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STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

PUBLIC HEARING

IN THE MATTER OF:

NEW-HOME CONSTRUCTION
ISSUES FR#9-4

State House Annex
West State Street
Trenton, New Jersey 08608
January 21, 2004

B E F O R E:

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-PUBLIC HEARING-

1 COMMISSIONER SCHILLER: Good
2 morning, ladies and gentlemen. Today the State
3 Commission of Investigation continues hearings on
4 abuses in new home construction. When we began
5 this process late last year, we did so out of a
6 sense of urgency amid allegations and findings
7 that defined a veritable crisis in the new home
8 construction industry statewide. Homebuyers
9 recounted nightmarish experiences with shoddy and
10 negligent workmanship in housing developments
11 large and small.

12 We heard sworn testimony and saw
13 documentary evidence of rampant and obvious code
14 violations, some potentially life-threatening. We
15 found that in many instances individuals charged
16 with the responsibility to conduct inspections are
17 incompetent or corrupt or both. Indeed, in
18 extreme cases, we even found that forged and
19 fraudulent Certificates of Occupancy were created
20 to close sales to unwitting buyers.

21 Ladies and gentlemen, I must say, I
22 didn't think it could get worse, but it has.
23 Since that first round of public hearings in
24 mid-November, the Commission has been inundated
25 with new complaints from every corner of this

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1 state. In many instances it is the same
2 disturbing theme: Unsuspecting, law-abiding
3 citizens reach for a piece of the American dream
4 in the form of a new home and find themselves
5 victimized by incompetent, conniving or downright
6 unscrupulous business interests whose products
7 make a mockery of their advertisements.

8 Worse, once caught in this web,
9 victimized homebuyers often quickly discover that
10 they have little recourse. The system that is
11 supposed to help them may instead work against
12 them.

13 And that is the central part of our
14 focus here today. Evidence and testimony will
15 bring into question the effectiveness of the
16 primary mechanism for correcting substandard and
17 deficient construction, the New Home Warranty
18 system. We will examine events and circumstances
19 that suggest profound defects in the state law
20 governing this system. We will hear from
21 witnesses whose experience suggests that warranty
22 programs offered to homebuyers through both the
23 government and the private sector utterly failed
24 to accomplish their intended purpose. Further,
25 you will hear testimony about instances that

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1 reveal a startling lack of oversight, enforcement
2 and follow-through on warranty-related issues by
3 appropriate governmental authorities.

4 As I indicated last fall at the
5 outset of these proceedings, this is an ongoing
6 investigation. Additional hearings will be held
7 as warranted, and we welcome the constructive
8 input of all parties because this is not merely an
9 academic exercise. Our ultimate goal is not just
10 to compile an investigative record, but to develop
11 a sensible, objective set of recommendations for
12 strong, effective statutory and regulatory
13 reforms.

14 Counsel, please call the first
15 witness.

16 MS. GAAL: First we'll have a panel.
17 The witnesses are Joseph Becht, James Conroy,
18 Karen Guhl and Charles Kuyl. We'll start on the
19 left.

20 EXAMINATION

21 BY MS. GAAL:

22 Q. Ms. Guhl, could you state your name,
23 please, and your position with the Commission.

24 A. My name is Karen Guhl. I'm a
25 Special Agent with the State Commission of

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1 Investigation.

2 Q. Mr. Conroy, your name for the
3 record, and your position?

4 A. James P. Conroy, Special Agent.

5 Q. Mr. Becht?

6 A. My name is Joseph Becht, Chief
7 Accountant, State Commission of Investigation.

8 Q. And Mr. Kuyl?

9 A. Charles A. Kuyl, Special Agent,
10 Commission of Investigation.

11 Q. We're going to start with you, Mr.
12 Becht.

13 Since the Commission's public
14 hearing in November, how many complaints have we
15 received concerning new construction-related
16 issues?

17 A. We received over 50 complaints with
18 approximately 21 being specifically connected to
19 the construction-related issues.

20 Q. The others, beyond the 21, what did
21 they relate to?

22 A. They related to allegations of
23 corruption, conflict of interest, warranty issues,
24 and complaints involving inspectors working in
25 other municipalities.

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1 Q. And how did these new complaints --
2 these are the complaints since November -- how did
3 they come in to the Commission?

4 A. They came through the hotline,
5 through telephone calls, letters and walk-ins.

6 Q. Are we still receiving new
7 complaints?

8 A. Yes, we are.

9 Q. As recently as yesterday?

10 A. Yes.

11 Q. Overall, do the complaints mirror
12 the issues that were brought out in the November
13 hearings?

14 A. Yes. They reaffirm the problems
15 that were discussed in our first hearing. There
16 were a lack of or deficient inspections, the
17 burden of proof left on homeowners to establish
18 defects existed, builders continuing to build
19 despite numerous developments that are defective
20 and, in many instances, no help for the homeowner
21 from state or local officials.

22 Q. Did we also receive several
23 complaints involving resale of homes in which the
24 new homeowner was not advised of the problems that
25 existed in the home?

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1 A. Yes, we did.

2 Q. In these instances was it pretty
3 well documented that the problems existed?

4 A. Yes. One woman told us that she was
5 advised by members of the development right after
6 she moved into the home that there were problems
7 throughout the development.

8 Q. But by then it was too late for her,
9 wasn't it?

10 A. Yes. She had already bought her
11 home.

12 Q. Of the 21 new complaints related to
13 construction issues that we received, how many
14 different builders were mentioned?

15 A. Approximately 19.

16 Q. Did we have previous complaints on
17 any of those 19 builders?

18 A. Yes. Several of the builders' names
19 have come up in previous developments.

20 Q. And did we also pick up some new
21 builders?

22 A. Yes, we did.

23 Q. So, it begins to appear that certain
24 builders have construction-related problems, not
25 just in one project, but in additional projects?

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1 A. Yes.

2 Q. So, it's not limited to a single
3 development?

4 A. No, it isn't.

5 Q. You mentioned 20 new complaints in
6 this two-month span. How many counties were these
7 new complaints located in?

8 A. They involved ten different
9 counties.

10 Q. So, in total now, how many complaint
11 scenarios has the Commission verified as being
12 connected to construction-related issues as
13 portrayed in these hearings?

14 A. Approximately 79.

15 Q. Seventy-nine different scenarios?

16 A. Yes.

17 Q. And how many counties are covered
18 now?

19 A. Twenty different counties.

20 MS. GAAL: I'd like to have Exhibit
21 NCI-251 put on the screen.

22 (Exhibit NCI-251 is marked for
23 identification.)

24 BY MS. GAAL:

25 Q. Now, this exhibit was prepared by

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1 the Commission staff, was it not?

2 A. Yes, it was.

3 Q. And does it represent a summary of
4 the Commission's investigation to date?

5 A. Yes, it does.

6 Q. Now, I see there are red dots and
7 blue dots. What's represented there?

8 A. Well, the red dots are the new
9 scenarios that we've looked at since our last
10 hearing, and the blue dots represent different
11 types of scenarios that we investigated. It could
12 be a warranty issue, a construction issue,
13 disclosure issue or default issues.

14 Q. Of the new complaints we examined,
15 did we find some that are examples of serious and
16 sometimes life-threatening issues?

17 A. Yes, we did.

18 Q. Special Agent Kuy1, did we again
19 discover instances where entire developments have
20 serious construction-related deficiencies?

21 A. Yes. We came across another
22 development in Monmouth County called Allaire
23 Estates that contained numerous construction and
24 engineering deficiencies that were not picked up
25 during initial inspections by the local

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1 municipality.

2 Q. Do you know who the builder was on
3 that project?

4 A. Yes, the builder was WRE
5 Development, Incorporated.

6 Q. So, this isn't a situation -- was it
7 VRE?

8 A. VRE, yes, ma'am.

9 Q. This isn't a situation where it's a
10 house here or a house there; it's a number of
11 homes in the development, am I right?

12 A. That's correct. There is 61 large
13 structures. Each structure contains four
14 townhouses, two stories high, with basements.

15 Q. And a number of them had problems?

16 A. All of them had problems.

17 Q. What type of problems did we find in
18 this particular development?

19 A. For example, there was improper
20 dryer ventilation of dryers that led to fires,
21 numerous leaking windows throughout the
22 development, improper grading, water infiltration
23 in the basement, including other areas throughout
24 the house structures, improper drainage, whereas
25 they -- the water drains, they diverted it into

-PUBLIC HEARING-

1 the sewerage system, which is a code violation.

2 There was numerous sidewalks
3 throughout the development that were
4 deteriorating. There was items missing from the
5 site plans, such as sidewalks, walking trails,
6 playgrounds, picnic areas. Numerous unstable
7 decks, and the firewalls throughout the various
8 structures were not extended to the underside of
9 the roof deck, causing a life safety issue.

10 Q. What is the estimated cost of
11 remediation at that one project alone?

12 A. From the problems we were able to
13 identify -- of course there is other problems they
14 didn't come across yet, but they figure --
15 estimate around \$1 million to make necessary
16 repairs.

17 Q. One million?

18 A. Yes, ma'am.

19 Q. Did we find that the performance
20 bond in that scenario had already been released by
21 the municipality?

22 A. It was definitely released.

23 Q. Have the homeowners there resorted
24 to litigation?

25 A. Yes. They are in that long process

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1 of litigation.

2 Q. And has the case been resolved as
3 yet?

4 A. Definitely not.

5 Q. Chief Accountant Becht, did we look
6 at a 55 and over development in Ocean County
7 called Four Seasons at Mirage?

8 A. Yes, we did.

9 Q. And did the entire development have
10 construction-related deficiencies?

11 A. Yes.

12 Q. Who was the builder there?

13 A. Menk.

14 Q. What happened with that development?

15 A. The development had numerous
16 code-related deficiencies, including truss
17 problems, problems with the location and number of
18 block piers, issues with the steel columns and the
19 foundation anchor straps, among a few, and the
20 major issues in regard to the HVAC systems, or
21 better known as heating, ventilation and
22 air-conditioning systems, which are not
23 necessarily code related.

24 Q. Now HVAC, H-Vac systems, is that
25 what that's referring to?

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1 A. Yes.

2 Q. What problems existed with the HVAC
3 systems there?

4 A. Several homeowners indicated that
5 they had problems heating their homes and the cost
6 was exorbitant. One individual indicated he found
7 that 35 to 40 percent of the ductwork leaked into
8 the attic. The reason for it is that at the main
9 connection the ductwork was connected with duct
10 tape and, from being in the attic, the heat dried
11 the tape and it separated.

12 Q. So the air was allowed to escape?

13 A. Yes.

14 Q. Was this individual the original
15 owner of that home?

16 A. No. He had bought the house as a
17 resale, but was never informed of the heating
18 issues before he bought the home.

19 Q. Did the Commission staff speak with
20 anyone else in this development concerning
21 heating-related issues?

22 A. Yes. One homeowner contacted a
23 heating, air-conditioning company to install a
24 humidifier on his furnace. The service
25 representative recommended a service contract,

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1 but, after examining the heating system, he
2 determined that the furnace had three-quarter inch
3 flexible ductwork instead of the seven-eighths
4 inch flexible ductwork, and there were other
5 potential problems.

6 The homeowner has yet -- had
7 indicated that approximately a year before the
8 furnace had its coil changed by the builder's
9 subcontractor because the wrong coil was initially
10 installed, and this, apparently, had been a
11 problem throughout the development. The service
12 company's representative said he would not write a
13 service contract for the furnace until the proper
14 hoses were installed.

15 Q. Did she have other problems with
16 subcontractors who attempted to correct work
17 there?

18 A. Yes. The subcontractors were out
19 there on three different occasions trying to fix
20 the furnace. At one point the -- a safety pan
21 hose was disconnected, causing the fluid to escape
22 and run down the walls of the house. To date she
23 will no longer allow the subcontractor's employees
24 into the house to make any more repairs.

25 Q. We also learned from a number of

-PUBLIC HEARING-

1 homeowners in that development that they have had
2 to replace their HVAC systems at their own expense
3 and they are four years or less old?

4 A. Yes. We learned that it cost
5 homeowners from 5,000 to \$40,000 to replace these
6 systems.

7 Q. And did DCA get notified of problems
8 in that development?

9 A. Yes. We examined the files located
10 in the office of the DCA in the spring of 2001 and
11 a letter of complaint was in the file which was
12 sent by a resident to DCA.

13 Q. Just so we are clear, that letter
14 was sent in the spring of 2001?

15 A. Yes.

16 Q. We didn't look at it then?

17 A. No, no, we --

18 Q. More recently?

19 A. Right.

20 Q. Was an investigation conducted by
21 DCA?

22 A. Yes. The DCA's Office of Regulatory
23 Affairs conducted an investigation. The inspector
24 sampled a number of homes and determined that
25 there are code violations in all the sample homes.

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1 Q. And what steps did they take?

2 A. From the examination, again, from
3 the Office of Regulatory Affairs' files, a memo
4 dated October 16, 2001, indicates that a meeting
5 was held between the ORA and the builder to
6 discuss an agreement to rectify code violations at
7 all the homes in the development.

8 Q. And do you know if they came to an
9 agreement -- some type of a remediation agreement?

10 A. The file also contained a draft
11 agreement dated January 25th, 2002, entitled,
12 "Memorandum of Agreement." This indicates that
13 the code violations will be repaired.

14 Q. Were we able to find a final
15 agreement?

16 A. Again, the file contained what
17 appears to be a final agreement, dated April 22,
18 2002. However, this agreement was never signed.

19 Q. Did the builder have an engineer
20 sample some of those homes to see if there were
21 deficiencies?

22 A. Yes. Based on a meeting in October
23 of 2001 between the DCA and the builder, the
24 builder hired an engineer to inspect a sampling of
25 the homes. Approximately 13 homes were looked at

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1 and, again, violations were identified and repairs
2 were completed in all 13 homes.

3 Q. So, the builder's engineer looked at
4 a sampling of the homes, they found violations,
5 and they repaired those 13 homes?

6 A. Yes.

7 Q. Okay.

8 How many other homes are there out
9 there?

10 A. There are approximately 170 other
11 homes in the development.

12 Q. What about the other 170 homes?

13 A. To date they haven't even been
14 inspected nor repaired.

15 Q. Were those homes to be repaired
16 according to that agreement you saw -- or the
17 staff saw?

18 A. Again, on January 13, 2004, we met
19 with Lou Mraw, supervisor, Office of Regulatory
20 Affairs, Department of Community Affairs, who
21 stated that no agreement was signed with the
22 builder in April of 2002. He stated that, because
23 he was understaffed and didn't have the personnel
24 to assume the administrative responsibilities and
25 oversee the repairs, he was going to leave it up

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1 to the local code official to conduct inspections
2 and issue code violations, as they came up.

3 Q. Now, just so we are clear, today is
4 the 21st of January and this information came to
5 us on the 13th?

6 A. Yes.

7 Q. Did DCA meet with the local
8 construction code official?

9 A. Yes. They did meet with the local
10 construction official.

11 Q. And did they do that to go over some
12 of the violations at Four Seasons at Mirage?

13 A. Yes, they did.

14 Q. And did Mr. Mraw indicate to the
15 Commission during this interview that, because of
16 a subsequent court decision, the DKM decision,
17 that now there was nothing they could do?

