not going to stipulate that the

7 board had information, and that they moved forward

8 against iMortgage having information that would have

9 exonerated them. The testimony already came out from

10 Mr. Maynor that once information was provided by

11 iMortgage, even without going through each one, we took

12 their word and did some random sampling and culled it

13 down to nine. So this information has already been

14 elicited from Mr. Maynor. And again, we're not here --

15 I know what they are trying to show is that the board

16 acted improperly and went against them for 150. If

17 that was the case, we would be trying 150 cases today.

18 We acted in good faith, took their word, and we're down

19 to nine. I don't think this information is relevant,

20 and it has already been elicited from Mr. Maynor.

21 JUDGE WHITE:

22 And the stipulation?

23 MS. EDWARDS:

24 Well, we've stipulated that it's nine.

25 JUDGE WHITE:

0198

1 Mr. Mathews, I think we may be duplicative and

2 cumulative of this issue. Why don't you try to wrap

3 this up?

4 MR. MATHEWS:

5 I'm trying to put a bow on it. I know he's

6 going to get on me, but I don't have a whole lot left,

7 I think, if I can just have a couple of more.

8 JUDGE WHITE:

9 All right. Let's move on.

10 MR. MATHEWS:

11 Your Honor, just to be clear, can I finish my

12 line of questions?

13 JUDGE WHITE:

14 Yes, go ahead and finish, but let's please do it

15 swiftly.

16 MR. MATHEWS:

17 Okay.

18 BY MR. MATHEWS:

19 Q. I think my last question was a spreadsheet that

20 was sent along with iMortgage's initial responses back

21 in July of 2014 through looking at tab three which you

22 now have in front of you, does this contain the

23 necessary information to determine whether these

24 particular appraisals should have been subject to

25 adjudication?

0199

1 A. The spreadsheet provides which product was

2 ordered. A 1004 is generally ordered for a mortgage.

3 Generally, there is a purchase, or a refinance. There

4 is an engagement letter that we were also provided

5 which showed that it was either for a refinance or for

6 a purchase which would put it under our fee study, so

7 it would provide the information we need to determine

8 whether or not the fee was reasonable or customary.

9 Q. Okay.

10 A. Or, you know, compare it to our --

11 Q. Sure. I mean, we just went through some of

12 these, and we said that some of them, Like the FNMA

13 2000, the Form 2006 Desktop Review are not ones that

14 come under the purview of the board's review for

15 customary and reasonable; correct?

16 A. That's correct.

17 Q. So based on this spreadsheet that was provided

18 in July of 2014, the board had information, or the

19 investigators had information that could have resulted

20 in a decision not to move forward with the charge, at

21 least relative to those appraisals that fall outside of

22 the purview of the board's review for customary and

23 reasonable fees?

24 A. I guess so.

25 Q. Okay.

0200

1 MR. HALL:

2 Mr. Mathews, would you, please estimate again

3 for me how long before you complete? This is the third

4 time I've asked, and we're now to over an hour and a

5 half, and you estimated 30 minutes the first time. So

6 what is it now?

7 MR. MATHEWS:

8 I would rather not give you another estimation

9 bcause I have been so wrong, but if you press me on it,

10 I think I have no more than ten minutes unless my

11 colleagues have a whole bunch, but again, we are trying

12 to present our case, and it's not an exact science as

13 far as what the response would be.

14 MR. HALL:

15 Okay. You are estimating ten minutes?

16 MR. MATHEWS:

17 Yes.

18 MR. HALL:

19 Okay. Let's go.

20 BY MR. MATHEWS:

21 Q. Henk, did you or anyone else on the

22 investigator's staff reach out to iMortgage to gain an

23 additional understanding of its response as to the

24 allegation letter?

25 A. Not that I know of. Not that I know of. I'm

0201

1 sorry.

2 Q. And did anyone, either yourself or anybody else

3 in the investigative staff reach out to iMortgage to

4 assist them in compliance with the board's regs and

5 rules?

6 A. Not that I know of. I'm speaking for myself.

7 Q. Sure. Do you know whether the complaint that

8 gave rise to this investigation was made by a borrower

9 or an appraiser?

10 A. An appraiser is my understanding.

11 Q. Okay. Did any consumer complain about any of

12 the appraisals that are the subject of this proceeding

13 here today?

14 A. I'm sorry. Say that one more time.

15 Q. Did any consumer make a complaint, to your

16 knowledge, with regard to any of the appraisals that

17 are subject of the proceeding here today?

18 A. A complaint how?

19 Q. A complaint to the board or --

20 A. No. But I mean, are you -- what type of

21 complaint?

22 Q. Any type of complaint.

23 A. I would have to go in, and, you know, search by

24 address and see if we received any complaints.

25 Q. That's fair. But as you sit here today, you are

0202

1 not aware of any complaints from a consumer?

2 A. I haven't really looked and said, you know, this

3 is an iMortgage report.

4 Q. Throughout your investigation process, has

5 iMortgage been cooperative in the investigation?

6 A. I mean, they have responded when we have sent

7 them letters.

8 Q. Have they ever expressed any intent not to

9 comply with the board's rules or regs?

10 A. Not to me.

11 Q. Okay.

12 MR. MATHEWS:

13 Let me confer with Mr. Rieger. I may be

14 finished.

15 MS. EDWARDS:

16 That's it?

17 MR. MATHEWS:

18 Yep.

19 JUDGE WHITE:

20 Redirect?

21 MS. EDWARDS:

22 Yes, sir.

23 BY MS. EDWARDS:

24 Q. Henk, you were asked about CAVU. I think you

25 looked at a sheet that showed some entries in CAVU for

0203

1 this case; is that correct?

2 A. Yes.

3 Q. What is CAVU? Is that an internal system?

4 A. Yes, it is.

5 Q. Did you use just CAVU in your investigation? Or

6 let me rephrase. Did you use just the information

7 contained within CAVU to investigate the allegations

8 and render a report of investigation?

9 A. No.

10 Q. Okay. To your knowledge, is there anything

11 missing from the file that you used for your

12 investigation?

13 A. Anything missing from the file file?

14 Q. Correct.

15 A. Not that I'm aware of.

16 Q. And to your knowledge, was everything that was

17 received from iMortgage, either directly from iMortgage

18 or through their counsel part of and included in the

19 file?

20 A. To my knowledge, yes.

21 Q. Okay. Now, you were asked if I think the letter

22 that Mr. Bolton sent initially, whether or not it

23 requested a fee study, and I think your answer was no;

24 correct?

25 A. To my knowledge, yes.

0204

1 Q. Were you aware that there was a fee study before

2 iMortgage even responded to the allegation letter?

3 A. No, I was not.

4 Q. If iMortgage had provided a copy of their fee

5 study, would you have included it in the file?

6 A. Yes, I would have.

7 Q. Was there any information that iMortgage

8 attempted to provide that you did not include in

9 looking at your investigation and include it in the

10 file?

11 A. No.

12 Q. Was iMortgage in any way, to your knowledge,

13 limited by what they were able to provide to you in

14 order for you to conduct your investigation?

15 A. Not to my knowledge.

16 Q. Okay. I'm going to call your attention back to

17 the rules, Subsection 31101, and actually we have a

18 copy that I have marked as "S-6." Since we've

19 discussed it, I'm going to mark it for identification

20 in evidence. This is Chapter 311, 31101 entitled

21 General Provisions; Customary and Reasonable Fees;

22 Presumptions of Compliance.

23 JUDGE WHITE:

24 And this is your "Exhibit S-6"?

25 MS. EDWARDS:

0205

1 I believe it's "#6."

2 JUDGE WHITE:

3 "S-6" would be the next one.

4 MS. EDWARDS:

5 Yes.

6 MR. MATHEWS:

7 No objection.

8 JUDGE WHITE:

9 It will be admitted.

10 BY MS. EDWARDS:

11 Q. Okay. I'm going to call your attention to

12 "S-6," and you were asked earlier if looking at A.1

13 where it says evidence for such fees may be

14 established, the question to you if I recall it

15 correctly was, does that mean that there can be no

16 other means of establishing a fee, and your answer was

17 what?

18 A. No -- let's see.

19 Q. Do you want me to rephrase it?

20 A. No, I would assume that there could be another.

21 Q. Are the other ways that they could comply

22 contained within Rule 31101?

23 A. I'm sorry. Let me try and read this, so I'm

24 not --

25 Q. That's okay.

0206

1 A. My interpretation would be that under 31101.A.1,

2 that you could use an objective third-party study such

3 as a government agency fee schedule, academic study, or

4 an independent private sector survey that excludes

5 assignments ordered by appraisal management companies.

6 That's one method. The board at its discretion may

7 establish a customary and reasonable rate. That's

8 another method, and we do not have that rate

9 established. And the third is that licensees may elect

10 to compensate fee appraisers on any basis other than an

11 established fee schedule as described in paragraphs one

12 and two above as long as it includes the factors under

13 B.1-6.

14 Q. Okay. So let me ask you this. Is there

15 anywhere else in our rules or laws that set out any

16 other ways that customary and reasonable can be

17 presumed?

18 A. Not that I'm aware of.

19 Q. Okay. And did iMortgage provide to you anything

20 showing that they used any of the six factors in

21 Section B?

22 A. Their response showed that they used some of the

23 factors.

24 Q. Okay. And B, my reading of it says at a minimum

25 the following elements; is that correct?

0207

1 A. That's what my understanding is.

2 MS. EDWARDS:

3 Okay. I marked this as "S-6" for introduction

4 which has been introduced. And that's all the

5 questions I have, Your Honor.

6 JUDGE WHITE:

7 Recross?

8 MR. MATHEWS:

9 Just one.

10 JUDGE WHITE:

11 Did you say just one?

12 MR. MATHEWS:

13 Well, yes, it always depends, Your Honor. I'm

14 sorry.

15 BY MR. MATHEWS:

16 Q. I think you just mentioned that iMortgage

17 provided information to show that it complied with some

18 of the six factors. Can you tell me just by process of

19 elimination which ones they did not provide information

20 for?

21 A. That's under tab three; is that correct?

22 Q. Yes, sir.

23 A. Okay. Under appraiser's scoring on page

24 IMS 24 --

25 Q. All right.

0208

1 A. -- I'm just going to read it if that's okay.

2 "iMortgage Services does utilize an appraiser scoring

3 system to rank appraiser performance. The system is

4 based on a four point system with four being the

5 highest and zero being the lowest. The score keys off

6 of service levels and product quality. As was

7 previously mentioned, for an appraiser to be eligible

8 for auto-assign, he/she must maintain a score of 2.5 or

9 higher. The service component of the score is directly

10 tied to turn time on the order." So it is establishing

11 turn times. I'm just going to borrow this for a

12 second.

13 MS. EDWARDS:

14 Okay.

15 MR. vanDUYVENDIJK:

16 "The quality component is based on QA results

17 once the appraiser delivers the report to iMortgage

18 Services and prior to delivery to the client."

19 So then it talks about quality. "The scoring

20 system is designed to give less weight to clerical

21 issues in the report such as a missed checkbox and

22 grader weight to material valuation issues such as

23 incorrect or missing adjustment. The score is further

24 delineated by product type as there are appraisers that

25 are more proficient on single family properties as

0209

1 compared to multi-family properties or review products.

2 The scoring system is designed to allow us to identify

3 the appraisers who are best suited to a particular

4 order type.

5 "The scoring system becomes less used in the

6 sparsely populated areas based on the likelihood of low

7 volume and extended turn times."

8 And that was the end of it. So they did talk

9 about scope of work. And they talked about product

10 type. They talked about turn times. They talked about

11 the appraiser's quality, experience, and professional

12 record is -- you know, I'm not sure. And then

13 qualifications, that did not come into play from my

14 reading this.

15 Q. Okay. And obviously, one component of

16 iMortgage's response, what about the appraiser

17 information that was provided? I think --

18 A. The appraiser information if you're talking

19 about the spreadsheet --

20 Q. Yes, sir.

21 A. -- it's showing -- once again, it relates back

22 to the scores that they talked about. A score of zero

23 through four, and that was what we already discussed

24 under appraisal scoring.

25 Q. Okay.

0210

1 A. So it didn't appear that --

2 Q. So I have just kind of been making tick marks.

3 It seems like there's one element that you're saying

4 that they didn't provide information for, and that is

5 the qualifications?

6 A. The experience, and -- I think it was -- I think

7 it was qualifications, yes.

8 Q. And what type of information would you typically

9 like to see to establish a fee appraiser's

10 qualifications?

11 A. That's really up to them, but that's not

12 something that they stated they used or provided, so

13 based on the response, it would appear that that was

14 left out of their calculations.

15 Q. And again, you never followed up with them to

16 clarify to say, hey, guys, it looks like you hit five,

17 but there's one that I don't see in your response?

18 That never took place; did it?

19 A. No.

20 Q. Okay. Look at IMS 29.

21 A. (Witness complies). Okay.

22 Q. I'm sorry. IMS 26.

23 A. (Witness complies). Okay.

24 Q. If you will, look at Section 5(a)a, Appraisers?

25 A. I'm sorry. 26?

0211

1 Q. Yes, 26. And under Vendor Partner Agreement, go

2 to 5(a)a.

3 A. (Witness complies). Okay.

4 Q. Can you read that for me real quick?

5 A. "IMS requires that an appraiser vendor partner

6 be state licensed or above, have at least three years

7 of appraising experience, be active with the ASC, AQB

8 compliant, and not have any prior history of

9 disciplinary action. (Required documents and

10 agreements, W-9, current license for all states

11 licensed, resume' showing appraisal experience, accept

12 vendor agreement in online profile (annually), accept

13 AIR agreement in online profile (annually), E&O (where

14 applicable). Current or prior disciplinary action

15 notifications obtained by the ASC or applicable state

16 board will result in the decline of an account at the

17 company level."

18 Q. And having reviewed that, is it still your

19 position that iMortgage provided no information

20 relative to the fee appraiser qualifications?

21 A. This appears to be an annual -- an agreement

22 that they would sign annually. This states that it

23 should be done for each appraisal report, so therefore,

24 if they're not -- if they're not maintaining it for

25 each report as far as quality -- I'm sorry -- as far as

0212

1 qualifications, there is nothing in their system. A

2 licensee shall maintain written documentation that

3 describes or substantiates all methods, factors,

4 variations, and differences used to determine the

5 customary and reasonable fees for appraisal services

6 conducted in geographic market areas. This

7 documentation shall include -- that goes into there.

8 Under three, licensees electing to compensate fee

9 appraisers on any basis other than an established fee

10 schedule as described in paragraphs one or two above

11 shall, at a minimum, review the factors listed below on

12 each assignment made.

13 Q. Okay. So is it your position that this

14 information that we just read on IMS 26 may suffice to

15 comply or to provide the fee appraiser qualifications,

16 but that this was done on an annual basis and so it

17 doesn't suffice to provide the information for each

18 separate appraisal?

19 A. How are they scoring it on each report if you

20 are using the scoring system?

21 And there is also C, "Licensees shall maintain

22 records of all methods, factors, variations, and

23 differences used to determine the customary and

24 reasonable rate of compensation paid for each appraisal

25 assignment in the geographic market of the property

0213

1 being appraised in accordance with Subsection 30501.C."

2 MR. MATHEWS:

3 I have nothing further.

4 JUDGE WHITE:

5 Is that it for this witness?

6 MS. EDWARDS:

7 Unless the board has questions.

8 MS. BONURA:

9 I have a question. Henk, when you were asked --

10 MS. EDWARDS:

11 Would you identify yourself for the record?

12 MS. BONURA:

13 Janis Bonura. When you were asked, did

14 iMortgage give you all documents requested, and you

15 guessed or something to that effect, I'm sure he has

16 got it, was it in a timely manner that those were given

17 to you?

18 MR. vanDUYVENDIJK:

19 I think that --

20 MS. BONURA:

21 In your opinion?

22 MR. vanDUYVENDIJK:

23 I think for the most part, I think we have been

24 at the very end right now trying to get data back and

25 forth, and it has been tight.

0214

1 MS. BONURA:

2 Okay. Thank you.

3 MR. GRAHAM:

4 I've got a quick question, real brief. Michael

5 Graham. Henk, we spent a lot of time talking about

6 SOPs, standard operating procedures, in regards to

7 investigations, and correct me if I'm wrong, it seems

8 like this is an internal policy that is put into place

9 to promote consistency and to help out the integrity

10 and the credibility of the process going forward for

11 investigations? I'm not saying there has been any

12 deviation, but if there has been any, has it affected

13 the credibility or the integrity of this investigation

14 process, in your opinion?

15 MR. vanDUYVENDIJK:

16 I think we have tried very hard to be fair.

17 When we went through and thought that they were making

18 late payments to appraisers, we researched it. We

19 determined that they weren't. We pulled that. When we

20 found out that they had less than -- you know, it

21 wasn't 150 appraisals that were in question, that it

22 was really 12 or 15, you know, we've lowered the

23 number. We've tried to do this as fair as possible.

24 There were some challenges with this when Robert went

25 out right after I was hired. I think that altered how

0215

1 things were done a little bit with Ms. Stafford.

2 MR. GRAHAM:

3 And this standard operating procedure is an

4 internal process that Mr. Unangst has the latitude to

5 change as he sees fit from time to time; is that

6 correct?

7 MR. vanDUYVENDIJK:

8 That's correct.

9 MR. GRAHAM:

10 Okay. Thank you.

11 JUDGE WHITE:

12 Further board questions?

13 MR. McMORRIS:

14 Yes, I have a question. Tommie McMorris. Can

15 you tell me what year the reasonable fees were first

16 established by the board, please?

17 MR. vanDUYVENDIJK:

18 I think the first schedule was issued -- was

19 funded in '12, and issued with a 2013 date, if I'm not

20 mistaken.

21 MR. McMORRIS:

22 Okay. Were those reasonable fees accessible by

23 all of the AMCs so that they would know that a

24 reasonable fee study had been concluded, and for them

25 to use to see if they were or were not in compliance?

0216

1 MR. vanDUYVENDIJK:

2 I wasn't here at that time. I really couldn't

3 say.

4 MR. McMORRIS:

5 Would you know if iMortgage had access to those

6 fee schedules?

7 MR. vanDUYVENDIJK:

8 I wasn't around at that time. Sorry.

9 MR. McMORRIS:

10 Okay. Thank you.

11 JUDGE WHITE:

12 Further board questions? Okay. Will the

13 witness please step outside? Don't discuss what went

14 on in here out there, will you please?

15 MS. EDWARDS:

16 No other witnesses for the Appraisers Board,

17 Your Honor.

18 JUDGE WHITE:

19 Defense?

20 MR. RIEGER:

21 Your Honor, I'd like to -- excuse me. Mr. Chair

22 and Members, I want to make a motion to dismiss this

23 proceeding in its entirety. I very much appreciate --

24 JUDGE WHITE:

25 Why don't you identify yourself, Counsel?

0217

1 MR. RIEGER:

2 I'm sorry. Pardon me. I'm counsel for

3 iMortgage, Robert L. Rieger, Jr., Adams & Reese. I

4 would like to make a motion to dismiss this proceeding

5 at this time in its entirety. And I very much

6 appreciate -- let me make it real, real clear. We are

7 not here to complain about the actions of this board.

8 We're complaining about the actions of the

9 investigation in the way that it was done. That's why

10 we went into rigorous detail to say that our client

11 provided information at the very beginning back in July

12 pursuant to an extension of time. Going to Ms.

13 Bonura's question, we -- our general counsel made a

14 request for additional time to provide all of the

15 information. Okay? We asked for an extension and we

16 were granted until July 30th. We made a submission on

17 July 28th. Every bit of information that we gave

18 became the basis to dismiss all but nine allegations of

19 this particular matter, if you will. We have -- yes,

20 we have worked with the staff. We have tried, but they

21 -- the staff had every iota, every scintilla of

22 evidence it needed at the time to dismiss every bit of

23 this.

24 And to your point, Mr. Graham, absolutely, these

25 rules and procedures are there for a reason. They are

0218

1 to show that a licensee or anyone going through this is

2 given a modicum of due process, process that means

3 information is brought in, records are kept together,

4 not a file file. You don't have two files. You don't

5 have a CAVU system, and you don't have a file. That is

6 like being on double secret probation if you ask me.

7 You have a system. You should input everything into

8 it. That way, you pull it straight out.

9 Now, I'm not necessarily going to quibble with

10 Ms. Edwards on failure to -- about getting stuff from

11 here, but this has taken way too long, over a year.

12 Now, to your question -- I think it was Mr.

13 McMorris -- the fee survey for 2014 came out May 30th

14 of 2014. That survey -- for '13. That survey was not

15 available to iMortgage at all during this investigatory

16 period except for the last month. Okay? So anything

17 that took place prior to that, this document was not

18 available to them. They didn't have that. That was

19 not something that was publicly available to them that

20 they were able to use. So we believe anything that

21 took place prior to May 30th, or June of 2014 should

22 not be considered, should be dismissed as well.

23 Furthermore, you have not heard it said anywhere

24 that either in the statute or in the rules that these

25 are the exclusive ways of proving customary and

0219

1 reasonable. That's not there. The word on -- and I

2 mentioned it in my opening. The language on fee study

3 is may be. May is a discretionary. It means you can

4 do something. Nowhere in this does it say it is the

5 exclusive way to do a fee survey. We told the staff we

6 relied on a fee study by our client. It was a

7 proprietary thing that we did not have access to.

8 Okay? The client chose not to give it to us.

9 And there is nothing in here that questions the

10 independence of that survey. Just some back of the

11 envelope notion by an investigator, but there is -- but

12 this back of the envelope notion has absolutely no

13 support in the rules. Had there been guidance -- and

14 Ms. Edwards was good to bring this out. You are not

15 required to give guidance, but from someone looking at

16 this thing a long way away, it looks like you can use a

17 fee survey by a third party, and it could be someone

18 who has no interest in the transaction. Flagstar Bank

19 has no interest in the transaction whatsoever. They

20 don't get any of the fees. In fact, all of the fees

21 are set with a cap to the consumer of a best estimate,

22 a good faith estimate. We can't go above that. We

23 can't change any of that. That bank got not a dime of

24 any of this. The bank benefits in no way from the

25 transaction of the dollars or anything. None

0220

1 whatsoever.

2 You will learn, or I will tell you OCC requires

3 fee surveys, and those OCC -- and I said that in my

4 opening, OCC requires those fee surveys because that's

5 how they help determine whether the bank is sound, so I

6 will question, can the staff really say that the OCC is

7 wrong in authorizing a fee study, and that this board

8 can't recognize a fee study that a bank and a regulator

9 use to rely on the soundness of that financial

10 institution. I do not see how that is a reasonable

11 interpretation, especially since there is nothing in

12 here that says this is the only way you can do it.

13 This reg does not say, these are the only ways to do

14 it. There's nothing in here that says exclusive.

15 First of all, if you go back to the statute, the

16 statute doesn't say there is anything about exclusive

17 ways. It says consistent with the presumptions of

18 compliance under federal law. Consistent with the

19 presumptions of compliance, and you know what? You

20 don't need presumptions to be able to comply. It just

21 lists a bunch of factors. You can do it a bunch of

22 different ways to prove whether or not your fee is

23 customary and reasonable. There is nothing in here

24 that says an AMC cannot use its own experience with the

25 fees it has paid to appraisers in the market area.

0221

1 There is nothing that says that here. There's nothing

2 whatsoever that says that.

3 So the takeaway that Mr. Maynor and Mr. Henk

4 both gave saying that there was something wrong is

5 absolutely incorrect because there is no exclusive

6 language in this document, the thing that you are

7 telling us that we violated. Looking at this, my

8 client doesn't know why he is being cited here. And

9 after providing all of this information, and that we

10 relied on to get over 100 and some odd things

11 dismissed, what is going on here? Really, we have to

12 ask the question. Again, this is not being critical of

13 this board at all. Okay? But you all are people, you

14 are businessmen and women. What would it be like to

15 have you go through something like this when the same

16 information that was presented back in July of '14 is

17 the one that is utilized to dismiss all of this

18 information? That is an abuse of process, and that is

19 not fair under the laws of Louisiana, and the United

20 States, and the federal constitution.

21 We have a property right at issue here that is

22 our license. Our ability to do business in Louisiana

23 has been severely jeopardized by the length of this

24 investigation, and that we've had to move heart and

25 soul, body and soul to push all of this in there trying

0222

1 to dismiss this thing, to bring it down to one thing.

2 Then they do not admit that this is not an exclusive

3 list and does not recognize that we can use the fees we

4 pay our own -- for our own deals, appraisers as part of

5 this customary and reasonable because there is -- as I

6 understand it, there is no fee survey. It's not fixed.

7 This board has not fixed a survey. That would be price

8 fixing. You'll have antitrust issues there. I don't

9 think this board has done that.

10 So for all of these reasons, given the

11 circumstances, we believe the just, equitable, and

12 right thing to do is to dismiss this proceeding at this

13 point. Thank you.

14 JUDGE WHITE:

15 Response?

16 MS. EDWARDS:

17 Just quickly, I'm going to leave the decision up

18 to the board as to whether or not the respondent

19 violated the law and rules, and what is exclusive and

20 what is not. I will say this, that it's a smoke screen

21 for CAVU. I'm not sure how Mr. Rieger's office runs

22 it, but I have a hard file, and I have a file on my

23 computer, and I will tell you, if you think I enter

24 every bit of information in there and type in

25 everything that I do for my file, I don't. I have a

0223

1 hard file. I scan things in. It's physically

2 impossible especially in a situation like this where

3 you have limited staff. As this board knows, they

4 handle appraisal, they handle AMCs, and they handle

5 real estate, and they are trying to juggle all of these

6 hats.

7 Mr. Maynor testified about how few investigators

8 he has, and all the reports that he has to look at, and

9 the information on CAVU. I think it's a smoke screen

10 to say that this investigation was done poorly. Yes,

11 it took some time, but as everybody here knows, this is

12 new territory. AMC laws are new. Louisiana is

13 breaking ground in a lot of these areas. We're doing

14 the best. We worked with iMortgage counsel to try to

15 whittle it down, and iMortgage counsel will admit it

16 wasn't until just recently that we had a couple of

17 sitdowns where they discovered that these things were

18 not covered transactions. That's not something they

19 discovered a long time ago either. So we're lawyers

20 and have difficulty doing it. We're lawyers and have

21 trouble. And I tell you, we haven't really talked

22 about the federal law, and we're not going to, but our

23 law is based on Dodd-Frank which I challenge any one of

24 you here to totally understand and tell me what it's

25 about.

0224

1 But to say that this investigation was done

2 wrong, it wasn't. It was done right. iMortgage had an

3 opportunity to present all of the evidence that they

4 wanted to present. And the fact that the investigation

5 didn't complete in 120 days, the fact that we had one

6 person that left, one person that retired, and one

7 person that was out on medical leave certainly are

8 exceptional circumstances as to why this thing didn't

9 come together as cohesively as it should have, but I

10 think the charges stand, and I think that we have

11 proven our case. And I don't think it is ripe for

12 dismissal at this point.

13 MR. RIEGER:

14 If I could be heard in response, Your Honor.

15 JUDGE WHITE:

16 Okay.

17 MR. RIEGER:

18 May it please the board, there is a big

19 difference between Ms. Edwards and I with regard to

20 standard operating procedures. We're private entities,

21 and she's right we both have some stuff that gets

22 entered into the virtual system, and some stuff we have

23 in a file. Okay? But I don't have taxpayer money, or

24 fee money, or anything else at my disposal. It's

25 private money. These measures, these SOPs are for the

0225

1 integrity of the system, integrity of the fees and

2 public dollars and taxpayer fees that come to support

3 this board's operation. It is an abomination if the

4 board's own procedures are not followed with regard to

5 documentation and other ways.

6 And I will cite you a case. The case is called

7 Washington-St. Tammany Electric versus Louisiana Public

8 Service Commission where the Supreme Court of Louisiana

9 in an unanimous decision said an administrative body's

10 ignorance or dismissal of its own rules is the epitome

11 of arbitrary and capricious conduct.

12 Now, I agree with Ms. Edwards. There are lots

13 and lots of reasons why this thing got bogged down. I

14 got it. Okay? But we're not the ones saying that we

15 violated the law. This is something that has gone on

16 all of this time period, and perhaps they did the best

17 they could do, perhaps, but is it good enough, you

18 know? Is that what a licensee for this board, either

19 AMC or appraisal side, is that what they are entitled

20 to have in terms of a full, fine, and fair hearing of

21 things?

22 And again, back to what Ms. Edward's said, no,

23 wrong. If you look at the information back in tab

24 three, the type of appraisals were in there from the

25 beginning. That's not any different. All the board

0226

1 investigator had to do was go and pull each one of

2 those -- not each appraisal, but just basically the

3 thing to see whether or not it was a default, it was

4 something else, and certainly, those that were not

5 covered by -- not covered transactions. Okay? It's --

6 I don't understand why we're the ones who have to show

7 whether they are or are not covered transactions. When

8 we got down to the written log on this thing, we

9 finally got to the point, well, yes, we can agree with

10 all of these things that these are the ones that are

11 there, but it is based on the same dadgum information

12 that was there from the beginning.

13 Okay. To have any private entity to go through

14 something like this, we believe is an abuse of power of

15 the staff in this instance, and we would ask your

16 favorable consideration to dismiss this proceeding

17 right at this moment. You don't think they've been

18 through enough? You don't think this entity doesn't

19 know that it has to play by the rules? They do, and

20 they're trying to. And as I said, based on what you

21 have seen here that this is not exclusive, that the

22 federal law allows for a lot more than is on this piece

23 of paper to be compliant. We think enough is enough.

24 It's time to shut this thing down, and we ask you to

25 dismiss the remaining nine allegations at this time.

0227

1 Thank you.

2 JUDGE WHITE:

3 Did you want to cite your Washington case,

4 Counsel?

5 MR. RIEGER:

6 I'll have to -- I don't have it on me, Your

7 Honor. I'll have to get it. I tried it in 1996. It's

8 one I remember. I had just left the general counsel's

9 office of the Public Service Commission. Louisiana

10 Supreme Court.

11 JUDGE WHITE:

12 And it's Washington what again? Washington

13 versus --

14 MR. RIEGER:

15 Washington-St. Tammany Electric versus Louisiana

16 Public Service Commission. In that case, the Public

17 Service Commission had some rules that basically

18 disposed how something was going to go, and the

19 Louisiana Supreme Court in an unanimous opinion said,

20 you've got to follow your rules. It follows a case

21 called Central Electric Louisiana -- Central Louisiana

22 Electric versus Louisiana Public Service Commission

23 says the same thing, you know, that not following your

24 own rules is the nth of arbitrary and capricious. So

25 to my point -- thank you, Your Honor. To not follow

0228

1 the things that go to the integrity of the system, I

2 suggest makes all of us as not as good as we could be

3 about this. And again, there is a heck of a lot of

4 difference between the records Ms. Edwards and I keep

5 in our offices. Thank you very much.

6 MR. HALL:

7 Okay. Do we have a motion from this board on

8 how we should move forward at this time?

9 MR. McMORRIS:

10 I have a motion. I would like to move to find

11 the respondent, iMortgage, guilty of the charges set

12 forth in the written complaint. And after reviewing

13 all of the testimony and documents, it is clearly

14 obvious that iMortgage did not follow the Louisiana law

15 and rules established in paying customary and

16 reasonable fees.

17 JUDGE WHITE:

18 Mr. Chair, more specifically --

19 MR. HALL:

20 Yes.

21 JUDGE WHITE:

22 -- maybe I should say this. The motion before

23 the board is for a directed verdict seeking a

24 dismissal. We're under the Administrative Procedures

25 Act, and Ms. Edwards, you may have something to say

0229

1 about this --

2 MS. EDWARDS:

3 Yes.

4 JUDGE WHITE:

5 -- but the idea of the board taking action to

6 deny that motion at this time, it would then throw the

7 matter to the defense if there are witnesses that the

8 respondent wishes to put on. If the board wanted to

9 hold off ruling on this to see if there were any other

10 evidence that it wants to hear, mindful of the

11 provision that -- I just looked at it.

12 MR. McMORRIS:

13 I would be willing to retract my motion, and not

14 grant the person the dismissal of the charges.

15 MR. LANDRY:

16 And I second.

17 MS. EDWARDS:

18 Yes. I think, Judge, they're not familiar with

19 directed verdict. We have never had a case before them

20 where someone made a motion to dismiss before the case

21 was completed, so I think that may be the confusion,

22 and you might explain to them exactly -- I know you

23 did, but -- I understood it, but I'm not so sure they

24 understood what the procedure is at this point.

25 JUDGE WHITE:

0230

1 Well, again, this is not a criminal proceeding.

2 This is not a civil proceeding in the sense that the

3 Code of Civil Procedure is the guidebook. It's the

4 Administrative Procedures Act. And, Mr. Rieger, you

5 might cite me if you are aware of any specific

6 provision on that. I believe it's Article 1810 of the

7 Code of Civil Procedure that --

8 MR. RIEGER:

9 It is.

10 JUDGE WHITE:

11 -- provides for directed verdicts. Is that what

12 you're relying on?

13 MR. RIEGER:

14 Yes, sir. That is correct, Your Honor.

15 JUDGE WHITE:

16 And --

17 MR. HALL:

18 Perhaps maybe we should have a roll call vote.

19 MS. EDWARDS:

20 Well, I have no -- I have no knowledge of that

21 being used in an administrative proceeding; however, I

22 have no objection to it as long as the board

23 understands that they are being asked to dismiss the

24 charges without iMortgage having put their case on.

25 JUDGE WHITE:

0231

1 Well, the standard -- of course, this is all

2 reviewable by a district court if indeed that should be

3 the case, but the standard is whether or not at the

4 close of the board's evidence, there is insufficient

5 evidence to sustain the charge. Is that the --

6 MS. EDWARDS:

7 Right. And I believe that's what Mr. Rieger is

8 asking. I don't think the board understands that

9 because they have never been put in such a situation.

10 We were basically making statements about the

11 dismissal, and I'm not real sure that the board, since

12 they have never been faced with this since I have been

13 here, which is longer than most of them have been here,

14 understand that at this point, Mr. Rieger was asking

15 that before he puts on any evidence to just have the

16 case dismissed based on the evidence that the staff has

17 introduced.

18 JUDGE WHITE:

19 They're taking the evidence in the light most

20 favorable to the board at this point, that there is

21 insufficient evidence to support a finding of a

22 violation.