18 A. Yes. They indicated that, because
19 of DKM, there was nothing they could do any
20 further, other than -- because the builder had
21 promised to make additional repairs, they were
22 just going to depend on that promise.

23 Q. Do you know if the builder was ever
24 sanctioned by the state?

25 A. No.

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1 Q. How about the local code official
2 that missed the violations?

3 A. No.

4 Q. Is he still an inspector?

5 A. No. The township now has their own
6 building department to do the code inspections.

7 Q. Do you know if that individual is
8 working anywhere else?

9 A. Yes.

10 Q. He is working somewhere else?

11 A. Yes, he is.

12 Q. Did the homeowners association have
13 any idea that there was no written agreement to
14 make repairs on the other homes in the
15 development?

16 A. No.

17 Q. They didn't know?

18 A. No, they didn't.

19 Q. They thought there was an agreement?

20 A. Yes, they did.

21 Q. And did they believe that that
22 agreement had been finalized?

23 A. Yes, they did.

24 Q. And when did they find out that
25 there was no agreement?

-PUBLIC HEARING-

1 A. We spoke to them after the January
2 13th meeting and let them know that there was no
3 agreement to repair any of the additional 170
4 homes.

5 Q. So, they just found out the last
6 week or ten days?

7 A. Yes.

8 Q. Did we speak to the local
9 construction code official about those additional
10 homes?

11 A. Yes. He was under the impression
12 that there was only the original 13 homes that had
13 code violations. He stated that he was not aware
14 that there were also an additional 170 homes that
15 also needed to be inspected and repairs made.

16 Q. So, he just found this out in the
17 last seven to ten days?

18 A. Yes.

19 Q. Is this the same builder that was
20 involved in another 55 and over development in
21 Gloucester County called Holiday City at Monroe,
22 in which there were significant
23 construction-related deficiencies that we talked
24 about at our last hearing?

25 A. Yes.

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1 Q. And was there an agreement signed
2 with DCA for remediation work in that development?

3 A. Yes, there was. There was almost a
4 similar agreement to the one at Barnegat.

5 Q. What is the status of repairs on the
6 Gloucester County project?

7 A. The repairs still have not been
8 completed.

9 Q. Do you know if there were ever any
10 sanctions against the builder?

11 A. The agreement states that the
12 builder will repair approximately 22 homes a
13 month. The repairs are scheduled to be completed
14 in July of 2004. If the builder -- for every home
15 under 22 homes that he doesn't complete in a
16 month, the builder is fined \$500 for each home.
17 The money is then put into a fund.

18 However, it is our understanding
19 that, once the construction -- or the repairs are
20 completed on all homes, the builder gets his money
21 back.

22 Q. The builder gets the fine back?

23 A. Yes.

24 Q. Special Agent Guhl, we talked a
25 little bit so far this morning about HVAC issues,

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1 and, since our last hearing, have we received a
2 number of complaints concerning HVAC problems?

3 A. Yes, we have. One in particular was
4 an individual who utilized his new wood-burning
5 fireplace in his new home only to have the
6 interior piping, ductwork, disintegrate and
7 collapse, emitting toxic fumes into his home.
8 After looking at the stuff that had collapsed, he
9 noticed that the material had been clearly marked
10 "For Gas Only." The contractor had installed the
11 wrong pipe material.

12 Q. And, aside from the physical aspects
13 of it, was that a serious life safety issue?

14 A. Yes, absolutely.

15 Q. Had that home been inspected?

16 A. Yes, it had passed inspection.

17 Q. Did the homeowner get an estimate as
18 to how much it would cost to correct the problem?

19 A. Yes, he did. He indicated to me
20 that it was in excess of \$40,000.

21 Q. Special Agent Kuyl, have you
22 encountered, since the last hearing, instances of
23 life safety issues involving HVAC systems?

24 A. Yes, ma'am. We spoke to a husband
25 and wife, both of whom are doctors. They had

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1 purchased a new home in Monmouth County for the
2 price of \$1.6 million and moved in March of 1998.
3 Upon moving in, they immediately began smelling an
4 odor when the fireplaces were on and began to
5 experience flu-like symptoms.

6 Q. Flu-like symptoms?

7 A. Yes, ma'am.

8 Q. Did they eventually find out what
9 was causing the odor and their illnesses?

10 A. Yes. It was revealed that dangerous
11 levels of carbon monoxide spilled into their home
12 due to faulty insulation of several defective
13 furnace heating systems and defective construction
14 of chimneys and fireplaces, including the fact
15 that they were built too short. In addition,
16 there were other structural deficiencies that they
17 came across.

18 Q. What are some of the other defects
19 that were found in that particular home?

20 A. For example, the hot water supplied
21 to a garage heater was being produced by domestic
22 hot water -- utilized the supply water inside the
23 residence, water that's used for cooking, showers,
24 et cetera, and then the water is being
25 recirculated back into the garage heating unit.

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1 There was also, in the crawl space,
2 uninsulated water lines which, during the freezing
3 time, would freeze up. A dryer vent was
4 improperly vented into the return duct through the
5 air-conditioning system, thus causing a fire
6 hazard and recirculating carbon monoxide.

7 The foundation was set too low, so,
8 during heavy rain or snow, the water would
9 penetrate and flood up the crawl space and,
10 according to an expert report, the first floor was
11 improperly set and actually cannot be corrected
12 without the complete destruction of the residence.

13 Q. And they paid one and a half million
14 dollars?

15 A. \$1.6 million.

16 Q. Now, without enumerating them, were
17 there a number of alleged violations of code in
18 this particular home?

19 A. There's quite a few.

20 Q. And have the homeowners suffered
21 illness and permanent damage as a result of the
22 defective systems?

23 A. Definitely. Because of the chronic
24 exposure to carbon monoxide, both developed
25 medical conditions that have prevented them from

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1 practicing medicine.

2 Q. They no longer can practice
3 medicine?

4 A. They can no longer practice
5 medicine.

6 Q. And did you personally examine
7 expert reports from a specialist in the
8 neurological field that confirmed these diagnoses?

9 A. Yes. The reports state that the
10 severe medical condition of the wife is the result
11 of chronic exposure to carbon monoxide. It is a
12 permanent condition and she can no longer practice
13 medicine.

14 Q. Did the home receive a valid
15 Certificate of Occupancy despite all these serious
16 problems?

17 A. Yes.

18 Q. It passed inspections?

19 A. Yes.

20 Q. Have the homeowners since made
21 repairs to correct at least some of these
22 deficiencies?

23 A. They made remedial repairs costing
24 over \$100,000. In addition, it was also estimated
25 that it would cost an additional 150 to \$200,000

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1 to correct other structural deficiencies, such as
2 construction of the fireplace and chimneys,
3 including reinforcement of the foundation wall
4 which is structurally unsound.

5 Thus far it has cost them in
6 addition \$150,000 in litigation fees.

7 Q. And did you personally go out and
8 see that house?

9 A. Yes, several times.

10 Q. I understand those folks were kind
11 enough to come down today?

12 A. Yes, they are here.

13 Q. Special Agent Guhl, did the
14 Commission also find that in several other
15 scenarios we looked at there was at least some
16 question as to whether the land on which homes
17 were constructed was suitable for residential home
18 building?

19 A. Yes, that is correct. In one
20 instance, Holiday City in Monroe Township, there
21 was an issue, due to the fact that the water table
22 is extremely high, whether it would have, in fact,
23 been suitable for construction. Through court
24 proceedings it was determined that it was
25 acceptable. However, the residents there still

-PUBLIC HEARING-

1 have very serious and numerous problems with the
2 water.

3 Q. And they live with those problems
4 every day?

5 A. Yes, they do.

6 Q. More recently now, since the last
7 hearing, did you learn of a situation in
8 Lambertville in Mercer County?

9 A. Yes. In this instance, the
10 homeowners purchased the property in 1992. What
11 they didn't know at that time was that it had been
12 constructed on a fill site with construction
13 debris.

14 Q. And was a study ever done to see if
15 the land was suitable for building?

16 A. Yes. The owner of the land had had
17 a geotechnical survey, engineering consultation
18 done to determine if, in fact, it was suitable for
19 residential development.

20 Q. And what was the outcome of that
21 study?

22 A. The report stated that the land
23 could support residential development, but, and I
24 quote, it stated "It will be necessary to have a
25 licensed engineer develop and approve of the

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1 foundation design criteria prior to the issuance
2 of the building permits."

3 It went on to say that, if it had
4 been determined that the fill was loose or
5 contained deleterious materials, possibly
6 conventional foundation design would not be
7 appropriate and they would have to come up with
8 some sort of alternative.

9 Q. And were some homes constructed on
10 the site?

11 A. Yes. The site in question had been
12 subdivided into five parcels. Two homes were
13 constructed.

14 Q. Now, did we speak to the owners of
15 one of those homes?

16 A. Yes, I did. These homeowners had
17 decided to purchase a modular home and have it
18 placed on the parcel. They had a local contractor
19 do the foundation, but, before the settling --
20 before the setting of the modular onto the
21 foundation, the homeowner discovered two cracks in
22 the foundation walls.

23 Q. Now, did the home receive a CO
24 despite the cracks in the foundation?

25 A. Yes. The local construction

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1 official issued a temporary Certificate of
2 Occupancy.

3 Q. Did those homeowners begin to notice
4 or eventually notice additional cracks?

5 A. Yes, they did.

6 Q. And did the builder retain the
7 services of the same engineering firm that did the
8 initial assessment to inspect those cracks?

9 A. Yes. The engineering firm reported
10 that, in their opinion, the cracks were due to the
11 settling of the foundation and did not deem these
12 to be structural issues.

13 Q. Did the builder attempt to repair
14 the cracks?

15 A. Yes, the builder did attempt, but
16 those attempts were unsuccessful.

17 Q. And did the cracks continue to
18 widen?

19 A. Yes, they did, and the engineer
20 maintained that they were not structurally
21 significant.

22 Q. Have you been out there to see that
23 house?

24 A. Yes, I have.

25 Q. And are the cracks still there?

-PUBLIC HEARING-

1 A. Oh, yes.

2 Q. Are they wider than they were?

3 A. Yes.

4 Q. According to the homeowners?

5 A. According to the homeowners and
6 to -- the engineering firm installed what are
7 called crack monitors to monitor the expansion of
8 the cracks.

9 Q. And are they expanding?

10 A. Yes, they are.

11 MS. GAAL: I'd like to have Exhibit
12 NCI-252 put up.

13 (Exhibit NCI-252 is marked for
14 identification.)

15 BY MS. GAAL:

16 Q. Can you tell us what that is?

17 A. Yes. This photograph is taken from
18 the inside of the garage looking out. In the
19 middle of the screen you see a light blue spot,
20 and that is outside of the house. You can see
21 right through the foundation.

22 The item --

23 Q. Right there? I'm pointing with my
24 pointer right now.

25 A. Yes.

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1 Q. Right there?

2 A. Correct.

3 Q. That's daylight?

4 A. That's daylight from the inside.

5 Q. From the inside.

6 A. And on the bottom, that is the crack
7 monitor that I had referenced before.

8 Q. This right here?

9 A. Yes.

10 Q. That measures the width?

11 A. Yes. There are a number of them
12 installed in the house.

13 Q. Now, did the homeowners file a
14 notice of claim and demand against the builder
15 with the State Office of Dispute Resolution?

16 A. Yes, they did, because that was the
17 warranty that their builder had provided.

18 They attended a hearing before the
19 Bureau of Homeowner Protection. They were
20 disappointed that there was not, in fact, a
21 licensed engineer at the hearing. The decision of
22 the bureau was that the builder would repair the
23 cracks with what was called -- what they described
24 as nonstructural shrinkage cracks utilizing a high
25 quality pliable sealant.

-PUBLIC HEARING-

1 Q. They actually called something like
2 that a nonstructural shrinkage crack?

3 A. Yes, they did.

4 Q. And they were using pliable sealant?

5 A. Sealant.

6 Q. And did they apply that sealant?

7 A. Yes, they did, but it was not
8 successful.

9 Q. Did the homeowners eventually retain
10 the services of their own engineer and did that
11 engineer dispute those findings?

12 A. Yes. Their engineer maintained that
13 the cracks represented a significant structural
14 defect with respect to the integrity of the
15 foundation. In his report he described the cracks
16 as traveling; that is to say, in addition to being
17 vertical, they were also horizontal.

18 Q. Did the homeowners opt for
19 litigation?

20 A. Yes, they did.

21 Q. What happened?

22 A. The homeowners had retained a
23 certain amount of monies owed the builder because
24 of, A, the cracks and other deficiencies, punch
25 list items. The builder felt that he was entitled

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1 to these monies and brought suit in small claims
2 court against the homeowners. The homeowners
3 countersued.

4 Q. What was the outcome?

5 A. It was transferred to superior court
6 in Hunterdon County. The engineering firm was
7 determined to have been negligent and the jury
8 awarded the homeowners \$100,000 as a settlement,
9 of which they deducted \$5,000 because the
10 homeowners at one point refused to allow the
11 builder in to make the approved remediation.

12 Q. Have the problems with that home
13 been corrected?

14 A. Well, the homeowners said to us --
15 told me that the award has just about been
16 exhausted in paying for the expert fees and the
17 legal fees associated with the litigation. They
18 have had an estimate of remediation costs that
19 placed it around \$200,000. The family does not
20 have \$200,000.

21 Additionally, they are -- because of
22 the extent of the deficiencies that would need to
23 be repaired, which would have to be disclosed in a
24 resale, they feel that they are unable to sell the
25 house. As a result of that, because the house is

-PUBLIC HEARING-

1 unsalable, they cannot obtain a home equity loan
2 or a line of credit.

3 As the homeowner said to me -- he
4 said, I'm faced with a house that's falling down
5 around me and no way out.

6 Q. And the repairs are well beyond
7 their financial capabilities?

8 A. Absolutely, yes.

9 Q. And this was a new home they bought?

10 A. Yes, a new modular home.

11 Q. Now, I think you mentioned that they
12 received a temporary CO. Was that issued in order
13 that they could move into the home?

14 A. Yes, it was.

15 Q. And did they ever get a final CO?

16 A. Well, yes, they did.

17 Q. Tell us about that.

18 A. When the builder met up with the
19 homeowner and requested the additional monies that
20 he felt were due to him, the homeowner was rather
21 frustrated and said, "You know, we still have
22 these problems, you are not addressing them. In
23 fact, I don't even have a CO." And the homeowner
24 indicated that the following day, when he went to
25 get his mail, there was a Certificate of Occupancy

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1 in his mailbox.

2 Q. And no inspection had been
3 conducted?

4 A. No final inspection had been
5 conducted.

6 Q. What other problems -- just if you
7 could summarize them for us, what other problems
8 did you see in this house?

9 A. The homeowner showed me a couple
10 that were rather startling. The egress to the
11 rear of the house, there are sliding glass doors
12 off the kitchen and a doorway in the hallway.
13 Unfortunately, there are no stairs, there is no
14 deck, there is a 15-foot drop.