23 MR. RIEGER:

24 Yes, Your Honor.

25 JUDGE WHITE:

0232

1 Is that substantially --

2 MR. RIEGER:

3 That is exactly -- that is succinctly put.

4 JUDGE WHITE:

5 So that really is the standard.

6 MR. HALL:

7 Okay. Well, what my thoughts are are very

8 simple. We'll have a roll call vote, and we can --

9 MS. EDWARDS:

10 Well, you need to have a motion on whether --

11 MR. GRAHAM:

12 How about this? I would like to make a motion

13 to not dismiss the charges and continue on with this

14 hearing as it has been going at this time.

15 MR. RIEGER:

16 If I could, the motion would just be a motion to

17 deny.

18 MR. GRAHAM:

19 A motion to deny?

20 MR. RIEGER:

21 Yes, sir.

22 MR. GRAHAM:

23 Then I would like to make a motion to deny Mr.

24 Rieger's motion to dismiss.

25 MR. McMORRIS:

0233

1 I second that.

2 MR. HALL:

3 Okay. We have a motion that has been made and

4 seconded. Any discussion on the motion? If not, we'll

5 have a roll call vote. Will you conduct that?

6 MS. EDWARDS:

7 Judge, do you want to conduct the roll call

8 vote? Do you have an agenda?

9 MR. HALL:

10 I can do it.

11 MS. EDWARDS:

12 Do you want to do it?

13 MR. HALL:

14 Okay. I will do it.

15 MR. GRAHAM:

16 This is you're answering the motion -- do you

17 agree with the motion to deny?

18 MR. HALL:

19 Right. So the motion is to deny the request.

20 Okay. Michael Graham?

21 MR. GRAHAM:

22 Yes.

23 MR. HALL:

24 Janis Bonura?

25 MS. BONURA:

0234

1 Yes. I agree to deny the motion.

2 MR. HALL:

3 Tim Hammett?

4 MR. HAMMETT:

5 Yes.

6 MR. HALL:

7 Butch Landry?

8 MR. LANDRY:

9 Yes.

10 MR. HALL:

11 Clay Lipscomb.

12 MR. LIPSCOMB:

13 Yes.

14 MR. HALL:

15 Tommie McMorris?

16 MR. McMORRIS:

17 Yes.

18 MR. HALL:

19 James Purgerson?

20 MR. PURGERSON:

21 Yes.

22 MR. HALL:

23 Let the record reflect that it is unanimous with

24 those that voted, and the motion is denied.

25 JUDGE WHITE:

0235

1 So there is a denial of the motion for directed

2 verdict. If there is an error, of course, then we

3 preserve for the record. Is there a defense?

4 MR. RIEGER:

5 Thank you very much. Yes, sir. There would be.

6 I suggest we take five minutes, Mr. Chair.

7 MR. HALL:

8 Yes. We would like to take about a ten-minute

9 break.

10 MR. RIEGER:

11 Thank you very much.

12 (A RECESS WAS TAKEN AT THIS TIME).

13 MR. HALL:

14 So we are ready to turn it back over to the

15 judge.

16 JUDGE WHITE:

17 Okay. We are back on the record?

18 MR. HALL:

19 Yes.

20 JUDGE WHITE:

21 It appears that everyone is present who was

22 present when we recessed.

23 Mr. Rieger, do you have any opening statement,

24 or do you wish to begin by calling witnesses?

25 MR. RIEGER:

0236

1 Your Honor, may it please the board, may it

2 please Judge White, we shall just go right into the

3 case. I think we did an opening statement on the front

4 end. I would remind the board that it is the burden of

5 proof of the staff to demonstrate that we have violated

6 any provision of Louisiana law including revised

7 statutes and the regs.

8 At this time, Judge White, I would like to call

9 my first witness, Mr. Matchneer. Please introduce

10 yourself for the record.

11 JUDGE WHITE:

12 Mr. Matchneer, I believe has been sworn.

13 MR. RIEGER:

14 He sure has.

15 MR. MATCHNEER:

16 I was sworn earlier this morning.

17 \* \* \* \* \* \*

18 WILLIAM WADE MATCHNEER, III,

19 after having previously been sworn did testify as

20 follows:

21 BY MR. RIEGER:

22 Q. Please state your current name and business

23 address.

24 A. Okay. William Wade Matchneer, III.

25 Q. Let me --

0237

1 A. Roman numeral three.

2 Q. Okay. Off to a good start. Let me advise the

3 board that we attached his resume' -- we have his

4 resume' at tab number five in here. It is IMS numbers

5 85, 86, 87, 88, 89, and I believe a total of five

6 pages, and I would like to mark that for potential

7 introduction into evidence.

8 JUDGE WHITE:

9 As "Respondent #8"?

10 MR. RIEGER:

11 "Respondent #8," yes, sir.

12 BY MR. RIEGER:

13 Q. Can you give the board a brief summary of your

14 educational background?

15 A. Well, I'm a lawyer, just so y'all know. I got

16 my Bachelor's Degree at Pace University in

17 Pleasantville, New York. I got my law degree at St.

18 John's University which is in Jamaica, New York.

19 Q. After you obtained your jurisdoctorate, did you

20 obtain your license to practice law?

21 A. Yes. I took the bar exam over the summer, and

22 was admitted very early in the new year in '79.

23 Q. And you are currently a licensed attorney in New

24 York; is that correct?

25 A. That's correct.

0238

1 Q. In any other jurisdictions besides New York at

2 this time?

3 A. I'm working on D.C. and Pennsylvania, but no.

4 Q. Since obtaining your license in 1979, have you

5 ever had your license revoked or suspended?

6 A. No.

7 Q. Are you currently the subject of any attorney

8 disciplinary proceeding?

9 A. No, I'm not.

10 Q. Are you currently practicing law?

11 A. Yes, I'm employed with the firm of Bradley Arant

12 Boult Cummings. I'm technically in their Washington

13 D.C. office, although I generally work from my home in

14 Pittsburgh, Pennsylvania.

15 Q. Did you give your address for the board? I

16 don't remember if we did that.

17 A. Okay. You want my home address, or my --

18 Q. How about your business address?

19 A. Well, it's --

20 Q. Do your home address. I'm sorry. My bad.

21 A. Yes. It's 38 Club Drive East, Pittsburgh

22 Pennsylvania, 15236.

23 Q. Now, you are not appearing on behalf of Bradley

24 Arant, your law firm; correct?

25 A. Correct. See, I work with them on a part-time,

0239

1 as-needed basis, and I am generally free to do other

2 things as well, and so I'm here on my own behalf at the

3 request of iMortgage and its representatives.

4 Q. What area of law do you primarily practice in?

5 A. Well, the team that I am on is the financial

6 services team which just takes in all facets of, you

7 know, mortgage lending, and servicing, and, you know,

8 appraisal. The thing that I'm working on the most

9 frankly is manufactured housing lending because I am

10 very well known in that industry from my time at HUD,

11 which we will get to in a minute.

12 Q. Prior to your employment with Bradley Arant,

13 where were you employed previously?

14 A. At the Consumer Financial Protection Bureau,

15 better known as the CFPB.

16 Q. And what was your job title with USCFPB?

17 A. I was a senior counsel, and I was in the Office

18 of Regulations, and my -- I was there for about two and

19 a half years before I retired, and my entire time, I

20 served as the team lead for the Dodd-Frank appraisal

21 regulations. And Dodd-Frank has a section in Title 14,

22 Subtitle F that is all appraisal, a whole lot of

23 different new appraisal requirements, and so that was

24 my gig.

25 Q. Were you also responsible for issues in federal

0240

1 financial law including, but not limited to, TILA, the

2 Truth in Lending Act?

3 A. Well, TILA was -- one of the statutes that we

4 were doing appraisal laws for was TILA, and so we did a

5 rule while I was there and finished it for higher

6 priced mortgage loans, and that's a TILA rule. And I

7 don't know. Maybe you're familiar with it. And also,

8 we did a rule while I was there for the Equal Credit

9 Opportunity Act having to do with the requirement to

10 provide copies of appraisals to the borrower, you know,

11 prior to the closing. I worked on the new AMC regs,

12 although those were published after I left. And let's

13 see. What else? What other things that you may know

14 of? There are a lot of small pieces in there. One of

15 them is to do with AVMs, and quality control reg

16 requirements, which we could never figure out how to

17 approach.

18 One thing that I should say is most of the rules

19 that I worked on while I was there are assigned by

20 Dodd-Frank to a six agency group, and so there were

21 like 40 people working on each rule that I was involved

22 in, and I was kind of the lead person from CFPB, and

23 then we also had the OCC, and the FDIC, and the Federal

24 Reserve, and the FHFA, and the credit union group whose

25 acronym I'm forgetting for the moment, but -- NCUA.

0241

1 Excuse me. But that's how all of those rules were

2 developed except the one that we are all here to talk

3 about.

4 Q. Tell us about your time at HUD, and when were

5 you there.

6 A. Okay. I was at HUD from 2002 until 2011.

7 Q. Excuse me. For the board who is following

8 along, we are at ISM 86 and 87 following along on his

9 resume'. Please continue.

10 A. Right, right. I first came to HUD as the

11 administrator of the Manufactured Housing Program. HUD

12 does the billing standards and regulations and

13 installation standards and regulations for manufactured

14 housing which is sort of the -- which are mobile homes.

15 And that's sort of the statutory name for a mobile home

16 in case you don't know. And I'm sure you guys are all

17 very familiar with manufactured housing. That was in

18 2002.

19 In 2005, I became acting associate assistant

20 secretary for the Office of Regulatory Affairs and

21 Manufactured Housing, which includes RESPA which you

22 all know, the SAFE Act now which is, you know, like a

23 newer thing, the Interstate Land Sales Act, and the, of

24 course, the Manufactured Housing Act. And I managed

25 that office from 2005 until about 2010, and then with

0242

1 some incoming new administration people, I got switched

2 over to the general counsel's office, but I was on the

3 general counsel's staff that advised those same

4 programs, so I was sort of moved over to the other side

5 of the table from program manager to program counsel.

6 Q. For purposes of clarity, would you name some of

7 those programs that you were part of? Would they

8 include RESPA and other things?

9 A. Yes. RESPA, the SAFE Act which is where, you

10 know, all of those MLS numbers come from, the

11 Interstate Land Sales Act, which is just basically a

12 registration act for interstate sale of more than 100

13 units, and again, the Manufactured Housing Construction

14 and Safety Standards, plus there is a program we did on

15 a contract with FHA for minimum property standards.

16 Q. Very good. Did HUD rely on your advice relative

17 to Consumer Protection Law issues, and explain if you

18 could? If the answer is in the affirmative, please

19 describe for the board some of the functions that you

20 did.

21 A. Well, most of the time my direct reports was on

22 all of the consumer -- you know, the consumer

23 protection programs that HUD has directly to the FHA

24 commissioner, and so I kept the commissioner advised on

25 a, you know, weekly, if not daily basis on, you know,

0243

1 the status of all of the consumer financial protection

2 programs that HUD has. HUD frankly does not have all

3 that many anymore. They all got transferred over to

4 CFPB, which is how I wound up there. Because of the

5 way the Dodd-Frank Act worked, it sent not only the

6 programs but the senior staff all over to an address on

7 the other side of town.

8 Q. CFPB?

9 A. CFPB.

10 Q. Prior to coming to HUD, can you provide us with

11 a brief overview of your work history post law school?

12 A. I worked with a title company for about two

13 weeks. Then I got picked up by a law firm in White

14 Plains, New York, which was a litigation firm. We took

15 assignments from a wide variety of insurance carriers,

16 you know, products liability, medical malpractice, a

17 whole range of different things that we defended, and I

18 was with that firm until '91 when I had an opportunity

19 to go down to Washington and work as a commissioner's

20 chief counsel at an agency known as the OSHA Review

21 Commission, which is not particularly well known, but

22 it was set up along with OSHA to be a stand alone

23 adjudicatory body with administrative law judges, and

24 then we sat in review of the administrative law judges'

25 decisions. We wrote appellate opinions, and then those

0244

1 opinions were subject to review by the circuit courts.

2 Q. What specific subject areas are you here to

3 provide testimony regarding?

4 A. Well, generally speaking, the whole customary

5 and reasonable fee issue, which is interesting in many

6 ways. The Dodd-Frank Act -- let me see. I have some

7 notes for myself, so I don't give you the wrong

8 citations. Section 1472, created a new section in the

9 Truth in Lending Act with 129 E, which essentially took

10 -- and you all remember the Home Valuation Code of

11 Conduct? It basically took all of the elements of the

12 Home Valuation Code of Conduct and put them into a

13 federal statute because it was sort of a clumsy thing.

14 It was just kind of a treaty arrangement made in New

15 York, and it was sort of clumsy the way it was being

16 worked with, so they made this section for appraisal

17 independence, and included essentially all of the HVCC

18 plus a brand new section on customary and reasonable

19 fees for appraisers, which was -- again, this was done

20 -- it was actually the very first regulation that was

21 published under Dodd-Frank. Dodd-Frank was published

22 in July of 2010, and this section, this brand new

23 section gave instructions to the Federal Reserve who

24 was responsible for the Truth in Lending Act at that

25 point. It gave them all of 90 days to publish an

0245

1 Interim Final Rule implementing this whole brand new

2 section. And they actually got it done like in about

3 92 days or something like that which is sort of a minor

4 miracle in D.C. to get a rule made that quickly. But

5 it was -- so it was published in October of 2010, and

6 that was well before the CFPB was formed, and so it was

7 written only by people at the Federal Reserve Board.

8 But after it was written, it became a rule in the Truth

9 in Lending Act, and it became as far as the amendments

10 go a rule that was subject to this whole six agency

11 process that I described to you earlier.

12 Q. Okay. Let's stop you right there for one

13 second. Have you ever testified as an expert before?

14 A. I have not.

15 Q. Is there any reason why you would not qualify as

16 an expert on the subject matter, and I'm talking

17 specifically consumer protection laws including but not

18 limited to TILA, the Dodd-Frank Act, the Interim Final

19 Rule, and any similar laws or regulations?

20 A. Well, I don't know. I sort of -- you know, I've

21 given you my background, and my education, and my

22 experience, and I think -- I consider myself to be as

23 much of an expert on this subject as there is out

24 there, and, you know, the appraisal independence rule

25 was something that we picked up right away and have

0246

1 worked with quite a bit, even though we didn't write

2 it, but I worked very closely with the people who did

3 write it. The guy who was responsible for getting it

4 written was my first boss at CFPB, and the staff person

5 who did the actual work was on the interagency group

6 that I worked with on all of the other rules, so I got

7 to know a whole lot about this rule and where it came

8 from, and what the intentions were.

9 Q. And this would include, you know, issues

10 requiring appraisal independence or appraiser

11 independence relative to certain home mortgage

12 transactions, and the applicability of these laws to

13 certain appraisal products and transactions?

14 A. Yes, that's a fair statement.

15 Q. Very good.

16 MR. RIEGER:

17 At this time, Your Honor, I would tender Mr.

18 Matchneer for any cross on his qualifications by

19 opposing counsel.

20 MS. EDWARDS:

21 And what are the specific areas?

22 MR. RIEGER:

23 To testify as an expert in the construction

24 application of TILA, the amendments thereto by

25 Dodd-Frank, and the application of those consumer laws,

0247

1 and certain appraisal products and transactions and how

2 they interrelate with potential state law transactions,

3 including the ones here today.

4 BY MS. EDWARDS:

5 Q. Mr. Matchneer, you are not licensed to practice

6 law in the state of Louisiana; are you?

7 A. No, I am not.

8 Q. And so your testimony is strictly going to be

9 regarding federal regulations; correct?

10 A. Well, I have reviewed the Louisiana statute, and

11 Louisiana code pretty closely, and discussed it at

12 length with Rob and his people, and so I'm -- I have

13 become familiar with it, and since it is based largely

14 on the federal rule in sort of a rearangement of

15 certain things, I think I'm -- I think I'm qualified to

16 speak to it.

17 Q. To give an opinion as a lawyer?

18 A. Yes, yes.

19 Q. Not as an expert?

20 A. No, I think -- well, I mean, I'm not --

21 Q. Well, you are a lawyer, and you are going to

22 give your legal opinion about the Louisiana law and

23 rules; correct?

24 A. Yes. That's why I'm here.

25 Q. Not an expert opinion? Just a lawyer's opinion?

0248

1 A. I -- well, I mean, I think because I was part of

2 the process that developed all of these rules in the

3 first place, and can see where all of this came

4 directly out of the work that we were doing in

5 Washington, and I could read it and patch it together

6 and see where all of the threads came from. I think --

7 I mean, no, I am not a Louisiana attorney, but I

8 certainly recognize this -- you know, these sections

9 basically from my own work product.

10 Q. Fine. Were you involved in the rule making

11 process for the Louisiana Real Estate Appraisers Board

12 for these rules dealing with appraisal management

13 companies?

14 A. Not at all, no.

15 Q. Were you involved in any way with the laws

16 having to do with appraisal management companies for

17 the Louisiana Appraisers Board?

18 A. No.

19 MS. EDWARDS:

20 Your Honor, I have no objection to him being

21 qualified as an expert regarding the federal

22 regulations, rules, laws that he was involved with,

23 but I certainly have an objection to any expert

24 testimony having to do with the Louisiana law and rules

25 which we are here for today because, no offense to Mr.

0249

1 Matchneer, lawyers are a dime a dozen. There are a

2 bunch of us in this room. And it is just basically

3 going to be his opinion on what our laws really mean.

4 And I think that is the job of the board who was

5 involved in this drafting of the law, and drafting of

6 the rules, and are going to be the ultimate decision

7 maker today.

8 MR. RIEGER:

9 If I could be heard on that, it's very simple,

10 his expert opinion, knowing the derivation of the

11 federal law and seeing similarities in the Louisiana

12 law, he absolutely can talk about the aspects of

13 Louisiana law that come from federal law because he has

14 worked with it the last ten years of his career. He

15 was at CFPB when they started the enforcement of all of

16 this. It's very clear it flows very carefully from

17 what's there, and because of the federal nature of his

18 practice and his expertise, he's going to be able to

19 suggest to you what these words mean not just in the

20 state of Louisiana, but in the nation at large. So I

21 think he absolutely is an expert here on all of this,

22 so I absolutely believe he is qualified in every facet

23 of this, Your Honor.

24 JUDGE WHITE:

25 I haven't seen his briefcase. I'll take

0250

1 judicial notice that Pittsburgh is more than 50 miles

2 away.

3 MR. MATCHNER:

4 Yes, it sure is.

5 JUDGE WHITE:

6 But at any rate, he'll be accepted as an expert

7 with whatever weight the board may ultimately give to

8 his opinions in this matter because as you indicated

9 quite correctly, Ms. Edwards, it is the board's job to

10 ultimately judge these issues.

11 MS. EDWARDS:

12 Thank you, Your Honor.

13 MR. RIEGER:

14 Very good. Thank you, Your Honor. And I would

15 agree that we are here for -- you know, this is new

16 ground here for the board.

17 BY MR. RIEGER:

18 Q. You testified earlier, Mr. Matchneer, you are

19 familiar with the purposes of Dodd-Frank. Can you walk

20 us through some of that briefly with regard to --

21 A. Why we are here today?

22 Q. -- why we are here today.

23 A. As I said, there is a Section 1472 that, you

24 know, took the Home Valuation Code of Conduct and put

25 it into federal law, and added this section on

0251

1 customary and reasonable fees. The statute itself says

2 for any covered transaction, the appraiser should --

3 the appraiser fee should be at a rate customary and

4 reasonable for comparable appraisal services performed

5 in the relevant geographic market of the property being

6 appraised.

7 Q. And what do the federal rules refer to as a

8 covered transaction?

9 A. A covered transaction is a consumer transaction

10 secured by the borrower's primary residence.

11 Q. Does Dodd-Frank apply to every appraisal

12 transaction?

13 A. No. Well, these rules apply only to those

14 transactions.

15 Q. Okay. When you say "a covered transaction,"

16 they are transactions or consumer credit transactions

17 secured by the consumer's principal dwelling; correct?

18 A. Correct.

19 Q. And that means a mortgage transaction where the

20 consumer's primary residence is collateral for a

21 mortgage loan?

22 A. Absolutely.

23 Q. How can an appraisal management company comply

24 with the Dodd-Frank Act and IFR, Interim Final Rules?

25 A. Okay. The way that the board wrote it up, the

0252

1 board -- the board took the statutory language and

2 began its -- the section actually which is published

3 for those who care at 12 CFR 1026.42f, that's the

4 subsection for customary and reasonable fees, and the

5 board -- the board's language, they start out the

6 section for any covered transaction, the appraiser fee

7 shall be at a rate customary and reasonable for

8 comparable appraisal services performed in the relevant

9 geographic market of the property being appraised, so

10 they changed it from a should to a shall. So the

11 federal law requires customary and reasonable fees,

12 you know, for covered transactions.

13 Q. Dodd-Frank provides two presumptions of

14 compliance; does it not?

15 A. Yes, yes. And there's -- well, let me give you

16 the way they did it, and the two presumption is not in

17 the statute. It was something that the Federal Reserve

18 Board came up with as a way to approach the compliance.

19 One of them is a presumption of compliance where the

20 AMC establishes fees based upon a review of six factors

21 that include the type of property, the scope of work,

22 the time in which the appraisal services are to be

23 performed, the fee appraiser's qualifications, the fee

24 appraiser's experience and professional record, and the

25 fee appraiser's work quality. And you will sort of

0253

1 recognize that I think in your second presumption in

2 the Louisiana regs. They are very, very closely

3 related.

4 Q. What is the first presumption --

5 A. And then the --

6 Q. -- or the alternative presumption?

7 A. As they wrote it up, the second presumption was

8 an alternative presumption which is where the AMC

9 established fees by relying on objective third-party

10 information, including fee schedule studies and surveys

11 prepared by independent third parties. The third-party

12 information must be based on a representative sample of

13 appraisal services in the geographic market, and cannot

14 include transactions with AMCs. And again, very

15 similar to what you see as your first presumption in

16 the Alabama (sic) regulations.

17 Q. If you will, in calculating under the first

18 presumption --

19 A. Uh-huh (affirmative response).

20 Q. -- do the fees that an AMC pays, are they

21 appropriate to be subject to calculating reasonable and

22 customary fees? The ones that are paid in proximity or

23 within the last year or at some phase up to this point,

24 are they appropriate to be considered for this?

25 A. I would say that that would be one thing to take

0254

1 into consideration, and that it be, you know, be done

2 timely enough and up-to-date.

3 Q. So your testimony is that that is something that

4 could be considered --

5 A. Yes, sir.

6 Q. -- as an element in calculating a reasonable and

7 customary fee?

8 A. Right.

9 Q. In this law, is there any sort of caution

10 against exercising anticompetitive behavior?

11 A. Well, yes. At the end of the first presumption,

12 there is a caution about setting -- essentially about

13 price fixing, and, you know, just a general concern

14 that you could get into trouble with the FTC, et

15 cetera.

16 Q. You say "FTC" meaning the --

17 A. Federal Trade Commission.

18 Q. And what do they have to do with this?

19 A. Well, they do antitrust laws.

20 MR. HALL:

21 Excuse me just one minute.

22 MR. RIEGER:

23 Yes, Mr. Chair?

24 MR. HALL:

25 A three-minute break?

0255

1 (A RECESS WAS TAKEN AT THIS TIME).

2 JUDGE WHITE:

3 Mr. Chairman, are you ready to go back on the

4 record?

5 MR. HALL:

6 Yes.

7 JUDGE WHITE:

8 Okay. The board will reconvene. Everyone is

9 present that was present when we adjourned, when we

10 recessed.

11 MR. RIEGER:

12 Thank you, Your Honor.

13 BY MR. RIEGER:

14 Q. At the time of the brief recess, I had put a

15 question to you about what the Federal Trade Commission

16 does, and what their role in this process was.

17 A. Well, they do antitrust, and this was -- this

18 was something -- again, I wasn't there when it was

19 written, but I did get to know the people who wrote it

20 very well, and that was one of the things we sort of

21 said, that that's a pretty heavy thing to put into this

22 rule, and they said, well, you know, technically, you

23 could, if you did get into the act of setting -- fixing

24 the exact pricing for appraisals, that kind of a

25 problem could come up, and so we just sort of left it

0256

1 at that.

2 Q. Let's go back to the second presumption for a

3 moment. That's the one based on fee studies by

4 objective third parties?

5 A. Yes.

6 Q. And I cite you to the language at three, small

7 i. It says that it is based on objective third-party

8 information, including fee schedule, studies and

9 surveys prepared by independent third parties such as

10 government agencies, academic institutions, and private

11 research firms. Are you aware of that language?

12 A. Yes, I am very familiar.

13 Q. Is that in any way a limitation in your judgment

14 of what sort of sources for a third-party fee survey

15 that can generate a third-party survey?

16 A. Well, the thing about all of this is that these

17 are set forth as presumptions which are by nature

18 rebuttal, and are by nature not exclusive means of

19 accomplishing the compliance end. They are --

20 Q. What is a presumption? Explain that again for

21 the record.

22 A. Well, a presumption is -- I mean, this is a

23 legal term, and I'm sorry to have to bother you with

24 this stuff, but, you know, you're sitting in -- you've

25 got to hear it. It is a suggestion rather than a

0257

1 requirement, and it is subject, even if it is met,

2 even if all of whatever is suggested is done, it is

3 still subject to rebuttal if the facts and

4 circumstances of the case would show that, you know,

5 even though you technically met this presumption, this

6 still is not what a customary and reasonable fee is in

7 this geographic area.

8 Q. So what if you did not satisfy a presumption?

9 Is that any black mark, or any sort of stain on your

10 character, or what does it mean if you don't satisfy a

11 presumption in your understanding?

12 A. Well, the point is, and make -- they make

13 reference to this in the official commentary to the

14 rule, the Federal Reserve Rule, that again, these are

15 not exclusive -- these aren't meant to be the exclusive

16 ways to comply with the rule, and that, you know, the

17 facts and circumstances of an individual case may

18 indicate that customary and reasonable fees were paid

19 even if you can't show complete compliance with all of

20 the elements of one of the two presumptions. I mean,

21 again, a presumption is just a suggestion. It's not a

22 requirement.

23 Q. It's not dispositive?

24 A. No, it's not.

25 Q. And what do I mean when I use the word

0258

1 "dispositive"?

2 A. Well, it simply --

3 Q. Is it a magic talisman? Is it open sesame?

4 A. No. It's not a requirement. It's a -- it's a

5 suggestion from the regulator as to how somebody would

6 go about doing this.

7 JUDGE WHITE:

8 Mr. Chairman, this board --

9 MR. HALL:

10 Yes.

11 JUDGE WHITE:

12 This board has the prerogative to take notice of

13 Louisiana law, and it may aid the board and counsel to

14 hear what the Louisiana Legislature has said about the

15 word presumption. In Louisiana Revised Statutes, Title

16 15, Section 432, it provides that a legal presumption

17 relieves him in whose favor it exists from the

18 necessity of any proof, but may nonetheless be

19 destroyed by rebutting evidence. And then goes on to

20 list certain legal presumptions. If it helps the

21 board.

22 MR. HALL:

23 Thank you.

24 MR. RIEGER:

25 Thank you, Your Honor. You preempted two of my

0259

1 questions. I appreciate that.

2 BY MR. RIEGER:

3 Q. Let's build on what Judge White just gave

4 guidance to the board on for a second.

5 A. Sure.

6 Q. It means if you satisfy, and the presumption is

7 established in your favor, you are relieved of

8 additional proof; is that right?

9 A. Yes. Once you get to that point, you have made

10 -- you have made your case, but it's not -- but it's

11 not over necessarily. It is subject to rebuttal.

12 Q. But only if it has been rebutted; correct?

13 A. Right.

14 Q. So let's talk a little bit about how this

15 federal backdrop deals with Louisiana.

16 A. Okay.

17 Q. Let's talk about that. Have you reviewed the

18 relevant Louisiana statutes and regulations --

19 A. Yes.

20 Q. -- regarding customary and reasonable fees for

21 appraisal services?

22 A. Yes.

23 Q. And they are located in Title 37, Section

24 3415.15, and Louisiana Administrative Code, Chapter

25 311, 31101; correct?

0260

1 A. Yes. Got them right in front of me.

2 Q. Okay. Very fine. How does the Louisiana

3 statute and the regulation compare to the federal

4 requirements under the IFR, meaning the Interim Final

5 Rule?

6 A. Well, first of all, the whole notion of this

7 customary and reasonable fee as a legal requirement,

8 you know, originated with Dodd-Frank, and got fleshed

9 out by the Federal Reserve in the Interim Final Rule,

10 and what I see here are basically the same elements and

11 the same terminology just sort of rearranged, and I see

12 an additional condition for what is the first -- it's

13 the second presumption in the Alabama or -- I'm sorry

14 -- the Louisiana code.

15 Q. Hold on just for a second if I could interrupt

16 you.

17 A. Yes.

18 Q. Let's back up just for a second and take a look

19 at the statutory underpinning in Title 37, 3415.15.

20 A. Right.

21 Q. Would you read that to the board, please?

22 A. "An appraisal management company shall

23 compensate appraisers at a rate that is customer and

24 reasonable for appraisals being performed in the market

25 area of the property being appraised, consistent with

0261

1 the presumptions of compliance under federal law."

2 Q. What does that mean to the person trying to

3 comply? If you are an AMC taking a read of this, what

4 does this mean?

5 A. Well, to me, it means that the presumptions of

6 compliance that the Federal Reserve Board provided are

7 relevant, to, you know, determination of compliance

8 with the Alabama (sic) statute.

9 Q. The Louisiana statute?

10 A. Yes. Wow, why do I keep doing that? I'm sorry.

11 (DISCUSSION OFF THE RECORD).

12 BY MR. RIEGER:

13 Q. Back on topic.

14 A. You know, we are in Louisiana. And I'm sorry.

15 So I'm sorry now. We managed to get ourselves lost.

16 Q. Consistent with presumptions of compliance in

17 the federal law?

18 A. Right.

19 Q. So that means the derivation of the Louisiana

20 law comes from federal law as we talked about; correct?

21 A. Uh-huh (affirmative response). And you can see

22 how the authors were obviously aware of how the federal

23 -- the Interim Final Rule was written, and they were

24 meaning to -- you know, obviously meaning to

25 incorporate it into the Alabama -- Louisiana code.

0262

1 Q. Let's talk about that again for a second.

2 A. Yes.

3 Q. It says consistent with the presumptions of

4 compliance under federal law. Does the statute go any

5 further than that, the Louisiana statute? Does it say

6 anything beyond that?

7 A. Well, I mean, an appraisal management company

8 shall separately state to the client all of the

9 following --

10 Q. No, I mean, I'm looking at the statute, not in

11 the reg right at this moment. Let me redirect you to

12 that. It is a one sentence statute that says, an

13 appraisal management company shall compensate

14 appraisers at a rate --

15 A. Yes. Right.

16 MS. EDWARDS:

17 Okay. Are you asking a question, or are you

18 testifying?

19 MR. RIEGER:

20 It's coming right here, Counsel.

21 BY MR. RIEGER:

22 Q. And again, it is a one sentence statute; is it

23 not?

24 A. It -- yes.

25 Q. And then from there, this board has promulgated

0263

1 rules; correct? Is that correct?

2 A. Correct.

3 Q. Do you know any limitating or limiting language

4 in the one sentence statute? Is there anything -- or

5 to ask it again, is there anything in that statute that

6 limits in any way what can be considered in coming up

7 with a customary and reasonable fee for an appraisal?

8 A. I don't see it.

9 Q. Not a word?

10 A. No.

11 Q. Pretty general?

12 A. Yes.

13 Q. Okay.

14 A. And I think they are very conscious of the

15 Interim Final Rule, and the fact that -- that they

16 really have to defer to it.

17 Q. Okay. Now, let's move over to the reg for a

18 second. All right?

19 A. Uh-huh (affirmative response).

20 Q. And let's look at A. What does A look like to

21 you? Shall compensate fee appraisers at a rate that is

22 customary and reasonable for appraisal services

23 performed in the market area of the property being

24 appraised and as prescribed by the statute, you know,

25 3415. For the purposes of this chapter, market area

0264

1 shall be identified by ZIP code, et cetera. Okay.

2 Read number one, A.1.

3 A. Yes. "Evidence for such fees may be established

4 by objective third-party information such as government

5 agency fee schedules, academic studies, and independent

6 private sector studies. Fee studies shall exclude

7 assignments as ordered by appraisal management

8 companies."

9 Q. So the only check on what can be used in that

10 one is what? What is the one -- from what I can see,

11 in that reg, what is the only thing that cannot be

12 used?

13 A. Well, you can't use studies -- assignments in

14 your study that are ordered by appraisal management

15 companies, but that same check exists in the -- in the

16 Interim Final Rule by the Federal Reserve, too.

17 Q. It's very similar?

18 A. Yes.

19 Q. The same check?

20 A. Same deal, yes.

21 Q. They are being consistent with each other right

22 at this moment?

23 A. Very much so.

24 Q. Is there any qualifier on what is any sort of

25 independent private sector survey?

0265

1 A. It -- no, I don't see it. I mean, it's --

2 independence, I mean, again, it's up to the board, but

3 I would say it would be independent of the party who is

4 being investigated, but beyond that, I don't see

5 anything to limit what an independent private sector

6 survey would be.

7 Q. So if the facts -- and you were present for the

8 testimony of the two investigators; were you not?

9 A. Yes.

10 Q. So if the facts were as part of this

11 investigation that the respondent, iMortgage, had, in

12 fact, let the board investigator know that it relied on

13 a fee study by its client, do you see anything wrong,

14 any prohibition in doing that, or anything that calls

15 into question the independence of that study?

16 A. I don't see it here (indicating).

17 Q. Do you see it anywhere in this regulation?

18 A. No, I don't.

19 Q. Do you see it back in the statutory law?

20 A. No, I don't.

21 Q. No place whatsoever; is that right?

22 A. No, I don't see it, no.

23 Q. Okay. Let's jump down -- are you familiar with

24 states or entities that have done fee studies?

25 A. I know that fee studies have been done. I know

0266

1 as soon as -- when I arrived at the CFPB back in 2011,

2 this was all new, and there were -- there was -- you

3 know, there were a lot of people talking about doing

4 fee studies and starting fee studies, and I know that

5 there have been several efforts made.

6 Q. Okay. Why would a lender do a fee study on

7 appraisal fees to come up with reasonable and customary

8 fees? Why would a lender do that?

9 A. Just -- so I mean, just to keep track of --

10 well, I'm not a lender, but so that they would know

11 what their -- what their customers are paying for.

12 Q. Is that an element of safety and soundness in a

13 requirement that its regulator, the OCC, or Federal

14 Reserve would implement with regard to the health and

15 condition of the way the bank does its loans?

16 A. I have heard that the OCC has required surveys

17 of this type, but I am not -- I haven't really reviewed

18 them or discussed them, but I know that that practice

19 exists.

20 Q. So that is an element, to your knowledge?

21 A. I know of it. I'm not -- I am not, you know,

22 sort of keenly familiar with it.

23 Q. Okay. Very fine. Let's talk about A.3. What

24 does A.3 set up for you in your mind?

25 A. Well, it looks a whole lot like the very first

0267

1 presumption in the IFR from the Federal Reserve Board.

2 It adds one thing, and that is the licensee shall

3 remain -- shall maintain written documentation that

4 describes or substantiates all methods, factors,

5 variations, and differences used to determine the

6 customary and reasonable fee for appraisal services

7 conducted in the geographic market of the appraisal

8 assignment.

9 Q. Does the IFR have such a documentation

10 requirement?

11 A. No, it does not.

12 Q. Why is that?

13 A. I don't know. I mean, it's just not -- I wasn't

14 -- I wasn't part of that rule making. I don't know if

15 that came up in the course of that rule making or

16 not, but it's not -- it's not there.

17 Q. It's not there at all?

18 A. No.

19 Q. So the absence of a limiting rule would tell you

20 as someone reading this that you could use other means

21 to prove -- elements required to substantiate a

22 customary and reasonable fee; is that correct?

23 A. Right. Well, again, as I've tried to say,

24 these two approaches as provided by the Federal Reserve

25 Board, and it appears to me as repeated again by the

0268

1 Louisiana Administrative Code are presumptions, and

2 which means, well, you know, these are two

3 presumptions, but if you've got a better way to do it

4 or another way to do it, you can still bring that to

5 the trier of fact to show that the, you know, customary

6 and reasonable fees were paid.

7 Q. Is there any limitation either in this statute

8 or -- I'm sorry -- in this reg or in the IFR that would

9 not allow an appraisal management company to utilize

10 fees paid to appraisers for -- as part of its ordinary

11 business?

12 A. I don't think so.

13 Q. There's no evidence of any of that?

14 A. No, I don't see --

15 Q. No language anywhere that says that?

16 A. No, I don't see that.

17 Q. There is no limitation in the Louisiana reg; is

18 there?

19 A. I don't see that.

20 Q. Okay. But a reg ordinarily, if it wanted to

21 exclude certain elements, it would have said that,

22 would it not, as someone who has written and

23 enforced --

24 A. Well, as somebody who has written a whole bunch

25 of regs, you know, it should. If that's what you

0269

1 intend, you really -- you have to -- you have to put it

2 in the reg, or else you wind up amending the reg later

3 because it's not clear.

4 Q. And is that not what any regulator wants,

5 that's the goal, clarity for those who may be affected

6 by that rule?

7 A. Very definitely.

8 Q. Okay. Very good. The factors in Section B of

9 the reg, let's take a look at those, if you will.

10 A. Right.

11 Q. Is there any similarity between those and the

12 IFR?

13 A. Yes, they're just about identical. I think --

14 let me check them and see. Yes, they're essentially

15 identical.

16 Q. So Louisiana has basically adopted, as it were,

17 those six elements as a means of establishing a

18 presumption for paying customary and reasonable?

19 A. Right. Exactly. Although they do add a

20 requirement for written documentation of, you know, all

21 of this --

22 Q. All of the six factors?

23 A. All of the six factors, which again, the federal

24 -- the federal rule, the IFR, sets the minimum

25 standards. The states are free to write stricter

0270

1 standards, but they can't contradict the federal

2 standard in any way.

3 Q. What do you mean by "can't contradict the

4 federal standard"?

5 A. Well, they -- I -- for instance, in this case, I

6 think that they can't make these two presumptions the

7 exclusive method of complying with the customary and

8 reasonable fee requirement. The IFR specifically is --

9 is not -- they are not exclusive. They are simply

10 presumptions subject to rebuttal. And if you've got a

11 better way of doing it, you can bring it to the trier

12 of fact, and the trier of fact is free to conclude

13 that, okay, you paid customary and reasonable fees in

14 this case, even though you're not showing me compliance

15 with either of these two presumptions.

16 Q. So again, you see nothing in this Louisiana reg

17 that would prohibit you from doing what you just

18 described?

19 A. Well, if -- if there is, I think it is in

20 conflict with the federal law which I don't believe

21 it's allowed to be.

22 Q. Well, isn't one of the first laws of legal

23 construction -- and, Ms. Edwards, I am going to ask him

24 as a lawyer on this one -- that you try not to conflict

25 with a bigger rooster in the pecking order of laws?

0271

1 And what I mean by that is the federal law is the

2 supreme law of the land, and that --

3 A. Right.

4 Q. And that is the boss rooster in the barnyard?

5 A. Correct.

6 Q. And the lesser rooster, if you will, would be

7 the Louisiana law and the Louisiana regulation?

8 A. Right.

9 Q. Do you agree with that characterization?

10 A. Right.

11 Q. Would it not be appropriate for the lesser

12 rooster to understand what the big rooster has said, if

13 you will, and conduct itself accordingly?

14 A. Right.

15 Q. And that way, it's not picking a fight with the

16 big rooster; is it?

17 A. Right. Now, one thing they have done and which

18 they are allowed to do is make -- make the presumption

19 under number three here stricter by adding a

20 requirement for documentation.

21 Q. But that only has to do with establishing a

22 presumption; is that right?

23 A. Right, right. On the presumption, which is the

24 first presumption in the IFR, the second presumption in

25 the Alabama -- I did it again -- in the Louisiana code.

0272

1 But they are free to write -- to make this stricter.

2 They simply can't contradict the overall federal

3 scheme.

4 Q. Again, was it the federal intent to limit

5 compliance with the Interim Final Rule to the two

6 presumptions?

7 A. No. And the Federal Reserve says so in the

8 official commentary to the rule.

9 Q. If a state takes a contrary approach seeking to

10 limit compliance to only two permissible methods, would

11 that be inconsistent with federal law?

12 A. In my opinion, yes.

13 Q. You mentioned the staff guidance to the Interim

14 Final Rule.

15 A. Yes.

16 Q. What does it mean?

17 A. It's the official interpretation -- it's the

18 official interpretation which comes at the very end of

19 the IFR.

20 Q. Okay. If no presumption is established by a

21 respondent such as iMortgage, what does that mean?

22 What impact, if any, does that have?

23 A. You mean if they can't meet one of the two

24 presumptions?

25 Q. Yes.

0273

1 A. Well, they have to come up with another way to

2 show that they have paid, you know, a fee appraiser at

3 a rate that is customary and reasonable for appraisal

4 services performed in the market area of the property

5 being appraised, and that would be -- that's the

6 Louisiana rule.

7 Q. So in an instance where a respondent such as

8 iMortgage is being cited for failing to pay customary

9 and reasonable --

10 A. Uh-huh (affirmative response).

11 Q. -- do they have to satisfy either presumption?

12 A. Well, to me, if -- if that's how Louisiana wrote

13 the rule, then it's in conflict with the federal rule.

14 Q. So we don't want Louisiana's rule to conflict

15 with federal rule; do we?

16 A. Well, that's --

17 Q. I understand that that's the board's call.

18 A. That's the board's call.

19 Q. Picking a fight with the big rooster would be my

20 characterization; would you agree with that?

21 A. Well, I mean, I understand -- yes, I mean, I

22 would agree with that.

23 Q. Who has the burden of proof, generally speaking,

24 in an administrative proceeding to demonstrate

25 something? Who has the burden of proof to carry an

0274

1 issue?

2 A. Well, the body that's charging noncompliance has

3 the burden of proof.

4 Q. So in this instance, it's not iMortgage's burden

5 at all to show that it did fail to pay customary and

6 reasonable rates? It is, in fact, the board's staff's

7 burden to demonstrate that iMortgage didn't; is that

8 correct?

9 A. Yes. I think that is simple, you know, correct.

10 Q. So again, if the staff has not carried its

11 burden of proof to affirmatively demonstrate that

12 iMortgage has not paid customary and reasonable fees,

13 then this board should in its exercise of prudential

14 judgment dismiss the allegations against iMortgage?

15 A. Well, again, that's for the board to decide.

16 MR. RIEGER:

17 I have no other questions. Please answer any

18 cross-examination Ms. Edwards might have.

19 BY MS. EDWARDS:

20 Q. I have just a few. You were asked about --

21 under Section 31101 which is the rules --

22 A. Yes.

23 Q. -- you were asked about objective third-party

24 information such as government agency fee schedules,

25 academic studies, and independent private sector

0275

1 surveys --

2 A. Uh-huh (affirmative response).

3 Q. -- and you were asked the question whether or

4 not you saw anything in here that defined independent

5 private sector surveys, or objective third-party

6 information, and I think your answer was no; correct?

7 A. Yes, it was no. I mean, I think independent on

8 its face means if you are an AMC, you cannot do your

9 own survey.

10 Q. Okay.

11 A. Beyond that, I don't see a limitation.

12 Q. Okay. So if you are an AMC, you can't do your

13 own survey, but your client -- you can contract with

14 your client where your client requires that you use

15 their fee survey that they have done, you consider that

16 independent?

17 A. Again, I don't see any language in here.

18 Q. I understand that. I'm asking you a specific

19 question.

20 A. Yes.

21 Q. I understand you don't see the language, but my

22 question to you as an expert as you profess yourself to

23 be, an intelligent man, a lawyer, do you believe that

24 having a contract with your client to use their fee

25 survey qualifies as an independent survey?

0276

1 A. I -- I would say -- and I understand what the

2 relationship here is with iMortgage and the fee survey

3 that it uses, and I think it's -- I think this statute,

4 these regs allow for that.

5 Q. Okay. What specifically in these regs allows

6 for it?

7 MR. RIEGER:

8 Objection. Argumentative, Your Honor.

9 MS. EDWARDS:

10 He's an expert.

11 MR. RIEGER:

12 Yes, he is an expert.

13 JUDGE WHITE:

14 Let counsel make his objection.

15 MR. RIEGER:

16 The objection is yes, it is argumentative. He

17 has asked and answered the question. I heard it. Now,

18 she's arguing with him because she doesn't like the

19 answer he gave.

20 JUDGE WHITE:

21 Ms. Edwards?

22 MS. EDWARDS:

23 Clearly not true. I asked him, although he does

24 not see limiting, does he believe that that's

25 independent? And he never answered it. He hem-hawed

0277

1 around, and then eventually said these regs

2 specifically, and he started talking about the reg. I

3 am asking him as an expert, as a lawyer, he's telling

4 everybody that he is very familiar with all of this,

5 whether or not he believes the fact that iMortgage in

6 this particular case has a contract with a client who

7 has done their own survey and requires them to use

8 their survey, is that considered independent? That's a

9 yes/no answer.

10 MR. MATCHNEER:

11 Well, I would call it --

12 JUDGE WHITE:

13 Hold on.

14 MR. RIEGER:

15 That's all right. That's all right. I will

16 allow it.

17 JUDGE WHITE:

18 Objection overruled.

19 MR. MATCHNEER:

20 Okay. I would say since it is not done by

21 iMortgage itself, it's independent of iMortgage. I

22 would -- to me, that's independent.

23 BY MS. EDWARDS:

24 Q. So your testimony is that unless the AMC does

25 their own study, it would be considered independent?

0278

1 A. I would -- yes, I would say so.

2 Q. Okay. Now, have you seen this fee study?

3 A. No.

4 Q. Do you know what was contained in it, or how it

5 was done?

6 A. No.

7 Q. So how do you know whether or not it fits the

8 criteria of a fee study?

9 A. All I know is whatever was done was done

10 independent of iMortgage, and so you've asked me about

11 whether I think it's independent, and I think it is. I

12 don't know -- as far as -- I mean, again, I haven't

13 seen it. I have only heard about it.

14 Q. Now, you were asked earlier why a lender would

15 want to do their own fee study, and your response was

16 so that they would know what their customers are paying

17 for. Explain that to me.

18 A. You know, they are going to have to generate a

19 TILA RESPA, and they want to know -- I mean, I would

20 say, I don't know. I am not the lender. I am not

21 sitting in the boardroom or making policy decisions.

22 Q. So you don't know why a lender would want to

23 have their own fee study?

24 A. I can imagine why they would.

25 Q. But you don't know?

0279

1 A. No.

2 Q. What is your relationship with iMortgage?

3 A. I was contacted by their -- by actually a REVAA

4 representative who then put me in touch with Rob

5 Rieger, and they asked me if I would, you know, provide

6 sort of expert legal information for this case that

7 they were involved with in Louisiana.

8 Q. So do you have any other involvement with

9 iMortgage?

10 A. No.

11 Q. Do you know if iMortgage is for sale at this

12 time?

13 A. No.

14 Q. Have you been involved in finding a buyer for

15 iMortgage?

16 A. No.

17 Q. Nothing at all? No contact with iMortgage?

18 A. No, no.

19 Q. Your contact --

20 A. I had one prior contact with iMortgage actually

21 which had to do with -- I have a relationship with an

22 equity firm in New York that has asked me to find

23 equity -- you know, people interested in equity

24 partnerships, and as a matter of fact, the same person

25 from REVAA put me in touch with iMortgage last year at

0280

1 some point, and it turned out they weren't interested.

2 Q. So you were contacted by someone to find an

3 equity partner in iMortgage?

4 A. No. This is a firm in New York that invests in

5 small to medium American companies for long-term

6 growth, and they contacted me not long after I retired,

7 and they were initially very interested in trying to

8 find manufactured housing opportunities, and I'm very

9 well known in that industry because of my time at HUD,

10 and I go to all of the, you know, the meetings, and

11 conferences, et cetera, and -- and I also, you know,

12 while I was at CFPB got to know people in the appraisal

13 area, and so I -- you know, I called Don Kelly who used

14 to run REVAA, and said, hey, Don, do you know anybody

15 who might be interested in sort of an equity partner,

16 and he said he would check around, and iMortgage sort

17 of came up on his radar screen. We had a couple of

18 phone calls, and then nothing happened.

19 Q. But there was some contact regarding iMortgage

20 and an equity partnership?

21 A. Yes, there was, and I can't put a date on it.

22 MS. EDWARDS:

23 That's all the questions I have. Thank you.

24 JUDGE WHITE:

25 Redirect?

0281

1 MR. RIEGER:

2 Thank you, Your Honor.

3 JUDGE WHITE:

4 Sure.

5 BY MR. RIEGER:

6 Q. Mr. Matchneer, and to the board, I'm looking at

7 "Exhibit State #4" or "S-4." It's this document right

8 here (indicating), and I'm going to ask Mr. Matchneer a

9 couple of questions about it. Ms. Edwards had asked

10 you that you couldn't -- well, you couldn't understand

11 why a fee study might be done by a lender, but if a

12 lender's fee study that was applied here generated a

13 fee that was in excess of an academic fee established

14 or a fee established by an independent third party, in

15 this instance, Southeastern University Business

16 School --

17 A. Yes.

18 Q. -- would that appear that the fee to be paid

19 would be customary and reasonable? And I'm directing

20 you to the seventh column over.

21 A. All right.

22 Q. And actually, it's the seventh and eighth column

23 over. They are all in yellow; is that correct?

24 There are some numbers in there?

25 A. There are numbers there.

0282

1 Q. There are numbers, and they are all in yellow;

2 right?

3 A. Yes.

4 Q. And this chart deals with 15 appraisals --

5 A. Uh-huh (affirmative response).

6 Q. -- that were the remaining appraisals when we

7 came to the hearing this morning.

8 A. Right.

9 Q. If you accept that.

10 A. Yes.

11 Q. Now, we made the point in discussions with

12 counsel that utilizing the Flagstar fee study generated

13 fees that were in excess of the Southeastern Louisiana

14 University fee study; is that correct, according to

15 this?

16 A. Well, I -- according to this, yes, and -- yes, I

17 mean, it's -- just from looking at the paper, that

18 seems to be so.

19 Q. Specifically, let's look at the customer ID, the

20 second one from the top, FLA-6002. That was order

21 number 331196623. Do you see that one?

22 A. I do.

23 Q. How much under total vendor order fee did the

24 Flagstar fee study call for to be paid?

25 A. It looks like 575.

0283

1 Q. And how about the one to the right of there,

2 total vendor order fee, that was the amount paid to the

3 appraiser; correct?

4 A. Yes. As I understand this chart, it is 425.

5 Q. Okay. And then what was the median fee

6 established there in yellow?

7 A. Okay. By Southeastern, 400.

8 Q. Okay. And this happened two other times in this

9 particular chart. Do you see the two in green?

10 A. Yes.

11 Q. The other two in green, order 331298400 --

12 A. Uh-huh (affirmative response). Right.

13 Q. -- and the other one with that last four digits

14 0213; right?

15 A. Right.

16 Q. And the last one, 7911?

17 A. Right.

18 Q. These were all transactions that the board staff

19 agreed to dismiss prior to the beginning of this

20 instance?

21 A. Uh-huh (affirmative response).

22 Q. And all of those were dismissed because of a

23 Flagstar fee study that produced a fee to the appraiser

24 that was in excess of --

25 MS. EDWARDS:

0284

1 I'm going to object. He's testifying. We don't

2 have a fee study. We don't know what the fee study

3 showed. They have chosen not to introduce the fee

4 study, so I adamantly object to Mr. Rieger referring to

5 what the fee study showed unless he's going to produce

6 the fee study for us to see.

7 JUDGE WHITE:

8 Mr. Rieger?

9 MR. RIEGER:

10 Two things, Your Honor. The numbers that we

11 paid for the four transactions I just described were

12 data that iMortgage gave to this board staff.

13 MS. EDWARDS:

14 Correct. And --

15 MR. RIEGER:

16 And that's where it came from. Excuse me,

17 Counsel.

18 JUDGE WHITE:

19 Let him finish, Ms. Edwards.

20 MR. RIEGER:

21 Thank you. Was stuff, the data that we gave

22 them. Okay? If they purport or if anyone purports to

23 hold up the Southeastern's fee study as some sort of

24 talisman, or if you pay a reasonable or customary fee

25 that's in line with that, then by all means, if the one

0285

1 that iMortgage used for these generated a few in excess

2 or equal to those, how is that not a legitimate fee

3 study? That's my point.

4 JUDGE WHITE:

5 So you think it it relevant?

6 MR. RIEGER:

7 Absolutely. And --

8 MS. EDWARDS:

9 Your Honor, this doesn't say --

10 JUDGE WHITE:

11 Wait, wait.

12 MS. EDWARDS:

13 Oh, I thought he sent it to me.

14 JUDGE WHITE:

15 More, Mr. Rieger?

16 MR. RIEGER:

17 No. Mr. Matchneer, do you have something you

18 wanted to say?

19 MR. MATCHNEER:

20 No, I just said it's in evidence --

21 MS. EDWARDS:

22 Whoa, whoa, whoa, whoa, whoa.

23 MR. RIEGER:

24 Wait. Hold on.

25 JUDGE WHITE:

0286

1 I need argument.

2 MR. RIEGER:

3 Just with counsel? Got it. No, I'm good right

4 now, Your Honor.

5 MS. EDWARDS:

6 My point is we're not saying that this amount

7 was not paid, but we have no information that this came

8 from a fee study. All this is is a piece of paper that

9 says total vendor order fee, so it says what the fee

10 was. They're trying to tie it to a study, and unless

11 they're going to introduce the study for us to see, I

12 object to any reference to it being a study. I have no

13 objection to Mr. Rieger saying if iMortgage paid this

14 fee, is it in line with what the Southeastern study

15 showed, but I do object to him saying these were

16 numbers that came from a study until the study is going

17 to be introduced.

18 MR. RIEGER:

19 Your Honor, if I could --

20 JUDGE WHITE:

21 No, no. I'm going to rule on the objection and

22 refer to the weight. This is the body, the board that

23 must weigh the evidence, and so I'm going to let him

24 ask the question and refer to the weight that this

25 board may ultimately give to it.

0287

1 MS. EDWARDS:

2 Your Honor, let me just say this. This is

3 likely to go up on appeal. I understand that they have

4 the ultimate decision, but if an appellate court looks

5 at this and believes that this came from a study, and

6 there is no evidence introduced by them to show it came

7 from a study, we're prejudiced.

8 JUDGE WHITE:

9 You don't think you will get an opportunity on

10 cross to bring that out?

11 MS. EDWARDS:

12 This man has already testified he knows nothing

13 about the study and has never seen it, so how is he

14 going to say that this came from a study or didn't. I

15 specifically asked him that. He said he's never looked

16 at it.

17 JUDGE WHITE:

18 Well, you are going to have him again on

19 recross.

20 MS. EDWARDS:

21 But again, Mr. Rieger is testifying that this

22 came from a study. If he wants to ask this gentleman

23 if this came from a fee study, and the gentleman

24 answers that yes, it did, and he knows how, that's

25 fine, but if Mr. Rieger is going to testify that these

0288

1 are fee study numbers, I'm objecting to that because we

2 don't have a fee study to show these numbers came from

3 any study.

4 JUDGE WHITE:

5 I think your record is complete to that effect.

6 I'm going to let it go to the weight. It's your

7 witness, Mr. Rieger. She's going to have an

8 opportunity to recross, and that's the way it's going

9 -- that will be my ruling.

10 MR. RIEGER:

11 Thank you, Your Honor.

12 BY MR. RIEGER:

13 Q. If you would, Mr. Matchneer --

14 A. Yes.

15 Q. -- those fees are in excess regardless of

16 source, whether they were from a fee study, whether

17 they were actually paid, which they were actually paid,

18 those numbers are in excess of those compared to the

19 Southeastern --

20 A. Yes.

21 Q. -- document?

22 A. The ones marked in green -- I mean, it just

23 speaks for itself. I mean, the ones marked in green

24 are, and those ones that I see that is equal to the --

25 this one here (indicating), it is simply equal to the

0289

1 number, number four.

2 Q. Okay.

3 A. But I mean, I have absolutely no idea where

4 these numbers came from.

5 Q. Okay. Fair enough. Ms. Edwards asked you

6 questions about a potential transaction involving

7 iMortgage.

8 A. Yes.

9 Q. We put your qualifications out there including

10 your ability to be impartial when we set up your

11 qualifications to be an expert; correct?

12 A. I think so.

13 Q. Yes. And you testified at that time that there

14 was nothing that you knew of that would affect your

15 ability to be impartial in giving your views as to laws

16 and rules and regs; is that correct?

17 A. Yes.

18 Q. No transaction or anything even came to

19 negotiation; is that correct?

20 A. It -- no, it went -- basically stopped very,

21 very quickly.

22 Q. Okay. Very fine. Please answer any other

23 questions counsel may have for you.

24 BY MS. EDWARDS:

25 Q. I have just a few. It is my understanding that

0290

1 you have not seen the fee study; correct?

2 A. Correct.

3 Q. And you do not know whether or not these amounts

4 were actually even paid by the vendor; do you?

5 A. I have no idea.

6 Q. And if they were paid, you would have no idea

7 where these numbers came from; is that right?

8 A. Yes.

9 MS. EDWARDS:

10 I have no other questions.

11 MR. RIEGER:

12 And I excuse the witness for board questions.

13 MR. HALL:

14 Yes, I have a question.

15 MR. MATCHNEER:

16 Yes.

17 MS. EDWARDS:

18 Identify yourself for the record, please.

19 MR. HALL:

20 I'm Roland Hall.

21 MR. MATCHNEER:

22 Yes, sir.

23 MR. HALL:

24 On this iMortgage Services, LLC, if you start at

25 the top, the very first one says that the total vendor

0291

1 order fee is $365.

2 MR. MATCHNEER:

3 All right. I can see that. Yes, sir.

4 MR. HALL:

5 Okay. And then it says the survey said 400.

6 MR. MATCHNEER:

7 Yes.

8 MR. HALL:

9 Okay. And you can go down and see that in 11 of

10 these instances, the survey fee exceeded the fee that

11 -- the vendor order fee. You can see that? If you

12 don't, then I will show you one at a time.

13 MR. MATCHNEER:

14 No. I can count. Yes, that's right.

15 MR. HALL:

16 So it is 11 that was less. One, it was the

17 same. And three, it was more by a total of $75. If

18 you do the math on the difference between the total

19 order fee and the survey fees --

20 MR. MATCHNEER:

21 I think actually two are the same.

22 MR. HALL:

23 Okay. I did the math.

24 MR. MATCHNEER:

25 Yes.

0292

1 MR. HALL:

2 And it is $590 less. My question to you is, you

3 answered the question that they were more than. Is 11

4 more than three?

5 MR. MATCHNEER:

6 No. I'm sorry. I don't understand the

7 question.

8 MR. HALL:

9 You answered the question that the fees on this

10 document --

11 MR. MATCHNEER:

12 Yes.

13 MR. HALL:

14 -- since it exceeded the fee from the survey on

15 this document --

16 MR. RIEGER:

17 That was not his testimony.

18 MR. HALL:

19 Okay.

20 MR. MATCHNEER:

21 No. I mean, only -- there were three that

22 exceed, and two that are the same, and otherwise, they

23 are less.

24 MR. HALL:

25 Right. Eleven less?

0293

1 MR. MATCHNEER:

2 Yes, yes.

3 MR. HALL:

4 Now, there have been three surveys. There is a

5 2012 fee schedule, a 2013 fee schedule, and a 2014

6 schedule.

7 MR. MATCHNEER:

8 That's your schedule. That's the one given to

9 you?

10 MR. HALL:

11 That's the one that the business college did for

12 us.

13 MR. MATCHNEER:

14 Right. But -- okay. Got it.

15 MR. McMORRIS:

16 I have a question.

17 MR. MATCHNEER:

18 Yes.

19 MR. McMORRIS:

20 Can anyone --

21 JUDGE WHITE:

22 Please identify yourself.

23 MR. McMORRIS:

24 I'm Tommie McMorris. I'm sorry. Can anyone out

25 there tell me on this $425 fee, is that the negotiated

0294

1 fee, or is that the -- what was the original fee that

2 was offered the appraiser before it went to 425?

3 MR. RIEGER:

4 If I could, Mr. McMorris, I don't think this

5 witness is competent to do that. I have one that will

6 be.

7 MR. McMORRIS:

8 Okay. That's fine.

9 Maybe this witness can tell me this since you've

10 asked for a few regs. Do you feel or is it your

11 opinion whether or not an AMC, any AMC, whether it be

12 iMortgage or anybody, should ensure that a fee study

13 that they are using complies with the geographical area

14 as independent prior to using it to place a loan?

15 MR. MATCHNEER:

16 Absolutely.

17 MR. McMORRIS:

18 So that would mean -- you're telling me then

19 that iMortgage ensured that this was a competent survey

20 they had done?

21 MR. MATCHNEER:

22 I don't -- see, I don't know of the survey. All

23 I know is that's as -- you know, that's what they

24 should do.

25 MR. McMORRIS:

0295

1 I just find it odd that this survey is not here

2 today brought by someone to give us to look at to see

3 if we can honestly believe what you guys are telling

4 us. That's my opinion because it seems like somewhere

5 along the line, someone should have said, well, you

6 know, we keep talking about surveys so why don't we

7 bring it, bring it to the board to see? Because

8 without the survey, I don't know if you guys are really

9 being up and up with us or not based on what I'm

10 looking at because I'm a residential appraiser, and I

11 work in rural areas, and I'm looking at these fees that

12 they are offering and paying, and then what the

13 customer is really paying and what the appraiser is

14 getting, it looks like that iMortgage is getting rich

15 and the appraisers are not. That's my opinion. And

16 that's all the questions I have.

17 MR. LIPSCOMB:

18 I have a question. I'm Clay Lipscomb.

19 MR. MATCHNEER:

20 Yes.

21 MR. LIPSCOMB:

22 Mr. Matchneer, I know you have experience

23 drafting laws, or assisting people drafting laws at the

24 federal level.

25 MR. MATCHNEER:

0296

1 Yes.

2 MR. LIPSCOMB:

3 Is it your opinion that when they refer to

4 independent private sector surveys, a survey in this

5 case by an AMC which was generated by their client, in

6 your opinion, do you think that meets the intent of

7 that law?

8 MR. MATCHNEER:

9 Well, I've already said that I don't see

10 anything in here that would limit that.

11 MR. MATCHNEER:

12 No, I know that. I'm saying in your opinion

13 with helping drafting these laws, there is always an

14 intent to these laws.

15 MR. MATCHNEER:

16 Of course.

17 MR. LIPSCOMB:

18 Do you think that meets the intent that this law

19 was intended to do as far as the burden of

20 independence --

21 MR. MATCHNEER:

22 Well, it is a pretty hard question to ask

23 somebody who wasn't part of the rule making process and

24 wasn't sitting in the room, and trying to capture, you

25 know, whatever the policy of the state was and put it

0297

1 down on paper.

2 MR. LIPSCOMB:

3 Well, would that meet your definition of

4 independence if you were being affected by that fee?

5 MR. MATCHNEER:

6 Well, as I see it, as long -- you know, the way

7 this reads to me, as long as it wasn't done by the AMC,

8 it would -- it would qualify as independent.

9 MR. LIPSCOMB:

10 You would consider that an independent third

11 party source?

12 MR. MATCHNEER:

13 I -- yes, I would.

14 MR. LIPSCOMB:

15 In your opinion?

16 MR. MATCHNEER:

17 Yes.

18 MR. LIPSCOMB:

19 Okay. Thank you.

20 MR. PURGERSON:

21 Jim Purgerson, I have a question. As a

22 regulator if you go into a bank, and they say they have

23 an independent survey, and they don't have it on them,

24 and I'm just thinking about it in my shoes -- we just

25 went through a compliance exam. We flood them with

0298

1 information. We give them everything they need. So in

2 this instance, do you believe that we are not being

3 shown or that this is being hidden from us?

4 MR. MATCHNEER:

5 I don't know if that's a question for me.

6 MR. PURGERSON:

7 Do you find it odd as a regulator that a

8 federally regulated entity can't produce the

9 independent survey that they are required to have to

10 comply with state law as a regulator?

11 MR. MATCHNEER:

12 I would have expected it to be available, you

13 know, but then again, I don't know what all of the

14 facts are, and what all the limitations are, what the

15 reasons are that it's not. I just, you know --

16 MR. PURGERSON:

17 Because I know what they would tell us. They

18 would write us up big time.

19 MR. MATCHNEER:

20 Well, yes. There may be a perfectly good

21 explanation for it, but I simply -- that's just not

22 something that I'm familiar with.

23 MR. PURGERSON:

24 But when you wrote all of these rules, don't you

25 think having substantial information in the file would

0299

1 be appropriate as somebody trying to --

2 MR. MATCHNEER:

3 Sure.

4 MR. PURGERSON:

5 Okay. That's all I have.

6 MR. RIEGER:

7 Any other questions from board members?

8 JUDGE WHITE:

9 Mr. Chairman, I had earlier mentioned the

10 definition of a presumption, and that particular

11 statute I will tell you for whatever worth any of you

12 may want to give to it, it is Louisiana Revised Statute

13 Title 15, Section 432, Effective Legal Presumptions,

14 and it provides, a legal presumption relieves him in

15 whose favor it exists from the necessity of any proof,

16 but may nonetheless be destroyed by rebutting evidence.

17 And then it goes on to list certain examples, the last

18 one of which is that, quote, evidence under the control

19 of a party and not produced by him was not produced

20 because it would not have aided him.

21 Are there any other questions of this witness?

22 MR. HALL:

23 I have just one little quick question.

24 MR. MATCHNEER:

25 Yes, sure.

0300

1 MR. HALL:

2 In the Dodd-Frank copy that I have --

3 MR. MATCHNEER:

4 Right.

5 MR. HALL:

6 -- it makes reference --

7 MR. MATCHNEER:

8 Are you looking at -- I'm sorry -- at Dodd-Frank

9 the statute, or the rule that was written?

10 MR. HALL:

11 Okay. I will put it to you in a different way.

12 MR. MATCHNEER:

13 Okay.

14 MR. HALL:

15 I'm going to read you a sentence.

16 MR. MATCHNEER:

17 Okay.

18 MR. HALL:

19 Fee studies shall exclude assignments ordered by

20 known appraisal management companies.

21 MR. MATCHNEER:

22 Correct. Yes.

23 MR. HALL:

24 Now, do you think that it could skew a fee

25 study? Why do you think that was put in there?

0301

1 MR. MATCHNEER:

2 Well, that's obviously what the Federal Reserve

3 board thought when they wrote that rule, and so they,

4 you know, excluded the studies that included, you know,

5 orders with AMCs.

6 MR. HALL:

7 Okay. Because in the reply that iMortgage made,

8 they disagreed with that. They said that it biased it

9 if it was excluded. And do you think that the numbers

10 that they have listed here from their survey, did they

11 exclude --

12 MR. MATCHNEER:

13 I have no way of knowing.

14 MR. HALL:

15 But you know the intent was to exclude it

16 because it would make it biased.

17 MR. MATCHNEER:

18 Yes.

19 MR. HALL:

20 But yet, we don't know whether they excluded it?

21 MR. MATCHNEER:

22 I have no way of knowing.

23 MR. HALL:

24 Okay. Thank you. Any other questions?

25 MR. McMORRIS:

0302

1 I have one question.

2 MR. MATCHNEER:

3 Yes.

4 MR. McMORRIS:

5 As an expert witness, did you request a copy

6 of this --

7 JUDGE WHITE:

8 Please identify yourself for the record.

9 MS. EDWARDS:

10 Tommie, please identify yourself.

11 MR. McMORRIS:

12 I'm sorry. Tommie McMorris. Before you came

13 here today, did you request a copy of this survey for

14 you since you were testifying about this survey?

15 MR. MATCHNEER:

16 Well, no. And I'm not really testifying about

17 this survey.

18 MR. McMORRIS:

19 You really are because you are commenting about

20 the prices and stuff in it.

21 MR. MATCHNEER:

22 Okay. Well, I mean, again, this was not

23 something that I was frankly expecting to comment on,

24 and therefore, I never asked for a copy.