15 MS. GAAL: Hold on a second. Let's
16 put up Exhibit Number 253.

17 (Exhibit NCI-253 is marked for
18 identification.)

19 BY MS. GAAL:

20 Q. That's a photograph?

21 A. Yes, that's the house.

22 Q. Who took the photograph, do you
23 know?

24 A. The homeowners.

25 Q. Is this the sliding glass doors you

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1 are referring to?

2 A. Those are the sliding glass doors
3 off the kitchen.

4 Q. And what is this door?

5 A. That's the door in the hallway where
6 the homeowners had to put up some wood to block --

7 Q. So, people wouldn't fall out?

8 A. -- so no one would fall out.

9 However, the doors in the kitchen open.

10 Q. The doors in the kitchen open?

11 A. Yes, they do.

12 Q. And what else can you tell us about
13 the house?

14 A. The homeowner showed me the handrail
15 going down to the basement. There are no spindles
16 attached to it, it's open on one side.
17 Additionally, he pointed out that the bottom step
18 is less than the required code amount from the
19 wall. Obvious, you know, visual code
20 inspection -- I'm sorry, deficiency.

21 Q. Are there youngsters living there?

22 A. The homeowners have an adult child
23 and their grandson is there.

24 Q. Now, the problems that you saw, that
25 they pointed out to you, do you think they would

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1 have been evident if a final inspection had been
2 conducted?

3 A. Yes, I would think so.

4 Q. Did the CO -- or the construction
5 official admit that he never conducted a final
6 inspection?

7 A. Yes, he did.

8 Q. Now, the home that was built next to
9 this one, did it also have some significant
10 structural problems?

11 A. Yes, it did. In fact, the home has
12 been abandoned by the homeowners. They had a rear
13 deck -- there is a creek that runs behind the
14 property. Their rear deck and approximately eight
15 feet of their sloping back yard had been washed
16 away.

17 MS. GAAL: I'd like to have Exhibit
18 Number 254 put up.

19 (Exhibit NCI-254 is marked for
20 identification.)

21 BY MS. GAAL:

22 Q. Is that a photograph of the house
23 next door?

24 A. Yes, it is.

25 Q. And do you know who took it?

-PUBLIC HEARING-

1 Somebody from our office?

2 A. Yes. Investigative Accountant Amy
3 Campbell.

4 Q. Just recently, within the last
5 couple weeks?

6 A. Yes, within the last couple weeks.

7 Q. And what did the construction
8 official indicate was the condition of this house?

9 A. The construction official advised
10 that, in his determination, the house is in a
11 state of progressive collapse. He indicated that,
12 if it should fall into the creek, which you can
13 see at the bottom there, it would cost
14 approximately three times the amount in cleanup
15 cost versus if it was demolished in a controlled
16 fashion.

17 Q. Now, this house is the one -- is a
18 neighboring house to the one we just looked at?

19 A. That's right.

20 Q. What happened to the homeowners of
21 this home?

22 A. They had to resort to litigation,
23 also. They brought suit against various entities.
24 The builder declared bankruptcy, so he was sort of
25 a dead end to them. They settled out of court

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1 with the two Realtors involved because they had
2 not been apprised of the condition of the site.
3 The engineering firm also settled out of court
4 with them.

5 They lost against the City of
6 Lambertville and the New Jersey Department of
7 Transportation was excluded from the suit.

8 Q. How much was their total award, do
9 you know?

10 A. Their total award was approximately
11 \$65,000.

12 Q. And they are left with a property
13 that is essentially a liability to them?

14 A. That's right. They were able to
15 work out a payment settlement with the bank, but
16 they are still left with a property that is a
17 liability to them.

18 Q. And were there any other homes built
19 on the lot?

20 A. No. Just those two.

21 Q. Special Agent Conroy, in November,
22 at the prior hearing, the Commission detailed some
23 information concerning several municipalities in
24 which local employees and officials were
25 recipients of meals, holiday parties, gifts,

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1 things along that line, from builders doing
2 construction work within their towns.

3 Did we find that, despite our
4 focusing on that at the last hearing, there is
5 evidence that it continues to occur in New Jersey?

6 A. Yes, we have.

7 Q. And did the Commission uncover
8 information with respect to a catered lunch
9 provided by a builder for the local building
10 construction office in Manchester Township?

11 A. Yes. It was learned throughout this
12 investigation that the municipality received a
13 catered luncheon on January 5th, 2004, by a
14 builder presently doing work inside the township.

15 Q. Now, what was the cost? Did we find
16 that out?

17 A. Yes. The luncheon, consisting of
18 several trays of food, cost \$150.

19 Q. Did you personally speak to the
20 builder about the lunch?

21 A. Yes, I did.

22 Q. What did they say?

23 A. The builder informed me that he
24 purchased the food for the township inspections
25 department because they were nice and they were

-PUBLIC HEARING-

1 efficient with respect to processing his
2 paperwork.

3 Q. He said they were efficient in
4 processing his paperwork?

5 A. Yes.

6 Q. Is that builder currently doing work
7 in the township?

8 A. Yes, he is.

9 Q. And was he doing work in the
10 township when he provided the luncheon?

11 A. Yes.

12 Q. Did you talk to the business
13 administrator or the office manager about that
14 lunch?

15 A. Yes, I spoke with both. The office
16 manager in the inspections department informed me
17 that it was her decision to allow the food to be
18 delivered on behalf of the builder. She stated
19 that she didn't know there was a conflict, despite
20 the policy set forth by the town mayor.

21 Q. Now, you mentioned the town mayor.
22 Did the mayor have a policy regarding gifts and
23 did the mayor promulgate that to the employees?

24 A. Yes, he did. The town mayor held a
25 meeting with the inspections department officials

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1 on November 25, 2003, right after our last
2 hearing. At that meeting the mayor informed the
3 inspections department that no gifts and no
4 gratuities were to be accepted by any builder or
5 any homeowner. In fact, a sign was even displayed
6 in the township office stating that this was not
7 to be accepted.

8 Q. Now, I recognize it's only a \$150
9 luncheon, but, just so we are clear, a couple days
10 after our last hearing the mayor personally met
11 with the staff?

12 A. That's correct. The mayor met with
13 the staff, informed them that no gratuities are to
14 be accepted, and this lunch was accepted
15 approximately two weeks ago, on January 5th, 2004.

16 Q. So, that lunch was accepted, despite
17 the mayor's instructions?

18 A. Yes. The office manager in the
19 inspections department indicated that they
20 approved the luncheon and claimed to be unaware
21 that it would constitute a violation of the policy
22 or that it was a gift.

23 Q. By the way, did that municipality
24 have an ethics on gifts policy?

25 A. Yes, they do. I was provided a copy

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1 of the policy.

2 Q. And what does it say in relevant
3 part?

4 A. The policy states that no township
5 officer or employee shall solicit, accept or
6 receive any gift, favor, service, employment, or
7 anything of value which the employee knows is
8 offered to them with the intent to influence the
9 employee in their performance of public duties and
10 responsibilities or was intended as a reward for
11 any official action on their part.

12 Q. Now, did it not seem to us that this
13 was business as usual, when it came to accepting
14 lunches and things along that line?

15 A. Yes.

16 Q. How about on the side of
17 disciplinary action against inspectors and code
18 officials that miss violations? Did it seem that
19 that was still continuing from some of the
20 complaints we received since the last hearing?

21 A. Yes, it does. In fact, we spoke to
22 one individual since the last hearing who has
23 numerous code violations in his home. Purchased
24 his home in Wall Township at a value of \$550,000.

25 The issue came before the DCA, but

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1 they opted not to discipline the inspector because
2 the homeowners chose to pursue litigation and,
3 once DCA learns of litigation, they will not get
4 involved in the proceeding.

5 Q. Can you give us some examples of the
6 type of problem that homeowner experienced?

7 A. Yes. That homeowner experienced
8 water leaking in the basement during heavy
9 rainstorms, water seeping into the living room,
10 the library, through the bay windows. The leakage
11 was caused by water penetrating the brick facade
12 on the home.

13 The builder attempted many repairs,
14 but they all met without success.

15 Q. Now, did a licensed architect
16 inspect the home?

17 A. Yes. Inspection by a licensed
18 architect uncovered other defects and possible
19 code violations in the framing. Additional
20 inspections by an engineer revealed a plethora of
21 deficiencies. Each of them was a code violation.

22 Q. Were there over 20 code violations
23 alleged?

24 A. Yes, there were.

25 Q. Now, can you just summarize for us

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1 some of the other main problems that were found to
2 be wrong with that house?

3 A. Sure. The homeowner conducted
4 inspections and he revealed that the improper
5 installation of the main girders in the basement
6 and sill plate was a problem. Of the 24 sections
7 of the sill plate around the perimeter of the
8 foundation, only four were fastened properly. An
9 earlier inspection of the floor joists revealed
10 that, of the 72 locations where the joists were to
11 be nailed to the sill plate, only 11 had nails, 49
12 had only one nail, and only 26 percent were
13 properly fastened.

14 Q. Eleven had no nails?

15 A. Correct.

16 Q. So, only 26 percent were properly
17 fastened?

18 A. That's correct.

19 Q. And did the homeowner notify the
20 municipal official of these problems?

21 A. Yes, he did. He notified the
22 construction official and his complaint went
23 ignored.

24 Q. And did they contact DCA?

25 A. Yes. They advised the DCA that

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1 there was never a correct set of plans for the
2 home, which resulted in the improper inspections.
3 DCA was also advised of the water problems and the
4 independent inspection that subsequently revealed
5 the code violations.

6 Q. Now, what did DCA tell us occurs if
7 a homeowner goes to court?

8 A. DCA informed that, if a homeowner
9 goes to court, they will no further be involved in
10 the proceedings.

11 Q. And did they explain why?

12 A. DCA said that the homeowner would
13 have to -- a homeowner who uses the court system
14 to settle their complaint, they will not become
15 involved. Once they become involved in the
16 courts, DCA basically removes themselves from the
17 process. DCA's position is that they don't want
18 to be part or be in any kind of outcome --
19 influencing any kind of outcome of the
20 proceedings.

21 Q. Now, in this particular matter was
22 the homeowner able to file a warranty claim?

23 A. No.

24 Q. Why not?

25 A. The problem was hidden from him

-PUBLIC HEARING-

1 until after the warranty expired.

2 Q. Did the DCA's investigation of this
3 matter confirm any code-related problems?

4 A. Yes. The DCA inspected the home,
5 found multiple code violations and deviations from
6 the released plan. They interviewed the municipal
7 building inspector regarding the inspections. The
8 inspector was asked how these violations could
9 have gone unnoticed during his inspections. He
10 stated that he did not use the released plans when
11 he was performing his inspection.

12 Q. Do you know or have we learned
13 whether there are any plans to discipline the
14 inspector by the DCA?

15 A. DCA advised that the investigation
16 was never completed because the homeowner chose
17 the court system, so nothing would happen until
18 that is finished.

19 Q. Is this something we recently
20 learned?

21 A. Yes.

22 Q. What about training for the
23 inspector?

24 A. The official I spoke to at DCA
25 indicated that during that time all the inspectors

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1 were being brought in for additional training.

2 Q. Just so we are clear, in a case
3 where a homeowner chooses litigation, the
4 inspector who missed the inspections or what have
5 you may be allowed to continue performing his job
6 during the litigation process?

7 A. That's correct.

8 Q. And a number of other homes could be
9 inspected while this litigation is going on?

10 A. Correct.

11 Q. And that could take years?

12 A. Correct.

13 MS. GAAL: That's all I have, Mr.
14 Chairman.

15 COMMISSIONER MARINIELLO: Agent
16 Guhl, the home that you showed us that
17 illustrated -- the two homes that were part of
18 Exhibits NCI-252 and -- 253 and 254, is the
19 inspection department in that town the same now as
20 it was at the time these homes were built?

21 MS. GUHL: No. The building subcode
22 official, the construction official, has -- at the
23 time has since retired.

24 COMMISSIONER MARINIELLO: I have
25 nothing further, Mr. Chairman.

-PUBLIC HEARING-

1 COMMISSIONER FLICKER: Mr. Becht,
2 could you explain for the nonlawyers in the
3 audience the impact of the DKM decision on
4 homeowners?

5 MR. BECHT: Well, the decision by
6 the courts -- DKM basically said that, once a
7 Certificate of Occupancy is issued for the home,
8 the builder cannot be issued any more violations,
9 and that's what DCA is now saying, that, once a CO
10 is issued, the builder can no longer be issued
11 violations.

12 However, the homeowner can still be
13 issued violations and they can be subject to fines
14 and whatever -- whatever that brings.

15 COMMISSIONER FLICKER: So that court
16 decision has made the homeowners responsible, even
17 if Certificates of Occupancy were issued, much
18 like the one that we heard about where one was
19 issued with no inspections, correct?

20 MR. BECHT: Yes, correct.

21 COMMISSIONER FLICKER: So, the
22 homeowner who had a house with no deck or no steps
23 leading from his kitchen is now responsible?

24 MR. BECHT: Yes.

25 COMMISSIONER FLICKER: That has

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1 dramatically changed the landscape for some of
2 these homeowners, hasn't it?

3 MR. BECHT: Oh, yes, it has.

4 COMMISSIONER FLICKER: When you have
5 talked -- since our last hearing when you've
6 gotten these additional complaints, was that still
7 a source -- when you talked to the homeowners or
8 the homeowners association, do most of them know
9 about this opinion or is it news to them that they
10 are now responsible for these violations?

11 MR. BECHT: Some know about it, but,
12 for the majority, I think it's going to be a rude
13 awakening when violations are issued and they find
14 out that they have to take care of them.

15 COMMISSIONER FLICKER: And let me
16 just go back to Agent Conroy for one question.
17 DCA's policy is that, if a homeowner chooses
18 litigation, they; that is, DCA, will do nothing
19 regarding the inspectors until the litigation is
20 completed?

21 MR. CONROY: That's correct. They
22 removed themselves from the process.

23 COMMISSIONER FLICKER: So they don't
24 do the investigation as to what the inspector did
25 or didn't do?

-PUBLIC HEARING-

1 MR. CONROY: Correct. Once it goes
2 to litigation, they do not become involved any
3 further.

4 COMMISSIONER FLICKER: Do we have
5 any information as to whether DCA ever follows up
6 after the litigation is completed?

7 MR. CONROY: That's being formulated
8 right now. At this time we have no information
9 that DCA has conducted any investigation once a
10 litigation has proceeded.

11 COMMISSIONER FLICKER: Thank you. I
12 have no further questions.

13 COMMISSIONER SCHILLER: Mr. Conroy
14 or Ms. Guhl, in your instances that you outlined
15 where there were either no inspections, shoddy
16 inspections, or just total misfeasance by the
17 local construction official, has -- to your
18 knowledge, has DCA taken any action on any of
19 those officials?

20 MS. GUHL: With reference to the
21 scenarios that I testified to this morning, no,
22 there was no action taken.

23 COMMISSIONER SCHILLER: Mr. Conroy?

24 MR. CONROY: There was no action
25 that I'm aware of subsequent to any litigation.

-PUBLIC HEARING-

1 COMMISSIONER SCHILLER: Thank you
2 very much. I have no other questions.

3 MS. GAAL: I have one more follow-up
4 now.

5 BY MS. GAAL:

6 Q. Chief Accountant Becht, with respect
7 to the DKM decision, is it our understanding that,
8 for some 20 years or more, that the Department of
9 Community Affairs had taken the position, up until
10 DKM, that they could proceed against builders
11 after COs were issued?

12 A. Yes.

13 Q. So, this decision has, for lack of a
14 better term, removed one of the remedies they had?

15 A. Yes, it has.

16 MS. GAAL: Okay. I just wanted to
17 clarify that.

18 COMMISSIONER SCHILLER: Thank you
19 very much.

20 MS. GAAL: Thank you.

21 The next witness is Amy Campbell.

22 EXAMINATION

23 BY MS. GAAL:

24 Q. Would you state your name, please,
25 for the record.

-PUBLIC HEARING-

1 A. Amy Campbell.

2 Q. And what is your position?

3 A. I am an investigative accountant
4 with the SCI.

5 Q. Let me just ask, Amy, how long have
6 you been with us?

7 A. Three years.

8 Q. And where did you work before you
9 came to the Commission?

10 A. I was with the New Jersey Division
11 of Criminal Justice for 12 years.

12 Q. And what was your position there?

13 A. I was an investigator.

14 Q. Now, did you review data and
15 information related to New Jersey's New Home
16 Warranty program?

17 A. Yes.

18 Q. And you've been doing that for quite
19 a while, I assume?

20 A. Yes.

21 Q. And that was your primary assignment
22 on this investigation?

23 A. Yes.

24 Q. And can you summarize for us the
25 type of data that you reviewed?

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1 A. I reviewed documentation that was
2 provided by the New Jersey private warranty
3 companies, documentation and data that was
4 available from the Department of Community
5 Affairs, Bureau of Homeowner Protection,
6 arbitrator information and arbitration service
7 information, as provided, as well as homeowner
8 information.

9 Q. And you got a lot of information
10 from the other members of the staff working on the
11 project?

12 A. That's correct.

13 Q. And did we -- and by "we" I mean the
14 Commission -- subpoena records and documents and
15 have witnesses called in to testify concerning the
16 New Home Warranty program?

17 A. Yes.

18 Q. And I'd like to start with an
19 overview of the New Home Warranty and Builders
20 Registration Act in New Jersey.

21 A. Um-hum.

22 Q. Did the Act require that new home
23 builders in New Jersey register with the New
24 Jersey Department of Community Affairs, the Bureau
25 of Homeowner Protection?

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-PUBLIC HEARING-

1 A. Yes.

2 Q. And did the Act require home
3 builders in this state to enroll with a warranty
4 claim provider and provide warranties to new
5 homeowners?

6 A. Yes, from a New Jersey-approved
7 provider.

8 Q. Would you tell us some of the
9 overall provisions of the New Jersey New Home
10 Warranty Act.

11 A. Each warranty provider must provide
12 provisions that comply with the statute. Each
13 warranty provider must provide a warranty insurer
14 who has an A.M. Best rating of A or A-Plus, and
15 each warranty provider must provide for a method
16 of dispute settlement or arbitration.

17 MS. GAAL: I'd like to have Exhibit
18 Number NCI-246 put up, please.

19 (Exhibit NCI-246 is marked for
20 identification.)

21 BY MS. GAAL:

22 Q. Did you prepare this?

23 A. Yes, I did.

24 Q. And can you tell us, from the
25 exhibit, who are the five active New

-PUBLIC HEARING-

1 Jersey-approved warranty providers?

2 A. Well, the State of New Jersey is an
3 approved provider, 210 Homebuyers Warranty out of
4 Georgia, Professional Warranty Services
5 Corporation out of Virginia, Quality Builders out
6 of Pennsylvania, and Residential Warranty
7 Corporation, also out of Pennsylvania.

8 Q. Now, when we use the term or people
9 use the term "state plan," is that the State of
10 New Jersey's New Home Warranty plan?

11 A. Yes, the state operates its own
12 plan.

13 Q. So there are five providers, am I
14 right?

15 A. Five current providers, yes.

16 Q. And four of them -- four of the five
17 are not from New Jersey?

18 A. That's correct.

19 Q. Now, in addition, do these warranty
20 providers need to secure an insurer for homeowner
21 claims?

22 A. Yes. As shown in the middle column,
23 the State of New Jersey is self-insured, 210
24 Homebuyers Warranty uses the National Home
25 Insurance Company, which is a risk retention

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1 group. Professional Warranty Services Corporation
2 uses Steadfast Insurance, Quality Builders uses
3 Liberty Mutual Insurance Company and Residential
4 Warranty Corporation also uses a risk retention
5 group, Western Pacific Mutual Insurance Company.

6 Q. We are going to talk a little bit
7 more about risk retention groups later.

8 A. Yes.

9 Q. Does the statute require each
10 warranty company to select a dispute settlement
11 firm or an arbitration service?

12 A. Yes. The State of New Jersey uses
13 the New Jersey Office of Dispute Settlement,
14 Residential Warranty Company also uses currently
15 the New Jersey Office of Dispute Settlement, and
16 the remaining three active providers all use
17 Construction Arbitration Services out of Texas.

18 Q. So the first one on the list, the
19 state plan, and the Residential Warranty, the last
20 one on the list, both use the New Jersey Office of
21 Dispute Settlement?

22 A. Correct.

23 Q. And the other three use Construction
24 Arbitration Services out of Texas?

25 A. That's right.

-PUBLIC HEARING-

1 MS. GAAL: Now I'd like to turn now
2 to get a summary of the home builders themselves
3 and the number of homes that are warrantied in New
4 Jersey and, in order to do that, I'd like to have
5 Exhibit NCI-247 put up.

6 (Exhibit NCI-247 is marked for
7 identification.)

8 BY MS. GAAL:

9 Q. And did you prepare this?

10 A. Yes.

11 Q. And what is it designed to depict
12 for us?

13 A. This depicts the active new home
14 builders registered in the State of New Jersey.

15 Q. Okay. And did you get this
16 information from where? The DCA database?

17 A. Yes, I did.

18 Q. Did you have to calculate it all
19 yourself?

20 A. I extracted this information from
21 what was provided.

22 Q. And if you could highlight for us
23 the numbers of builders and so forth in the state.

24 A. The total builders at the time I did
25 this analysis was 7,948. The state plan had 5,755

-PUBLIC HEARING-

1 of those active builders, which represented 20 --
2 or 72.5 percent of them. The remaining balance of
3 just a little over 25 or 27 percent are with the
4 private plans.

5 Q. Now, just so it's clear on the
6 chart, the state plan represents the large light
7 green piece of that pie?

8 A. That's correct.

9 Q. Am I right?

10 A. Um-hum.

11 Q. And the 25 percent of warranties
12 that are through the private plans are through the
13 four private plans which are in the upper
14 right-hand corner of the circle?

15 A. Yes.

16 Q. Am I right?

17 A. Um-hum.

18 Q. Now, the actual breakdown of the
19 number of builders among the warranty companies,
20 is that also depicted on that chart?

21 A. Yes, and you'll see that Residential
22 Warranty Company and 210 Homebuyers Warranty
23 comprise over three-quarters of that balance and
24 they are the two warranty administrators --

25 Q. That's these two here?

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-PUBLIC HEARING-

1 A. -- yes, that involve risk retention
2 groups. The balance of 5.5 percent are with
3 Professional Warranty Corporation and Quality
4 Builders.

5 Q. So, three-quarters of the private
6 plan warranties are with risk retention groups?

7 A. Involved.

8 Q. Involved, okay.

9 And how many builders would be
10 covered by those two plans?

11 A. Approximately -- if you add them up,
12 I think it's 1779.

13 Q. Of the builders?

14 A. Yes.

15 Q. Okay.

16 A. The remaining.

17 Q. So that leaves about what, 414?

18 A. Yes, with the other two plans.

19 MS. GAAL: Now, if we would turn to
20 the next exhibit, which is another pie chart, and
21 it's Exhibit Number NCI-248.

22 (Exhibit NCI-248 is marked for
23 identification.)

24 BY MS. GAAL:

25 Q. Did you prepare this chart?

-PUBLIC HEARING-

1 A. Yes.

2 Q. And what does it depict?

3 A. This depicts the New Jersey new home
4 warranties active, per the New Jersey Department
5 of Community Affairs' central registry records.
6 Approximately 238,096 active warranties.

7 Q. So, there were 238,000 -- over
8 238,000 active warranties in New Jersey in 2003
9 when you did this?

10 A. Yes.

11 Q. And can you break out for us the
12 state plan versus the private plan, in terms of
13 who holds the most warranties?

14 A. Yes. As you can see, the state plan
15 has only 56,752 of those warranties, which is
16 down --

17 Q. That's down here, that light color
18 green again?

19 A. Yes. It's only 24 percent of that
20 total number. The remaining 181,000 plus
21 warranties are distributed among those current and
22 former private plans. Again, Homebuyers Warranty
23 and Residential Warranty comprise a large
24 percentage of those remaining warranties.

25 Q. So, the private plans cover over

-PUBLIC HEARING-

1 181,000 of the 238,000 warranties that were active
2 when you put this chart together?

3 A. Yes.

4 Q. And that would be the vast majority
5 of warranties?

6 A. 76 percent.

7 Q. Just so we are clear, we are going
8 to talk a little bit more about this, you are
9 saying, although the number of active builders in
10 the state is larger, the private plan arena is
11 actually the bigger picture?

12 A. That's correct.

13 MS. GAAL: And I'd like to have the
14 next exhibit, which has been previously marked as
15 NCI-249, put up, please.

16 (Exhibit NCI-249 is marked for
17 identification.)

18 MS. CAMPBELL: And you can clearly
19 see the difference in the summary chart.

20 BY MS. GAAL:

21 Q. Okay. Let's hold a second. Did you
22 prepare this?

23 A. Yes.

24 Q. You did personally?

25 A. Yes.

-PUBLIC HEARING-

1 Q. And it says, "Summary comparison,
2 state plan versus private plan as of 2003," and
3 when you say you can clearly see the difference,
4 what are you contrasting here?

5 A. The state plan versus the private
6 plan, as it relates to the number of active
7 builders --

8 Q. Right.

9 A. -- and the number of active
10 warranties, there is an inverse relationship
11 between those two elements. Although the state
12 plan has 72.5 percent of the active builders, they
13 only have 27 percent of the active warranties;
14 whereas, the private plan, who has a smaller
15 number of the builders, actually has that larger
16 76 percent of the warranties.

17 Q. And, just so we are clear, in case
18 someone can't read the key, the light blue is, in
19 both instances, the state side, the state plan,
20 and the red-ish brown is the private plan side?

21 A. That's correct.

22 Q. Now, why is this inverse
23 relationship significant, in your opinion, based
24 on what you've seen in the investigation? Why is
25 it significant?

-PUBLIC HEARING-

1 A. It's significant because, as you'll
2 see, there is very little oversight over that
3 larger private plan arena.

4 MS. GAAL: I'd like to now have you
5 give us an overview of the homeowners claim
6 process and, in order to do that, I'd like to have
7 Exhibit NCI-250a put up on the screen.

8 (Exhibit NCI-250a is marked for
9 identification.)

10 BY MS. GAAL:

11 Q. This has also been distributed, if
12 people want to see it.

13 Did you prepare this?

14 A. Yes.

15 Q. And, before we get into the -- what
16 is it designed to depict?

17 A. This depicts actually a simple
18 overview of the request dispute settlement
19 process, what a homeowner will go through when
20 they file a claim when they find a defect on their
21 home.

22 Q. And you've done it so that we, the
23 Commission, and people here can sort of understand
24 the process?

25 A. It's a general road map.

-PUBLIC HEARING-

1 Q. So, this is what a homeowner is
2 confronted with when they are going to go through
3 the warranty process?

4 A. May be, yes.

5 Q. A simple version of it?

6 A. Yes.

7 Q. And when does the homeowner get
8 their information about this process, typically?

9 A. Typically, when a homeowner closes
10 on his home, that is when the builder transfers
11 the warranty booklet or warranty information to
12 the homeowner.

13 Q. And, based on our investigation,
14 either because you've spoken to them or other
15 staff members have spoken to them, did the
16 homeowners indicate that they had much idea or any
17 idea what was covered in their warranties?

18 A. Pretty much, from the homeowners
19 we've talked to, they have little or no idea what
20 is covered in the warranty until they signed on
21 the dotted line and received their warranty
22 booklet.

23 Q. Now, does the homeowner have any
24 options in selecting the warranty plan under which
25 his or her home will be covered?

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1 A. No. That's all determined by the
2 builder.

3 Q. So, the builder determines the plan?

4 A. Yes.

5 Q. Typically -- now this is typically,
6 based on our investigation, when does a homeowner
7 begin to identify defects?

8 A. Actually, the homeowner can identify
9 defects at or before closing, in the preclosing
10 walk-through inspection. They'll walk through
11 with the builder and they'll generate what is
12 called a punch list, where the punch list is a
13 list of defects that they've uncovered prior to
14 actually signing for the home.

15 Q. So, in some cases, at the punch list
16 time, at the walk-through, they are starting to
17 identify defects?

18 A. Yes.

19 Q. Are the standards for defining
20 defects covered in the warranty booklet?

21 A. Yes. Generally the warranty
22 companies consider it the defect Bible for filing
23 a claim.

24 Q. The defect Bible, the warranty
25 booklet?

-PUBLIC HEARING-

1 A. Um-hum.

2 Q. I'd like you to leave this exhibit
3 up. Are there limitations in the warranty system
4 for reporting defects?

5 A. Yes. Although the homeowner is
6 provided with a ten-year warranty, it's a limited
7 warranty. Most items are only covered in that
8 first year of the warranty.

9 Q. Can you give us any summary language
10 as to what defects are covered in that first year?

11 A. I'd say almost anything -- all of
12 your painting, all of your simple defects --

13 Q. Cosmetics?

14 A. Cosmetic defects, yes.

15 Q. So, they have a year on those?

16 A. Yes.

17 Q. So, that's the majority of the
18 defects?

19 A. Yes.

20 Q. First year. Okay.

21 What happens after the first year?

22 A. In the second year your more
23 mechanical, structural type defects are covered.
24 Maybe your furnace or something that would carry
25 over seasonally.

-PUBLIC HEARING-

1 Q. So you have two years on structural
2 and mechanical?

3 A. Yes.

4 Q. What happens after Year 2?

5 A. The first two years are the
6 responsibility of the builder for the repairs.
7 Years 3 through 10 cover only what are called
8 major structural defects, and they are the
9 responsibility of the warranty provider.

10 Q. Now, generally -- and I recognize
11 you are giving us some general information here --
12 but, what is a major structural defect?

13 A. A major structural defect involves a
14 defect to the load-bearing portion of the house.
15 So, in simple homeowner terms, your house has to
16 be unsafe or almost unsafe before you can file an
17 MSD.