25 MR. McMORRIS:

0303

1 Well, you as the intelligent man you are, you

2 didn't think someone was going to ask you about whether

3 you had that survey, and how you came up with your

4 opinions?

5 A. Well, again, it wasn't -- I wasn't expecting to

6 be asked about the particulars of this survey. I

7 honestly wasn't expecting that to come up.

8 MR. McMORRIS:

9 Okay. That's good. Thank you.

10 MR. HALL:

11 Any other questions?

12 JUDGE WHITE:

13 Next witness?

14 BY MR. RIEGER:

15 Q. I have a question on redirect, re-redirect, if

16 you would. The survey, the Flagstar fee survey, is

17 that in iMortgage's custody, to your knowledge?

18 A. I have no idea.

19 MR. RIEGER:

20 Okay.

21 MS. EDWARDS:

22 What was the question, Rob? I'm sorry. I

23 didn't hear you.

24 MR. RIEGER:

25 The question was, the Flagstar fee survey, I

0304

1 asked was it in iMortgage's custody, did the witness

2 know?

3 MS. EDWARDS:

4 Okay. I got you.

5 BY MR. RIEGER:

6 Q. And you don't know?

7 A. I have no idea.

8 Q. So if the testimony was that it was not, you

9 wouldn't know one way or the other; is that correct?

10 That was not something that you were asked to look at?

11 A. No, no.

12 Q. Absolutely?

13 A. No.

14 MR. RIEGER:

15 Okay. Very good.

16 MS. BONURA:

17 I have a question. I'm Janis Bonura.

18 MR. MATCHNEER:

19 Yes.

20 MS. BONURA:

21 Flagstar Bank -- you may not be the right

22 witness -- do they utilize AMCs?

23 MR. MATCHNEER:

24 Beg your pardon?

25 MS. BONURA:

0305

1 Flagstar, do they utilize --

2 MR. RIEGER:

3 This witness is not the right one for that.

4 MS. BONURA:

5 Do you have a witness for that?

6 MR. RIEGER:

7 Yes, we do.

8 MR. MATCHNEER:

9 Yes. You have got other guys coming up behind

10 me that know more about that stuff than I do.

11 MS. BONURA:

12 Very good.

13 JUDGE WHITE:

14 Any further questions by either side?

15 MS. EDWARDS:

16 No. None for me.

17 MR. RIEGER:

18 No.

19 JUDGE WHITE:

20 Okay. You're excused. And let's have the next

21 witness, please.

22 MR. MATCHNEER:

23 What's the next bus to Pittsburgh? Put me on

24 it.

25 MR. HALL:

0306

1 We're going to have a five-minute break in

2 between witnesses.

3 (A RECESS WAS TAKEN AT THIS TIME).

4 MR. HALL:

5 We are ready to go back on the record, Judge.

6 JUDGE WHITE:

7 Okay, Mr. Chairman. We will reconvene, and

8 everybody who was present when we recessed is present,

9 and a new witness is here. And you have been sworn,

10 sir; is that correct?

11 MR. DICKSTEIN:

12 I have indeed.

13 \* \* \* \* \* \*

14 JEFF DICKSTEIN,

15 after having previously been sworn did testify as

16 follows:

17 BY MR. RIEGER:

18 Q. Please introduce -- Rob Rieger for the

19 respondent. Mr. Dickstein, can you, please, introduce

20 yourself, give your name and business address for the

21 members of the board?

22 A. My name is Jeff Dickstein. Do you want that

23 spelled?

24 Q. Please.

25 A. D as in David-I-C-K-S-T-E-I-N. I'm with Pro

0307

1 Teck Valuation Services. We are at 307 Waverly Oaks

2 Road in Waltham, Massachusetts.

3 Q. Can you give the board a brief summary of your

4 educational background?

5 A. Some college. I didn't finish. I got into

6 mortgage when I was 18, so I focused on economics and

7 finance courses as well as my ongoing continuing

8 education.

9 Q. And you are currently a certified residential

10 appraiser in a number of states?

11 A. I am a certified residential appraiser.

12 Q. How many?

13 A. I am currently in 15 states.

14 Q. Is Louisiana one of those 15 states?

15 A. Yes, Louisiana is one of them.

16 Q. Are you currently the subject of any appraisal

17 disciplinary proceedings, either you individually or

18 Pro Teck?

19 A. No. Neither myself nor Pro Teck.

20 Q. How long have you been employed by Pro Teck?

21 A. Since July 2007.

22 Q. And what is your present job title at Pro Teck?

23 A. I am currently the chief compliance officer. I

24 was the chief appraiser up until about two years ago,

25 but I still oversee all of them.

0308

1 Q. What duties -- what duties fall under your

2 responsibility?

3 A. So I oversee all policies and procedures within

4 the company, make sure that we're following all state

5 and federal regs as well as all the third party

6 oversight from all of our lender clients.

7 Q. When you say -- well, I will get to that in a

8 minute. When you say "compliance," you're talking

9 about with federal and state laws; is that correct?

10 A. Federal and state law. Federal regulations as

11 far as interagency appraisal valuation guidance as well

12 as any other guidance, even GSE guidance, FHA guidance.

13 That all falls under my watch.

14 Q. Prior to joining Pro Teck, where did you work?

15 A. I worked at People's Choice Home Loan.

16 Q. What did you do there?

17 A. I was the vice president of appraisal review for

18 capital markets.

19 Q. And your responsibilities included?

20 A. Everything appraisal related post closing.

21 Q. So what does that mean, appraisal related post

22 closing?

23 A. So I was in charge of everything after a loan

24 closed, so it included diligence and tie-out for

25 mortgage-backed security trades, any type of valuations

0309

1 for loss mitigation, REO properties that they might

2 have taken back, maintained the ineligible appraiser

3 list for the institution, as well as investigated

4 appraiser filings.

5 Q. And where did you work prior to joining People's

6 Choice?

7 A. Option One Home Loan.

8 Q. Your job there?

9 A. I was the senior review appraiser.

10 Q. And those responsibilities?

11 A. I was still in the post closing world, so I did

12 everything I did at People's Choice. I was just not at

13 a director level.

14 Q. Streamline this process. Can you estimate the

15 number of years that you have worked in the real estate

16 valuation industry?

17 A. I've been an appraiser for 26 years.

18 Q. In the mortgage industry, how long?

19 A. I've been in the mortgage industry since high

20 school, so 35 years.

21 Q. Can you tell us something about your

22 professional affiliations?

23 A. I'm currently the 2015-16 chairman of the

24 Appraisal Foundation History Advisory Council. My

25 company and myself are members of REVAA, Real Estate

0310

1 Valuation Advocacy Association. We are a charter

2 member. I'm the 2016 incoming treasurer. I'm also on

3 the Government Affairs Committee, BPO and Valuation

4 Committee. I am a member of NAR. I am on the

5 executive board of the National Appraisal Congress. I

6 am a member of the National Appraisal Association. I

7 am also on their Government Affairs Committee. I am a

8 member of the Collateral Risk Network. And that -- and

9 that's it.

10 Q. That's a pretty good list.

11 A. Yes, it keeps me pretty busy.

12 Q. And on whose behalf are you testifying today?

13 A. I was asked on behalf of REVAA to come here and

14 testify today.

15 Q. Very good. Did REVAA offer a letter of support

16 or anything as part of your testimony?

17 A. I know REVAA submitted a letter to the board on

18 behalf of REVAA, and I know the letter was vetted by

19 the REVAA board.

20 Q. And that letter would be identified in your

21 binder as tab number nine, and I'm going to show that

22 to you as soon as I pull that up. And I am going to

23 tentatively identify that as "Respondent #8," I think

24 it is. Or "#9"?

25 JUDGE WHITE:

0311

1 I have an "#8."

2 MR. RIEGER:

3 You have an "#8," so this will be "#9."

4 BY MR. RIEGER:

5 Q. I will call that the REVAA letter. I am going

6 to show it to you. Can you identify that for us?

7 A. Yes. That is the letter that was reviewed.

8 Q. Okay. Very fine. Did you review the contents

9 of this letter?

10 A. I did.

11 Q. Did you agree with the stances and policies that

12 are contained in that?

13 A. I did agree with the content.

14 Q. Okay. I'm going to jump ahead in your testimony

15 if I can find my notes, and I want to go to option two

16 or presumption two of compliance. Can you explain what

17 that is, the section Presumption of Compliance?

18 A. So I'm sure as you all know, there are the two

19 presumptions of compliance that are outlined in the

20 Interim Final Rule from the agencies. Presumption two,

21 I think the two presumptions were separated into a

22 wholesale model and a retail model. And presumption

23 two was based on certain market surveys that excluded

24 AMC fees.

25 Q. And so do clients select option two and provide

0312

1 you fee studies or rates or things such as that; is

2 that correct?

3 MS. EDWARDS:

4 Excuse me. Can I find out what he is testifying

5 about? In other words, you're asking him about

6 presumptions. Is he here as an expert? What capacity

7 is he here in that he is going to testify about the

8 federal law?

9 MR. RIEGER:

10 He is -- I'm sorry. Excuse me, Counsel. He is

11 offering just his interpretation of how it works and

12 how his company does it as a REVAA member.

13 MS. EDWARDS:

14 As the current company that he works for, Pro

15 Teck, how they handle their business?

16 MR. RIEGER:

17 A part of that, yes, that's right.

18 MS. EDWARDS:

19 Okay.

20 MR. DICKSTEIN:

21 I'm sorry. What was the question?

22 BY MR. RIEGER:

23 Q. So the question is, do you know generally how

24 AMCs generally satisfy the second presumption of

25 compliance?

0313

1 A. If we do have a client that selects presumption

2 two as a means of C&R compliance, they don't give us

3 the detail behind the study that they use. It's board

4 recognized that Dodd-Frank amended Section 129E of TILA

5 where appraiser independence is and C&R falls under,

6 and I have asked -- we only have a couple of clients

7 that use presumption two, and I have asked them about

8 that, and they said because that falls under their TILA

9 obligations, that that is audited by their regulatory

10 to be in compliance with TILA, and those fees, I guess,

11 are covered as part of their TILA compliance.

12 Q. So your understanding is based on the

13 relationship that Pro Teck has with its clients, this

14 is another regulatory obligation that your clients have

15 that they need to comply with; is that correct?

16 A. Yes. They're under an obligation to comply with

17 TILA, and their regulators audit them to be in

18 compliance with TILA.

19 Q. So what would happen, if you know, if one of

20 those clients did not have one of these fee surveys or

21 fee studies?

22 A. I would assume if they were investigated and

23 audited by their regulator, there would be some type of

24 remediation to validate whatever study they used and

25 gave to the AMC to use.

0314

1 Q. One of those plans to remediate could very well

2 be the establishment or the update of these surveys?

3 A. It very well could be.

4 Q. So it is something, at least in your knowledge,

5 it is an item, a required item --

6 MS. EDWARDS:

7 I'm going to object. I know we want to move

8 forward, but he is not an expert, and Mr. Rieger is

9 basically leading him and testifying. So I know we

10 want to get moving, but this gentleman is not an

11 expert, so I would ask that he ask him a question and

12 allow Mr. Dickstein to answer the question.

13 MR. RIEGER:

14 I thought I did, Your Honor. As it were, I

15 asked him if he knew what the importance of these

16 things were based on his understanding of how he did

17 business with his client.

18 JUDGE WHITE:

19 My recollection is that leading questions in

20 administrative procedures are pretty loosely accepted,

21 so I'm going to overrule the objection and let him

22 proceed.

23 MR. RIEGER:

24 Very fine.

25 BY MR. RIEGER:

0315

1 Q. Again, you were saying, Mr. Dickstein, that your

2 clients are subject to audit; is that correct?

3 A. Yes. The lender clients we have are subject to

4 audit by their regulators.

5 Q. If you know, who generally completes such

6 studies?

7 A. We are not given any insight from our clients,

8 the lenders who complete those studies.

9 Q. You are essentially instructed to use these fees

10 as part of transactions that you are performing for

11 that client?

12 A. We are contractually obligated based on a

13 relationship with that specific client.

14 Q. In your experience, and if you know, is a fee

15 study that is conducted by an AMC client considered to

16 be objective or independent?

17 A. You know, I would assume so based on that that's

18 what the reg says. But again, I'm not intimate with

19 their process, and based on my conversations with them,

20 because they are audited by their regulator to be in

21 compliance with TILA, it would have to fall under that

22 independence category.

23 Q. If I could have just one moment, Your Honor.

24 At this time, I would tender the witness for

25 cross-examination.

0316

1 MS. EDWARDS:

2 I have no questions.

3 MR. RIEGER:

4 Any questions from the board?

5 MR. HALL:

6 I have no questions. Anybody have any

7 questions? No.

8 MR. RIEGER:

9 In connection with this witness' testimony, I

10 want to offer "Exhibit R-8," if you will, and make sure

11 it's already in there. It's not?

12 JUDGE WHITE:

13 Actually, "R-8" was the biosketch of --

14 MR. RIEGER:

15 The bio of Bill Matchneer, that's right.

16 JUDGE WHITE:

17 -- Mr. Matchneer.

18 MR. RIEGER:

19 Yes.

20 JUDGE WHITE:

21 And I have marked it in.

22 MR. RIEGER:

23 That's right.

24 MS. EDWARDS:

25 Right. I had no objection to that. I do have

0317

1 an objection to "#9" which is a letter that I'm

2 assuming they are trying to introduce dated December

3 7th drafted by or signed by Mr. Mark Schifmann, which

4 really has no relevance to this proceeding. It is not

5 generated by this gentleman here who is testifying,

6 and it has no relevance to the investigation itself or

7 the outcome of this investigation.

8 MR. RIEGER:

9 That is client's -- excuse me. That is

10 counsel's opinion, but the witness indeed read and said

11 -- testified that he read and approved and vetted the

12 contents of this letter, and he stood behind and agreed

13 with the contents.

14 MS. EDWARDS:

15 But it has nothing to do with this hearing. It

16 is REVAA's opinion about whether AMCs are in

17 compliance. It has nothing to do with the hearing.

18 MR. RIEGER:

19 It has everything to do with this hearing.

20 JUDGE WHITE:

21 Okay. I'm going to let it in, and I'm going to

22 say again, board, it's up to you to decide what weight

23 you're going to give to it, but it will come in over

24 objection, "Respondent #9."

25 Next witness?

0318

1 MR. DICKSTEIN:

2 Thank you.

3 MR. RIEGER:

4 Okay. I excuse this witness, and if I could

5 have a one-minute break with our last witness, we will

6 proceed. That's all I need.

7 MS. EDWARDS:

8 Okay.

9 MR. HALL:

10 Mr. Rieger, are you ready to --

11 MR. RIEGER:

12 Just about, Mr. Chair. All right, Mr. Chair.

13 Ready when you are.

14 \* \* \* \* \* \*

15 DEAN B. KELKER,

16 after having previously been sworn did testify as

17 follows:

18 JUDGE WHITE:

19 Okay. This administrative hearing will

20 reconvene. Everyone who was present when we went off

21 the record is now back with us. Will you please

22 identify yourself and your capacity, please?

23 MR. KELKER:

24 My name is Dean Kelker. I'm Senior Vice

25 President - Chief Risk Officer with iMortgage Services.

0319

1 BY MR. RIEGER:

2 Q. And you've been previously sworn; have you not,

3 Mr. Kelker?

4 A. Yes, I have.

5 Q. Okay. Very fine. How long have you been

6 employed by iMortgage?

7 A. Since 2012.

8 Q. And you said your present job title again was

9 senior vice-president and chief risk officer; is that

10 correct?

11 A. Yes, that is correct.

12 Q. And you have held these titles for how long?

13 A. Since I joined the company.

14 Q. Will you give the board a brief summary of your

15 educational background?

16 A. I went to Ohio University and majored in

17 accounting and finance many years ago.

18 Q. And you have a degree in what year?

19 A. It would have been '73.

20 Q. We don't get too many Ohio University types down

21 here. Can you, please, summarize your professional

22 background for the board?

23 A. My professional background in real estate

24 finance, most recently prior to iMortgage Services, I

25 had a brief tenure as director of collateral risk for

0320

1 STARS, which is the captive AMC for PHH Mortgage.

2 Prior to that, I was a principal in a company called

3 Meridian Risk Management, and we did investigations on

4 defaulted loan files, both credit, collateral and

5 investigations of fraud. Prior to that, I spent some

6 time in other appraisal management firms. I was the

7 chief appraiser at PNC Mortgage, a large top ten

8 financial institution based in Pittsburgh. Along with

9 being chief appraiser, I also managed some of the other

10 vendor services type of insurance, mortgage insurance,

11 some of the strategic initiatives that we had as a

12 business.

13 I also spent time at Radian Guaranty, a mortgage

14 insurer. I ran their loan underwriting group which at

15 its maximum had approximately 700 underwriters spread

16 over 21 locations.

17 Q. Very good. Can you outline your relevant

18 professional training?

19 A. I was an appraiser back in the mid '80s. I

20 trained -- just prior to licensing, I trained, I guess,

21 the old fashioned way as an apprentice to a designated

22 institute member who supervised my work for an extended

23 period of time until I was deemed competent enough to

24 work on my own. I was a candidate member at the time

25 of the Appraisal Institute. I had taken all of the

0321

1 course work associated with residential membership.

2 Q. Can you very briefly one more time give this

3 board a brief understanding and description of your

4 current job opportunities with iMortgage one more time?

5 A. My position at iMortgage as the chief risk

6 officer is to manage the company's financial regulatory

7 reputational risks as well as oversee our valuation

8 business.

9 Q. When you say "valuation business," you are

10 talking about appraisals and AMC business and all of

11 that?

12 A. Appraisals. We also do BPOs, and --

13 Q. What is a BPO?

14 A. A broker price opinion.

15 Q. Okay. Very fine. Have you been designated by

16 iMortgage to appear before this board and represent

17 them here on its behalf?

18 A. Yes, I have.

19 Q. Okay. Briefly again, explain what iMortgage

20 does.

21 A. iMortgage Services is a sell our services firm

22 that provides valuation services, title and closing

23 services.

24 Q. How many states does iMortgage operate in?

25 A. On the valuation side, we operate in all 50

0322

1 states.

2 Q. Is compliance with federal and state laws

3 important to you?

4 A. Oh, yes, it's very important.

5 Q. Is it just very important, or is it extremely

6 important, is it just to you, or --

7 A. It's important to the organization. One of the

8 roles iMortgage plays with its clients is as an agent

9 particularly on the valuation side, and therefore, the

10 compliance requirements of our client pass through to

11 us in terms of meeting those requirement and needs.

12 Q. What does that mean, the requirements pass

13 through to you?

14 A. If we go back about two years ago, a little over

15 two years ago, the Office of the Comptoller of the

16 Currency issued guidance for third party oversight to

17 their regulated institutions. That third party

18 oversight guidance basically said that if you decided

19 to use a third-party provider to perform critical

20 services which appraisal services are classified as a

21 critical service and a high risk service or function.

22 All of the requirements that DOCC imposes on regulated

23 institutions must be monitored and audited at the

24 third-party provider level, so our OCC regulated

25 clients audit us as if we were effectively a department

0323

1 of an institution.

2 Q. Is Flagstar Bank an OCC client, regulated

3 client?

4 A. Flagstar Bank is an OCC regulated institution.

5 Q. How does iMortgage make sure you remain

6 compliant with relevant state and federal laws and

7 regulations?

8 A. We at iMortgage monitor federal and state

9 regulation changes through a number of services. We

10 are a member of REVAA which also manages or monitors

11 those services. There is an internal compliance

12 committee which I chair, and that committee is made up

13 of myself, the general counsel, the chief appraiser,

14 and our vice president of valuations.

15 Q. What would happen if iMortgage was deemed to be

16 fallen out of compliance?

17 A. It would start to damage our customer

18 relationships in the sense that our regulated clients

19 would have compliance issues for themselves because of

20 our noncompliance, and ultimately, it would affect our

21 business relationship.

22 Q. You talked about the Comptroller of the Currency

23 guidance a couple of years ago. Tell me how -- what

24 level of importance is that right now in this business?

25 A. Very important in the sense that when the OCC

0324

1 does their safety and soundness audits of their

2 regulated institutions, appraisal management is a

3 critical area. The guidance that they provided has

4 focused on a couple of areas. Those areas are focused

5 on appraiser qualification, the vetting process, the

6 management of those appraisers as well as the order

7 assignment process. It's the OCC's position that if

8 you were not managing those elements successfully,

9 there is nothing you can do to recover.

10 Q. We discussed the relationship between iMortgage

11 and its clients, but what role do you serve between

12 iMortgage and its clients?

13 A. I serve multiple roles. I'm involved in the

14 customer and client relationship process, the business

15 development process in the sense that as we either

16 acquire new customers or maintain current customers,

17 obviously compliance, risk management issues,

18 operational planning and development are all issues

19 that are in those discussions both at the development

20 level as well as the maintenance level.

21 Q. Do you have responsibility for client audits

22 that may be of your business?

23 A. Yes. All of the client audits are managed by

24 myself.

25 Q. So you have keen understanding of what is

0325

1 involved in these audits, and why they are important to

2 your clients; do you not?

3 A. Absolutely. I am the one that sits across the

4 table during the audit period. I am the one that goes

5 through the audit program with them and answers any

6 questions that they may have, and I'm responsible for

7 managing any remediation that happens subsequent to the

8 audit.

9 Q. Let's shift gears a little bit. What role do

10 you serve between iMortgage and its appraisers?

11 A. My primary role as far as appraisers are

12 concerned are really to establish the policies and

13 procedures associated with recruiting, boarding,

14 qualification of appraisers. If appraisers are

15 suspended or terminated by iMortgage because of various

16 state laws, there are requirements that we have to meet

17 in terms of notification, allowing for appeals, and, I

18 guess, I am the final appeals officer if someone wants

19 to appeal a suspension or termination.

20 Q. Is iMortgage responsible for the quality and/or

21 competency of both the appraisers and the products that

22 they generate?

23 A. Yes, we are. We are fully responsible to our

24 clients for the quality of the appraisers that are

25 performing the work, as well as the product quality

0326

1 that we deliver.

2 Q. And you stand behind that 100 percent as a

3 company, and your reputation is at risk at every one of

4 these; right?

5 A. We stand behind them. Some clients purchase

6 warranties, and we would be responsible for a loss that

7 was associated with an appraisal. We carry E&O

8 insurance as well to deal with any potential loss that

9 we might have.

10 Q. What would happen if an appraiser's independence

11 was called into question, Mr. Kelker?

12 A. We have a number of appraiser independence

13 policies and procedures. When an appraiser is on

14 boarded with iMortgage, one of the things that they

15 need to do is acknowledge appraiser independence

16 disclosure that essentially outlines all of our

17 independence requirements. We also have provided an

18 800 number that if an appraiser feels that he or she

19 has been compromised on an assignment because of

20 pressure from any participant in the transaction, they

21 are to call the number, report the incident. We follow

22 up on that and either cancel the order with the lender,

23 or reassign it to a different appraiser.

24 Q. Does iMortgage ever lose money on an appraisal

25 or an appraisal job?

0327

1 A. Yes. Occasionally, we do.

2 Q. How does that happen?

3 A. It can be through a number of ways.

4 Q. Can you go through all of them?

5 A. Probably the most common way is if we get a fee

6 quote from an appraiser in the field to complete an

7 assignment, and we can't recover all of that cost from

8 the client, then if it's a regular client, we're

9 probably just going to eat that fee. There are times

10 when there are service dislocations. Maybe an

11 appraiser doesn't return the product in time, and we

12 have a situation where we have to either eat the fee or

13 discount the fee. In some cases, if a rate lock has

14 been gone through, we would be responsible in certain

15 cases for the loss associated with the rate loss.

16 Q. Has there been any change in federal regulations

17 having to do with the good faith estimate that would

18 put these charges at further risk that you're aware of?

19 A. Yes. With the implementation of TRID in

20 October, October 3rd, I believe was the implementation

21 date --

22 Q. Real time stuff; right?

23 A. It is real time stuff. There is a situation now

24 that once the fees, in the case of appraisal fees have

25 been disclosed to the borrower, they can only -- they

0328

1 cannot be changed. If they -- the only instance where

2 they are able to be changed is what is called a change

3 in circumstance, and a change in circumstance used to

4 be something that was unanticipated. In this case,

5 change in circumstance has been substantially reduced

6 and would only apply if the borrower said, I have a

7 single family house, and it turned out to be a two

8 family or a condo or a different property type

9 entirely, that would allow for a fee change. But if we

10 find out that the property is instead of a 1,500 square

11 foot bungalow a 20,000 square foot mansion, that is not

12 a fee change that can occur as far as the borrower is

13 concerned.

14 Q. So in that instance, chances are that is

15 something you are going to absorb?

16 A. Either iMortgage would absorb it, or a

17 combination of iMortgage and the lender.

18 Q. But in no circumstance would the appraiser

19 absorb any of that that you are aware of?

20 A. No. And again, the regulations have only been

21 in effect since the beginning of October, and to date,

22 we haven't had any circumstances where there were

23 disclosure issues where the actual fee was

24 substantially more than what we thought it was going to

25 be.

0329

1 Q. Very good. We are going to talk a little bit

2 about Dodd-Frank. You are familiar with the purposes

3 of Dodd-Frank, and the Interim Final Rule and now the

4 Final Rule; is that correct?

5 A. Yes.

6 Q. What does Dodd-Frank mean to you? Speak of all

7 of that together.

8 A. Okay. Dodd-Frank covers two basic areas. There

9 is the part of Dodd-Frank that is designed to secure

10 the financial system and manage some of the risks

11 associated with the financial system. There is a

12 portion of Dodd-Frank that deals with appraiser

13 independence and is embodied primarily in Section 129E

14 which concerns appraiser independence as it impacts

15 certain types of mortgage transactions.

16 Q. Okay. What are we talking about today? What

17 types of mortgage transactions does this impact?

18 A. Mortgage transactions that are consumer based,

19 and where the consumer's primary residence is going to

20 be encumbered by the mortgage.

21 Q. What is the shorthand for that?

22 A. The shorthand is owner occupied mortgages that

23 are being made between lender and consumer.

24 Q. Is the phrase covered transaction?

25 A. Covered transaction, yes, it is the covered

0330

1 transaction.

2 Q. Okay. Very fine. Dodd-Frank applies only to

3 these certain consumer covered transactions; is that

4 correct?

5 A. That is correct.

6 Q. Are all of iMortgage's appraisal products the

7 same? Are they all dealing with covered transactions?

8 A. No, they aren't. In fact, I would say that's a

9 minority of our business. We do within our group of

10 valuation products, we do the traditional appraisal

11 products that are used for standard mortgage

12 transactions, but those same forms are also used for

13 servicing and default purposes. We do review products

14 which are reviews of existing reports to determine if

15 they are accurate, and the value or estimate or opinion

16 of value is appropriate. We do more limited valuation

17 products that are primarily used for default and

18 servicing transactions.

19 Q. Very good. How about automated valuation

20 models? Tell me about some of those.

21 A. We resell certain AVMs to a few clients. We

22 don't have our own AVM. It's a resale proposition,

23 but it is a low cost valuation product that is used for

24 portfolio analysis or a few other either investment or

25 servicing functions.

0331

1 Q. And your testimony was your understanding was

2 those additional noncovered transaction appraisal

3 products are not covered by Dodd-Frank; is that

4 correct?

5 A. That is correct.

6 Q. Do you pay appraisers for services other than

7 appraisals?

8 A. Yes, we do.

9 Q. And what types of services do they perform for

10 y'all?

11 A. Well, we have the basic appraisal products, but

12 iMortgage also provides consulting and advisory

13 services, so we have paid appraisers to perform market

14 analysis, or other types of investigations that are for

15 the purposes of Dodd-Frank that would be noncovered

16 transactions.

17 Q. You discussed review appraisals, and you also

18 discussed default appraisals; is that correct?

19 A. Correct, correct.

20 Q. What is the difference between an origination

21 and a default appraisal?

22 A. An origination appraisal is done for the purpose

23 of valuing the collateral associated with the

24 prospective loan for a consumer. Those transactions

25 generally have fees that the borrower is paying upfront

0332

1 on the servicing default side. Those are initiated by

2 the lender for the lender's purpose, and those purposes

3 can be loss mitigation, portfolio analysis, trying to

4 decide whether or not to foreclose or try some other

5 loss mitigation strategy with a property that is

6 currently in default.

7 Q. Very fine. Let's go to the transactions at

8 issue in this proceeding right now. Are you familiar

9 with the appraisal order transactions that we are about

10 to talk about here?

11 A. Yes.

12 Q. How did you become familiar with these?

13 A. I became familiar with them in response to the

14 board's request for information that occurred last June

15 or July 2014 for the transactions that we had conducted

16 in the state of Louisiana between December '13 and I

17 believe June '14.

18 Q. All right. I would like you to look in your

19 binder at tab number one which is an exhibit that has

20 previously been admitted into evidence as "Respondent

21 #7," and ask you if you can identify that. And board

22 members, we are back on tab number one in the binder.

23 A. This is the data request that I received from

24 the board.

25 Q. Did the letter specify which provisions of

0333

1 Louisiana law the board was trying to see that the

2 company may have violated?

3 A. No, it did not.

4 Q. Okay. How did iMortgage respond to this

5 allegation letter?

6 A. We provided information that was responsive to

7 each of the 13 items that were listed in the letter.

8 Q. Okay. I'm going to show you -- now, board

9 members, I am at tab number three which has been

10 previously identified as "Respondent #3," and ask if

11 you can identify that document.

12 A. Yes. This is the document that I returned to

13 the board --

14 Q. You say you returned. What is your familiarity

15 with it?

16 A. I drafted it.

17 Q. Okay. Describe the responsive materials that

18 are in there for us, please.

19 A. The response -- well, first, there was a

20 spreadsheet that listed each of the orders that

21 occurred during the investigative period. That was the

22 150 orders. And then there is a narrative surrounding

23 assignment methodology, fee methodology, our appraisers

24 scoring system, a copy of our vendor agreement which

25 outlines the business terms between iMortgage and each

0334

1 of our appraisers that they execute and must execute in

2 advance of receiving any work from us.

3 Q. All right. So that's basically the book, as it

4 were --

5 A. Yes.

6 Q. -- about how you do your relationship with your

7 appraisers?

8 A. Yes. And the spreadsheet included links to the

9 engagement letters for each of the orders.

10 Q. And these were active links, I guess, that were

11 E-mailed to the board?

12 A. This was E-mailed to the board.

13 Q. Do you remember who it was addressed to?

14 A. Tad Bolton.

15 Q. Did Mr. Bolton ever give you a ring to

16 acknowledge receipt of this?

17 A. No. I never heard from the board regarding the

18 submission ever.

19 Q. That's a broad statement, Mr. Kelker. You did

20 not -- my first question was, did Mr. Bolton?

21 A. No.

22 Q. You never heard from him?

23 A. No, I did not.

24 Q. No other members from the board staff contacted

25 you, or to your knowledge, any other person from

0335

1 iMortgage about any of this; is that correct?

2 A. That's correct.

3 Q. When you say live links to the orders, describe

4 to the board what that means to the engagements of

5 appraisers.

6 A. What those live links do, rather than printing

7 out each page for each transaction, that link would

8 take the user right into our system and link it

9 directly to the engagement letter on that order, and

10 from that, that link, the user could print a copy of

11 the engagement letter.

12 Q. Tell us what is in that engagement letter

13 briefly.

14 A. The engagement letter has our client name. It

15 has product specifications as to what the requirements

16 are for that assignment. It has the appraiser/vendor's

17 fee on the document. And usually, there is a due date.

18 Q. A due date for what?

19 A. For when the order is to be returned to

20 iMortgage.

21 Q. I'm sorry. I'm just trying to find my documents

22 here. One second. And again, your role specifically

23 during this investigation process was to do what?

24 A. Was to provide the requested information back to

25 the board.

0336

1 Q. Were you available to respond to any follow-up

2 questions or anything like that?

3 A. Yes, I was.

4 Q. From the board investigator?

5 A. Yes, I was.

6 Q. At the time you received the allegation -- I'm

7 sorry -- the investigatory letter, were you in any way

8 concerned with any issue of compliance that you had in

9 the state of Louisiana, that iMortgage would have had

10 in the state of Louisiana?

11 A. Well, I saw in the request that there was --

12 there appeared to be a complaint, but I wasn't

13 concerned about compliance being that we had received

14 what I recall information requests from a number of

15 states and provided similar data to those states.

16 Q. So this was an ordinary -- there was nothing

17 that put you on notice or cause for alarm or anything

18 in the allegation letter that you received?

19 A. No, no.

20 Q. Had you familiarized yourself with Louisiana law

21 and Louisiana rules and regulations as they were put

22 into place in November of 2013?

23 A. Yes. I was aware, but I would also say that

24 there was very little guidance in terms of the actual

25 execution and implementation of those rules.

0337

1 Q. So you read the rules, and you read them

2 carefully; is that correct?

3 A. Yes.

4 Q. And you always, or I should say your policy is

5 that you always conform your operations to what you

6 understand the rules and regulations or the rules of

7 the game to be of any regulatory entity; is that

8 correct?

9 A. That is correct.

10 Q. What is the consequences if you don't do that?

11 A. Well, the consequences would be an issue of

12 noncompliance, particularly -- well, a complaint, a

13 disruption in the business while we deal with those

14 issues.

15 Q. Again, to a person of ordinary intelligence,

16 the chief compliance officer on the compliance

17 committee, you read the Louisiana Revised Statute,

18 Title 37, Section 3415.15, and the regs, Chapter 311 on

19 compensation of fee appraisers, and you read them and

20 felt that you understood what they meant, what both of

21 those things meant; is that correct?

22 A. That is correct.

23 Q. Okay. What is the next thing? What is the next

24 communication you got from the board that you recall?

25 A. The next communication from the board, I

0338

1 believe, was late in the fall of 2014, I believe,

2 regarding preliminary notice of adjudication.

3 Q. September 24th of 2014, I believe, was that the

4 first one, or --

5 A. No.

6 Q. November?

7 A. Yes, it was September of this year.

8 Q. That's right. September of this year. You're

9 right. So what did that letter show you? What did it

10 say?

11 A. The letter said that there is an investigation,

12 and a complaint, and it went on to discuss the board's

13 enforcement regs.

14 Q. And for the board's knowledge, this is tab --

15 let's see -- 2-B, if you will.

16 A. 2-A.

17 Q. 2-A. I'm sorry. I have so many of these. Had

18 you any idea that iMortgage's operations in Louisiana

19 had done anything to cause a violation?

20 A. No, I did not.

21 Q. Okay. There were others of these notices of

22 adjudications and complaints that took place; is that

23 correct?

24 A. Yes, there were.

25 Q. Okay. Now, you said you submitted in the

0339

1 initial response back in July of 2014 essentially every

2 appraisal that you did during the December '13 to June

3 '14 time period, and that was 150; is that correct?

4 A. That is correct.

5 Q. Okay. And there was information that you

6 detailed at that time, and submitted it by including

7 the active links that would allow someone to be able to

8 review that information and decide whether or not these

9 were covered transactions; is that your understanding?

10 A. That is correct.

11 Q. Okay. But, in fact, when you began to receive

12 these letters, had any of the noncovered transactions

13 been eliminated from the number of alleged violations

14 that you were supposed to have committed; is that

15 correct?

16 A. That is correct. The letters listed 150

17 transactions.

18 Q. And until recently, that number never came down;

19 is that correct?

20 A. That is correct.

21 Q. And that was despite the fact that the board

22 staff had in its possession everything it needed to

23 determine what was a covered transaction and what was

24 not?

25 A. Correct.

0340

1 Q. And your understanding again is only covered

2 transactions were subject to customary and reasonable

3 fees; is that correct?

4 A. That is correct.

5 Q. And you always strive to pay customary and

6 reasonable fees on all transactions, but because of the

7 federal and state overlay, especially on covered

8 transactions; is that correct?

9 A. That is correct.

10 Q. Okay. I am going to direct you to tab 2-B, and

11 that's another violation letter, is it not, or I will

12 ask you to review it, tab 2-B.

13 A. Yes.

14 Q. Dated June 24th, 2015; correct?

15 A. Yes.

16 Q. And what does it say that iMortgage failed to

17 do?

18 A. It says that we failed -- we failed to pay

19 customary and reasonable fees, and it also stated that

20 we failed to pay within 30 days of the appraiser

21 providing completed report.

22 Q. And that for the first time is the pay within 30

23 days. If you look at IMS 00010, if you will, as part

24 of that same exhibit, those are five transactions

25 listed by appraisal order number right there; is that

0341

1 correct?

2 A. That is correct.

3 Q. Okay. But all of the information that was there

4 to allow someone to determine that payment was

5 appropriate was already in the information that you

6 previously had sent; is that correct?

7 A. That is correct. In the July '14 submission, we

8 also included a copy of our vendor agreement which

9 includes payment terms.

10 Q. Which means they are going to pay so many days

11 after closing of the transaction; is that correct? And

12 the transaction meaning the completion of the appraisal

13 and submission to you.

14 A. Yes.

15 Q. Once it's completely finished?

16 A. Once it's completed, and where it falls in the

17 calendar.

18 Q. In the calendar cue?

19 A. Yes.

20 Q. But in any event, you paid everything with no

21 more than 45 days?

22 A. That is correct.

23 Q. Ultimately, these were dismissed; were they not?

24 Is that your understanding?

25 A. That's my understanding.

0342

1 Q. And of the other 150 allegations, more than 135

2 of those were dismissed; is that correct?

3 A. That is correct.

4 Q. They are all based on the same information that

5 you had submitted back over a year ago; is that

6 correct?

7 A. That is correct.

8 Q. All right. Let's look at tab 2-D which is the

9 November 17, 2015, letter, which I believe is "S-1" as

10 it were. Have you got that there?

11 A. Yes.

12 Q. Okay. What has happened since the September

13 16th, 2015, preliminary notice of adjudication? What

14 has happened in that about two-month period that you

15 can tell us?

16 A. The payment issues, the terms of timing of

17 payments has dropped off the letter.

18 Q. Okay. What else, or is there anything else?

19 A. This is like finding Waldo. The number has

20 dropped to 15 real estate assignments, 15 transactions.

21 Q. Very fine. Does this notice indicate what laws

22 or regs the board alleges IMS to have violated?

23 A. There are citations to Louisiana law here, yes.

24 Q. Revised Statutes in Title 37 and regs in Section

25 31101; correct?

0343

1 A. Correct.

2 Q. According to the letter; is that right?

3 A. Yes, yes.

4 Q. And that is a law and some regs that you

5 testified that you previously reviewed when they came

6 out in November of 2013, and satisfied yourself that

7 iMortgage's processes were in compliance thereto, based

8 on your understanding of both of them; is that correct?

9 A. That is correct.

10 Q. So let's talk about general iMortgage processes;

11 shall we?

12 A. Sure.

13 Q. All right. What are your general protocols or

14 processes for appraiser selection?

15 A. We are talking about appraiser qualifications?

16 Q. Qualifications, yes, sir. It is pretty

17 important; is it not?

18 A. It is as identified by the OCC one of the most

19 important components in risk management which is to

20 assess the quality of the candidate appraisers that are

21 accepted for an institution's approved list. And in

22 this case, IMS requires the appraiser to have three

23 years of licensed or certified experience beyond their

24 training time as a minimum requirement.

25 Q. Do they have to supply their professional

0344

1 qualifications and references and things like that as

2 well?

3 A. They need to -- they are required to provide all

4 of those items. They are required to provide their

5 geographic coverage area. One of the reasons for

6 references is to check the references to determine if

7 geographic competency that they provided us is

8 consistent with what their clients are saying.

9 Q. And that is something you do affirmatively; is

10 that correct?

11 A. Yes, we do.

12 Q. Okay. What is the purpose of the vendor

13 agreement?

14 A. The vendor agreement covers, aside from the

15 payment terms between iMortgage and its appraisers and

16 other suppliers, it also covers the privacy

17 requirements. It covers competency issues with respect

18 to geographic competency. It covers items such as

19 disciplinary action and requires affirmative reporting

20 on the part of the appraiser should anything happen.

21 As a component that goes along with the vendor

22 agreement, there is the appraiser independence

23 requirement disclosure as well.

24 Q. And you rely on that disclosure?

25 A. Yes, we do.

0345

1 Q. Is it not incumbent upon the appraiser to advise

2 you of any causes that may impugn or change his ability

3 to make independent assessments; is that correct?

4 A. That is correct. And it is part of the

5 disclosure that they sign on every report.

6 Q. Okay. What is iMortgage's general protocol or

7 processes for appraisal or assignments? Let's talk

8 about those for a moment.

9 A. Okay. We have two basic methodologies. One is

10 an auto-assign process, and the other is a

11 manual-assign process. The auto-assign process is a

12 mechanism in our operating platform that looks at the

13 location of a particular order, will call up a table

14 that has the eligible appraisers on a list, and the

15 list is ordered first by score. There is a composite

16 score that each appraiser has for each product that

17 they --

18 Q. Why is that important to you, that score?

19 A. The score is important because the score

20 basically is a proxy for the appraiser's skill,

21 competency on that product type.

22 Q. And this score can change on a per transaction

23 basis; can it not?

24 A. It is a dynamic score. It changes --

25 Q. You said dynamic score?

0346

1 A. It is a dynamic score. It changes with each

2 transaction that they perform on each product.

3 Q. So an appraiser is judged on his or her last

4 transaction, but also on the body of work that they

5 have with a certain time period; is that correct?

6 A. There is a cumulative score. They get a score

7 on each assignment, but there is a cumulative score

8 that is the cumulation of the last six months or so of

9 work.

10 Q. At least six months; is that right?

11 A. Yes, yes.

12 Q. Okay.

13 A. That score has a quality component. It also has

14 a service component.

15 Q. Could you explain both of them to us?

16 A. Sure. We score on a four point scale, and on

17 the quality side, once a report comes back to us, and

18 it's our QA department, the report is examined, and if

19 there are no errors, the report is scored as a four

20 and delivered to the customer. If there are minor

21 clerical errors, those are generally small deductions,

22 maybe at a tenth of a point depending on the nature,

23 and those would be deducted from that 4.0 score. And

24 generally, the report would be returned to the

25 appraiser to be corrected. If it is a significant

0347

1 defect, something in the valuation portion of the

2 report, say the adjustment should have been negative

3 but it was positive in the grid, that's a major defect.

4 It would be a significant hit to the score. And with

5 respect to auto-assign, an appraiser needs to have a

6 minimum score of 2.5 to even be eligible for

7 auto-assign, so if someone's score falls to 2.4, 2.3,

8 they are no longer eligible for auto-assign. Now, if

9 the report does not auto-assign --

10 Q. Well, let's talk about that just for one second.

11 Auto-assign, the algorithms that you have, or the

12 program you have always selects the highest rated

13 appraiser for that particular job; is that right?

14 A. That is what it does. It always picks from the

15 top of the list.

16 Q. So under your system, the best qualified

17 appraiser every time gets first crack at the job; is

18 that correct?

19 A. That is correct.

20 Q. In any instance that you can think of, is an

21 unqualified or less qualified appraiser selected in

22 auto-assign?

23 A. Yes, it can be. We have a situation where each

24 appraiser in our system has what is called max orders

25 which is --

0348

1 Q. Max orders?

2 A. Max orders.

3 Q. Okay.

4 A. That is the maximum number of open orders they

5 are allowed to have at any particular time. If the

6 number one appraiser is at his or her max orders, then

7 it's going to go to the number two appraiser.

8 Q. But why would you do that? If this is the

9 number one appraiser, why would you do that if it's the

10 best person?

11 A. It's the best person, but the other component

12 here is there are service standards that we have to

13 meet for our clients in terms of turn time and

14 delivery, so if someone is at their max orders, that's

15 their max orders with us. We're assuming that many of

16 the appraisers work for multiple AMCs or multiple

17 clients, so if someone is at max orders for us, and we

18 manually assign beyond their max orders, we are almost

19 guaranteeing that we are going to get a late delivery

20 and be out of our delivery date, so that's why we go to

21 the next.

22 Q. So that's important to you? You know from your

23 experience that if you give one appraiser more than ten

24 or so orders, chances are, despite the merits of that

25 individual, you run a higher risk of that appraiser

0349

1 being returned late, or having the appraisal being

2 returned late or having errors or having something else

3 that may come into play here; is that correct?

4 A. That is correct.

5 Q. And you know this from your experience?

6 A. Yes, I do.

7 Q. Let's talk about manual assignment. Go through

8 some of those for us. We are talking about someone

9 that is not a 2.5, as it were, on your scale system?

10 A. Not necessarily.

11 Q. Not necessarily? Okay.

12 A. I'll give you an example.

13 Q. Sure.

14 A. If we assign to number one on -- if we

15 auto-assign a number one on the pick list, and say on

16 our system, he has got available capacity, but perhaps

17 he or she is busy with other assignments for someone

18 else, they can reject the order, and if they reject the

19 order, it's kind of a checkbox audit E-mail that goes

20 out with the order, and that returns to the system,

21 and the system now knows that that order has been

22 rejected. Well, the system doesn't keep churning

23 through the list at that point. What it will do is

24 kick it to one of our representatives who will then

25 manually assign it.

0350

1 So they will open up a screen in the system

2 which again will list all of the available appraisers

3 in that area, and that screen shows the appraisers, it

4 shows their cumulative score, it shows their current

5 active orders, their max orders, and their distance

6 from the property. And at that point, the

7 representative would pick one or more people to contact

8 to assign that order.

9 Q. And then what would happen from there?

10 A. Well, they would start making calls generally

11 from the top of the list, and what happens in real life

12 is, you know, appraisers are out in the field, and if

13 they leave messages, we may leave two messages, we may

14 leave five messages for five different appraisers and

15 ask for a call back and let them know that we have an

16 order, 123 Main Street, and call back. We give them

17 contact numbers to recontact us, and generally, whoever

18 is first with getting back to us is likely to get the

19 assignment.

20 Q. And in your knowledge, is that unusual in this

21 business?

22 A. No, it's not.

23 Q. Why is that not unusual?

24 A. It's not unusual in the sense that, you know,

25 appraisers tend to be out during the day doing what

0351

1 they do in the field, and while some appraisers take

2 calls in the field on a cell phone, if we're able to

3 get a hit first time, then the order is going to be

4 gone. If it takes two calls, if it takes ten calls,

5 there are some orders where we might call 15 people

6 because it is a remote area, and they're just

7 assignments that are difficult to place.

8 Q. Very good. What is iMortgage's general protocol

9 or processes for calculating an appraisal fee offer?

10 How do you do that?

11 A. There are a couple of ways. In the case of --

12 Q. Excuse me one second. Do you need to stop and

13 get a drink of water?

14 A. Yes. I'm sorry.

15 Q. No, no. That's all right. We've been going at

16 this pretty good, Mr. Chair.

17 MR. HALL:

18 What is your question?

19 MR. RIEGER:

20 Just refill your water? Are you good? I just

21 wanted to let the witness have a sip of water.

22 BY MR. RIEGER:

23 Q. Now, please continue your answer.

24 A. Fees. With respect to fees, we have fees that

25 are determined in a couple of ways. We have a retail

0352

1 customer, Flagstar Bank, that operates on a cost plus

2 basis. Flagstar Bank went out and conducted a fee

3 study through a number of their correspondents, and

4 through purchasing some data from a third party, and

5 they determined what they thought customary and

6 reasonable fees were throughout the country

7 geographically. Whatever that fee is, we have a

8 standard add-on that is the same regardless of where it

9 is. It's a fixed margin. For non-fee study customers,

10 what we have the ability to do is when a representative

11 is looking at a particular order, there is a screen

12 that they can pull up that shows our actual experience

13 in that particular market with respect to appraisal

14 fees, and what the range of what we are paying is. The

15 real life experience that we have had over the last

16 number of months when it has been busy is that in large

17 part, the fees that we have been paying in those cases

18 are determined directly by the appraisers. The

19 appraisers say, you know, I'm busy. If you want me to

20 do this, it is going to cost "X." And we either agree

21 with it or we don't, but we at least have a measuring

22 stick developed and we can see if it's reasonably

23 within line of what our experience is in a particular

24 market.

25 Q. So going back to the Flagstar fee study --

0353

1 A. Yes.

2 Q. -- you presented that to an appraiser, and they

3 took a tenative or responded that they may want to do

4 that, but if they didn't feel that fee was appropriate,

5 despite Flagstar doing the fee study, that that was

6 something that needed to be increased, it was something

7 that you would negotiate with them, if necessary?

8 A. That is correct. And if the fee increase was

9 appropriate due to property type or circumstances, we

10 would certainly take that back to Flagstar and say,

11 this is a complex property, there needs to be a fee

12 adjustment, and in advance of TRID, that was not an

13 issue.

14 Q. Right. But my question also is for your

15 purposes, whether you use the Flagstar fee study or any

16 other fee appraisal, that is never a take it or leave

17 it proposition?

18 A. No, no. The bottom line is we need to get the

19 work done, and so we don't have the luxury of telling

20 most of our clients, we don't want to do this one.

21 It's whatever we get, we need to deal with, and

22 typically in the default world, we have got some very

23 strange properties in very strange locations, and we

24 don't have really the right to cancel. If we get an

25 order, we have got to fulfill the order. So going back

0354

1 to a question that you had early on about the way we

2 lose money, that's how we can lose money on an

3 individual order.

4 Q. Going back to that again, you are never, ever

5 going to cut corners, either by compromising your

6 appraiser's fee, or scores, or anything like that at

7 all; is that correct?

8 A. Now, the score is -- for the score, the scoring

9 occurs in the back end of the process in QA, and those

10 people are separated in function from the folks that as

11 we call place and change orders. The people that are

12 scoring appraisers are not doing anything regarding

13 fees or assignments.

14 Q. Very good. I know you talked something about

15 this earlier in your testimony, but let's hit this real

16 quick. Why would a lender again do a fee study? We

17 talked about this a little bit. Let's talk about that

18 one more time.

19 A. Well, in the case of Flagstar, they did their

20 fee study for a couple of reasons. First, they felt

21 that they wanted to make sure that they got quality

22 appraisals from the field, and in doing that, they

23 wanted to make sure that they were paying a fair price

24 for those appraisals, so they went through the effort

25 of transferring their business over to a cost plus

0355

1 concept and took the time to develop fees on a national

2 basis, on a county basis. We have fees for every

3 county in the U.S.

4 Q. Even parishes in Louisiana?

5 A. Even parishes in Louisiana.

6 Q. Again, you talked about examples of appraisal

7 orders assigned that would require fee adjustment, and

8 again, you know what you know based on the order that

9 comes from the client and all of this kind of stuff,

10 but if things are not as they appear to be, what

11 happens?

12 A. Well, we don't -- we know very little about the

13 property when we get the order from the client. We

14 have an address, a point of contact if there is an

15 interior inspection, and that's about it. We don't

16 know -- we generally know the type, whether it is

17 single family, whether it is multi family, or condo,

18 but --

19 Q. And you know what type of an appraisal it is?

20 If it is a covered transaction, you would know that?

21 A. Yes, yes, yes, we would know that, but we know

22 very little about the properties. So what has

23 happened, what does happen is the assignment goes out,

24 or if we are talking to an appraiser regarding a fee

25 quote on a particular transaction, we are giving him or

0356

1 her the address. If they have got the ability to pull

2 the address up in their office, or on their phone, or

3 whatever, they may be able to tell us on the spot that

4 this is an unusual property. This is a mansion. This

5 is whatever it is. And we would go back to the client

6 at that point, and say, we have a complex assignment,

7 and therefore, we need to do something with the fee.

8 Q. Very good. What is your general protocols or

9 processes for calculating an appraisal fee offer for a

10 client that doesn't utilize an independent fee study?

11 A. In that case, we are using our experience in the

12 market. The scoring methodology that we use embodies a

13 lot of the things that we believe go into determining

14 what a fee should be. I mean, if someone is very

15 highly scored, obviously, they are competent, they are

16 meeting the service times, they are doing a good job

17 without a lot of rework, and in those cases, we would

18 generally find them near the middle or the upper end of

19 the fee range in that particular market.

20 Q. You use basically the first presumption of

21 compliance; is that correct?

22 A. That is correct.

23 Q. And continue to walk through with me like you

24 are doing.

25 A. In that case, we would offer to work out at a

0357

1 particular fee. The appraiser is in the position of

2 accepting at that number, or saying, no, I need $50

3 more, $100 more, whatever he or she believes to be a

4 reasonable fee for that particular assignment. We are

5 in a position of either -- we have options of either

6 accepting that, or trying to find somebody who will do

7 it for a little less, but still doing it that still

8 meets the quality scoring that we need to have.

9 Q. That you insist upon?

10 A. Yes. And in some cases, we have clients who say

11 it must be the top scored available appraiser at that

12 point in time.

13 Q. So you get the MVP for these particular subset

14 of appraisals has to be made available; is that

15 correct?

16 A. That is correct.

17 Q. And these are sophisticated clients who know

18 what they are looking for, and because of the products

19 and their own standards of quality, they want only the

20 best; is that right?

21 A. They are national banks.

22 Q. And you have to give them the best?

23 A. That is -- they audit our actual transactions on

24 a sample basis to determine if that actually happens.

25 Q. So what happens if you don't do it? Let's say

0358

1 you slip up, and you didn't tell them, or you didn't

2 get permission?

3 A. If I didn't get an exception, then if it shows

4 up in the audit, it becomes an audit finding.

5 Q. And that's not good?

6 A. No, it is not.

7 Q. You talk about your general experience. What

8 does that mean for appraisals for covered transactions?

9 A. For covered transactions -- well, for any

10 transaction, we know what we've paid, and we know how

11 many assignments we've done, when we've done them, and

12 what we've paid for them.

13 Q. Okay. And you basically use that book of

14 experience?

15 A. Yes. It's -- we're working on some system

16 modifications which will make it more real time than it

17 is now.

18 Q. What does that mean, "more real time than it is

19 now"?

20 A. That when somebody -- ultimately, when someone

21 looks at the screen, there is some delay in that data

22 coming into the system. We're accelerating it, and

23 we're parsing it a little tighter so that everyone

24 says, you know, 1004 is a 1004, but in our case, we

25 have got probably 15 or 16 versions of a 1004, so --

0359

1 Q. And each one of those has its own --

2 A. Because the content of each of those is a little

3 bit different based on client requirements.

4 Q. Yes. And you could have again a client that

5 asked for the MVP for each one of those?

6 A. Yes. Or we could have a client that just asked

7 for the basic report with very little add-in, and that

8 would be something that we could do for a lower cost

9 than the deluxe version.

10 Q. Okay. You talked about QA. What is QA

11 internally?

12 A. That's our quality assurance department.

13 Q. And what happens there?

14 A. When the appraiser returns the report to us,

15 systemically, it goes to our QA, and our QA analysts

16 range in skills and experience from just being

17 allocated to BPO work to advanced appraisal

18 assignments. We've got staff appraisers as well who

19 handle the most complex reviews on high value or

20 difficult properties. But the QA process first goes

21 through the report, and compares is to the engagement

22 letter, and makes sure that all of the required items

23 from the engagement letter are contained within the

24 report. If not, there is an engagement letter

25 violation. It's noted, and sent back to the appraiser

0360

1 to correct. Valuation issues, if a valuation issue,

2 and valuation issues come in the context of missed

3 adjustments or what appear to be missed adjustments, or

4 logic that doesn't flow through the report, generally

5 they get escalated to a senior reviewer to resolve.

6 Sometimes, there is sufficient information in the

7 report to say, okay, it's fine. And in other cases,

8 it again needs to be returned to the appraiser for

9 remediation. One of the issues that happens, we review

10 against a checklist, and the checklist has a number of

11 items that the analyst is to check for in the report.

12 If they are not present, then that's when deductions

13 start to occur on the score.

14 Q. Very good. Remind the board what your specific

15 protocols are for compliance with customary and

16 reasonable fee methodologies. You hit on this once.

17 Hit it another way, please.

18 A. Aside from -- well, we've got the -- we audit

19 our fee performance where we have the fee study against

20 the fees that we were supposed to be paying for those

21 locations on assignments against what we actually paid

22 for those assignments in those locations. Flagstar

23 Bank also audits that fee performance. To date, there

24 have not been any deviations. We run a large quarterly

25 data dump that provides fee information by location

0361

1 that we compare against what we have actually paid on

2 individual assignments, and again, looking for outliers

3 where we may have underpaid. We do that on a quarterly

4 basis. Part of the enhancements that we are currently

5 working on are designed to be able to do that on a more

6 real time basis so that we are not waiting for the

7 quarter, plus it's a massive amount of data to wade

8 through, so if we can look at it kind of on the fly

9 while we are living the transactions, I think we get a

10 more timely analysis. The other piece that we're going

11 to be putting in is a floor that would be an amount

12 that even if an appraiser said, yes, I will do it for

13 50 bucks, if the prevailing rate is 300, it won't let

14 us pay him $50. He has to get paid the prevailing

15 rate.

16 Q. So you are not going to allow someone to buy the

17 business for whatever motivations they may have; is

18 that correct?

19 A. That is correct.

20 Q. Why would you not do that? You would make more

21 money; wouldn't you? You would put more money in your

22 pocket; wouldn't you?

23 A. Well, perhaps, but my experience has also shown

24 that there are times when people come in with what I

25 will call extreme discounted fees, and when we get into

0362

1 the QA end of it, there is so much rework that the

2 report goes back and forth five or six times. It's no

3 longer cheaper. Now, I have got a report that's late,

4 and I have got a report that probably has a quality

5 issue to it, so in reality, it's not cheaper.

6 Q. Well, customary and reasonable works for you

7 because you get the quality, and you get it timely for

8 the most part; right?

9 A. That is correct.

10 Q. And your fees go up and down depending on what

11 you have been paying for the similar things; is that

12 correct?

13 A. The fees are dynamic, particularly when the

14 market is shifting either up or down.

15 Q. Speak up just a hair. I know you are tired.

16 You are hitting this hard.

17 A. Yes. The fees go up or down depending on market

18 dynamics. Of late, the fees have been going up more

19 than down because the market demand has been what it

20 has been. We've had margin deterioration that is just

21 the cycle of business.

22 Q. Very good. I'm going to show you what has been

23 previously marked as "State Exhibit S-6" and that is

24 the rule, Chapter 311, the Compensation of Fee

25 Appraisers, Section 31101, and ask if you're familiar

0363

1 with that document.

2 A. Yes.

3 Q. And this is a document or a provision of the

4 Louisiana regs that you utilize in setting your

5 customary and reasonable rates? These are the

6 considerations that you use where you are not using --

7 number one, when you are using a fee study, and number

8 two, when you are not using a fee study; is that

9 correct?

10 A. That is correct.

11 Q. So let's talk about some of those. Each one of

12 these, you have to, at a minimum, review all of the

13 factors submitted in B.1-6, and I'm right at A.3 as it

14 were, on each assignment made, and make appropriate

15 adjustments to recent rates paid in the relevant

16 geographic market necessary to ensure the amount of

17 compensation is reasonable. Now, does that conform

18 with the testimony that you just gave to us?

19 A. I believe it does.

20 Q. And you do these things already? Your system

21 says you do these things right now; is that correct?

22 A. Yes, we do that, and there are proxies which

23 recognize --

24 Q. Well, let's talk about all of these. The first

25 is the type of property for each appraisal performed.

0364

1 A. Well, we know the property type at a gross level

2 in terms of is it single family, multi-family, or

3 condominium? If the property is unusual such as an

4 earth-sheltered home, or something that's unusual, we

5 would not know that at the point of order. We would

6 find that out with feedback from the field, from the

7 appraiser. The appraiser would let us know.

8 Q. She would get back with you and say, hey, this

9 is not what you think it is?

10 A. That is correct.

11 Q. And you rely on them to be boots on the ground,

12 feet on the street, as it were, to make sure that this

13 is exactly -- that you know what you're asking them to

14 do, and they know what they're asking you to do; is

15 that correct?

16 A. That is correct.

17 Q. And then they get a fee commensurate with that;

18 is that correct?

19 A. That is correct.

20 Q. Okay. Number two is the scope of work for each

21 appraisal performed. You always say what it is that

22 you want in the context of your appraisals; is that

23 correct?

24 A. Yes, that is the engagement letter.

25 Q. The vendor agreement; right?

0365

1 A. Well, it's the engagement letter that goes with

2 that specific transaction.

3 Q. And it covers everything that is required;

4 correct?

5 A. Yes, it does.

6 Q. Very fine. How about the time in which the

7 appraisal services are required to be performed, the

8 turn time, if you will?

9 A. The --

10 Q. That is what I think is the turn time.

11 A. Yes, the due date is on the engagement letter.

12 Q. If there is something going on with that

13 particular appraisal where you need additional time,

14 is that something that you are able to give?

15 A. Generally, yes. What is important to us is that

16 the appraiser notify us as soon as possible that if

17 it's because the assignment is complex and they need

18 more time, they need to tell us so that we can tell the

19 client. If it's a situation where they can't get

20 access to the property on a timely basis because the

21 homeowner or whomever, one contact is out of town or

22 whatever, they --

23 Q. Or it is a crime scene or something else is

24 going on?

25 A. Whatever. Yes, we can make adjustments to the

0366

1 turn time.

2 Q. Is an appraiser ever penalized for instances

3 that you just described?

4 A. They are penalized.

5 Q. Are they penalized at all?

6 A. They are penalized if they are late without

7 cause.

8 Q. But so long as they communicate with you as to

9 any delays or difficulties they have encountered?

10 A. If they communicate with us, we will change the

11 ETA in the system, and at that point, the on time date

12 goes out to whatever that extra time is.

13 Q. That y'all agreed on which between the two of

14 you have decided is reasonable to turn this thing; is

15 that correct?

16 A. That is correct.

17 Q. So if someone doesn't communicate with you then

18 about turning something in late, and you don't know

19 about it, that would be an instance where an appraiser

20 score might be penalized; is that correct?

21 A. Right. The scoring for service is also on a

22 four point scale, but in the process of being changed

23 as well. The service component of the composite score

24 is about 45 percent. The quality portion of the score

25 is 55 percent.

0367

1 Q. Okay. But again, these are things that are

2 dynamic in terms of these are what your clients require

3 you to do, and you are customizing and changing your

4 policies and procedures to accommodate them; is that

5 correct?

6 A. That is correct.

7 Q. Very good. The next one is the fee appraiser's

8 qualifications. You talked a good bit about that

9 previously. You do this on all assignments; do you

10 not?

11 A. Yes. When we assign, particularly a manual

12 assignment where the representative is looking at a

13 screen that shows the eligible lenders, eligible

14 appraisers for an assignment, one of the data points

15 that is on that screen is the appraiser's years of

16 experience. Years of experience while it has some

17 importance more focused on quality score in the sense

18 that there are appraisers that have 20 years of

19 experience, it's great experience, and there are

20 appraisers that have 20 years of experience, and it's

21 one year 20 times over, so in that case just the years

22 in and of itself --

23 Q. Are meaningless?

24 A. -- are not as meaningful as how is this

25 appraiser performing assignment after assignment.

0368

1 Q. On the repetition?

2 A. Yes.

3 Q. Okay. And every one of those is a new encounter

4 with a new score; is that correct?

5 A. That is correct.

6 Q. And we talk about the fee appraiser experience

7 and professional record, and that would be disciplinary

8 issues or whatever?

9 A. We do not allow appraisers on our panel that

10 have disciplinary actions.

11 Q. Why is that?

12 A. Some of our clients do not allow it. A major

13 portion of our practice was what I would call

14 investigative and forensic work associated with

15 repurchase and rescission, and any appraiser that is

16 involved anywhere in the transaction that has

17 disciplinary action, whether it is the original

18 appraiser, the review appraiser, whatever, whoever has

19 disciplinary action automatically loses in that deal.

20 So of our panel, we have one appraiser out of thousands

21 who has had disciplinary action, and he has a very

22 limited approval for a specific client who had him on

23 their "do not use" list and removed him.

24 Q. So that was the client's decision and the

25 client's request; is that correct?

0369

1 A. It was the appraisers -- the appraiser appealed.

2 He appealed his termination.

3 Q. His termination, sure.

4 A. And said that the lender that had reported him

5 to the state had removed him from the "do not use" list

6 and had reinstated him. We get that lenders "do not

7 use" list every day. We were able to verify that. We

8 reinstated him, but only for that client's work.

9 Q. So automatically, when you get any appraiser

10 coming through, you're going to look to see if that

11 appraiser has been disciplined on a cha-ching

12 basis every time one of these things comes through; is

13 that right?

14 A. No. What we do when we board -- on board an

15 appraiser, when we verify his or her license, we go to

16 the individual state, and it varies by state. Some

17 states have disciplinary records online. Others, we

18 have to send a letter to or communicate in some other

19 fashion, and we verify that they have not had

20 disciplinary action. Once that is verified, then they

21 are on board with us. In terms of license

22 verification, we have a direct link to the ASC, and

23 every time we place an order, it checks that

24 appraiser's license against the ASC. And when the

25 appraisal comes back and flows through QA before it is

0370

1 delivered to the client, that license is again verified

2 through the ASC.

3 Q. Okay. Very good. So this is again a dynamic

4 process with several checks along the way; is that

5 right?

6 A. That's correct.

7 MR. RIEGER:

8 Mr. Chair, I want to make sure I am not up

9 against any time period that you may have. If you want

10 to take a break, we are happy to do that. I've got a

11 few more questions probably, though, if I had to guess

12 15 minutes for this witness. We are going to finish, I

13 promise you.

14 MR. HALL:

15 Okay. I have no problem with continuing 15 more

16 minutes. Does anybody want to stop?

17 MR. RIEGER:

18 Okay. We'll charge on.

19 BY MR. RIEGER:

20 Q. Let's talk about the remaining nine transactions

21 at issue. First, I'm going to show you what was "S-4"

22 which was the last remaining 15 transactions that we

23 had according to the November notice of preliminary

24 adjudication.

25 A. Okay.

0371

1 Q. And I'm showing you this exhibit. What does

2 that exhibit show you or demonstrate to you? What are

3 the important data points? And I'm referring to the

4 ones that are in green and yellow and in red.

5 A. The fees that are in green are what we paid the

6 appraiser for the assignment. The yellow figures are

7 numbers from I believe the Louisiana fee study. And

8 the red dates are the created dates which are --

9 Q. Outside of the --

10 A. They are before the beginning of the

11 investigative period.

12 Q. The ones that are in green, who is your client

13 on that one?

14 A. The green fees are all Flagstar.

15 Q. And so those fees that were paid to those

16 appraisers in those particular transactions came off of

17 the Flagstar fee study, the list of which you were

18 given, and that is what you utilized; is that correct?

19 A. Correct.

20 Q. Okay. Very fine. So with -- and you know that

21 the three that are outside the date, numbers 5513,

22 6623, and 3644, are they all Flagstar transactions as

23 well?

24 A. Yes, they are.

25 Q. So let's go now down to the last nine that we

0372

1 have, and I'm going to show you another exhibit that

2 was tentatively labeled as "State #5." This was handed

3 out by Ms. Edwards I think earlier this afternoon.

4 Make sure you have got it. Arlene, do you have it?

5 MS. EDWARDS:

6 Yes, I have it.

7 MR. RIEGER:

8 Q. Let's take a look at some of these. The print

9 is very small, but let's go through these. The first

10 one is transaction last four numbers 7989 on this

11 spreadsheet. It's shown as two, but there are only

12 nine that we are talking about in total; is that

13 correct?

14 A. Correct.

15 Q. Who is the client on that one?

16 A. The client is Flagstar.

17 Q. Okay. And it was done in Prairieville, which is

18 in Ascension Parish; is that correct?

19 A. No, we're on the --

20 Q. Oh, I'm sorry. That's the wrong one.

21 A. Lake Charles.

22 Q. I'm sorry. Lake Charles. Pardon me. Calcasieu

23 Parish. Okay. Can you tell me how that 365 appraisal

24 fee was calculated?

25 A. That would have been extracted from the fees

0373

1 that Flagstar provided from their fee study.

2 Q. Now, you didn't do an independent verification

3 of that because under your agreement with Flagstar,

4 this is one that you are contractually obligated to

5 use?

6 A. That amount, or it would be more if the

7 appraiser required it because of the nature of the

8 assignment.

9 Q. I notice on this list Flagstar has four more for

10 a total of five, I believe, on this; is that correct?

11 A. That is correct.

12 Q. And your testimony would be the same for those

13 other five -- other four transactions; is that right?

14 A. That is correct.

15 Q. Okay. Very fine. Let's talk a second about the

16 Flagstar fee survey. You attempted to get that fee

17 survey; did you not?