18 Q. Leave the exhibit up.

19 So, assuming a homeowner finds a
20 defect or several defects, what happens, using
21 your chart?

22 A. The homeowner will notify the
23 builder of the defect. The homeowner will either
24 repair the defect or not repair the defect.

25 Q. That's what you have up here, they

-PUBLIC HEARING-

1 notify the builder, and he either repairs it and
2 takes care of it or doesn't repair it?

3 A. Correct.

4 Q. So, if they don't repair it, then we
5 start to go down the left-hand column of this
6 chart, am I right?

7 A. Yes.

8 Q. What does the homeowner have to do?
9 Do they have to file papers and so forth?

10 A. Yes. A homeowner will file -- the
11 initial paper is called a request for dispute
12 settlement, and that pretty much tells the
13 warranty company, I have a defect and the builder
14 will not repair it.

15 Q. What does the warranty company
16 typically do?

17 A. The warranty company will respond
18 by -- if the builder is not going to fix the
19 repair, they'll say, "File additional paperwork
20 which says 'I request an arbitration,'" and then
21 the warranty company will send out what's called a
22 judge or a referee. His name is Mr. Arbitrator.
23 The arbitrator will determine if there is a
24 defect, according to the warranty booklet, and who
25 is responsible.

-PUBLIC HEARING-

1 Q. Now, does Mr. Arbitrator typically
2 meet with the homeowner and the builder together?

3 A. Yes, they usually meet at the place
4 where the defect is, at the homeowner's residence,
5 and the arbitrator will lay down the ground rules
6 for the arbitration, and he will tell the builder
7 and the homeowner, "Convince me there is a
8 defect," or convince me there isn't a defect."

9 Q. Who is the burden on?

10 A. The burden is on the homeowner --
11 well, it should be on the homeowner and the
12 builder to both show there isn't a defect, on the
13 builder's side, and there is, on the homeowner,
14 but, from the cases we've seen, the homeowners are
15 required to prove that there is a defect.

16 Q. Now, after both sides show their
17 proofs to Mr. Arbitrator -- to the arbitrator,
18 what happens?

19 A. If the builder is responsible for
20 the repair, then he must prepare what is called a
21 repair specification document --

22 Q. Hold on, let me stop you a second.
23 Maybe I should ask that a little differently.

24 Does the arbitrator make some type
25 of a decision?

-PUBLIC HEARING-

1 A. Yes.

2 Q. And he decides what, either the
3 builder has to make repairs or there is no basis
4 for the claim?

5 A. He will award each item. Either
6 it's awarded to the builder as a nondefect, and
7 he'll cite the -- he should cite the particular
8 section of the warranty booklet as to why it fits
9 or doesn't fit --

10 Q. Okay.

11 A. -- or he will award it to the
12 homeowner, and he will again cite the particular
13 area of the warranty booklet that the defect is
14 covered under.

15 Q. So, taking us now one step further,
16 let's assume the arbitrator awards defects to the
17 homeowner, what happens next?

18 A. Then the builder is required to
19 prepare what is called a repair specification
20 document. That repair specification document
21 details how the builder is going to repair the
22 item so that it's in compliance.

23 Q. Now, that's commonly called an RSD?

24 A. Yes.

25 Q. Does the homeowner have to agree or

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1 accept the RSD as prepared or submitted by a
2 builder?

3 A. No. If the homeowner disagrees,
4 they can actually provide their own repair
5 specification information. They can request a
6 method of repair arbitration, and an arbitrator
7 will come out, similar circumstances, he'll have
8 the builder's repair specification document and
9 what the homeowner suggests is the proper method
10 of repair and the arbitrator will rule.

11 Q. Looking at your depiction up there,
12 that is about -- a little bit below -- halfway
13 down the left-hand column, you see -- I think it
14 says there, "Homeowner has 30 days to challenge
15 the RSD," am I right?

16 A. That's correct.

17 Q. And also on the right-hand side,
18 "Homeowner accepts the RSD" or the "Builder
19 accepts the homeowners RSD," is that right?

20 A. That's correct.

21 Q. Now, if the builder -- excuse me.
22 If the homeowner is awarded his defect, what is
23 supposed to happen?

24 A. The builder is supposed to repair
25 it.

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1 Q. Plain and simple?

2 A. (Witness nods.)

3 Q. What happens if, any time after an
4 arbitrator has awarded a defect to the homeowner,
5 the builder says, "No, I'm not going to fix this,"
6 or just fails to do it?

7 A. Then it's the responsibility of the
8 warranty company to step into the builder's shoes
9 and either repair the item, replace the item, or
10 offer a settlement, so the homeowner can have the
11 item repaired.

12 Q. Now, this is a simple version of how
13 the home warranty process is supposed to work?

14 A. Yes.

15 Q. And how it does work, I guess?

16 A. Right.

17 Q. Through our investigation did you
18 come to learn of problems with the process?

19 A. Yes.

20 Q. With the program?

21 A. (Witness nods.)

22 Q. Yes?

23 A. Yes.

24 MS. GAAL: I'd like to have Exhibit
25 250b put up.

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1 (Exhibit NCI-250b is marked for
2 identification.)

3 BY MS. GAAL:

4 Q. Now, did you prepare this exhibit?

5 A. Yes.

6 Q. And are there points along the
7 process throughout the program where we found sort
8 of critical points where there are problems in the
9 program, from what we saw?

10 A. Yes.

11 Q. And from what you saw?

12 A. Um-hum. They are highlighted in
13 red.

14 Q. And they are highlighted in red,
15 okay.

16 Now, did you find that there were
17 problems at what I'm going to call the initial
18 homeowner or builder relationship level?

19 A. Yes.

20 Q. Did you find problems at the
21 arbitration level?

22 A. Yes, we did.

23 Q. Are there problems at the warranty
24 company level?

25 A. Yes.

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1 Q. Now, going specifically to the
2 chart, in the upper left-hand corner of it, right
3 up there you've got a box outlined in red, and it
4 says, "Notification to the homeowner regarding
5 provisions of the warranty." So, is this the
6 first point in the process where we found
7 problems?

8 A. Yes.

9 Q. And who is responsible for
10 communicating to the homeowner about the warranty
11 information?

12 A. Under the current program it's the
13 builder.

14 Q. And did we find that there are
15 problems there?

16 A. Yes.

17 Q. Generally, are homeowners provided
18 with the warranty booklet and not much else by way
19 of information?

20 A. Yes. Very little information, if
21 any.

22 Q. Have we also learned that, when you
23 look at it on balance, the builder is very well
24 versed in warranty performance standards and
25 timing constraints and reporting about defects and

-PUBLIC HEARING-

1 so forth?

2 A. Yes, and the homeowner has no idea
3 of how the system works until after he's already
4 signed for his home.

5 Q. Are they, based on what we saw, in a
6 vulnerable position right there?

7 A. Yes, they are.

8 Q. What are some of the more common
9 misunderstandings that you found that homeowners
10 have?

11 A. Homeowners generally believe that,
12 when they notify the builder of a defect, that
13 that may mean notification to the warranty
14 company. It is listed in the warranty booklet
15 that it is not the same, but homeowners have that
16 sense of a relationship with the builder.

17 Homeowners also don't understand how
18 the process works. As we mentioned before, the
19 onus is on the homeowner to prove that that defect
20 exists. An arbitrator just isn't going to come in
21 generally and look at the huge crack and say,
22 "Yes, there is a crack there."

23 The homeowner has to present expert
24 testimony and support to show that, yes, there is
25 a crack there and it's a performance standard.

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1 And the homeowner also doesn't know that a
2 warranty -- his warranty does not cover a code
3 defect.

4 Q. Now, is that a significant issue we
5 found during our investigation, that homeowners
6 think that the warranty is also supposed to cover
7 code problems?

8 A. Yes.

9 Q. So, a code defect is not necessarily
10 a warranty defect?

11 A. Generally, no. And, if a code
12 defect can manifest itself as a warranty defect,
13 it must be translated by the homeowner or his
14 professionals into a performance standard. They
15 must use the terminology that's in the warranty
16 booklet to actually explain their defect.

17 Q. So, even if it does relate, they
18 can't just cite the code?

19 A. Correct.

20 Q. And, based on our investigation, did
21 we find that none of this is really explained to
22 the homeowner when he or she purchases the home?

23 A. That's correct.

24 Q. I would assume that the average
25 homeowner wouldn't even perhaps read that warranty

-PUBLIC HEARING-

1 booklet in the hectic time of closing and moving
2 and maybe selling another house and so forth.

3 A. Most of the homeowners we've spoken
4 to and asked if they've reviewed their warranty
5 booklet did acknowledge that they don't sit down
6 and study it at closing or afterwards. Generally,
7 they pick it up when they find a serious defect.

8 Q. Now, the second caption box, the
9 first one below that one on the left-hand square,
10 it reads, "Builder does not repair." What happens
11 there?

12 A. We've seen cases where the builder
13 will string along the homeowner and promise to
14 come in for repair and promise to send a crew or
15 say he's scheduling someone to come in and nobody
16 shows up or they come in and they just don't
17 repair the item.

18 Q. Have we found that this, to at least
19 some degree, lulls the homeowner into some sort of
20 false sense of security?

21 A. Yes. The homeowner believes that
22 that builder is going to come and repair the
23 defect, so he's not going to file the paperwork if
24 the builder is going to come repair the defect.

25 Q. Did most of the homeowners we dealt

-PUBLIC HEARING-

1 with know that they should file a request for
2 dispute resolution or dispute settlement anyway,
3 just to protect their rights?

4 A. In many cases, no. They believe
5 that the builder is going to come and repair the
6 defect and, so, therefore, they are covered and
7 they don't have to file the paperwork to protect
8 themselves.

9 Q. Was there a sense that they don't
10 want to file paperwork, if they don't have to?

11 A. Does anyone?

12 Q. Now, if the builder knows the filing
13 deadlines and the homeowner doesn't, if he simply
14 delays the repair beyond the time period for
15 filing a request for dispute settlement, what
16 happens?

17 A. Many times the homeowner just loses
18 out on the opportunity to file a claim for that
19 defect.

20 Q. Did we hear about that a lot?

21 A. Yes. We've seen documentation of
22 that on file at the Department of Community
23 Affairs, Bureau of Homeowner Protection.

24 Q. Is there a term that's used to refer
25 to this part of the process?

-PUBLIC HEARING-

1 A. It's commonly referred to as
2 lulling.

3 Q. Lulling?

4 A. Yes.

5 Q. Lulling the homeowner along?

6 A. Um-hum.

7 Q. Did our investigation reveal a case
8 where a builder was using his own warranty company
9 for the first two years of the program?

10 A. Yes. The first two years are the
11 years of builder responsibility, so that builder
12 would tell his homeowner to file with his
13 intermediate warranty company and not the approved
14 New Jersey plan provider.

15 Q. Now, if the homeowner is instructed
16 by the builder to file the defect claims with the
17 builder's intermediate warranty company, and
18 that's not a New Jersey-approved new home warranty
19 provider, and the period for the defect filing
20 expires, could that be a lost opportunity for a
21 homeowner?

22 A. That's correct. The homeowner loses
23 the opportunity to file for the defect.

24 Q. Going back to your chart, I'd like
25 to go down to the third highlighted box. This is

-PUBLIC HEARING-

1 the arbitration stage.

2 What has our investigation revealed
3 concerning problems at the arbitration service
4 stage?

5 A. You will hear today from a savvy
6 homeowner who sensed something was wrong in her
7 arbitration. Her further investigation revealed
8 that her arbitrator had fallen through the cracks
9 when certification requirements changed and, as a
10 result, her arbitrator actually was not qualified
11 to do the arbitration here in New Jersey.

12 Q. And how many arbitrations had he
13 performed?

14 A. From the time the certification
15 requirement came in from 1998 through 2001, over
16 300.

17 Q. Are we going to hear testimony from
18 a homeowner whose arbitrator ruled in an initial
19 arbitration between the homeowner and the builder,
20 but then the arbitrator -- rather, the homeowner
21 later learned that the arbitrator was engaged in
22 business dealings with the builder?

23 A. Yes, and even after this was
24 disclosed, the arbitrator did not voluntarily
25 recuse himself.

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-PUBLIC HEARING-

1 Q. Have we seen what we characterized
2 as an operational conflict by an arbitration
3 service?

4 A. Yes. For a period of time an
5 arbitration service was performing informal
6 inspections for one of the warranty providers, as
7 well as arbitration.

8 Q. Based on our investigation, the
9 arbitration and warranty process, was it described
10 as being easy to navigate for the average
11 homeowner?

12 A. No. You will hear from a homeowner
13 today who is still finding his way through the
14 arbitration and warranty process. In his case the
15 arbitrator changed the rules. This homeowner, who
16 is also an attorney, has described the New Home
17 Warranty process as almost impossible for the
18 average homeowner to manage, both practically and
19 financially.

20 Q. And we found that they expend a
21 considerable amount of money?

22 A. Yes.

23 Q. They hire lawyers?

24 A. Lawyers, experts, more lawyers and
25 more experts.

-PUBLIC HEARING-

1 Q. Just to get through the process?

2 A. Yes.

3 Q. Now, has our investigation revealed
4 other flaws in the program?

5 A. Yes. We have sworn testimony from a
6 very qualified arbitrator who has performed
7 arbitrations and appeals. This arbitrator
8 testified that in at least one instance of an
9 arbitration the arbitrator before him totally
10 disregarded expert testimony and proof of a defect
11 and found for the builder.

12 Q. So, that one totally disregarded
13 expert testimony?

14 A. Yes.

15 Q. Have we also learned that in some
16 cases an arbitrator could not possibly have
17 measured defects, based on the outcome of the
18 award?

19 A. That's also correct.

20 Q. Have we seen an instance where is an
21 arbitration service isn't even registered to do
22 business in this state?

23 A. Yes, and the same arbitration
24 service keeps very little records relating to
25 arbitrators and arbitrator histories.

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-PUBLIC HEARING-

1 Q. And, even though the company is not
2 registered to do business in the state, they are
3 allowed to continue to do the arbitrations?

4 A. I don't believe that the state is
5 aware that they are not properly registered with
6 the Secretary of State's office, and this is part
7 of our lack of oversight problem.

8 Q. So, you are saying you don't even
9 think the state knows they are not registered?

10 A. Um-hum.

11 Q. Have we, the SCI, been trying to get
12 records from that arbitration service?

13 A. Yes. Per their counsel, many of the
14 statistics that we requested they do not maintain,
15 and relating to their arbitrator information, they
16 only maintain it for the current arbitrators.

17 Q. And how current, in terms of time,
18 do they have records?

19 A. Pretty much, when the arbitrator is
20 no longer doing business with them, they get rid
21 of their file.

22 Q. Did they say they only have them for
23 the current year?

24 A. They just say current arbitrators.
25 They haven't defined a cut-off for us.

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1 Q. Have we also tried the other side --
2 sort of flipped a coin and tried to get the
3 records from the arbitrators?

4 A. Yes.

5 Q. And have we been successful there?

6 A. In some cases arbitrators maintain
7 records. In other cases arbitrators say they
8 don't maintain records because nobody told them
9 they had to.

10 Q. Do we need that information to get a
11 complete picture of the process and problems with
12 the process and to complete our investigation?

13 A. Yes, it would be very helpful.

14 Q. And it would help us make
15 recommendations?

16 A. Correct.

17 Q. Do we still have outstanding
18 subpoenas?

19 A. Yes, we do.

20 Q. Now, moving to the fourth problem
21 box, the fourth outlined box, which is down near
22 the bottom, "Award the homeowner," did we learn
23 there are times when the warranty company seems to
24 stall the homeowner for the final payment?

25 A. Yes. There is documentation on file

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1 with the Department of Community Affairs, letters
2 which state -- urge the warranty companies to
3 settle up on old claims that are outstanding far
4 past when they should be.

5 Q. Now, during the course of the
6 investigation, did we learn of a warranty company
7 for whom the rules appear to have been changed in
8 order to allow the company to become a new home
9 warranty claim provider in the state?

10 A. Yes, and this company was never
11 required to make the full financial disclosure
12 that the other plans were required to make.

13 Q. Did we see evidence that this
14 company boasted about its political affiliations?

15 A. Documentation indicates that this
16 did happen and the boasting was to individuals who
17 were reviewing the application during the
18 application review process.

19 Q. Within three years of operation was
20 this company dropped by its insurer?

21 A. Yes.

22 Q. Was the carrier still required to
23 pay out on claims?

24 A. Yes, but there have been problems
25 with that. You will hear from a homeowner today

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1 whose claim was outstanding for over two years and
2 that homeowner pretty much had to fight his way
3 individually through the process in order to get
4 his settlement in the end.

5 Q. Now, earlier we mentioned briefly
6 that two of the insurers were risk retention
7 groups. Can you tell us briefly what is a risk
8 retention group?

9 A. A risk retention group, simply put,
10 is a liability company owned by its members.

11 Q. In this case it would be what?

12 A. In this case it would be the
13 builders.

14 Q. So, the builders own the insurers?

15 A. They are builder members of the risk
16 retention group. They are members of the group.

17 Q. Could we call this, just so we
18 understand it, sort of a form of self-insurance
19 for the builders?

20 A. Absolutely.

21 Q. Now, we noted that two of the larger
22 private plan providers are the risk retention
23 groups, okay. Can you just talk about that for a
24 moment.

25 A. Yes. 210 Homebuyers Warranty uses

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1 the National Home Insurance Warranty risk
2 retention group and Residential Warranty
3 Corporation uses Western Pacific Mutual Insurance
4 Group, and they are two larger private plan
5 providers, if you remember from the slides.

6 Q. As part of the investigation, did
7 you do some research into the survival rates of
8 risk retention groups?

9 A. Yes.

10 Q. And what did you find out?

11 A. That, between approximately 1987 and
12 2001, only about 50 percent of the risk retention
13 groups formed are still operating today. In the
14 area of home warranties, that statistic is just a
15 little higher. I think it's 57 percent.

16 Q. So, about half --

17 A. Yes.

18 Q. -- were still operating?

19 What can you say -- or what do you
20 say to the Commission concerning the oversight of
21 the New Home Warranty program in New Jersey?

22 A. In the private plan arena there is
23 little to no oversight.

24 Q. And the private plan, based on what
25 you've told us earlier, covers 75 percent of the

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1 warranties?

2 A. That's correct.

3 Q. Did it seem us to be most of the
4 claims, too?

5 A. Yes.

6 Q. What is the size of the staff
7 overseeing the four current private plan warranty
8 providers and the three prior warranty plan
9 providers that we at one time had in New Jersey?

10 A. Currently one individual is the sole
11 person responsible for oversight of those plans
12 and potentially the 181,000 warranties.

13 Q. Now, is that individual responsible
14 for monitoring changes to the plan, monitoring
15 irregularities in the plans and ensuring that the
16 homeowner receives an unbiased claims process?

17 A. Yes. That individual is Ken Butko,
18 and he is the sole system of checks and balances
19 over that large private plan arena.

20 Q. Were you able to determine if he has
21 any enforcement power?

22 A. No. I was able to determine that,
23 no, his enforcement power is either use moral
24 suasion to entice the warranty companies to comply
25 or to try to have the provider removed from the

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1 plan.

2 Q. Is there anything in between?

3 A. Not -- no.

4 Q. How about fining authority or
5 anything like that?

6 A. No.

7 Q. Based on your investigation, did Mr.
8 Butko -- does he have any authority over the
9 arbitrators?

10 A. According to information and
11 directives from Peter Desch, he has no oversight
12 over the arbitrators.

13 Q. And who is Peter Desch?

14 A. He is the chief of the Bureau of
15 Homeowner Protection.

16 Q. Would that be Mr. Butko's
17 superior --

18 A. Yes.

19 Q. -- just so we are clear?

20 So, from what you understand, Mr.
21 Butko doesn't have authority over the arbitrators,
22 either?

23 A. Correct.

24 Q. Were you able to determine if DCA's
25 Bureau of Regulatory Affairs becomes aware of

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1 allegations of code violations that get reported
2 to the private plan section?

3 A. It's Mr. Desch's position or policy
4 not to directly or internally refer those to the
5 Regulatory Affairs section.

6 Q. And did you try to determine why
7 that was?

8 A. In my discussions with Chief Desch,
9 he stated that the Regulatory Affairs section is
10 basically overworked and understaffed and he
11 believed that they pretty much know about all
12 these violations anyway.

13 Q. Were you able to figure out or
14 determine, if Mr. Butko is the only individual
15 working on the private plan side and he's the sole
16 source of the complaints, how Regulatory Affairs
17 would know about all these violations?

18 A. Mr. Desch's position is that many
19 homeowners complain of code violations because a
20 neighbor tells them it's a code violation. There
21 is very little support, independent support, to
22 show that it's an actual code violation for
23 referral.

24 Q. One of the questions or issues we
25 tried to determine was to get a handle on how many

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1 of these homeowners really had problems. Isn't
2 that true? We tried to find that out?

3 A. Yes.

4 Q. Do the files in the private plan
5 section of DCA represent most of the homeowners
6 with problems? Were you able to determine that?

7 A. We really don't know. What we do
8 know is that those homeowners with files in the
9 private plan section are those lucky individuals
10 who found Mr. Butko's number in the book, were
11 able to get through to him and process their
12 complaint.

13 Q. Overall, the homeowners we spoke to,
14 were they complementary of Mr. Butko?

15 A. Yes.

16 Q. Very much?

17 A. Absolutely.

18 Q. Were you able to determine if there
19 is a close working relationship on the state side?
20 If you look at the state plan, how did that
21 relationship appear to be, between the state plan
22 in the warranty process?

23 A. Within the state plan there is a
24 much closer working relationship, both in
25 proximity and oversight. Peter Desch is the chief

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1 of the Bureau of Homeowner Protection, the new
2 builder registration section is under Mr. Desch,
3 the private plan is under Mr. Desch, the
4 compliance section and inspectors that would go
5 out on the state plan side are under Mr. Desch,
6 and the Regulatory Affairs section is right down
7 the hall on the same floor.

8 Q. So, are you saying that the
9 opportunity to monitor builder problems appeared
10 to be there on the state plan side?

11 A. Yes, and most of our complaints that
12 come in on our investigation deal with the private
13 plan side.

14 Q. Right. We didn't get a lot of
15 complaints from the state plan side?

16 A. No.

17 Q. No, okay.

18 Can you give us your best opinion as
19 to the impact of the lack of oversight -- or the
20 impact on the homeowners that the lack of
21 oversight on the private plan warranty side have?

22 A. I think that will be demonstrated
23 today by the witnesses who will testify.
24 Homeowners are incurring greater costs and greater
25 frustration just to have repairs made to their

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1 homes, which is the exact opposite of the intent
2 of the law.

3 One engineer described the
4 arbitration process as arbitrary, and dealing with
5 the home warranty companies as them providing
6 obstruction to the homeowner at every step of the
7 way.

8 Q. Did you have a sense that the
9 homeowners that were able to often had to spend an
10 extraordinary amount of money getting lawyers and
11 experts, and the ones that did not have the
12 wherewithal to do so or the time, just couldn't
13 proceed along that line.

14 A. Yes.

15 Q. But, if they had the money and the
16 time, they would have?

17 A. They have to invest the same amount
18 of resources, dollars, time, experts, in pursuing
19 a claim through the private warranty process as
20 they would if they went and litigated the claim.

21 MS. GAAL: That's all I have, Mr.
22 Chairman.

23 COMMISSIONER FLICKER: Investigator
24 Campbell, just looking at your chart, it looks
25 like a nightmare, and I'm a lawyer and I can't

-PUBLIC HEARING-

1 figure out what you are supposed to do. You must
2 have run into a great deal of distress by the
3 homeowners as you go through this process.

4 MS. CAMPBELL: Most of the
5 homeowners that have been successful in fighting
6 their way through the process have brought their
7 own army of professionals, including lawyers and
8 experts, but we believe there is a larger number
9 of homeowners out there who have looked at
10 something like this chart and just said, "I'll
11 just live with my defect."

12 COMMISSIONER FLICKER: So this --
13 the hearings we have had have uncovered the fact
14 that builders aren't doing what we would hope they
15 would do, the construction officials aren't doing
16 what we would hope they would do in many
17 instances, so, when the homeowner finally turns to
18 the warranty process, they are also finding
19 roadblocks at every step? Is that what we are
20 hearing?

21 MS. CAMPBELL: Yes.

22 COMMISSIONER FLICKER: And you said
23 that there is one man overseeing the private plan?

24 MS. CAMPBELL: Yes, and you'll hear
25 testimony from him later today.

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1 COMMISSIONER FLICKER: Do we have
2 any idea why this one man alone is doing this?

3 MS. CAMPBELL: I guess he's
4 Superman.

5 COMMISSIONER FLICKER: How many
6 people work in the other section, Mr. Desch's
7 section?

8 MS. CAMPBELL: There are over 20
9 other employees there, but they are broken out
10 into managing the state plan side and the builder
11 registration section.

12 COMMISSIONER FLICKER: But,
13 basically -- so there are 20 other employees. Did
14 you say 19 are assigned to the state side and one
15 to the private plan?

16 MS. CAMPBELL: Yes.

17 COMMISSIONER FLICKER: And the
18 private plans have, percentage-wise, how many more
19 of the actual homes?

20 MS. CAMPBELL: They have 76 percent
21 of the homes, and 24 with the state plan side.

22 COMMISSIONER FLICKER: I just have
23 to ask you one other question. When you talked
24 about the fact that under the warranty most items
25 are only covered for the first year, for two years

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1 there is coverage for structural and mechanical
2 problems, and for Years 3 through 10 it has to be
3 a major structural defect, meaning a load-bearing
4 portion of the house?

5 MS. CAMPBELL: That's correct.

6 COMMISSIONER FLICKER: So, some of
7 the other things you discussed as being
8 life-threatening, some of the ducts that weren't
9 adequately vented, would that be a load-bearing
10 portion of the house?

11 MS. CAMPBELL: No.

12 COMMISSIONER FLICKER: So, even
13 life-threatening problems would not be covered
14 under the warranty?

15 MS. CAMPBELL: Not if they didn't
16 occur in Year 1 or 2.

17 COMMISSIONER FLICKER: Investigator
18 Campbell, thank you very much.

19 COMMISSIONER EDWARDS: I have one
20 quick question. You remember that we had up on
21 the board before Exhibit NCI-254, which was the
22 house hanging over the stream that was about to
23 collapse and the family had abandoned that
24 particular house?

25 MS. CAMPBELL: Yes.

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1 COMMISSIONER EDWARDS: Would that be
2 a structural defect? I would think it is, in my
3 own opinion, but --

4 MS. CAMPBELL: I don't know if those
5 homeowners were successful in filing a structural
6 claim. That wasn't -- I don't know the -- whether
7 or not they filed a claim.

8 COMMISSIONER EDWARDS: Because it
9 doesn't look like it's structural, it looks like
10 it's the underlying ground is the problem, and the
11 actual construction of the building is probably
12 built very properly, I would assume, so it
13 wouldn't or would not --

14 MS. CAMPBELL: No, if it doesn't
15 affect a load-bearing portion, that's probably
16 correct.

17 COMMISSIONER EDWARDS: I understand.
18 Thank you.

19 COMMISSIONER MARINIELLO: Just to
20 echo what you were saying, your first point about
21 the lack of education to the homeowner when they
22 are buying a home, how would you recommend that a
23 change be made there? I could see a lot of times
24 these homeowners who are buying from large
25 developers, some of them don't have -- most of

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1 them, I imagine, don't even have real estate
2 agents, they bought directly from the builder, and
3 in many cases they don't have attorneys who are
4 representing them.

5 Is it really just the handing over
6 of the warranty with virtually no other
7 explanation of what the benefits are?

8 MS. CAMPBELL: At this point, yes,
9 or they'll be told everything is covered, so they
10 just don't have an understanding of what is
11 covered, when it is covered, the time limitations.

12 Perhaps a way for the homeowner to
13 become more familiar with what's covered or not is
14 to, at the point of sale, at the signing of the
15 contract before that house is even built, to
16 provide them with additional documentation on how
17 the warranty program works. Something like this,
18 the process that they are going to have to go
19 through that they can visually see. This is what
20 I have to do to file a claim? And -- that will be
21 one suggestion of how to educate consumers.

22 Or provide the Realtor with an
23 opportunity to educate the consumer, some type of
24 a mini course or something to provide them with
25 additional information on what's going to happen

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1 after they sign on the dotted line and get in the
2 house and it's theirs.

3 COMMISSIONER MARINIELLO: And in my
4 private capacity I've had people come to me who
5 are buying new construction and they walk in the
6 door and keep referring me to the ten-year home
7 warranty. I don't know where they are getting
8 that term from. I presume it's coming from some
9 discussions with the builder or whoever else, but
10 it's really a fallacy, it's really a two-year
11 warranty, as you are explaining it today.

12 MS. CAMPBELL: That's correct, or
13 one year.

14 COMMISSIONER MARINIELLO: As some of
15 our investigation or some of the testimony from
16 the last hearing and even today, some of the items
17 that are covered in Year 1 of that warranty are --
18 you referred to as like workmanship type issues.

19 MS. CAMPBELL: Yes.

20 COMMISSIONER MARINIELLO: But those
21 items really may be hiding some underlying
22 structural problems with the home, so, if
23 somebody, in theory, was to have a problem with
24 cracked tile or -- you know, cracked floor tile or
25 what have you, something that may appear to be in

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1 Year 1 a cosmetic problem, it may ultimately, by
2 Year 3, 4 or 5, turn out to be something much
3 greater than just a cosmetic issue. It may be
4 that the entire floor system may not have been
5 built on a level plain or what have you, is that
6 correct?

7 MS. CAMPBELL: Yes, many times these
8 simple things are just a symptom of a larger
9 problem and a lot of times a homeowner doesn't
10 know that unless they hire an engineer to come in
11 and evaluate that little crack which tells them
12 that they are missing required supporting beams in
13 the cellar or broken joists.