18 A. Yes, I did ask for it.

19 Q. Okay. And Flagstar is a good client. Did you

20 tell them why you needed it?

21 A. Yes. I told them that we would use it as

22 evidence for this hearing.

23 Q. Okay. Regrettably, Flagstar was not able to

24 produce it; is that correct?

25 A. They elected not to produce it, correct.

0374

1 Q. Flagstar did, though -- let me back up. Who is

2 Joseph Kuzner; do you know?

3 A. Joe Kuzner is the chief residential appraiser

4 for Flagstar Bank.

5 Q. Do you work with Mr. Kuzner closely?

6 A. I work with him regularly. Not closely, no.

7 Q. Okay. Fair enough. And for the board's use, I

8 am now on tab 12, which is the affidavit of Joseph

9 Kuzner of Flagstar Bank. IMS 000153 through 000155 is

10 the affidavit that I am going to tentatively mark as

11 "R-10." Judge White, is that right?

12 JUDGE WHITE:

13 That would be -- serially, that would be

14 correct.

15 MS. EDWARDS:

16 Your Honor, I'm going to object. I know he

17 hasn't introduced it, but he's asking the board to look

18 at it. It's an affidavit that I received yesterday.

19 It's an affidavit from a gentleman that is not here

20 today. It goes into issues that are beyond just facts.

21 I certainly think that it's prejudicial not to have an

22 opportunity to cross-examine the witness, not have him

23 here, and it goes to the heart of the matter because it

24 is about this fee study that has not been produced. So

25 I have an objection to it being introduced, and I have

0375

1 an objection to the board members being able to see the

2 affidavit.

3 MR. RIEGER:

4 I would like to -- in response to that, being

5 this is an administrative proceeding, this is someone

6 that gives this affidavit from records that are

7 maintained. It's part of their business records. It

8 is an exception to the hearsay. We are in an

9 administrative procedure. The rules of evidence are as

10 The Court has noted or as Judge White has noted are

11 relaxed in this instance. We're talking about someone

12 that this gentleman has a relationship with, and can

13 attest to many of the things that are in there himself.

14 He can verify and vouch for them because of his own

15 experience with them. But for the board's time, just

16 to save time, we thought the affidavit in lieu of the

17 study was the best evidence we could generate at the

18 time of this hearing with the understanding again that

19 we did everything within our power to ask this bank to

20 give us this fee study, and they refused to do it.

21 JUDGE WHITE:

22 It is your objection. I'll let you oppose it.

23 MS. EDWARDS:

24 Actually, hearsay evidence is admissible, but

25 incompetent evidence is not, and this is considered

0376

1 incompetent evidence. If Mr. Kelker can testify about

2 the particulars, we don't need the affidavit. If the

3 affidavit has to stand on its own, then my objection is

4 I should have the opportunity to cross-examine this

5 witness because it has to go to the heart of the

6 matter. He has an affidavit addressing much more than

7 just I work for Flagstar. It goes to how the fee study

8 was conducted and what was in it. We don't have an

9 opportunity to hear him, and the board doesn't, so I

10 think it's prejudicial. So I don't think it is

11 considered competent evidence. And there is quite of

12 bit of case law on incompetent evidence being

13 considered in an administrative hearing, and an

14 administrative hearing cannot be decided on incompetent

15 evidence.

16 MR. RIEGER:

17 Not solely on incompetent evidence. There is

18 plenty of competent evidence in here already, including

19 the very detailed testimony of Mr. Kelker.

20 JUDGE WHITE:

21 Well, there are a number of competing

22 considerations here. I'm looking at the lateness of

23 the arrival of it, number one, and the prospect that --

24 I don't know that subpoenas could have been issued or

25 not. But at any rate, I'm going to let it go to the

0377

1 weight. I will let it in. The objection will be

2 noted. It will go to the weight of whatever the board

3 may decide to ultimately give to it. But it will come

4 in.

5 MS. EDWARDS:

6 Again, Your Honor, I'm going to note my

7 objection because if this goes up on appeal, there is

8 nothing that the district court can look at other than

9 the record itself. If this goes up as a judicial

10 review, there is no evidence that can be presented so

11 we are stuck with what is in the record, so we have an

12 affidavit from a man that no board member can question,

13 that I can't question. We have no way of knowing

14 whether or not it is correct. And this evidence can be

15 adduced by this gentleman here who is live if Mr.

16 Rieger's statement is correct that Mr. Kelker has

17 firsthand knowledge of the information in this

18 affidavit. He can testify to that. Once it's in, we

19 are stuck.

20 JUDGE WHITE:

21 And if we were in a murder trial, I think you

22 would be correct, but we are in an administrative

23 proceeding.

24 MR. RIEGER:

25 And The Court's -- excuse me -- Judge White's

0378

1 observation, could he have been subpoenaed?

2 Absolutely. Again, Mr. Kelker's testimony was they got

3 nothing from the board's staff about trying to test

4 anything that is in there, so he does this report --

5 JUDGE WHITE:

6 Okay. You win.

7 MR. RIEGER:

8 I got it. Okay. Thank you, Your Honor. I want

9 to make sure that you're really right.

10 BY MR. RIEGER:

11 Q. So let's look at this affidavit. I'm going to

12 just ask you to read it, if you will. He says he is --

13 in paragraph one and two, it says he is over 18 years

14 of age, of sound mind, and capable of making this

15 affidavit. The facts are true and correct and are

16 within his personal knowledge and are based on his

17 experience and training with the subject matter

18 discussed herein. What's his physical address, Mr.

19 Kelker?

20 A. Physical address is 24535 Raven Avenue.

21 Eastpointe, Michigan.

22 Q. And who does he work for?

23 A. Flagstar Bank.

24 Q. Okay. And what is his capacity there?

25 A. He is the chief residential appraiser.

0379

1 Q. And number five, prior to his employment with

2 Flagstar?

3 A. He worked for LaSalle Bank.

4 Q. And in six, what does he say about his

5 familiarity with TILA and Dodd-Frank?

6 A. That he is familiar with them and the amendments

7 from Dodd-Frank, and is familiar with the new

8 requirements for appraisal independence.

9 Q. Relative to the survey -- and the board can read

10 the rest of it. And he offers this affidavit on behalf

11 of Flagstar why, and to do what?

12 A. Basically, to say that the survey was completed

13 without conflicts of interest.

14 Q. And what else? Finish that sentence. I think

15 the whole thing needs to be placed in evidence.

16 A. "I am unaware of any conflicts of interest that

17 would preclude my exercising my complete and

18 independent judgment on the subjects that I attest to

19 and not under any mental or physical impairment that

20 would impact either my analysis or conclusions

21 expressed herein."

22 Q. Please turn to page two, paragraph eight.

23 A. "I am unavailable to appear live at the hearing

24 of the Louisiana Real Estate Appraisers Board, Case

25 Number 2014-1500, on December 8th, 2015, due to the

0380

1 fact that I reside more than 100 miles from the place

2 of the hearing and am otherwise unavailable not due to

3 any fault or contrivance of respondent, iMortgage."

4 Q. How about number nine?

5 A. "I am available to testify via a remote

6 appearance either by way of telephone or video."

7 Q. How about number ten?

8 A. "In August of 2013, Flagstar performed an

9 independent survey of customary and reasonable

10 appraisal fees (the 'study') for each relevant

11 geographic market area in the state. I was involved in

12 obtaining the data, performing the requisite analysis

13 and developing the study."

14 Q. Number 11?

15 A. "To complete the study, Flagstar obtained

16 objective third-party data regarding customary and

17 reasonable appraisal fees from Joan Trice. Ms. Trice

18 conducted an objective nationwide survey of both

19 Louisiana mortgage lenders and Louisiana licensed

20 residential real estate appraisers to collect a diverse

21 sample of data regarding the typical appraisal fees for

22 each geographic market within the state. Ms. Trice's

23 nationwide survey reflects third-party data and obtains

24 responses from approximately 3,400 appraisers."

25 Q. Number 12?

0381

1 A. "Flagstar performed a thorough analysis of this

2 data set to arrive at the final study fees. For the

3 market areas with the greater amount of data, the study

4 breaks down customary and reasonable appraiser fees by

5 parish."

6 Q. Number 13?

7 A. "Flagstar believes the study to be in

8 substantial compliance with the customary and

9 reasonable fee requirements under federal and state

10 laws."

11 Q. Number 14?

12 A. "Flagstar has been a client of iMortgage since

13 2008. Flagstar requires all appraisal management

14 companies with which it contracts to utilize the study

15 to ensure adherence to the applicable customary and

16 reasonable fee standard."

17 Q. Number 15?

18 A. "It is my understanding that iMortgage utilized

19 the study in paying its appraisers for the appraisal

20 order transactions performed for Flagstar."

21 Q. Okay. Number 16?

22 A. "I have reviewed the attached appraisal order

23 spreadsheet and the 11 Flagstar transactions at issue

24 and confirm that the rates paid by iMortgage are

25 consistent with the study."

0382

1 Q. And number 17 on page three?

2 A. "This concludes my testimony via affidavit."

3 Q. Very fine. Now, this affidavit corroborates

4 your testimony in multiple ways; correct?

5 A. Yes, it does.

6 Q. And first of all, that Flagstar did a fee study;

7 is that correct?

8 A. Yes, they did.

9 Q. And you understood that Flagstar used certain

10 information from a certain individual to help put it

11 together. Was that your understanding prior to seeing

12 this affidavit?

13 A. That is correct.

14 Q. And Mr. Kuzner was unavailable to be here; is

15 that correct?

16 A. That is correct.

17 Q. Got you. Let's see. They obtained information

18 from a Ms. Trice who did a nationwide survey that

19 reflected third-party data and contains responses from

20 how many appraisers did we catch there?

21 A. 3,400.

22 Q. 3,400. And then what did they do? Did you

23 understand that they did their own analysis of this?

24 A. Yes, they did.

25 Q. And came up with these prices, they came up with

0383

1 them?

2 A. That's right.

3 Q. And they are your client; is that right?

4 A. Yes, they are.

5 Q. And again, he is attesting that you all used

6 their study; is that correct?

7 A. That is correct.

8 Q. And then he also has reviewed what was an

9 attached spreadsheet to this which did not make it into

10 the thing, but it is the balance of the --

11 A. The transactions still --

12 Q. -- still transactions? Yes.

13 A. The 11 Flagstar transactions in the

14 investigative period.

15 Q. Yes. And again, the balance of those on Exhibit

16 "S-5," is that correct, the last five that we were

17 talking about a moment ago?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. And again, you did not deviate from that

22 Flagstar survey; is that correct?

23 A. No, we did not.

24 Q. Okay. Do you have any knowledge if there needed

25 to be any upward deviation? And as you testified

0384

1 previously, had there been a necessity of there being

2 an upward deviation, you could have done that; is that

3 correct?

4 A. That is correct.

5 Q. But the appraiser would be the one to come to

6 you and say, I can't do it for what we agreed on, we

7 need to get a little more, and here is why?

8 A. That is correct.

9 Q. So also, if something came out to where the

10 original turn time on the appraisal was going to be

11 later than you all agreed to, the appraiser would come

12 to you and tell you that; is that correct?

13 A. Hopefully, yes.

14 Q. Okay. Very good. So that takes care of all of

15 the Flagstar appraisals I think that we talked about,

16 that you did them all the same way; is that correct?

17 A. Correct.

18 Q. Okay. That leaves us with four more. Well,

19 let's back up a second. You said Flagstar audited

20 iMortgage; is that correct?

21 A. Yes, it is.

22 Q. Tell me about those audits and what they do.

23 You talked a little bit about it. Let's do a little

24 deeper dive into it.

25 A. Generally, Flagstar audits us once a year on

0385

1 site, and that on-site audit entails a number of

2 things. They review our appraiser qualifications, our

3 appraiser selections. They audit the fees that we have

4 paid, and then they pull random transactions and look

5 at those individual transactions, from start to finish,

6 including all of the background data for the individual

7 appraisers that were involved. They will sit with our

8 order assignment personnel. They sit with our vendor

9 solutions personnel who on board appraisers, and they

10 sit with our QA personnel, and actually watch them work

11 on Flagstar transactions that are live.

12 Q. So they are really into your business; is that

13 correct?

14 A. Yes. That's generally a two- to three-day

15 process.

16 Q. So this is a periodic, I don't want to say

17 disruption, but it is something that you have to deal

18 with while you are still trying to handle transactions?

19 A. It is part of our life now. I mean, that's just

20 the way it is. They come in once a year and then

21 during the course of the year, they may sample

22 transactions, and we have to send them information.

23 Q. And they will do it just on a random basis --

24 A. On a random basis.

25 Q. -- or whatever basis they choose to do so?

0386

1 A. That is correct.

2 Q. That is part of their product integrity, and

3 that is also your product integrity; is it not?

4 A. That is part of the safety and soundness

5 third-party oversight that they are required by the OCC

6 to perform.

7 Q. So this is something they have to do because of

8 their regulator; is that right?

9 A. That is correct.

10 Q. Very good. Let's talk about the remaining four

11 transactions, and I think the first one I see is the

12 third but listed as number four. Can you read that one

13 out? The last four digits are 2498?

14 A. 2498, that is a Freedom Mortgage transaction.

15 Q. Who is Freedom Mortgage?

16 A. Freedom Mortgage is based in southern New

17 Jersey. They are a national lender. They are a

18 nonbank lender, and therefore, are regulated by

19 Consumer Finance Protection Bureau.

20 Q. CFPB?

21 A. CFPB is their regulator.

22 Q. Very good. How did you calculate that rate?

23 A. That fee would have been based on our experience

24 in the market, and/or with input from the individual

25 appraisers.

0387

1 Q. So the six factors that were in the second

2 presumption, those were all of the things you do, plus

3 your experience with the appraiser, plus your other

4 experience in the market?

5 A. That's correct.

6 Q. Including everything that came in?

7 A. Yes, the six factors again are --

8 Q. They are everywhere?

9 A. They are everywhere. Our system managing

10 appraisers is appraiser centric. We focus on the

11 individual appraiser because again that is the OCC

12 guidance, that they are focused on who is doing the

13 work and are they competent. So while the six factors

14 are broad elements, those six factors have to be melded

15 into the individual appraisers, and that happens

16 through the scoring primarily, and through the

17 qualifications to get on board.

18 Q. So as good as an appraiser is, he or she, they

19 are as good as their work product and everything else

20 that they do, and it is all about them in this

21 instance; is that right?

22 A. That is correct.

23 Q. Including some being so good, and as the MVPs,

24 they are the ones who are commanded by some of your

25 clients; is that right?

0388

1 A. That is correct.

2 Q. Let's look at the one I will label, I think,

3 TFF. What is that one? That is about number five

4 ending in 4598.

5 A. That is Top Flite Financial.

6 Q. This involves something in Monroe and Ouachita

7 Parish?

8 A. Yes, they are a large correspondent lender.

9 They sell their loan output to a few investors.

10 Flagstar is one of them. If they are designating a

11 specific loan to Flagstar, at the time they order, then

12 we would price them under Flagstar's fee schedule. If

13 they do not give us an independent investor at that

14 point in time, then they would --

15 Q. Then they would fall under your usual

16 methodologies?

17 A. That is correct.

18 Q. Okay. Very fine. And as you say, sometimes

19 they sell to Flagstar, and sometimes they don't?

20 A. That is correct.

21 Q. In this instance, this is more where you

22 investigated and found they did not sell to Flagstar;

23 is that right?

24 A. It was not set up that way. It might have ended

25 up with Flagstar, but for the relevant time period --

0389

1 Q. But as the order came in?

2 A. -- for us, we don't know what they did with it.

3 Q. Very fine. Let's look at the one that is last

4 four digits, 8294. It looks like LOA-1001. What is

5 that one?

6 A. That is Loan Leaders of America, another

7 correspondent that sells to Flagstar, but occasionally

8 use Flagstar's fee schedule if the loan was designated

9 to Flagstar at the time that we got the order. If it's

10 not, then it would be -- the fee would be determined

11 based on our other process.

12 Q. Okay. Very fine. Have we now covered all of

13 the ones on this list?

14 A. The last one.

15 Q. The last one?

16 A. That's Freedom Mortgage again.

17 Q. FMC? Okay.

18 A. Same.

19 Q. 6202, LaPlace?

20 A. Yes.

21 Q. Again, that's the same protocol you discussed

22 using with Freedom?

23 A. Yes.

24 Q. And it would have had appraiser inputs if

25 anything needed to be different --

0390

1 A. That is correct.

2 Q. -- than the price that you all originally agreed

3 on; is that right?

4 A. That is correct.

5 Q. Okay. Very good. Now, are you familiar with

6 the transaction or supposed transaction that led to the

7 complaint that led to this investigation? Do you

8 remember that?

9 A. Yes, I do.

10 Q. Can you describe for the board what went on in

11 that particular situation?

12 A. There was an auto-assign order that went to an

13 appraiser in Louisiana. I don't recall his name. It

14 was not a covered transaction.

15 Q. Not a covered transaction, so not one that this

16 board had any jurisdiction over; is that correct?

17 A. No.

18 Q. But for reasons known to the board staff, the

19 board decided to use that to commence an investigation;

20 is that correct?

21 A. Yes, that's my understanding.

22 Q. That's what you -- that's how they did that.

23 MR. RIEGER:

24 Excuse me one moment, Mr. Chair. Could we have

25 just one minute, Mr. Chair? We need to get a little

0391

1 water and take a bathroom break. We will tender you to

2 cross-examination as soon as we come back.

3 MR. HALL:

4 It is our intention to complete it without

5 anymore breaks.

6 MR. RIEGER:

7 Oh, absolutely. We are about done.

8 (A RECESS WAS TAKEN AT THIS TIME).

9 MR. RIEGER:

10 Mr. Chair, we are ready when y'all are.

11 MR. HALL:

12 Let's go back on the record as soon as we can.

13 MS. EDWARDS:

14 You tender, Rob?

15 MR. RIEGER:

16 Yes, I did.

17 JUDGE WHITE:

18 Everybody is present who was present when we had

19 taken a break. And, Mr. Rieger, do you rest with this

20 witness?

21 MR. RIEGER:

22 We rest. We tender for cross-examination, Your

23 Honor.

24 BY MS. EDWARDS:

25 Q. Mr. Kelker, we've talked a little bit about a

0392

1 survey, or you have been asked questions. You don't

2 have the survey with you today; do you?

3 A. No, I don't.

4 Q. Is that survey used only for covered

5 transactions, or is it used for other transactions?

6 A. Right now, it is used only for covered

7 transactions, but it is Flagstar's intent to use it for

8 noncovered transactions that we do for them.

9 Q. And Flagstar is your client; correct?

10 A. That is correct.

11 Q. And you have a contract with Flagstar that

12 requires that you use the contents of that fee study;

13 correct?

14 A. That is correct.

15 Q. And if you don't use the fee study to pay

16 appraisers, what happens?

17 A. We would be in violation of that agreement.

18 Q. So you would lose Flagstar's business?

19 A. Theoretically, yes. I mean, we could pay more

20 than those rates.

21 Q. But that wouldn't be good business; would it?

22 A. No, it wouldn't.

23 Q. Now, you said earlier that you had received a

24 letter from Mr. Bolton asking for information; is that

25 correct?

0393

1 A. Yes.

2 Q. An initial letter?

3 A. Yes.

4 Q. And you provided a response to that letter; did

5 you not?

6 A. Yes.

7 Q. And I think you said that you had not spoken

8 with anybody from the appraisers board staff since that

9 time; is that right?

10 A. Not regarding that letter, no.

11 Q. Okay. Regarding what?

12 A. I think -- and I don't know if it was after the

13 letter or before the letter. I was on a call regarding

14 a licensing issue that was totally unrelated to this.

15 Q. Okay. Who is George Simon?

16 A. Gerry Simon. He's right here (indicating),

17 general counsel.

18 Q. He is general counsel. To your knowledge, did

19 he have a conversation at some point with Mr. Bolton on

20 the telephone?

21 A. I don't know.

22 Q. I am going to show you a letter dated July 10,

23 2014. Are you familiar with that letter?

24 A. I am because I am copied on it, yes.

25 Q. And that letter indicates that there was at

0394

1 least some conversation between your counsel and Mr.

2 Bolton; correct?

3 A. Yes.

4 Q. Does that refresh your memory now that there was

5 some contact between your counsel and staff at the

6 appraisers board?

7 A. Yes, concerning scheduling.

8 Q. Okay. Now, I believe you made the comment that

9 you have not gotten or received any guidance from

10 anybody at the Appraisers Board staff or otherwise

11 regarding the law and the rules concerning I guess the

12 particular allegation that you are here for. Was that

13 pretty much your statement?

14 A. Yes.

15 Q. Did you ever reach out to anyone at the board,

16 any staff member?

17 A. No, I did not.

18 Q. Okay. And you made the comment earlier that

19 this concerned you because it could ultimately affect

20 your business, so you didn't think that was important

21 enough to try to reach out and see what information the

22 board staff might need in order to resolve this issue?

23 A. My expectation was after responding to the

24 request from the board staff, Mr. Bolton, that after I

25 submitted that information that I would hear back if

0395

1 there was either any additional information required or

2 some feedback, and I did not get any of that feedback.

3 Q. But you got some feedback in the form of a

4 preliminary notice of adjudication; correct?

5 A. That is correct.

6 Q. Now, how many states is your business currently

7 in?

8 A. Fifty.

9 Q. Of those states, how many of them have

10 implemented AMC laws?

11 A. Thirty-eight.

12 Q. Okay. And of those, how many of those have

13 reached out to you to give you guidance on their laws?

14 A. At least two.

15 Q. And two out of 38? And who would those be?

16 A. Illinois is one, and I believe Mississippi.

17 Q. And were the contacts between you and the

18 appraisers boards in those states or somebody else in

19 your office?

20 A. They were with me.

21 Q. Okay. And did you contact either one of those

22 states, or did they take it upon themselves to contact

23 you to give you guidance?

24 A. What happened is those two states requested

25 information, not unlike the information that Louisiana

0396

1 requested, and there was feedback, I believe, regarding

2 both of those states.

3 Q. So there was an investigation conducted in those

4 states against iMortgage?

5 A. They were not investigations. They were

6 requests for information.

7 Q. Okay. So at that point, there was no letter to

8 you as there was from Mr. Bolton to you indicating that

9 there were alleged violations?

10 A. That is correct.

11 Q. Okay. Now, did you at any point send any

12 further information to Mr. Bolton or any staff member

13 indicating that of these 150 or so appraisals that a

14 number of them were noncovered transactions in your

15 opinion?

16 A. No.

17 Q. Why not?

18 A. I was asked questions. I answered the

19 questions.

20 Q. Well, let me ask you something. Do you take

21 issue with any of the responses that you provided to

22 Mr. Bolton in your letter?

23 A. "Take issue," I'm not sure I understand the

24 question.

25 Q. Well, you sent him a response July 28th, 2014,

0397

1 that's marked in tab three, and attached to that is

2 Louisiana investigative response, and there was some

3 methodology, there was some attachments.

4 A. Yes.

5 Q. Do you stand by that letter and those

6 attachments that you sent to Mr. Bolton in response to

7 his letter to you?

8 A. Yes. At the time they were written, that is

9 correct.

10 Q. So you are saying now that something has

11 changed?

12 A. A number of things have changed. I think we are

13 at a constant state of process improvements. There are

14 things that have changed that are better than they were

15 a year and a half ago.

16 Q. Well, let me ask you this. In one of your

17 responses, you said that the client has performed their

18 own fee study nationally and developed the data on a

19 county/parish basis for each date. We can't speak to

20 the details of the development of their survey as it

21 was completed without our involvement. Is that still

22 the case?

23 A. I know more today about the study than I did at

24 the time that I responded to Mr. Bolton.

25 Q. Okay. And once you found out more information,

0398

1 did you contact Mr. Bolton or any staff member and say,

2 hey, look, I have now found more information about the

3 fee study?

4 A. No.

5 Q. When did you find more information?

6 A. Probably over the last few months.

7 Q. That was after the investigation began and

8 continued and you received several adjudicatory

9 notices; correct?

10 A. Yes.

11 Q. Now, I want to ask you, and maybe I

12 misunderstood, but Mr. Rieger asked you about under tab

13 B, 2-B, a June 24, 2015, preliminary notice of

14 adjudication that was sent, and I believe you said at

15 that point, there were two allegations, one had to do

16 with reasonable and customary, and one had to do with

17 the 30 days of -- within 30 days of paying the

18 appraiser; correct?

19 A. Yes. It's on -- yes.

20 Q. Okay. And then he also called your attention to

21 tabs 2-C and 2-D. One was a September 16 letter to

22 you, and one was a November 17 letter to you, and his

23 question was, what changed between September and

24 November, and your response was the allegation

25 regarding the 30-day payment was deleted. In my

0399

1 looking at it, I don't see it included in the September

2 16th letter that you failed to pay within 30 days; do

3 you?

4 A. It is not in the September 16th letter.

5 Q. So it would have been in the June 24th letter,

6 and then deleted by the September 16th letter; correct?

7 A. Yes.

8 Q. Okay. And your response regarding payment

9 within 30 days was actually provided to Mr. Bolton in

10 July of 2014 after he had sent the original preliminary

11 notice of adjudication; correct?

12 MR. RIEGER:

13 Can you rephrase the question -- I'm sorry --

14 reask the question. I didn't hear it.

15 BY MS. EDWARDS:

16 Q. Okay. The original letter to you dated June 24,

17 2015, addressed the failure to pay within 30 days. My

18 understanding from your testimony earlier is in your

19 response to that letter in July of 2014, you provided

20 information regarding the payment of 30 days, and that

21 you actually had something that you attached to the

22 document to show that these were not late payments; is

23 that right?

24 MR. RIEGER:

25 Counsel, are you asking the question of June

0400

1 24th, 2015, or one in July of 2014?

2 MS. EDWARDS:

3 Well, my mistake. You're right. You're right.

4 MR. RIEGER:

5 I just want to make sure that we are on all on

6 the same page.

7 MS. EDWARDS:

8 Yes. You're right. I have them out of order

9 here.

10 MR. RIEGER:

11 That's okay.

12 MS. EDWARDS:

13 I withdraw the question.

14 BY MS. EDWARDS:

15 Q. All right. Now, you said earlier that one of

16 the ways that y'all calculate a fee is to see what an

17 appraiser will accept; is that correct?

18 A. Repeat that again.

19 Q. One of the determining factors that you

20 sometimes use as to what you are going to pay for a fee

21 for an appraisal is what the appraiser will accept?

22 A. Yes. In the context of what he requires, he or

23 she requires to do the assignment.

24 Q. And I believe you testified that if an appraiser

25 comes back and says, due to the property type or the

0401

1 complexity, they are requesting additional payment or a

2 higher fee, that that is taken into consideration; is

3 that correct?

4 A. Yes.

5 Q. What percentage of your appraisal requests that

6 are sent out do you increase the fee when the appraiser

7 asks that the fee be increased?

8 MR. RIEGER:

9 If you know that.

10 MR. KELKER:

11 If the appraiser requests, what percent do we

12 actually increase it?

13 BY MS. EDWARDS:

14 Q. No. Not what percentage do you increase it,

15 but what percentage of the time that an appraiser asks

16 that it be increased, do you actually go ahead and

17 abide by the wishes of the appraiser and increase it?

18 A. I don't know the exact percentage. I would say

19 most of the time.

20 Q. Okay. Now, in the letter that Mr. Bolton

21 originally sent to you, he asked that you provide a

22 number of documents; correct?

23 A. Yes.

24 Q. Okay. Do you have that letter in front of you?

25 It should be under tab one.

0402

1 A. Tab one?

2 MR. RIEGER:

3 Tab one.

4 BY MS. EDWARDS:

5 Q. Yes. Now, you see in there the second bullet

6 point, it lists for each appraisal assignment

7 administered by your firm, you are instructed to

8 provide the following information, and it lists 13

9 items?

10 A. Uh-huh (affirmative response). Yes.

11 Q. Okay. Go ahead and look at what has been marked

12 as "Exhibit S-6" that your counsel showed you which is

13 the Louisiana Real Estate Appraisers Board rules and

14 regulations, Section 31101?

15 A. Okay.

16 Q. And look at under B, numbers one through six,

17 and tell me are those items that are mentioned in B,

18 numbers one through six part of the items that were

19 requested by Mr. Bolton in his letter to you of July

20 2014?

21 A. Yes.

22 Q. And is it your testimony that you provided all

23 of that information for every one of the appraisals?

24 A. Yes.

25 Q. Okay. So you maintained records of all of the

0403

1 information pursuant to Section C of this chapter and

2 provided that to Mr. Bolton or staff here at the

3 Appraisers Board?

4 A. Section C?

5 Q. Correct.

6 A. Yes. And as I mentioned before, that many of

7 those factors are vetted as proxies in the quality

8 scoring and qualification methodology.

9 Q. I want to ask you about the affidavit. We have

10 an affidavit of -- what is this gentleman's name?

11 A. Joe Kuzner.

12 Q. Kuzner?

13 A. Yes.

14 Q. And you work with Mr. Kuzner?

15 A. Joe Kuzner is a client. He works for one of our

16 clients. I know Joe. I have worked with him not on a

17 daily basis, but I see Joe generally once a quarter.

18 Q. So he works for one of your clients?

19 A. Joe Kuzner is the chief appraiser of Flagstar

20 Bank.

21 Q. And Mr. Kuzner prepared this affidavit; is that

22 correct?

23 A. Yes.

24 Q. Did you have any input into the affidavit?

25 A. No.

0404

1 Q. Did you discuss any of the contents of this

2 affidavit with Mr. Kuzner?

3 A. Yes, I did.

4 Q. And when would that have been?

5 A. A couple of weeks ago over the phone.

6 Q. Okay. Who is Joan Trice?

7 A. Joan Trice is a person that has a business that

8 has monetized certain elements of the appraisal

9 profession, continuing education, regulatory compliance

10 consulting, background checks. She does a number of

11 things, holds seminars, and is the sponsoring person

12 for the Collateral Risk Network.

13 Q. Do you speak with Ms. Trice often?

14 A. No, not often. I normally see her when I attend

15 her events.

16 Q. Let me ask you. This affidavit you went through

17 and read almost all of the paragraphs, tell me what

18 information in here are you independently familiar

19 with. The earlier paragraphs just talk about Mr.

20 Kuzner's age, and where he works, and what his address

21 is, and that he's not able to testify. Let me ask you

22 about number ten. It says, "In August of 2013,

23 Flagstar performed an independent survey of customary

24 and reasonable appraisal fees (the 'study') for each

25 relevant geographic market in the state. I was

0405

1 involved in obtaining the data, performing the

2 requisite analysis, and developing the study." Were

3 you involved in the study at all?

4 A. Only to the extent that I was aware that they

5 were performing it.

6 Q. And do you know any of the steps that they took

7 in performing this study?

8 A. No, not firsthand.

9 Q. Okay. Number two -- I mean, Number 11 -- excuse

10 me -- the second page, "To complete the study, Flagstar

11 obtained objective third-party data regarding customary

12 and reasonable appraisal fees from Joan Trice." Do you

13 know whether or not they actually obtained this

14 information from Ms. Trice?

15 A. Joe told me that they purchased it from Joan

16 Trice.

17 Q. Okay. It says, "Ms. Trice conducted an

18 objective nationwide survey of both Louisiana mortgage

19 lenders and Louisiana licensed residential real estate

20 appraisers to collect a diverse sample of data

21 regarding the typical appraisal fees for each

22 geographic market area within the state." Do you know

23 that to be a fact?

24 A. I am aware that she advertised for data for some

25 period of time, and was trying to collect enough data

0406

1 to publish such a study, but I was not directly

2 involved in any of that activity.

3 Q. Do you know how many parishes she actually

4 received data from?

5 A. No, I do not.

6 Q. And if I told you she received data from less

7 than half of the parishes in this state, would you

8 believe that is an objective nationwide survey

9 regarding typical appraisal fees for each geographic

10 market within the state?

11 A. Then you are asking me to assume that your

12 information is correct. I don't know that either.

13 Q. I'm asking you to assume that information is

14 correct.

15 A. If -- if it's half the parishes?

16 Q. Less than half.

17 MR. RIEGER:

18 Objection. It assumes facts not relevant -- not

19 in evidence -- excuse me -- Your Honor.

20 MS. EDWARDS:

21 Your Honor, we have an affidavit from a man I

22 can't cross-examine. Now, if I need to, I can call the

23 executive director on rebuttal to testify, but I'm

24 asking this gentleman, otherwise, I am going to call

25 Mr. Unangst.

0407

1 JUDGE WHITE:

2 I'm going to -- objection noted. I will admit

3 it. The question is cross-examination. It is hearsay.

4 All things considered, I'm going to admit it. So

5 objection overruled. Go ahead, Counsel.

6 BY MS. EDWARDS:

7 Q. If the survey that -- if the market data -- let

8 me ask you this. Did she do a survey?

9 A To the best of my knowledge, yes.

10 Q. And what did that survey consist of?

11 A. I don't know the details of that survey. She

12 never published the survey.

13 Q. So you never saw it?

14 A. No, I did not.

15 Q. So how do you know she did a survey?

16 A. Because in some of her public written

17 statements, she said that she was collecting data.

18 Q. She was collecting data? She didn't say she did

19 a survey; did she?

20 A. If we are going to differentiate between the

21 data and a survey, she did not publish a survey.

22 Q. Okay. Now, if the data she collected was 20

23 something parishes out of 64 parishes, in your opinion,

24 do you believe that would be diverse sample data

25 regarding typical appraisal fees for each geographic

0408

1 market within the state?

2 A. My answer would be it depends on which 20

3 parishes they were. There are 88 counties in Ohio. If

4 I have 25 county data, I would have a pretty good

5 survey of the state.

6 Q. So you believe possibly, it is?

7 A. It is possible.

8 Q. But you have no independent knowledge of that?

9 A. No, I do not.

10 Q. So if Flagstar used that information to create

11 their survey, it may, in fact, not be a good survey;

12 correct?

13 A. Flagstar used her data as part of their data.

14 They also used their own internal experience that may

15 have included broader data. I don't know. I don't

16 know if they had complete survey data from the state of

17 Louisiana. I didn't see it.

18 Q. So you really know nothing about the survey

19 other than the fact that they have provided you with

20 numbers to pay appraisals?