14 COMMISSIONER MARINIELLO: So, in
15 theory, a builder who is told of cracked kitchen
16 tiles could go in and replace those tiles with no
17 explanation as to why the tile cracked in the
18 first place, and then the homeowner, two or three
19 years later, is left with a bunch of cracked tiles
20 once again, and they are beyond the time that they
21 can proceed under the warranty for issues that
22 expire at the end of Year 2?

23 MS. CAMPBELL: That's correct.

24 COMMISSIONER MARINIELLO: I don't
25 have anything further at this time, Mr. Chairman.

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1 COMMISSIONER SCHILLER: Ms.
2 Campbell, the private plans cover 76 percent of
3 the homes out there that under warranty now. Did
4 you find whether -- anything in terms of the
5 percentage of large builders that would be in the
6 private plan as opposed to the state plan, or are
7 there any discrepancies between smaller builders
8 being in the state plan and larger builders being
9 in the private plan?

10 MS. CAMPBELL: Yes.

11 COMMISSIONER SCHILLER: Can you
12 perhaps address that?

13 MS. CAMPBELL: Yes. We find that
14 most of the larger builders are with the private
15 plans. They can negotiate a better premium with
16 the private plans because they have a higher
17 volume of construction. So they are with the
18 private plans. Most of your larger builders, the
19 builders we've run into, the cases we've run into,
20 deal with the private plan side where there is
21 little or no oversight.

22 COMMISSIONER SCHILLER: So, as they
23 didn't provide any oversight, but it also seems
24 that builders also -- the large builders
25 participate in actually owning the risk management

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1 company?

2 MS. CAMPBELL: Two of the plans
3 involve risk retention groups and two do not.
4 Some of those -- those builders are distributed
5 among those four plans, so they may be involved in
6 the risk retention group and they may not.
7 That -- the risk retention portion is still being
8 investigated and that will be addressed in the
9 report.

10 COMMISSIONER SCHILLER: Thank you,
11 Ms. Campbell. I have no other questions. Any
12 other Commissioners?

13 Thank you very much. At this time
14 we'll just take a ten-minute break.

15 (Recess called at 11:25 a.m.)

16 (Resumed at 11:40 a.m.)

17 COMMISSIONER SCHILLER: May we have
18 your attention, please.

19 Counsel, would you please call your
20 next witness.

21 MS. GAAL: The next witness is
22 Kenneth Butko.

23 Would you please stand and be sworn
24 by the reporter.

25 KENNETH J. BUTKO, after having been first duly

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1 sworn, was examined and testified as follows:

2 EXAMINATION

3 BY MS. GAAL:

4 Q. Thank you.

5 May we have your name for the
6 record.

7 A. Kenneth J. Butko.

8 Q. And by whom are you employed?

9 A. The State of New Jersey, Department
10 of Community Affairs, Bureau of Homeowner
11 Protection.

12 Q. And, although you may have heard you
13 referred to as Superman before, what is your
14 title?

15 A. I'm called the manager of the
16 private warranty section. It's a little different
17 than the Civil Service title, which is supervising
18 program development specialist.

19 Q. How long have you been in the
20 private plan section, approximately?

21 A. Over ten years.

22 Q. So, since maybe around 1991 or so?

23 A. A little before that, I believe.

24 Q. Can you briefly describe for us the
25 role of the private plan section.

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1 A. Well, if I could, I would quote from
2 a letter sent out by one of our commissioners to
3 a -- a response to a homeowner dated March 2nd,
4 1994, and, as I said, I'm in the Bureau of
5 Homeowner Protection.

6 "The Bureau of Homeowner Protection
7 exists to manage a homeowner warranty protection
8 plan, regulate the activities of the authorized
9 private warranty plans, serve to assist homeowners
10 who are unfamiliar with the provisions of their
11 respective warranties or who require assistance
12 with claims."

13 Generally that's what I do.

14 Q. Now, how many people are in your
15 section?

16 A. Myself.

17 Q. You're it?

18 A. That's correct.

19 Q. Do you have any assistants -- you
20 know, any other people working with you?

21 A. No one works for me.

22 Q. How long have you been the single
23 employee in that section?

24 A. A good three or four years.

25 Q. In you could think back to, say,

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1 three, four, five years ago or longer, were there
2 more employees there at one time?

3 A. At one time we had a secretary and
4 two other subordinates to me.

5 Q. So, the last three or four years
6 you've been the lone individual?

7 A. It went from four to three to two to
8 one and then zero.

9 Q. How many -- approximately how many
10 active builders do you have registered with the
11 private plan?

12 A. According to the most recent report
13 I got from our registry, it was a little over
14 2,000.

15 Q. And approximately how many home
16 warranties are covered by the private plans?

17 A. As the agent said earlier, doing
18 research from, I guess, the central database, it
19 was about 175,000 warranties in force. That's
20 from Year 1 through Year 10.

21 Q. Just so we are clear, you are the
22 only individual charged with the duties you just
23 read to us with respect to currently 180,000
24 warranties?

25 A. Yes, I guess you could say that.

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1 Q. Okay.

2 Now, do the private plans include
3 the larger builders in the State of New Jersey,
4 such as -- I'm going to mention a few -- Calton,
5 Centex, Menk, Pulte, Toll and others?

6 A. The larger builders have a tendency
7 to go with the private plans, for the reasons
8 described earlier, and because, of course, they
9 have a publicity package, they have signs they can
10 put up on their lawns to attract people indicating
11 that they have a certain product which is
12 attractive in marketing.

13 Q. The reasons mentioned earlier, did
14 that have to do with better premiums? Is that
15 what you meant?

16 A. It could. They have different
17 schemes that they can create for their builders
18 where they can have lower premiums if they invest
19 more in the company and so on, and buy into larger
20 deductibles, things like that.

21 Q. Things along that line, okay.

22 Do you get involved in overseeing
23 that at all? You don't have any oversight over
24 that --

25 A. In terms of their financial

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1 capability, no, absolutely not.

2 Q. How many private warranty providers
3 are currently operating in New Jersey?

4 A. Well, right now we have four active
5 warranty providers in the state, in addition to
6 the State Warranty Security Trust Fund.

7 Q. Were there other warranty providers
8 who were in the program during your tenure, but
9 who are no longer active in New Jersey?

10 A. Well, there was the granddaddy of
11 them all, the Homeowner Warranty Corporation,
12 which was put into receivership in their domiciled
13 state of Virginia. There was the Builder Trust
14 Warranty, a smaller firm, and the U.S.A. Warranty
15 Corporation at one time were active.

16 At the current time there is a
17 warranty company that is making application for
18 the fifth warranty program, and that's called the
19 American E-Warranty. It's being reviewed right
20 now.

21 Q. Are they from this state?

22 A. No.

23 Q. So, HOW went into receivership, BTW
24 went out of business, and U.S.A. was put out of
25 the program?

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1 A. HOW went into a receivership because
2 of certain financial constraints put upon them in
3 their operation in Virginia. BTW, yes, they went
4 out of business and the owner retired to Florida,
5 and U.S.A. at one time, after operating
6 approximately, I think, 33 months, lost their
7 warranty guarantor and apparently couldn't replace
8 their warranty guarantor and they went out of
9 business.

10 Q. Now, did those companies have home
11 warranties in this state at the time they ceased
12 being active companies here?

13 A. Yes, they did.

14 Q. Do you know approximately how many?

15 A. No.

16 Q. Were there a lot?

17 A. It was probably -- no, I couldn't
18 give you an accurate figure.

19 Q. What happens when a warranty company
20 loses its active status? What happens to those
21 warranties, or what is supposed to happen to those
22 warranties?

23 A. Well, fortunately, in the Virginia
24 case with HOW, the receivership in Texas, and they
25 had enough assets to pay claims. They were paying

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1 them initially at the tune of 40 cents on a
2 dollar, though, if anybody had a claim with HOW.
3 So there were monies to pay that.

4 Builders Trust, it was before my
5 time, maybe the chief or something could testify
6 on that, as to exactly how they intended to work
7 with their particular product. And U.S.A., the
8 Travelers Insurance was guaranteeing them to take
9 care of their claims even after they went out of
10 business.

11 Q. Do you have sanctioning power over
12 the warranty companies?

13 A. Not per se. I mean, the
14 administrative code allows us to revoke their
15 ability to sell their product through the builders
16 in the state, that's the main one, but years ago,
17 before I got there, they attempted to institute a
18 fining penalty, which didn't get too far, that
19 sort of died, and basically, when I work with them
20 now, in terms of sanctioning, I, you know, try to
21 use, you know, whatever friendships I've developed
22 in dealing with the people that are the warranty
23 administrators or using moral suasion to get them
24 to do something. Sometimes the cost of glitter
25 here and there, you know, might work, but,

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1 generally, beyond that, you know, very little than
2 reviewing or recommending that they be revoked.

3 Q. Now, we talked about the process
4 today with the other witnesses, but I'd just like
5 to kind of go through it with you because you
6 handle it on a daily basis.

7 Are we correct in understanding
8 that, if a homeowner identifies a defect, and
9 we'll use Year 1 for our purposes, the first thing
10 they usually do is they notify the builder?

11 A. They are obligated to notify the
12 builder. The state administrative code says the
13 builder has the right to repair, replace or offer
14 a reasonable cost of repair or replacement for
15 whatever defect exists, and most of the plans
16 specify that you must notify the builder, and
17 there is a time limit of 120 days initially when
18 actually filing a claim with a warranty company,
19 except possibly in the area of an emergency.

20 So, for the first 120 days at least,
21 the homeowner must deal with the builder, and for
22 the first two years the builder is responsible to
23 correct any performance standard defects from the
24 warranty.

25 Q. Now, if the builder does not correct

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1 the defect, then the homeowner files a request for
2 a dispute settlement with the warranty company?

3 A. Well, not initially.

4 Q. Okay.

5 A. They could ask the warranty
6 company -- well, sometimes they call me if they --
7 and, in that case, I could call the builder and
8 ask him what's going on, but they could call the
9 warranty company and indicate that they would like
10 to see the builder perform his responsibilities
11 under the code in the State of New Jersey and, you
12 know, the warranty company should get after them,
13 because eventually it will just become unpleasant
14 for them also, if they don't, and they probably
15 set up a file and start working on it and try to
16 do something.

17 One company has a mediation period
18 of 30 days after a homeowner notifies them in
19 order to try to resolve the problem between the
20 homeowner and the builder. If that particular
21 thing fails, then at that time they can offer them
22 arbitration and send them a request for
23 arbitration form.

24 Q. And the builder -- or, excuse me,
25 the homeowner would file for arbitration?

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1 A. They could either do that or elect
2 the remedy to sue in a civil venue.

3 Q. Is that the point where the builder
4 has to make a choice? I mean -- excuse me, I said
5 that twice. Where the homeowner has to make a
6 choice?

7 A. Well, that's debatable.

8 Q. Okay.

9 A. One company feels that the request
10 for builder performance, this mediation kind of
11 thing, is actually an election of remedy. I
12 disagree with that.

13 Q. Okay.

14 A. And I certainly disagree with the
15 court decision that sponsored that, but that
16 hasn't been converted into a law yet and it was
17 only, I think, a one-case deal, so there is a
18 question as to when you elect a remedy.

19 Q. So, what is that company saying?
20 That at that point the homeowner can no longer
21 sue?

22 A. Yes. Basically, yes.

23 Q. And what do the other companies say?

24 A. They are a little more liberal with
25 their interpretation. They don't even call it a

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1 mediation period, they just work on it and they
2 keep handling it until eventually it would become
3 a claim.

4 Q. In your view, at what point would
5 the homeowner be precluded from seeking redress
6 through the courts?

7 A. When they sign a request for
8 arbitration form and get into arbitration. That's
9 my personal feeling.

10 Q. Have you encountered homeowners, as
11 we have, who think that, once they get into the
12 process, from the very beginning, they can't sue
13 anymore? Have you found that misunderstanding?

14 A. Well, what the homeowner actually
15 believes runs the gamut of everything. I mean,
16 it's just unbelievable, and I've been sitting
17 there listening to things for ten years. I mean,
18 they'll just believe anything. They actually
19 believe that subcontractors are primarily
20 responsible in New Jersey for correcting their
21 defects. I mean, things like that.

22 So there is a whole misconception, I
23 guess, about what their, for lack of a better
24 word, a Bill of Rights are.

25 Q. So, in other words, the homeowners

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1 overall are ignorant of what their rights are?

2 A. Yes. If they read the document, it
3 might be helpful and it might be confusing. I try
4 to make it as helpful as possible within the
5 parameters of the legality of the whole thing, but
6 still a lot of homeowners are confused by the
7 process.

8 Most homeowners believe that they
9 not only have like a fiduciary connection with
10 their builder, but they also believe that they
11 have something more than a fiduciary attachment.
12 It's almost like an emotional thing, that they
13 really believe that the builder, which they gave
14 all their hard-earned money to, is going to come
15 through and give them their dream home without any
16 problems, and, unfortunately, that's not the way
17 it is in a lot of cases.

18 Q. So, have you found that the
19 homeowners have to overcome that notion? In other
20 words, they've got to overcome the notion that the
21 builder is their friend and that the builder is
22 going to protect them?

23 A. Most people that I've talked to over
24 the years have to overcome that fear. They do not
25 want to make their builder mad by either asking

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1 too many questions or demanding that so many
2 defects be fixed or whatever it is. They really
3 fear that and that's something that only a
4 publicity campaign or something can overcome.

5 Q. Do you think that's a significant
6 problem?

7 A. Oh, yes. It prevents them from
8 pursuing the alternative dispute settlement
9 process, because they are really waiting for the
10 builder to come through.

11 Q. Do you find, along the same vein,
12 that the homeowners may not or do not have the
13 financial wherewithal to litigate or to hire the
14 experts and lawyers they need to get through the
15 process?

16 A. Well, I think the whole alternative
17 dispute settlement process works well for people
18 who do not have the funds to take it through the
19 court system, that's absolutely correct, and I
20 think that's why arbitration was designed, to not
21 only take the burden off our court system, but
22 also to make it cheaper, and, in this particular
23 case, in New Jersey, under directives I issued,
24 that the builder pays for the first arbitration,
25 the initial arbitration, and that arbitration

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1 determines whether or not there is a defect and
2 whether or not that defect is the builder's
3 responsibility.

4 So they pay for the first one, and
5 then, if it goes on to the second one, which is
6 known as a method of repair, the builder also pays
7 for that. So -- or the warranty company, if the
8 builder fails to do that.

9 So, yes, the arbitration process
10 could be, you know, much more beneficial and
11 probably get a quicker answer, although, if it's
12 not positive, it's a moot kind of thing, but for
13 the homeowner.

14 Q. Now, how many arbitration services
15 do we currently have operating in New Jersey?

16 A. Well, right now there are two and
17 there is one that is currently going to come in to
18 the state. The two that are operating are -- one
19 is out of the Office of the Public Defender, known
20 as the Office of Dispute Settlement, and the
21 second one is Construction Arbitration Service out
22 of Dallas, Texas, which -- I think it was an
23 offshoot of the National Association of
24 Conciliators, a precursor of them. I think they
25 have some of the same people, same players in it.

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1 The new one is called the DeMars
2 Associates. They've just applied through one of
3 our programs to be an arbitrator possibly for
4 them.