21 MR. RIEGER:

22 Objection. Asked and answered already, Your

23 Honor. We have heard this at least twice.

24 JUDGE WHITE:

25 Counsel?

0409

1 MS. EDWARDS:

2 Your Honor, I'm asking him because he keeps

3 dodging the question. First, he said he knew a little

4 bit about the survey. Now, he is saying he really

5 knows nothing about the survey. I'm trying to find

6 out. I want a clear answer from this gentleman. This

7 is the man that runs iMortgage. We have a survey that

8 we keep discussing. We have an affidavit about a

9 survey. I want to know if this man really knows the

10 data that went into that survey. He said he is

11 intimately familiar with the information contained

12 within this affidavit, and I'm asking him questions,

13 and he says he doesn't know, so I'm trying to find out

14 if he really knows what went into the survey. I

15 think I --

16 MR. RIEGER:

17 There was -- go ahead, I'm sorry, Counsel.

18 MS. EDWARDS:

19 He said his counsel said that this affidavit

20 could be introduced because this gentleman here could

21 testify to most of the information in this affidavit

22 because he had personal knowledge. Other than

23 information regarding where this man works, where he

24 lives, how old he is, the pertinent information in this

25 affidavit has to do with the survey, so I think I have

0410

1 a --

2 JUDGE WHITE:

3 So you think you ought to be able to pursue this

4 line of questioning?

5 MS. EDWARDS:

6 Yes, sir.

7 JUDGE WHITE:

8 Mr. Rieger?

9 MR. RIEGER:

10 I think he has already been asked these

11 questions, and he has responded. She doesn't like his

12 answer, so she asks it a different way. I think we've

13 seen this at least twice already.

14 JUDGE WHITE:

15 Well, that's cross-examination. I will permit

16 it. Objection overruled.

17 MR. RIEGER:

18 Thank you, Your Honor.

19 BY MS. EDWARDS:

20 Q. So, Mr. Kelker, you really don't know what went

21 into this survey other than what Flagstar told you; is

22 that correct?

23 A. That is correct.

24 MS. EDWARDS:

25 Okay. I have no other questions.

0411

1 BY MR. RIEGER:

2 Q. So let's go through this again.

3 MR. RIEGER:

4 Thank you. I'll redirect if I could, Your

5 Honor.

6 BY MR. RIEGER:

7 Q. In your testimony previously which counsel did

8 not at all refer to, you testified that Flagstar did

9 this in part for their safety and soundness because of

10 what is required from the OCC; is that correct?

11 A. That is correct.

12 Q. So it would seem fairly -- Flagstar is a big

13 institution, a small institution? What are they?

14 A. It is a large institution.

15 Q. Okay. So whether or not this survey or this

16 study was done properly probably is fairly meaningful;

17 is that right?

18 A. Yes, it is.

19 Q. Why? Why is it meaningful?

20 A. It is meaningful because Flagstar as part of

21 their safety and soundness examination that they have

22 annually with the OCC has to discuss this fee study,

23 and how it impacts their interpretation of customary

24 and reasonable, and the OCC did ask for information

25 regarding the survey which Flagstar responded.

0412

1 Q. Well, stop. Hold on. Wait. I want to make

2 sure I heard that right. Did you tell me that OCC --

3 it is your testimony that the Office of Comptroller of

4 Currency looked at this fee study?

5 A. Yes, they did.

6 Q. How do you know that?

7 A. Well, I was not at the examination. I was told

8 that it was part of their examination by Joe Kuzner.

9 Q. And what was the outcome of this examination?

10 A. The outcome as it impacts the fee study is that

11 the OCC approved of the methodology that they used.

12 Q. So the Office of the Comptroller of Currency

13 decided that the methodology was fine, wherever the

14 data came from and however many parishes were picked up

15 in Louisiana; is that correct?

16 A. That is correct.

17 Q. And counsel has not given you anything to the

18 contrary that would say that that is an inefficient or

19 ineffective fee study based on your personal knowledge;

20 is that correct?

21 A. That is correct.

22 Q. Now, you do actually know Joan Trice. That's

23 right? We talked about that; correct?

24 A. Yes, I do.

25 Q. And she was putting together as you said -- you

0413

1 described her as someone who monetizes aspects of the

2 appraisal business. Did I hear that right?

3 A. Yes, sir.

4 Q. What does that mean again, monetizes aspects of

5 it?

6 A. As I mentioned, she has an educational

7 organization that sells continuing education programs

8 for appraisers. She has a background check, and it's

9 kind of a fee panel management apparatus that she sells

10 to appraisers to join. She sells to AMCs and lenders

11 to access the data. Her purpose, as I understood it in

12 conversations with Joan, casual conversations with Joan

13 -- I have known Joan for over 20 years -- is that her

14 intent was to develop a national fee study that she

15 could then sell, whether it is to lenders, AMCs, or

16 state boards.

17 Q. And your testimony was that at least at

18 Flagstar, your own personal knowledge is they utilized

19 other data elements besides what Ms. Trice put

20 together; is that right?

21 A. That is correct.

22 Q. And you said they got that from their own

23 experience. What does that mean?

24 A. Flagstar buys loans -- most of Flagstar's loan

25 production comes from third party originators, brokers,

0414

1 and corespondents, and what Flagstar did, some of the

2 correspondents are large and independent enough that

3 they are allowed to manage their own appraisal

4 activities, and they use direct engagement appraisers

5 as opposed to AMCs, and where they had direct

6 engagement appraisal data, fee data, that was what was

7 incorporated into the Flagstar fee study. Now --

8 Q. Now, you just said -- hold on just a second.

9 You just said that they use direct engagement data; is

10 that correct?

11 A. That was -- that was the intent when they

12 started the fee study to use direct engagement.

13 Q. And so they did not use -- as you understand it,

14 direct engagement data is not the same thing as AMC

15 data; is that right?

16 A. It is not.

17 Q. Okay. That's it on that. Thank you.

18 So again, they used additional data elements; is

19 that right?

20 A. That is correct.

21 Q. Okay. Very fine. Aside from Ms. Trice. So

22 those other data elements could have picked up the

23 other 30 some odd parishes in the state of Louisiana?

24 We just don't know; do we?

25 A. We do not.

0415

1 Q. But as you said, 28 parishes in Ohio, which is a

2 significantly more populated state than Louisiana but

3 does have some rural areas, in your professional

4 opinion, that would be fine, it would be good in Ohio.

5 So what is the difference between Ohio and Louisiana

6 that you can think of?

7 A. Ohio probably has more metropolitan areas than

8 Louisiana, so I would say that 28 parishes in Louisiana

9 would probably allow you to pick up an overwhelming

10 amount of the population in the state, and therefore,

11 be a good representative of the state.

12 Q. Very good. You responded to a couple of

13 questions from Ms. Edwards early on in her cross having

14 to do with touching base with the board; is that

15 correct?

16 A. Yes.

17 Q. Again, Mr. Simon who is your general counsel

18 reached out to the board for what reason that you found

19 out later?

20 A. I believe to reschedule a hearing.

21 Q. Was it to reschedule a hearing, or was it to get

22 additional time to respond?

23 A. To get additional time.

24 Q. I think that was the letter that --

25 A. Yes.

0416

1 Q. And he followed up with a letter. But he did

2 that, he reached out simply why? Because you were in

3 charge of compiling the data and you needed a little

4 bit more time?

5 A. There was a lot of data to comply on, and we

6 wanted to be fully responsive to the request.

7 Q. So you asked for additional time so you could

8 put your best foot forward; is that right?

9 A. We wanted to be -- it goes back to similar to

10 what I said about appraisers. I didn't want to be late

11 without a cause. We asked for an extension because it

12 was going to take us more than the initially allowed

13 period to comply with it.

14 Q. And you actually came in several days early;

15 right?

16 A. I believe so, yes.

17 Q. With live data and live feeds that allowed them

18 to look directly into your system; is that correct?

19 A. Correct.

20 MR. RIEGER:

21 One moment, Your Honor.

22 We tender for redirect -- I'm sorry -- recross.

23 BY MS. EDWARDS:

24 Q. I have a question. You kept referring to 28

25 parishes. I didn't tell you how many parishes there

0417

1 were. How did you know how many were included in Ms.

2 Trice's data collection?

3 MR. RIEGER:

4 I'll object to that. And I'll answer it because

5 she mentioned it going in. That's what I heard, 28.

6 MS. EDWARDS:

7 No, I said less than half, so I'm just wondering

8 where you came up with the number 28, and I'm asking

9 your witness and not you.

10 MR. RIEGER:

11 That's fine. Ask the witness.

12 JUDGE WHITE:

13 I will permit it.

14 BY MS. EDWARDS:

15 Q. Yes. How do you know 28?

16 A. I don't.

17 Q. Okay.

18 MR. RIEGER:

19 That is not your testimony? That was my

20 reference; is that correct?

21 MR. KELKER:

22 Yes.

23 MR. RIEGER:

24 I'm sorry. I didn't mean to jump in.

25 MS. EDWARDS:

0418

1 I don't have anything else.

2 MR. RIEGER:

3 Questions from the board?

4 MR. HALL:

5 Yes. A couple of questions. Go ahead.

6 MS. BONURA:

7 I have one.

8 JUDGE WHITE:

9 Please state your name for the record.

10 MS. BONURA:

11 Janis Bonura. Thank you for your patience.

12 MR. KELKER:

13 Certainly.

14 MS. BONURA:

15 How big is Flagstar Bank? Would you guess?

16 MR. KELKER:

17 I don't know how big they are. There is the

18 bank, which is relatively small compared to the

19 mortgage company. The bank has a small regional

20 footprint. The mortgage company operates nationally.

21 MS. BONURA:

22 Okay. And no guess on how big you think those

23 guys are? Billion? Million? Trillion?

24 MR. KELKER:

25 Oh, they are a billion dollar institution.

0419

1 MS. BONURA:

2 And how many clients roughly does iMortgage

3 have?

4 MR. KELKER:

5 Excuse me?

6 MS. BONURA:

7 How many clients does iMortgage have?

8 MR. KELKER:

9 I would say probably in the range of over 100.

10 MS. BONURA:

11 All right. Let's say 100. It is easier to add.

12 And how many of those would you say are similar in size

13 to Flagstar Bank?

14 MR. KELKER:

15 Probably four or five.

16 MS. BONURA:

17 So it is one of your bigger clients?

18 MR. KELKER:

19 Huh?

20 MS. BONURA:

21 It is one of your bigger clients?

22 MR. KELKER:

23 Yes, it is.

24 MS. BONURA:

25 And to your knowledge, is Flagstar pleased with

0420

1 y'all's performance?

2 MR. KELKER:

3 Yes.

4 MS. BONURA:

5 iMortgage?

6 MR. KELKER:

7 Yes.

8 MS. BONURA:

9 Is iMortgage the only AMC for Flagstar Bank?

10 MR. KELKER:

11 No. I believe Flagstar at one point had as many

12 as 113 AMCs.

13 MS. BONURA:

14 That has changed?

15 MR. KELKER:

16 Well, the OCC directed them to reduce that

17 number as too many to manage, and I think they are down

18 around seven now.

19 MS. BONURA:

20 Okay. When you're putting out for the

21 appraisers to respond for a fee, a quote, turn time,

22 how much time was given to be compliant with TRID on

23 those?

24 MR. RIEGER:

25 Could you restate it? I couldn't hear the

0421

1 question, Ms. Bonura. I'm sorry.

2 MS. BONURA:

3 When you're putting out fee quotes and turn

4 times for the appraisers -- we had gone through all of

5 the ways that you can get a bid out there -- how much

6 time is given to be compliant with TRID?

7 MR. KELKER:

8 Well, we have got a couple of issues. Some of

9 our clients, and I would say the more involved clients,

10 are asking questions of the applicant when they are

11 taking the application, so when they come to us with an

12 appraisal order, they're notifying us in advance if it

13 is likely to be an unusual property. Most of our

14 clients are not doing that. The decision that

15 iMortgage made with respect to TRID was we looked at

16 how many fee quotes we were having in terms of a share

17 of our business, in terms of escalated fees, and in

18 large part, we did not see a significant number, and

19 what we -- the decision that we made was that we would

20 not make a fee adjustment, and we would just monitor

21 our experience with respect to fee quotes coming in

22 from appraisers, and in most cases, that is something

23 that we would absorb, and if we got to the point where

24 our average costs for a particular client went up a

25 material amount, we would adjust their fees to account

0422

1 for that. Again, at this point, six weeks or so,

2 eight weeks into TRID, we've had very, very little

3 experience with respect to fees coming from appraisers

4 that are outside what I would call normal tolerances.

5 MS. BONURA:

6 Okay. The 150 reports that we have heard all

7 day, when you submitted the requested information, did

8 you notify your clients that were involved that you

9 were sending all of that information? Were there any

10 confidentiality issues with that?

11 MR. KELKER:

12 No, I did not notify our clients because

13 generally, a governmental request like that is not

14 something that we can ignore.

15 MS. BONURA:

16 Well, not ignore, but still notify.

17 MR. KELKER:

18 We notified the bulk of the clients. In this

19 case, Flagstar and JPMorgan Chase. The other

20 transactions were kind of incidental.

21 MS. BONURA:

22 And tell me one more time. When was the

23 Flagstar study done? What was the date?

24 MR. KELKER:

25 When was it done? It was done, I believe,

0423

1 around the third quarter of 2013.

2 MS. BONURA:

3 So a little over a year ago. And was that fee

4 study the reaction from an auditor, whether it was

5 internal, external, or an exam, or any kind of

6 exception report? Did anything trigger the need to do

7 that fee study?

8 MR. KELKER:

9 No, it was a business -- to my knowledge, it was

10 a business decision on the part of Flagstar to move to

11 -- one of the pricing methodologies that has been

12 floating out there is cost plus where there is just a

13 fixed margin over and above what the appraisers paid,

14 and they decided to switch to a cost plus, and that was

15 done in conjunction with the fee study.

16 MS. BONURA:

17 And how many appraisers are on your approved

18 list in Louisiana?

19 MR. KELKER:

20 I don't know the -- I think that was the number

21 we submitted back in the Tad Bolton letter. Has it

22 changed significantly since then? Probably not.

23 MS. BONURA:

24 So when the OCC comes in and audits Flagstar,

25 one of the things they look at you said, if I

0424

1 understand you correctly, were the fees?

2 MR. KELKER:

3 Yes.

4 MS. BONURA:

5 The fees that were paid that were based on a fee

6 study Flagstar did that they are turning over to the

7 OCC?

8 MR. KELKER:

9 I don't know if they turned over the fee -- I

10 don't believe they turned over the fee study.

11 MS. BONURA:

12 But they are privy to the fees paid?

13 MR. KELKER:

14 What they asked Flagstar was for their

15 methodology in developing the fee study, and how was

16 the fee study administered.

17 MS. BONURA:

18 Okay. And then above that, we have got the

19 internal data. They can pull from that as well to

20 assign fees; correct?

21 MR. KELKER:

22 Yes.

23 MS. BONURA:

24 And we can't be assured because we haven't seen

25 the fee study that those fees paid were by the other

0425

1 AMCs that Flagstar uses; correct?

2 MR. KELKER:

3 I'm not sure I understand the question.

4 MS. BONURA:

5 They are allowed to use their own fee study?

6 MR. KELKER:

7 Flagstar?

8 MS. BONURA:

9 Flagstar.

10 MR. KELKER:

11 Yes.

12 MS. BONURA:

13 Yes? Which is what you use because they tell

14 you to?

15 MR. KELKER:

16 Correct.

17 MS. BONURA:

18 They also can use their internal data which they

19 don't describe for us other than internal data?

20 MR. KELKER:

21 Correct.

22 MS. BONURA:

23 And we know they have other AMCs. How do we not

24 know the fees paid by those AMCs aren't part of their

25 internal data that they're basing the fees on which

0426

1 would be the direct issue with shall exclude

2 assignments ordered by appraisal management companies

3 if that's what the fees are based on? That's where the

4 independent is getting really hairy for me, the

5 objective.

6 MR. KELKER:

7 I understand that, but I can't make that

8 assurance in the sense that I was not intimately

9 involved in the development of -- I didn't see the

10 data.

11 MS. BONURA:

12 I understand, but you use it?

13 MR. KELKER:

14 Yes, we do.

15 MS. BONURA:

16 And if you decided tomorrow not to use it, and

17 Flagstar said, thank you, goodbye, it would have an

18 impact?

19 MR. KELKER:

20 Yes, it would.

21 MS. BONURA:

22 But we are still not thinking that's objective

23 or any kind of clouding of the issues, as far as you

24 understand it?

25 MR. KELKER:

0427

1 As far as I understand it, when we got the fees

2 from Flagstar and we looked at them in the context of

3 our own experience in many of the markets, they

4 appeared to be reasonable, they appeared to be in a

5 number of cases higher than our own experience.

6 MS. BONURA:

7 Okay. I have no other questions. Thank you.

8 MR. McMORRIS:

9 I have a question. Tommie McMorris. I'm

10 looking at the printout from earlier from the E-mail I

11 guess that started this whole thing. Are you familiar

12 with the St. John Parish area?

13 MR. KELKER:

14 Other than I know that it exists, I'm not

15 intimately.

16 MR. McMORRIS:

17 Do you know that LaPlace, Louisiana, is in St.

18 John Parish?

19 MR. RIEGER:

20 Do you know that?

21 MS. EDWARDS:

22 Rob?

23 MR. KELKER:

24 Well, yes.

25 BY MR. McMORRIS:

0428

1 You know that; huh? Okay. Did you know that

2 St. John Parish, LaPlace in particular, is within my

3 geographical area, and your firm offered only I think

4 an automation deal of $200 for an FHA appraisal with a

5 full UAD which stems off for a reasonable fee of around

6 4 to $500?

7 MR. KELKER:

8 Well, let me comment on that.

9 MR. McMORRIS:

10 I want you to.

11 MR. KELKER:

12 That product, that's a JPMorgan Chase default

13 product. It is a specific product type that what

14 happens is on anywhere, and it depends on the

15 geography, but anywhere between 80 and 90 percent of

16 those are downgraded from a 1004 to a 2055, so what we

17 do, what we had asked Chase to do was to order them as

18 a 2055, and we would upgrade them for the few times

19 that they get upgraded to a full interior, so they told

20 us they couldn't or wouldn't do that, and so what we do

21 because we know that they are going to become a driveby

22 2055 in most cases is they are offered out at a 2055

23 fee, and if they were to upgrade, and when we actually

24 assign it, the individual that -- that sent that E-mail

25 and did respond to us, and offered to do it for 375,

0429

1 we got quotes from at least two other appraisers, one

2 at 350 and one at 325, and we assigned it to the 325

3 appraiser. The product did downgrade, and we paid $200

4 for the 2055, so that particular product is unusual.

5 And what ends up happening for the folks that do that

6 particular product on a regular basis, they understand

7 that it's -- it's generally a downgrade, so it's -- I

8 understand how it looks, but the underlying logic is

9 that it's a downgraded product.

10 MR. McMORRIS:

11 Okay. So you are aware, though, this

12 description that you have here for a full UAD report

13 for $200 is not compliant in reference to your survey;

14 right?

15 MR. KELKER:

16 Yes, but I can't order it -- the way orders come

17 over from JPMorgan Chase is they place it, it's a

18 system to system, I can't change that order in my

19 system until it actually formally downgrades, so it

20 comes through as a full FHA Title 4 which I know looks

21 crazy.

22 MR. McMORRIS:

23 It's terrible.

24 MR. KELKER:

25 Yes.

0430

1 MR. McMORRIS:

2 How many appraisers do you get to accept this

3 order for $200?

4 MR. KELKER:

5 I did not. That particular order when the

6 gentleman that sent the E-mail rejected as fee too low,

7 it then came back to us, and --

8 MR. McMORRIS:

9 Okay. That's good. I have one more question

10 for you.

11 MR. KELKER:

12 Yes, sir.

13 MR. McMORRIS:

14 Earlier in your tesimony, you said that --

15 MR. RIEGER:

16 I don't think the witness was finished

17 testifying.

18 JUDGE WHITE:

19 Wait, wait, wait.

20 MR. RIEGER:

21 Pardon me. I was just asking if the witness

22 could please complete his answer before you go into the

23 next one.

24 MR. McMORRIS:

25 That's fine. Go ahead and complete it, sir.

0431

1 MR. KELKER:

2 When it come back as a rejected auto-assign, we

3 then surveyed appraisers for that product, and those

4 were the fees that we got ranging from 375 to 325, and

5 then the product downgraded to a 2055 and was priced at

6 200.

7 MR. McMORRIS:

8 My next question is that earlier in your

9 testimony, you said that you received limited data on

10 the appraisal requests from Flagstar with nothing other

11 than the address and the contact number, and during

12 your conversation just a minute ago, you stated that

13 you get information on appraiser requests when they are

14 unusual appraisal requests. Why didn't you tell us

15 that earlier is my question, that you do get other

16 data?

17 MR. KELKER:

18 That has been something that we have experienced

19 on a very low share of our production since the

20 implementation of TRID, and that has been designed to

21 -- the couple of clients that are doing that are trying

22 to insulate themselves from significant fee increases

23 by having us absorb unusual amounts of cost because in

24 both cases, those clients do a number of high value

25 properties, but when we receive an order, most of the

0432

1 time, probably 98 percent of the time, we get a point

2 of contact, a product, and a property address.

3 MR. McMORRIS:

4 Okay. Thank you very much.

5 MR. KELKER:

6 Sure.

7 MR. McMORRIS:

8 That's all my questions.

9 MR. PURGERSON:

10 Jim Purgerson. I just have a few questions. It

11 looks like Joan Trice is the one to go to in the

12 industry. And I am wondering, did you consider her

13 providing, paying for her services, or having her come

14 down here to enlighten us on some of the things that

15 she would have probably given to Flagstar? The same

16 data that Flagstar bought, did you consider buying it?

17 MR. KELKER:

18 No, I did not.

19 MR. PURGERSON:

20 The OCC regulatory issues, it governing

21 Flagstar, if there was any problem to arise between OCC

22 and Flagstar, how would you know about it? I work for

23 a federally regulated institution, and we are not

24 allowed to discuss regulatory things unless they make

25 it to the public record.

0433

1 MR. KELKER:

2 I would say the reality of what happens in --

3 and I don't know if your institution uses third-party

4 providers or AMCs in their business, but from a

5 practical perspective as a third-party service

6 provider, and as someone who is covered in the

7 third-party oversight of a regulated institution, if

8 they have either a finding or a matter that -- an MRA,

9 which means a matter that requires attention, that gets

10 transmitted to us because we are the ones that are

11 actually executing either the credit policy, their

12 appraisal policy, whatever because if they received an

13 MRA or a finding and it has to be corrected, we have to

14 correct it, so that's how we find out. I don't get a

15 copy of Flagstar's or anybody else's OCC examination,

16 but if there is something that we are doing that

17 affects their safety and soundness, or their fair

18 lending examination, or anything from a regulatory

19 perspective that we are actually executing, that's how

20 we find out.

21 MR. PURGERSON:

22 Then I have a follow-up. I really meant the

23 OCC's satisfactory, whether they were satisfied or not

24 with this study that this affidavit that we received

25 last Friday --

0434

1 MR. KELKER:

2 Yes.

3 MR. PURGERSON:

4 I mean, their satisfaction. I mean, we are just

5 trying to get our hands around the fact that we don't

6 have this study.

7 MR. KELKER:

8 There -- I'll be honest. There is no way that a

9 state would get that study as a federally chartered

10 institution, and having worked for one, nobody in those

11 roles, and the last role I had at PNC Mortgage was

12 running risk management and compliance, I didn't

13 respond to state requests because the state didn't have

14 jurisdiction over our business at all, so I think, and

15 I can only speculate that they elected to not break

16 with precedent and provide an internal document to a

17 state when they don't have to.

18 MR. PURGERSON:

19 I just have one more. On the "S-4," this

20 exhibit (indicating), I'm just curious. I'm referring

21 to the second to last one. It's a property in Cut Off.

22 The order number ends in 294, I guess. Do you see

23 that?

24 MR. KELKER:

25 Yes.

0435

1 MR. PURGERSON:

2 Okay. Cut Off, Louisiana, is in the sticks.

3 It's about two hours from here, and somebody agreed to

4 be paid 250 to do an FHA single family, and I looked up

5 the appraiser, and he's coming from Madisonville which

6 is three hours away from there. How does that happen?

7 I mean, just educate me on that.

8 MR. KELKER:

9 How it happens in the sticks, as you called it,

10 is when we pull up, when we have a manually assigned

11 order, and that would be a manually assigned order, and

12 we get a screen that shows the available appraisers in

13 the market, it ranks them aside from score and

14 proximity, and while this guy is a couple of hours

15 away, he might have been the only person who wanted to

16 take that assignment at the time. I have got order

17 screens where the nearest appraiser in certain states

18 is 250 miles away, and he may be geographically

19 competent because he covers that area for the one or

20 two times a year that something needs to be done, but I

21 would guess if that's out in the sticks, we just don't

22 have deep coverage there.

23 MR. PURGERSON:

24 Well, I shouldn't -- it's a really fun place to

25 go to fish, but there is -- we have appraisers down

0436

1 there that I think would take that for a lot more than

2 250. It just stood out. And I know it is an outlier,

3 but I wanted to bring that up.

4 MR. KELKER:

5 Well, and all I can say is I can look to see

6 what happened in that transaction, who we talked to.

7 This particular appraiser may have been the only one

8 that responded. I don't know.

9 MR. PURGERSON:

10 Okay. Thank you.

11 MR. HALL:

12 Okay. I have a couple of questions. Have you

13 ever heard this phrase before? It is in a section

14 about Dodd-Frank. It says, fee studies shall exclude

15 assignments ordered by known appraisal management

16 companies. Have you ever heard that before?

17 MR. KELKER:

18 Yes, I have.

19 MR. HALL:

20 Okay. When you look at this list of the nine

21 that we are dealing with here today --

22 MR. KELKER:

23 Yes.

24 MR. HALL:

25 -- can you look at number four, number seven,

0437

1 and number ten?

2 MR. KELKER:

3 Yes.

4 MR. HALL:

5 Those three together are $350 lower than the fee

6 study which excluded AMCs. Can you give me a reason

7 why? And by the way, these were not Flagstar's.

8 MR. KELKER:

9 Right.

10 MR. HALL:

11 What do you attribute this large difference of

12 three that weren't Flagstar, three of them, $350 less

13 than our survey? Is that -- give me an idea on how

14 that could happen. Do you think it is because Flagstar

15 used AMCs in their stuff, or are you aware whether they

16 did that or not?

17 MR. KELKER:

18 I don't know definitively because I wasn't

19 involved in the data collection or the analysis of the

20 Flagstar study. I guess what I would say is, and

21 without -- you know, I'm not intimately involved or

22 knowledgeable about what is entailed in the Louisiana

23 fee study, but I would respond in the context of in a

24 state such as Louisiana, there is a -- I wouldn't call

25 a dominant, but a significant share of AMC activity in

0438

1 this state. I would guess it's probably in the range

2 of 70 to 75 percent of the transactions, and while I

3 read through the Louisiana fee study, I think the

4 response rate was light, and I was curious as to

5 whether some of the values in there represented what I

6 would call aspirational fees, that if I were doing the

7 work, that this is what I would want to be paid. The

8 one thing that I didn't see happen with that fee study

9 was actual validation of those fees in a manner that

10 would have documented that they were real. So while

11 there might be a large gap between those three

12 transactions and the state fee study, I can't validate

13 that the fee study number is necessarily right, or

14 these numbers are what we actually experienced when we

15 asked for fees, that was what people wanted, and that's

16 what we paid.

17 MR. HALL:

18 So you paid them what they wanted, and you think

19 that's more accurate than a fee study?

20 MR. KELKER:

21 Well, I guess what I would say is in any

22 business, the negotiation and agreement on terms of the

23 deal are a critical element of running a business, and

24 I would suspect that any appraiser who was in the

25 business way back when I was doing fee work, if I

0439

1 didn't like the fee, I didn't do the work. If I did, I

2 took the assignment. Did I miss out on some work?

3 Absolutely. But I expect anyone that we are dealing

4 with, whether it is Louisiana or any other state that

5 when we are negotiating for fees, that the appraiser is

6 acting in his own best interest when he makes an offer

7 or a counteroffer. I feel that the appraisers are

8 competent to make those decisions on their own.

9 MR. HALL:

10 So is your answer to me -- my specific question

11 is, why do you think these three appraisal orders that

12 were not -- Flagstar was not the client --

13 MR. KELKER:

14 Right.

15 MR. HALL:

16 -- why they're so much different than the fees

17 of the Flagstar client?

18 MR. KELKER:

19 I don't know if that has to do with location. I

20 don't know. I know Flagstar has significant

21 requirements in their product. I know on the case of

22 Freedom Mortgage, they've got a lighter requirement in

23 terms of what needs to be in the report. I can't

24 necessarily speak to that. The appraisers were paid

25 what they wanted for those transactions.

0440

1 MR. HALL:

2 So what you're saying then, just to summarize,

3 what you're saying to me is that either the survey that

4 the university did isn't accurate, or the appraisers

5 for whatever reason wanted less, those are your best

6 guesses on why Flagstar, which you said made a survey

7 although we haven't seen it, you believed that they

8 made a survey and that one is good because you use it?

9 It's very confusing to me to try to understand how

10 three could be that far off according to the survey,

11 and then the other ones are not that far off. And I

12 asked you for an explanation, and you're saying that

13 because they accepted it or because the survey was

14 wrong.

15 MR. KELKER:

16 I am not saying the survey was wrong. I am just

17 saying I can't validate -- I can't independently

18 validate the survey.

19 MR. HALL:

20 Can you independently validate Flagstar's

21 survey?

22 MR. KELKER:

23 No. But I'm required to use that to do business

24 with them.

25 MR. HALL:

0441

1 Do you think that in order to do business with

2 them, you can deal with a fee that is less than what's

3 customary and reasonable?

4 MR. RIEGER:

5 Do you understand the question?

6 MR. KELKER:

7 I'm not sure if I do.

8 MR. RIEGER:

9 Restate the question.

10 MR. HALL:

11 Okay. You said that Flagstar has a survey that

12 you don't know anything about, but you had to use it to

13 get their business or to keep their business probably.

14 MR. RIEGER:

15 (Mr. Rieger makes a comment under his breath).

16 MS. EDWARDS:

17 Rob, I'm asking you. He's -- Judge, I'm just

18 asking that Rob doesn't editorialize. If he has an

19 objection, I ask that he stand up and make it rather

20 than telling the witness basically what Rob wants him

21 to say.

22 JUDGE WHITE:

23 Well, let's see. We started off the morning

24 with you coaching.

25 MS. EDWARDS:

0442

1 Exactly. And I was not even saying anything.

2 Rob is actually speaking out loud.

3 MR. KELKER:

4 Let me state this. I've not seen the details of

5 Flagstar's fee study. I've seen the results of it.

6 The results of it are vetted in our system. The one

7 thing that I have for the Flagstar fee study is that

8 their regulator has looked at their methodology and

9 approved their methodology, so from that perspective

10 without knowing the intimate details of how that study

11 was put together, or looking at the data or the

12 analysis that came up with those data elements, I have

13 a reasonable third party, who is very independent,

14 focused on safety and soundness in compliance with the

15 federal laws saying that they agree with what they did.

16 MR. HALL:

17 Okay. So what you are saying is if that is not

18 customary and reasonable, do you still think it is okay

19 to use it because their statement --

20 MR. RIEGER:

21 Objection. He has never testified that it is

22 not customary and reasonable. Mr. Hall, that is not

23 his testimony that I have heard, and I can stand to be

24 corrected, but that's not what I've heard.

25 MS. EDWARDS:

0443

1 I think Mr. Hall is asking him a question, and

2 that is --

3 JUDGE WHITE:

4 Well, let's let the question be asked first,

5 Mr. Rieger, and if you have an objection, then make it.

6 Go ahead and finish the question, please.

7 MR. HALL:

8 Okay. A while ago, you said -- a few moments

9 ago, you said that you had to use their fee study --

10 MR. KELKER:

11 Yes.

12 MR. HALL:

13 -- if you wanted their business?

14 MR. KELKER:

15 Yes.

16 MR. HALL:

17 And my question -- and you didn't know anything

18 about their fee study?

19 MR. KELKER:

20 That's not true. I know that the fee study has

21 been approved by the OCC.

22 MR. HALL:

23 Okay. My question to you has not changed. It

24 is, do you think that it's okay to use their fee study

25 to set your fees if your fees were found to be less

0444

1 than what is customary and reasonable in Louisiana?

2 MR. KELKER:

3 To use their fee study for everything we do in

4 the state of Louisiana, is that your question?

5 MR. HALL:

6 My question was, if Flagstar -- you say that you

7 are willing to use their fee study, is what you said.

8 You have to use their fee study in Louisiana in order

9 to have their business.

10 MR. KELKER:

11 Yes.

12 MR. HALL:

13 My question to you is very simple. If that fee

14 study is not what is customary and reasonable in

15 Louisiana, do you think it is okay to use it?

16 MR. KELKER:

17 That's a hypothetical, and I'm not going to

18 answer a hypothetical. I have to make an assumption

19 that their fee study is not customary and reasonable

20 when I don't know that to be true. I would say from

21 the safety and soundness perspective, the OCC believes

22 their fee study to be customary and reasonable so for

23 me to comment on if it is not is not appropriate.

24 MR. HALL:

25 I have no further questions.

0445

1 JUDGE WHITE:

2 Further questions by the board?

3 MR. GRAHAM:

4 I just have one just off of his. Michael

5 Graham.

6 Why isn't the Flagstar fee study used on all of

7 the appraisals even on the ones that aren't ordered by

8 Flagstar? If that is the gold standard as it seems

9 that we are talking about right now, why is it not used

10 on everything?

11 MR. KELKER:

12 Flagstar has a very specific scope of work in

13 terms of product content, in terms of we have some

14 network charges that go with all their orders. There

15 is a product warranty that is included in that. There

16 is -- as I mentioned earlier, we have 14 or 15 types of

17 1004s. We have an entirely separate Flagstar group of

18 products for every forum that's Flagstar only. Nobody

19 uses those products except for Flagstar so the fees

20 that were developed by Flagstar for themselves, those

21 fees are based on their scope of work. The scope of

22 work for Freedom Mortgage is nothing like what the

23 scope of work is for Flagstar.

24 MR. GRAHAM:

25 Okay.

0446

1 JUDGE WHITE:

2 Further questions by the board?

3 MR. RIEGER:

4 Redirect, Your Honor. Very brief.

5 JUDGE WHITE:

6 All right.

7 MR. RIEGER:

8 Thank you.

9 BY MR. RIEGER:

10 Q. What you're saying, Mr. Kelker, in responding to

11 all of these questions mainly from the board members is

12 you have to look at the exact product that the

13 particular fee is being called for; isn't that correct?

14 A. That is correct.

15 Q. And that's what you are supposed to do as part

16 of these presumptions that the federal law and the

17 Louisiana reg require you to do? You have to look at

18 all of the particulars for each one of those to

19 determine whether or not the fee is reasonable and

20 customary; is that right?

21 A. That is correct.

22 Q. Okay. So the fee that is in the fee study, is

23 that the magic? And when I say "fee study" -- I

24 apologize -- I'm talking about the Southeastern

25 Business College study. Is that the fee? What does

0447

1 that represent in your mind? Is that the fee? Is that

2 the fee you have to charge in Louisiana?

3 A. I don't know what that fee entails. I don't

4 know what the scope of work is. I would say most of

5 the lender work that gets done that does not flow

6 through AMCs, whether it's Louisiana or most any other

7 state, is private banking work. It is work that has a

8 different scope of work than standard mortgage work.

9 We do default work for JPMorgan Chase. They have an

10 origination side. We don't do fulfillment on that

11 side. But they also have a private bank where the fees

12 are much higher, origination fees are higher than the

13 default. The private bank fees are much higher than

14 the origination fees. They relate to the scope of work

15 for the product that is being acquired by the bank. So

16 when we look at a customer, we look at a lot of

17 factors. Do they want a warranted product? Are we

18 receiving the orders directly on our website, or are we

19 paying network charges to one of the network carriers

20 like FNC or Real EC where there is an in and out charge

21 where a report moves? Those things get wrapped up in

22 the fee that we charge our customers, and ultimately

23 get reflected in the fees that we pay our appraisers.

24 Q. So it's not only a matter of being apples to

25 apples? It has to be Granny Smith to Granny Smith

0448

1 apples?

2 A. Absolutely.

3 Q. Or crabapples to crabapples?

4 A. It's a very simple business except when it's

5 not, and it's not. What we have found since the crash

6 in the market is that the orders have been very

7 specific, very customized. The requirements -- we have

8 a standard operating procedure for JPMorgan Chase. It

9 is 80 some odd pages long. That's the detail of what

10 we have to do to do business with JPMorgan Chase. The

11 Flagstar SOP is probably close to 100 pages as well.

12 So again, it's a very simple business. We're selling

13 appraisals, but then within each of those jobs, there

14 are very specific requirements that have to be dealt

15 with both at the field level -- the biggest problem we

16 have on the appraisers side is we send out engagement

17 letters. Engagement letters are ridiculous. They are

18 three or four pages long. We know nobody reads them.

19 The report comes back to us. My experience is most

20 appraisers have kind of a standard report that they

21 write. It comes back to us, and 40 percent of the time

22 it is rejected on the basis of engagement letter

23 violations. The requirement was right there. They

24 just didn't read it, didn't see it, or whatever, so

25 back out. So we're rejecting 40 percent of the work

0449

1 just because someone didn't read an engagement letter

2 that had very specific requirements for that

3 assignment.

4 MS. BONURA:

5 May I ask a question? Janis Bonura.

6 MR. RIEGER:

7 If I could, Ms. Bonura. I have got one other

8 follow-up. I tell you what. Go ahead, please, and ask

9 your question.

10 MS. BONURA:

11 Since you brought up apples over Granny Smith

12 apples, the scope of work is near and dear to all of

13 us. When all of that is put out to the appraisers, are

14 you telling them, hey, Appraiser, you are bidding on a

15 Granny Smith, or a Fuji, or a rotten apple, or no

16 apple, so some of that is in the information that only

17 comes to the appraiser from you guys --

18 MR. KELKER:

19 That is correct.

20 MS. BONURA:

21 -- sending out the scope?

22 MR. KELKER:

23 What happens is for appraisers that are specific

24 or experienced with certain clients, like we have

25 appraisers that do JPMorgan Chase all of the time with

0450

1 very specific requirements. We have appraisers that do

2 Flagstar. We have appraisers that do a multitude. We

3 will tell them, I have a Flagstar 1004. That alerts

4 them that that's their scope of work. The other thing

5 that will happen occasionally if we have an appraiser

6 who is not experienced with a particular client is that

7 we will shoot the engagement. They can accept it and

8 say, okay, I will do it for "X." We send them the

9 engagement letter, and they come back and say, whoa, I

10 didn't know all of that, I need "X" plus 50, well,

11 then, we'll do "X" plus 50.

12 MS. BONURA:

13 Well, more in regards to the down charge, it

14 went out as an FHA whatever whatever?

15 MR. KELKER:

16 Yes.

17 MS. BONURA:

18 But because of circumstances that you are not

19 shown up front, it gets downgraded, but there is still

20 this discrepancy in fee --

21 MR. KELKER:

22 Yes.

23 MS. BONURA:

24 -- that's causing some friction clearly?

25 MR. KELKER:

0451

1 Yes.

2 MS. BONURA:

3 Where is that information? Is it in your vendor

4 agreements? Is it in your annual, I'm checking over my

5 appraiser list, is it anywhere that could have had

6 an --

7 MR. KELKER:

8 I will tell you how that product works. It

9 comes out with a fee that is appropriate for a 2055

10 even though it's ordered initially as a 1004. For

11 someone who has not experienced that particular

12 product, it draws the reaction that we got, you know,

13 in the E-mail. For someone that does, the downgrade

14 doesn't happen until the appraiser reports an

15 occurrence in the field, so the appraiser goes out to

16 the property. These properties are supposed to have

17 lockboxes on them. They go out, and unfortunately with

18 this particular product, and I don't understand why,

19 but Chase can't seem to know whether these properties

20 are occupied or unoccupied, so the appraiser goes out

21 to see it. There may be a lockbox on the property, but

22 someone is living in it. They're supposed to be

23 vacant. At that point, they're supposed to take

24 exterior photographs and leave. They're not supposed

25 to even go up on the steps. At that point, they report

0452

1 to us. We downgrade the product to a 2055 because they

2 can't enter, or they go out and the property is vacant,

3 but the lockbox hasn't been put on it. So that again

4 downgrades from the --

5 MS. BONURA:

6 I understand that. But my question is in the

7 engagement letter in the documentation that you

8 provide, is it written, you may get out there and end

9 up in a downgrade situation?

10 MR. KELKER:

11 Yes, yes. The instructions that are given to

12 the appraiser are that if they get out there and the

13 property appears to be occupied, or there is not a

14 lockbox on it, and it's vacant, the product

15 automatically downgrades, and it's completed as a 2055

16 report back to us because we have to go into -- we have

17 to go back to Chase. Chase then changes the product in

18 thier system which changes it in ours.

19 MS. BONURA:

20 So the fee is in that initial write-up, but if

21 you get out there and it has to be downgraded --

22 MR. KELKER:

23 Normally, what we do --

24 MS. BONURA:

25 -- the fee is representative of the actual work

0453

1 you're going to do?

2 MR. KELKER:

3 Yes. Normally, what we do is because quite

4 frankly that particular product almost never

5 auto-assigns because of that situation, when we talk to

6 the appraiser, we ask for two quotes. We ask for a

7 quote at 1004, and a quote at 2055.

8 MS. BONURA:

9 And when did that begin, the two quotes?

10 MR. KELKER:

11 It has always been like that.

12 MS. BONURA:

13 It didn't look like that on the thing you

14 submitted?

15 MR. KELKER:

16 Well, it went out like that, and that's what we

17 try to do is stop sending those out. We can't put two

18 quotes on the auto-assign. The auto-assign has been

19 set to the most likely product that it is going to be

20 which is the 2055.

21 MS. BONURA:

22 Thank you.

23 MR. KELKER:

24 Certainly.

25 MR. HALL:

0454

1 I have just one more comment and question. I've

2 been doing this --

3 JUDGE WHITE:

4 Mr. Chairman, I'm sorry. Please --

5 MR. HALL:

6 Roland Hall. I've been doing this for over 46

7 years, and I've read every single engagement letter

8 that I've ever received, and most of the appraisers

9 that I know read every engagement letter. And you said

10 that most appraisers don't read engagement letters. Do

11 you really believe that?

12 MR. KELKER:

13 Well, I would say that at a 40 percent rejection

14 rate primarily for engagement letter violations would

15 tell me that they are not reading them carefully.

16 That's all I can say. I don't want to cast aspersions

17 on the profession. I'm just saying that I've got a

18 rejection rate, and when I look at what those

19 rejections are, the rejections are less often on

20 someone not explaining methodology and why they valued

21 the property, it's because a particular lender wanted

22 to know how many feet the house was from the nearest

23 fire hydrant, and somebody didn't put it in. Those are

24 -- those are defects. They're not substantive defects,

25 but they're defects that I have to resolve before I can

0455

1 deliver the report to the client because otherwise, it

2 will come back to me.

3 MR. HALL:

4 Okay. Forgive me for reading the document every

5 time, but you said 40 percent of your

6 rejections --

7 MR. KELKER:

8 No, 40 percent of the volume coming in is

9 rejected on first pass.

10 MR. HALL:

11 Forty percent of your --

12 MR. KELKER:

13 Forty percent.

14 MR. HALL:

15 -- product is rejected?

16 MR. KELKER:

17 Yes.

18 MR. HALL:

19 I find that hard to believe.

20 MR. KELKER:

21 Forty percent.

22 JUDGE WHITE:

23 Anything further?

24 MR. RIEGER:

25 Yes indeed.

0456

1 BY MR. RIEGER:

2 Q. Mr. Kelker, you are under oath; correct?

3 A. Correct.

4 Q. Everything you said is true, to the best of your

5 knowledge; is that right?

6 A. Yes, it is.

7 Q. So when you say there is a 40 percent error rate

8 on the first pass, that's your experience?

9 A. That it is.

10 Q. And in your company, you're responsible to know

11 that?

12 A. Yes, I am.

13 Q. You get compensated based on that rate; do you

14 not?

15 A. I don't, but other people do.

16 Q. It's one of the things that when your clients

17 want to know what is taking so long for the appraisals

18 because you had an error the first time through, that

19 is something that you pay attention to; is that

20 correct?

21 A. Absolutely. And I would say a large part of our

22 business is not origination. Origination is generally

23 much cleaner work. We do -- and a lot of the rejection

24 rate can be concentrated with a couple of clients.

25 JPMorgan Chase default, they do a number of things or

0457

1 they require a number of things on several of their

2 products that are I would say counterintuitive to the

3 average appraiser in terms of how they want repairs

4 identified, are they cosmetic or health and safety.

5 They tend to be -- health and safety is a very limited

6 area. I would say probably more limited than the

7 average appraiser would consider. So when a report

8 comes in with a more traditional health and safety list

9 beyond what Chase accepts, then we have got to go back

10 to the appraiser and say, no, this is how they define

11 health and safety.

12 Q. Mr. Kelker, it was your testimony earlier that

13 you run a very appraiser centric operation?

14 A. Yes.

15 Q. Would you hit that a lick one more time for us,

16 please?

17 A. Well, we focus very much on the individual

18 appraiser in terms of who they are, what they do, how

19 they score, and that really determines how they get

20 assignments. I mean, Flagstar at one point had a top

21 score person only, and what they realized is it was

22 jamming up that top guy in the markets to the extent

23 that there were very qualified people just below him or

24 her that could do the work, and Flagstar has now come

25 back after our audit and said, if you need to go three

0458

1 to five people down, whatever it is, as long as the

2 difference in score is not material, fine.

3 Realistically, is there a real difference between an

4 appraiser that has a 3.9 score and a 3.7? No. There

5 really isn't. Is there a difference between a 3.9 and

6 a 2.1? Yes, there is. I'm not going to jump from a

7 3.9 to a 2.1, but if my top four people are clustered

8 around 3.9, 3.9, 3.8, 3.7, they are saying that I can

9 order from any of them. We run into some markets with

10 them that we have insufficient coverage.

11 The way the scoring mechanism works is it is

12 almost impossible to make it to the top of the list

13 unless you get work. If you don't make it to the top

14 of the list, you don't get work until you are near the

15 top of the list. So we have started to bring on new

16 people, and we give them an assumed score out of the

17 box until we have a chance to use and experience them.

18 Any new appraiser coming into our system comes in as a

19 probationary appraiser. Their max orders are one. So

20 when that first order comes in after they have got an

21 assignment, it goes to the normal QA process, then it

22 goes to one of our staff appraisers for another level

23 of review, and if the report is deemed to be solid and

24 sound, then they're taken off of probation. They get

25 normal max orders. If they fail on the first one, they

0459

1 are kept on probation until the next one comes in. If

2 they don't pass generally after twice, they are going

3 to get terminated.

4 Q. Mr. Purgerson again made note of the --

5 MS. EDWARDS:

6 Your Honor, I'm going to ask that we not be able

7 to -- we did direct, cross, redirect, the board asked,

8 and now, we're re-redirect, and we're going into a

9 whole bunch of new stuff --

10 MR. RIEGER:

11 No, we're not, Counsel.

12 MS. EDWARDS:

13 -- or repetitive things. I think the board has

14 heard enough. If there is something that Mr. Kelker

15 has not testified to, I have no problem with Mr. Rieger

16 asking him, but we keep going over the same stuff over

17 and over again. And there's really nothing in the

18 rules that allow for re-redirect, so I ask that if he

19 has any more questions, we cut to the chase and let's

20 get this completed.

21 MR. RIEGER:

22 I would respond very simply that I never got the

23 opportunity to redirect my client after all of the

24 questions from all of the board members. I just want

25 to make sure that we cover all of the points that all

0460

1 of the board members made to their satisfaction and to

2 give a complete record, and I have got several

3 questions left that I would like to complete.

4 JUDGE WHITE:

5 There is language in the administrative code

6 about the opportunity to make a complete record, so

7 we've been here for over 12 hours, so we'll keep on

8 going. So, Mr. Rieger, proceed.

9 MR. RIEGER:

10 I won't keep us long, I promise, Everyone.

11 BY MR. RIEGER:

12 Q. A couple of questions very quickly. Mr.

13 Purgerson used the example of the Cut Off appraisal

14 which Cut Off is down in the sticks, down in Lafourche

15 Parish. There's good fishing and some other things

16 down that way. But the question came out why the

17 disparity between that and the comparable Flagstar

18 rate? Mr. Purgerson asked about that, and I think also

19 the chair made several references to that, and what I

20 heard you say earlier, but I'm not sure you got to

21 finish your thought, you began to say that one was a

22 Flagstar appraisal, and another one was an LOA which is

23 Lenders of America, and we were talking about apples to

24 apples, and Fuji apples to Fuji apples. Could you

25 explain just very briefly what a potential reason why

0461

1 those appraisals would be different --

2 A. Well --

3 Q. -- in a fee charge for that, what would be paid

4 for those?

5 A. In that particular case, Loan Leaders of America

6 is a correspondent, and they do sell to Flagstar, but

7 this particular case, I believe this one did not go to

8 Flagstar, but it comes from Flagstar pricing. The

9 scope of work for Loan Leaders is substantially

10 different than Flagstar. It is not coming through a

11 network with network charges. There is not a product

12 warranty on it, which has some cost, and the fee, again

13 without knowing the details, you know, it may be an

14 outlier maybe because nobody in the area that works

15 that area on a regular basis wanted that assignment at

16 that point in time.

17 Q. Got it. Is it your -- I'm sorry. Does that

18 complete your answer?

19 A. Yes, sir.

20 Q. Is it your understanding that the Southeastern

21 fee study is merely a way to comply with a presumption

22 that the fee paid is customary and reasonable; is that

23 correct?

24 A. Yes.

25 Q. Okay. Such that if you didn't pay a presumed

0462

1 valid fee, you could still pay customary and reasonable

2 fee by going through all of the factors that we talked

3 about earlier in your testimony; is that correct?

4 A. That is correct.

5 Q. And that's how you do it where you don't use a

6 fee study? You use your experience? You use the six

7 factors and all of those other things that you

8 testified about as well?

9 A. That is correct.

10 MR. RIEGER:

11 That concludes my re-recross or whatever it is,

12 and I tender the witness.

13 MS. EDWARDS:

14 I have no questions.

15 JUDGE WHITE:

16 Unless the board has any questions, then -- is

17 there going to be any argument?

18 MS. EDWARDS:

19 I am just going to make a quick closing

20 statement, and that's it. I am quick, and basically,

21 all I'm going to say is that we believe that we proved

22 the allegations set forth in the written complaint, and

23 that the Louisiana Real Estate Appraisers Board

24 licensing laws and rules were not followed. They're

25 sound rules. They may be a little bit more strict than

0463

1 the federal rules. They are allowed to be as long as

2 they're not in conflict. We think that we proved our

3 case based upon the evidence that has been introduced

4 and the testimony that has been elicited. Thank you.

5 JUDGE WHITE:

6 Mr. Rieger?

7 MR. RIEGER:

8 First of all, I thank the board very much for

9 indulging in this. I would say we have had 12 plus

10 hours of hearing, I think, and that has given us all a

11 pretty good way of asking all of the questions and

12 putting on the evidence the best case that we can, so

13 you have my client's thanks, you know, for enduring all

14 of this, and your attention, and everything else that

15 goes with it.

16 This is a burden of proof case. The staff bears

17 the burden of showing that iMortgage did not pay

18 customary and reasonable fees. It is their burden.

19 They have to show that in every instance, every

20 instance that the fee that they actually paid was not

21 customary and reasonable, and we know from Mr.

22 Matchneer's testimony that there is nothing in

23 Louisiana law or in Louisiana regs that says you have

24 to do it the way that's in the regs because if there

25 were, that would conflict with federal law, and we

0464

1 don't want to do that.

2 You heard this gentleman go into immense detail

3 on a transaction by transaction basis to talk about how

4 the fee that they ended up paying was one that took

5 into account every factor that is in the rules, every

6 factor that is in the Interim Final Rule and the Final

7 Rule and in Dodd-Frank, all of those things plus a lot

8 more, excruciating detail because they weren't entitled

9 to either one of the presumptions. I got that. They

10 didn't use the fee study except in Flagstar. That

11 should be one. But if it's not, they still showed and

12 demonstrated in each instance that they took into

13 account all of the things.

14 They produced the testimony that substantiated all of

15 that, and they did all of the things they were supposed

16 to do to pay a customary and reasonable fee.

17 Our thanks to the staff for essentially grinding

18 this thing down to lower transactions. Again, we

19 believe that the process of having to do that was still

20 untoward in that this client has been sorely put upon

21 by having to go through this process. Now, that having

22 been said, we've said our piece. We've made our

23 statements. We've explained how we do things. We

24 think we are in full compliance with the letter,

25 spirit, intent of federal law, and Louisiana state law,

0465

1 both in the statute and in the rule. And I would

2 remind the board again that neither the statute nor the

3 rule say those are the exclusive ways to prove

4 customary and reasonable fees, other than customary and

5 reasonable fees have to be paid. And I would also

6 suggest to the board that the Southeastern fee study

7 entitles one to a presumption of compliance, but a

8 presumption only. It does not mean -- it's not a trump

9 card. It does not mean that if you don't pay it, then

10 you haven't paid customary and reasonable. It's an

11 incredible difference, a distinction that this Board

12 needs to be well aware of as you all deliberate.

13 Again, thank you so very much for your time and

14 your patience hearing us out. iMortgage rests at this

15 time.

16 JUDGE WHITE:

17 Is there a rebuttal argument?

18 MS. EDWARDS:

19 No rebuttal, Your Honor.

20 JUDGE WHITE:

21 Okay. The matter has been presented by way of

22 testimony, argument, exhibits, and it is ripe for the

23 board's decision, Mr. Chair.

24 MR. HALL:

25 Okay. We would like to at this time go into

0466

1 executive session so that we can discuss the issues

2 that have been raised in the last 12 hours plus.

3 MR. PURGERSON:

4 I make a motion to go into executive session.

5 MS. BONURA:

6 I second the motion.

7 MR. HALL:

8 Does anybody have any comments or concerns or

9 questions about this?

10 MR. UNANGST:

11 Mr. Chairman, I would just like to clarify with

12 Mr. Rieger and his client that there's no objection if

13 the board goes into executive session.

14 MR. RIEGER:

15 We have no position, Mr. Unangst. This is the

16 board's call. If the board thinks executive session is

17 what the board wants to do to consider this matter,

18 that's the board's decision. We have no position.

19 MR. UNANGST:

20 When you say, "no position" --

21 MR. RIEGER:

22 I said, "no position."

23 MR. UNANGST:

24 -- that means you have no objection?

25 MR. RIEGER:

0467

1 I said I said, "no position." Very, very,

2 very --

3 MR. UNANGST:

4 Ms. Edwards, as our legal counsel before the

5 board votes on this issue, what is your understanding

6 of the law that would allow or disallow the board to go

7 into executive session?

8 MS. EDWARDS:

9 If there is no objection to going into executive

10 session, I believe the board can go into executive

11 session if that is their pleasure.

12 MR. UNANGST:

13 And what Mr. Rieger is saying is they have no

14 position. I don't know what that means. If they are

15 for it, or against it, I don't know. Certainly, I

16 would like the board to go on record, I certainly would

17 here, that we are making every effort to see if there

18 is any objection, that the board knows it so that they

19 can take that under consideration before they decide on

20 that.

21 Judge White, I don't know from your

22 jurisprudence and background, what is your call on

23 this? Is there any prohibition in the Administrative

24 Procedures Act?

25 JUDGE WHITE:

0468

1 I don't think the Administrative Procedures Act

2 of the state is at issue. The public records or public

3 meetings --

4 MS. EDWARDS:

5 Open meeting law.

6 JUDGE WHITE:

7 -- is the appropriate thing, and quite frankly,

8 I would have to do some research. I don't feel

9 comfortable shooting from the hip on that, Mr. Chairman

10 -- Mr. Executive Director.

11 MR. UNANGST:

12 Okay. With that said then, and what I'm

13 hearing, I don't want to put words in Judge White's or

14 counsel's, or iMortgage's or their counsel's mouth, but

15 I think the situation is it is your decision here.

16 What the respondent's attorney is saying is they have

17 no position whether you do or not. I think our board

18 attorney just said she finds no prohibition that would

19 prohibit you from doing it. And Judge White says, boy,

20 I don't know. So I think did that sum it up pretty

21 well, guys? I don't know. So I think really, I don't

22 see any objection here to you going into executive

23 session. According to Ms. Edwards, there is no law

24 against this, so if that's the board's purview, I would

25 simply vote then to go into executive session if that's

0469

1 your desire or not. But obviously, you can't vote in

2 executive session, and you may want to address that, if

3 they choose to go into executive session, what they can

4 and cannot talk about in executive session.

5 MS. EDWARDS:

6 Well, if you go into executive session, it is

7 just for discussion purposes. Any vote would have to

8 be taken in a public meeting.

9 MR. HALL:

10 Is there any other issues or concerns before we

11 vote? Okay. Do you want to have a roll call vote?

12 MR. GRAHAM:

13 So we've got a motion to go into executive

14 session and a second. We want a roll call? All right.

15 Roland Hall?

16 MR. HALL:

17 Yes.

18 MR. GRAHAM:

19 Michael Graham? Yes.

20 Cheryl Bella, absent.

21 Janis Bonura?

22 MS. BONURA:

23 Yes.

24 MR. GRAHAM:

25 Tim Hammett?

0470

1 MR. HAMMETT:

2 Yes.

3 MR. GRAHAM:

4 Butch Landry?

5 JUDGE WHITE:

6 Yes.

7 MR. GRAHAM:

8 Clay Lipscomb?

9 MR. LIPSCOMB:

10 Yes.

11 MR. GRAHAM:

12 Jim Purgerson?

13 MR. PURGERSON:

14 Yes.

15 MR. HALL:

16 We're going to go into executive session and

17 discuss the issues.

18 MR. RIEGER:

19 Well, a question if I could, Mr. Chair, very

20 quickly. Are you going to do that in this room? Would

21 you like us to vacate, or do you want to retire

22 someplace else?

23 MS. EDWARDS:

24 We usually leave so that they can stay here.

25 MR. RIEGER:

0471

1 That's fine.

2 MS. EDWARDS:

3 We just ask that all recording equipment --

4 MR. RIEGER:

5 I just wanted to know what the protocol was.

6 MS. EDWARDS:

7 Yes, usually it's easier for us to leave. I

8 just ask that y'all make sure that all recording

9 equipment is off.

10 (AT THIS TIME, THE BOARD WENT INTO EXECUTIVE

11 SESSION).

12 JUDGE WHITE:

13 Are we on record?

14 MR. HALL:

15 We are ready to go back into session and on the

16 record.

17 JUDGE WHITE:

18 Okay. I believe everyone is here, Mr. Chairman,

19 who was here when we had recessed.

20 MR. RIEGER:

21 Yes, Your Honor.

22 MS. EDWARDS:

23 I'm here.

24 JUDGE WHITE:

25 We are on record.

0472

1 MR. HALL:

2 Okay. What we are going to do now is after our

3 deliberation, we are going to -- we have a motion, and

4 then we will discuss it.

5 MR. McMORRIS:

6 Tommie McMorris. I move the respondent,

7 iMortgage, is guilty of the charges set forth in the

8 written complaint. Further, after hearing all of the

9 testimony and legal documents submitted, it is obvious

10 that the respondent did not follow Louisiana law and

11 rules establishing that they paid reasonable and

12 customary fees.

13 MR. HALL:

14 Do I have a second?

15 MS. BONURA:

16 I second.

17 MR. HALL:

18 Okay. We have a motion and a second. Do we

19 have any further discussion?

20 Okay. If not, we will have a roll call vote.

21 And I will call, and then I will keep track.

22 Michael Graham?

23 MR. GRAHAM:

24 Yea.

25 MR. HALL:

0473

1 Janis Bonura?

2 MS. BONURA:

3 Here.

4 MR. HALL:

5 You're voting.

6 MS. BONURA:

7 I'm sorry. It's late.

8 MR. HALL:

9 Yes?

10 MS. BONURA:

11 I'm voting yes.

12 MR. HALL:

13 Tim Hammett?

14 MR. HAMMETT:

15 Yes.

16 MR. HALL:

17 Butch Landry?

18 MR. LANDRY:

19 Yes.

20 MR. HALL:

21 Clay Lipscomb?

22 MR. LIPSCOMB:

23 Yes.

24 MR. HALL:

25 Tommie McMorris?

0474

1 MR. McMORRIS:

2 Yes.

3 MR. HALL:

4 And Jim Purgerson?

5 MR. PURGERSON:

6 Yes.

7 MR. HALL:

8 Okay. It's unanimous.

9 MR. McMORRIS:

10 I would like to say something, Roland, if I

11 could, please.

12 MR. HALL:

13 Go ahead.

14 MR. McMORRIS:

15 I would like to state my primary reasons for

16 making my decision that I did. It had a lot to do with

17 the E-mail that I read going to the conflicting prices

18 and stuff and the explanations that I got as well as

19 the lack of an actual survey to actually review that

20 would probably have helped my determination of this

21 case a lot better if I would have had that. And that's

22 all I have to add.

23 MR. HALL:

24 Anybody else like to make any comments about why

25 they voted the way they did?

0475

1 MR. LIPSCOMB:

2 Yes. I just felt like the --

3 MR. HALL:

4 Identify yourself.

5 MR. LIPSCOMB:

6 Clay Lipscomb. I just felt like the staff

7 showed that they didn't follow louisiana law as I read

8 it in establishing customary and reasonable fees.

9 MR. HALL:

10 Anybody else?

11 MS. BONURA:

12 For me, my decision was based on the charges

13 that we heard very early this morning, and in rereading

14 what reasonable and customary means, how we obtained

15 it, objective, independent, that's my guilty version of

16 it.

17 MR. HALL:

18 Okay. Anybody else? Okay. Do we have any

19 other motions?

20 MR. GRAHAM:

21 Yes. I would like to move that this board

22 impose the following penalties on iMortgage for the

23 charges set forth in the written complaint as follows:

24 Number one, a penalty of $10,000 to be paid by March

25 21st, 2016. Two, the cost of adjudication of this

0476

1 adjudication payable to Louisiana Real Estate

2 Appraisers Board to be paid by March 21st, 2016. Also,

3 a suspension for six months that will be stayed until

4 March 21st, 2016, subject to iMortgage's compliance of

5 the customary and reasonable fee plan approved by the

6 Louisiana Real Estate Appraisers Board. And finally,

7 if the approved compliance plan submitted to the

8 Louisiana Real Estate Appraisers Board by March 21st,

9 2016, and the penalties and costs are paid by March

10 21st, 2016, the six-month suspension shall be vacated.

11 MR. HALL:

12 Do I have a second?

13 MR. McMORRIS:

14 I second it.

15 MR. HALL:

16 Okay. Is there any discussion in the -- it is

17 my understanding that March 21st is when we have a

18 meeting in March. We have an audit and some other

19 circumstances for our meetings in January and February,

20 which is kind of unusual, so this is basically 90 days

21 plus or minus a few to get this board to approve a

22 compliance plan. And that's my discussion. Does

23 anybody else have any comments about it?

24 MR. PURGERSON:

25 Yes, I want --

0477

1 MR. RIEGER:

2 Mr. Chairman --

3 MR. McMORRIS:

4 I'll go back to him.

5 MR. PURGERSON:

6 I want to say that I think Mr. Kelker has the

7 ability and the staff to put together something very

8 reasonable within 90 days. I don't think we are here

9 to cause anymore burden, but hopefully, we made it

10 clear. I'm going to vote against the motion, this

11 second one just based on the fine. I think that doing

12 the action plan is enough, but I fully respect those

13 that do vote for it.

14 MR. HALL:

15 Okay. If there is not any further -- is there

16 any other discussion before we have a roll call vote?

17 MR. RIEGER:

18 Your Honor -- excuse me. Mr. Chair, is it

19 appropriate to ask questions at this point?

20 JUDGE WHITE:

21 Well, I will comment on that, Mr. Chairman, if

22 you want me to.

23 MR. HALL:

24 Yes. Go ahead.

25 JUDGE WHITE:

0478

1 My experience as the hearing officer with the

2 State Licensing Board for Contractors, there has been a

3 very full opportunity for a hearing. The matter has

4 been placed in the hands of the board, and at that

5 particular point, I think the role is to listen. There

6 may be a motion under the Administrative Procedures Act

7 for rehearing, reconsideration, et cetera, or an appeal

8 to the district court, but I believe it is really in

9 the board's hands respectively, Mr. Rieger, at this

10 point to make these -- to make these remarks.

11 MR. RIEGER:

12 Okay.

13 MR. HALL:

14 Okay. I would like the board to finish our

15 discussion, and have a roll call vote, and after we do

16 that, you can ask a question if you want to ask a

17 question.

18 MR. RIEGER:

19 Fair enough.

20 MR. HALL:

21 Okay. Michael Graham?

22 MR. GRAHAM:

23 Yea.

24 MR. HALL:

25 And if you would, if you -- that's fine.

0479

1 Michael Graham. Janis Bonura?

2 MS. BONURA:

3 Yes.

4 MR. HALL:

5 Tim Hammett?

6 MR. HAMMETT:

7 Yes.

8 MR. HALL:

9 Clay Lipscomb?

10 MR. LIPSCOMB:

11 Yes.

12 MR. HALL:

13 Tommie McMorris?

14 MR. McMORRIS:

15 Yes.

16 MR. HALL:

17 Jim Purgerson?

18 MR. PURGERSON:

19 No.

20 MR. HALL:

21 Okay. The motion carries.

22 MR. McMORRIS:

23 Butch Landry.

24 MS. EDWARDS:

25 Wait. You forgot Butch Landry.

0480

1 MR. HALL:

2 Oh. Butch Landry?

3 MR. LANDRY:

4 Yes.

5 MR. HALL:

6 It's getting late, Gentlemen. I'm so sorry.

7 Okay. Is there anybody else that I missed because I'm

8 not trying to miss anybody? Okay. We have one, two,

9 three, four, five, six yeas, and one no. Motion

10 passed.

11 Is there anybody else that has any other

12 comments that they would like to make? Okay. In that

13 case, Mr. Rieger, I understand you want to say

14 something, and I want you to always know that we're

15 always willing to listen.

16 MR. RIEGER:

17 Thank you. Question, and I'm trying to

18 understand exactly how this sanction works. I

19 understand penalties, pay a fine by March, cost of the

20 adjudication by March 21st. I got those two. A

21 suspension of the license for six months, but that is

22 stayed until March 21st contingent upon board approval

23 of a compliance plan that would give this board

24 assurance that iMortgage is charging customary and

25 reasonable fees; is that correct?

0481

1 MR. HALL:

2 Yes.

3 MR. RIEGER:

4 Okay. So there is no suspension at this time?

5 MR. HALL:

6 That is correct. We felt like that you should

7 have time to come up with a plan, and whatever else you

8 choose.

9 MR. RIEGER:

10 Sure.

11 MR. HALL:

12 And then submit it to us. And my guess is we

13 can do some communications to work it out. And then

14 because of the Louisiana Real Estate Appraisers Board's

15 business calendar -- okay? We have a meeting like

16 January 25th, and then February 4th because we have the

17 ASC audit, so, you know, it really --

18 MR. RIEGER:

19 Sure.

20 MR. HALL:

21 We just kind of -- so the next available meeting

22 would be March 21st. That gives us time for y'all to

23 come up with a plan and for us to approve it, and then

24 we will deal with it at that time.

25 MR. RIEGER:

0482

1 Okay. Very good. I understand that. Thank you

2 all.

3 MR. McMORRIS:

4 Thank you.

5 MR. HALL:

6 Does anybody have any other comments? In light

7 of the hour --

8 MR. PURGERSON:

9 Motion to adjourn.

10 MR. HALL:

11 I was fixing to say that, but what I want to do

12 is I want everybody to know that we're just going to

13 take up the rest of our agenda at the next meeting. So

14 I have a motion. Do I have a second?

15 MR. McMORRIS:

16 Second.

17 MR. HALL:

18 Okay. All in favor, say aye.

19 (THE BOARD MEMBERS RESPONDED AYE IN UNISON).

20 (THE HEARING WAS RECESSED AT 10:45 P.M.).

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23

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1 REPORTER'S CERTIFICATE

2

This certification is valid only for a transcript

3 accompanied by my original signature and original

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