5 Q. Now, if the homeowner goes to
6 arbitration, is an arbitrator typically selected
7 and the arbitration generally held at the home?

8 A. Yes.

9 Q. Who selects the arbitrator?

10 A. The service has a pool of
11 arbitrators. The arbitration service actually
12 doesn't do the arbitrations. They are the
13 administrator and they have a pool of arbitrators
14 that are qualified, hopefully, in New Jersey in
15 order to perform arbitrations and, based upon
16 their availability or the proximity to where the
17 arbitration is going to take place, they will
18 select that arbitrator and the arbitrator will be
19 paid through them.

20 Q. Now, assuming we've got an
21 arbitration in a home, do both the builder and the
22 homeowner present their facts and whatever
23 information they have to the arbitrator?

24 A. Well, I can't speak from personal
25 experience because I'm barred from -- I can't do

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1 anything with the arbitrators, but, yes, that's
2 what generally happens. That the state
3 administrative code indicates that it's incumbent
4 upon the homeowner to prove that the defect that
5 you claim exists and, if the defect is
6 unobservable, you must make it observable. So
7 there is a burden upon the homeowner in order to
8 prove that they have defects.

9 Q. And do they have to hire experts
10 sometimes?

11 A. Well, yes, they would. One example
12 was an individual -- by the way, if you have to
13 hire an expert to prove an unobservable defect,
14 it's refundable, but one of the larger examples
15 was a gentleman that was claiming he had air
16 infiltration into his house, so you could do
17 different things. You could light a cigarette,
18 you can blow smoke, you can have a candle near the
19 windows and entry points and all that. Well, he
20 went a step further and he hired an infrared
21 specialist to give an infrared diagram of the
22 whole house. Of course, he won that case, there
23 was air infiltration, he got his money back. But
24 in that case, yes, he did have to hire an expert
25 to prove his case.

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1 Q. Well, he had to have the money to
2 hire the expert to start with?

3 A. Well, or buy a couple packs of
4 cigarettes or something, you know, to smoke.

5 Q. Now, does the arbitrator then take
6 the information and then render a decision at some
7 point?

8 A. Yes. They are obligated to render a
9 decision after they take all the testimony within,
10 you know, 20 days of the arbitration, and
11 sometimes the arbitration is held open or
12 sometimes it's closed exactly when everybody
13 leaves the house.

14 Q. Now, when Investigative Accountant
15 Campbell testified earlier -- you may have been
16 here -- she indicated that, if there is an award
17 to the homeowner, the builder must submit a repair
18 specification document. Am I right?

19 A. Yes. When Agent Campbell had the
20 diagram on the board, it was primarily referring
21 to the private sector.

22 Q. Right.

23 A. The whole state side does something
24 entirely different.

25 Q. Okay.

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1 A. So, when you talk about that, yes.
2 After an initial arbitration, if the homeowner
3 wins, the builder, within ten business days, must
4 give them what's known as a repair specification
5 document indicating to them exactly how they
6 intend to remove the defect.

7 Q. And the homeowner does not have to
8 accept that remedy, do they?

9 A. Correct. They have the right to
10 challenge that with their own experts. They just
11 can't personally say "I don't like it," but, if
12 they get experts to challenge it, that there would
13 be a better way, then they have a 30-day period to
14 hire an expert to come up with it. Then the
15 builder still has another shot to look at it and
16 determine whether he wants to accept their method
17 of repair or continue to do it his way.

18 If they are still at loggerheads,
19 then it goes to what's known as the method of
20 repair arbitration and they'll make their cases
21 before the arbitrator, who then will decide which
22 method will most likely remove the defect.

23 Q. Now, if there is an award to the
24 builder and we get to the point where there is no
25 further -- an award to the homeowner and there is

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1 no further appeal of the repair specifications, is
2 it essentially true that at this point you expect
3 the builder to make the repair?

4 A. Yes.

5 Q. What happens if the builder doesn't
6 make the repair or, you know, he doesn't want to
7 do it or whatever? What's supposed to happen?

8 A. Well, it would be noncompliance with
9 the arbitrator's decision.

10 Q. Right.

11 A. And the arbitrator will usually give
12 them 60 days to perform the work, unless there is
13 some unusual circumstance.

14 By the way, while these challenges
15 are going on, the clock is stopped. So, in other
16 words, nobody loses any time because of these
17 administrative challenges. So the builder has 60
18 days to correct the defects. If he fails to do it
19 at that time, then, of course, the builder is in
20 default and the warranty company will then step in
21 the builder's shoes and take over the claim,
22 process the claim, if they have to pay the claim
23 or do the work, they'll do it, and then they'll
24 dun their builder.

25 If their builder refuses to respond

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1 and pay the company back, then the company will
2 usually send a letter to our builder registration
3 department, our builder compliance section, and
4 they could take action against the builder for a
5 default on an arbitration award.

6 Q. Now, you mentioned a moment ago that
7 the state plan operates differently.

8 Can you summarize for us the
9 difference?

10 A. No.

11 Q. You can't?

12 A. No.

13 Q. You are not familiar with it or --

14 A. Never had anything to do with it.
15 It's different.

16 Q. But you don't --

17 A. I mean, what I read in the regs,
18 just like anybody else, there is bureau decisions,
19 commissioner's decisions, AOL things that they go
20 through, they have their own inspectors that go
21 out and --

22 Q. Okay. My point is, it doesn't run
23 the same?

24 A. No, no.

25 Q. Now, if there is no complaint from a

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1 homeowner, okay, no homeowner contacts you, do you
2 have any oversight or information about the claims
3 or the complaints out there? In other words, if
4 you don't hear from a homeowner, do you monitor
5 what's going on?

6 A. We get reports now and then which
7 would indicate, you know, how many claims there
8 were. Usually it doesn't look like a lot on the
9 reports, but, unless I actually get a call from a
10 homeowner to ask me about it, I have no idea how
11 many really are floating around out there at any
12 particular time.

13 Q. And you have no idea how many people
14 who were going through the process and maybe gave
15 up or accepted it or weren't happy with it, but
16 didn't call you?

17 A. True.

18 Q. Do you review or compile or maintain
19 statistics that come in to pinpoint any kind of
20 problems in specific areas? Do you do anything
21 along that line?

22 A. No. We get the -- well, quarterly
23 reports have to do with how many builders are in
24 the program. We get semi-annual and annual
25 reports that indicate, in general, in numbers

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1 exactly how many requests for performance were
2 filed and, you know, how many claims were paid.
3 But usually all my work is done from the personal
4 calls that the people are making when they run
5 into bottlenecks.

6 Q. Well, are you pretty busy?

7 A. I would say so. I mean, you know,
8 let's face it, like anybody else, you have light
9 days, but, when I get calls, sometimes I'm on the
10 phone with one person maybe for an hour, hour and
11 15 minutes, and then there might be a follow up to
12 check some local building department or something,
13 whether or not there was a permit issued, or even
14 what their warranty was.

15 Many people who call with a warranty
16 issue, they don't know what warranty they have,
17 for whatever reason, so I have to call a local
18 building department and just see exactly whether
19 or not the builder had filed and what their
20 warranty company was.

21 Q. Well, I know, just so you know from
22 us, from the people we've talked to, they
23 compliment you highly and they say you worked
24 tirelessly to try to help them through the
25 process, but my question really has to do with --

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1 and I know you are only one person, but I'm just
2 curious, does anybody over there do anything to
3 review or audit or look at any information from
4 the private plan to determine if the plans are
5 even following the procedures that they put out in
6 their programs, absent a complaint from a
7 homeowner?

8 A. Well, if you are talking about, you
9 know, data that's submitted, we have like a
10 central registry that data is submitted to.

11 Q. Right.

12 A. I don't -- I never did anything with
13 it, no one ever asked me to do anything with it.
14 It goes upstairs, I believe, to the director's
15 office and they have statisticians or information
16 specialists up there that can analyze anything
17 that, you know, should be important.

18 Q. Right.

19 A. But no one ever told me that they
20 found anything that was important.

21 Q. Do you have any oversight over the
22 arbitrators in the process?

23 A. No, not -- no, not really. No
24 personal involvement in anything when they get
25 involved -- sometimes I'll talk to the

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1 administrators of the program about, you know, why
2 they can't get anybody, why somebody maybe didn't
3 show up or something like that, but, once it gets
4 into arbitration, it's totally a hands-off policy.

5 Q. Do you know anything about how they
6 are paid or how they are salaried?

7 A. They are salaried per case and
8 sometimes for travel, and they are paid for -- the
9 two initial ones which I mentioned -- by the
10 builder or the warranty company through the
11 warranty service.

12 Q. Do you know if they get a flat fee
13 per case?

14 A. Well, they get a flat fee for
15 certain cases and then, if the items go high -- I
16 mean, some people will have three to five items.
17 I've seen lists with five, 600 items. So,
18 depending upon the number, they get paid
19 accordingly. If there is over, whatever, a
20 hundred and some items, they'll get paid, but we
21 have nothing to do with that. That's up to the
22 administrators.

23 Q. But my point is this: It's my
24 understanding that you may have a homeowner that's
25 got three to five items, you may have another

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1 homeowner that's got 70 items.

2 Is it your understanding that, in
3 those instances, that arbitrator, in all
4 likelihood, gets the same flat fee?

5 A. I mean, if the items are that small,
6 between five and 70, yes, he's out there for the
7 half day or whatever it is. Yes, he probably
8 would get paid the same. But, as I said, I have
9 no personal knowledge of exactly what they get
10 paid.

11 Q. So, the arbitrator doesn't get paid
12 for prep time, doesn't get paid to analyze each
13 one and whatever amount of time it takes?

14 A. I don't think they are getting paid
15 for prep time. I think they are getting paid --
16 and this is my own feeling -- for showing up that
17 day and running the arbitration at the
18 individual's home.

19 Q. Well, just in terms of human nature,
20 isn't it almost an incentive to get it done as
21 quickly as possible, because you are not getting
22 any more money if you are doing --

23 A. Well, that would be conjecture on my
24 part.

25 Q. Would you be aware or would you

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1 become aware of any arbitrator/builder
2 relationships or conflicts of interest, if a
3 homeowner doesn't complain about it?

4 A. No. No way of cross-referencing
5 that at all.

6 Q. Is there any requirement that
7 conflicts of interest be reported to you? And I
8 mean the state.

9 A. With respect to arbitrators?

10 Q. Right.

11 A. Not -- no, not really.

12 Q. Okay.

13 If a homeowner complains of a
14 Uniform Construction Code violation, do you refer
15 that information to the Bureau of Regulatory
16 Affairs?

17 A. I did at one time.

18 Q. How long ago was that,
19 approximately?

20 A. Back in the early '90s, maybe,
21 something like that.

22 Q. So, when you first started out on
23 the job?

24 A. Yes. We used to send things up --
25 because we would get letters that had a myriad of

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1 problems. They could have had something to do
2 with local site planning analysis and why the
3 development was even approved. They could have
4 something to do with why their house got a
5 Certificate of Occupancy when it's falling apart.
6 They could have legitimate problems that deal with
7 the warranty.

8 So, if you got all three, obviously
9 I can only answer one of those questions, so I
10 would refer it to Regulatory Affairs, so they
11 could answer their portion of it.

12 Q. But you don't do that anymore?

13 A. No.

14 Q. And you haven't for a long time?

15 A. No.

16 Q. Why not?

17 A. I was directed not to.

18 Q. By whom?

19 A. Peter Desch.

20 Q. Did he give you any reason?

21 A. No, I don't recall a reason.

22 Q. And he is your supervisor?

23 A. Yes, he is.

24 Q. Do you have any sense of whether the
25 homeowner complaints that you are receiving

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1 represent essentially all of them that are out
2 there or that maybe there may be more or even as
3 much as an iceberg beneath the ones you are
4 receiving? Do you have any sense at all?

5 A. No. Just by the tenor of the way
6 people call and then they are surprised that they
7 found somebody, that's when I get the idea that
8 there might be a lot more than the ones that are
9 just calling me.

10 One of the first things I did when I
11 took over this section was have my telephone
12 number printed in all the private warranty
13 books -- that wasn't done before -- so they had at
14 least a number to call. But then, when we
15 transferred our offices from Lawrence Township to
16 downtown Trenton, that number was lost and,
17 between that time and the time new books were
18 printed with the new number, there could have been
19 a lot of cases that they were calling the old
20 number.

21 Q. What you are saying is that the
22 people that reach you seem surprised there is
23 somebody to call, and that causes you a concern as
24 to whether there are a lot of other people who
25 just got lost through the process?

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1 A. Yes, you're right.

2 Q. Now, the statute requires that
3 insurers have an A.M. Best rating of A or better,
4 is that right?

5 A. Yes.

6 Q. Now, have there been occasions
7 during your tenure that the warranty providers
8 have fallen below that threshold or haven't been
9 rated at all?

10 A. Well, initially the risk retention
11 groups were not rated at all by A.M. Best. They
12 just started, apparently, rating them a while ago,
13 and now one of the groups has a rating, the other
14 has a nonrating. 210 HBW has a nonrating in the
15 last A.M. Best I looked at, which I think was
16 sometime in September, October.

17 So RWC, which is a risk retention
18 group, did get an A.M. Best rating which
19 satisfied, and the other two, of course, with
20 general carriers do have an A.M. Best rating that
21 qualifies.

22 In the past, though, there were
23 periods of time when companies fell below that,
24 you know, maybe ten years ago or something like
25 that they fell below that. It was brought to the

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1 attention of my superior that they had fallen
2 below their rating.

3 Q. And did anything happen, to your
4 knowledge?

5 A. Nothing -- nothing concrete. What I
6 did was I started making telephone calls and
7 telling the administrators of the program
8 basically that you got to do something about this,
9 but, in terms of any formal action, there was no
10 formal action.

11 Q. So, we currently have one of our
12 risk retention groups, the 210, is not rated?

13 A. No. They have an A.M. Best -- what
14 happened was, they sold out to a larger company
15 this past year called Aegis, and I think A.M. Best
16 determined that they didn't have any real
17 information on Aegis in this business, or
18 something like that, so they gave them a
19 nonrating.

20 Q. And had they had the requisite
21 rating before?

22 A. No, they never had a rating because
23 A.M. Best wasn't rating risk retention groups.

24 Q. Were there ever financial tests or
25 audits performed to verify the financial stability

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1 or status of these companies?

2 A. No. As a matter of fact, we have no
3 auditing capability at all.

4 Q. Was that considered at one point?

5 A. Yes, it was.

6 Q. How long ago? Can you give us your
7 best guesstimate?

8 A. Let me just see, if you'll bear with
9 me here.

10 Q. A number of years ago?

11 A. Yes. It was back in the -- it was
12 back in the early '90s. I would say about 1994,
13 just offhand.

14 Q. And do you know what happened to
15 that idea or that notion?

16 A. The idea was promoted at a -- one of
17 the meetings I went to, and it happened generally
18 because of the problems with the HOW warranty, and
19 there were, I think, public hearings going on down
20 in Washington at the congress, and, so, the idea
21 of a company failing was something to be looked
22 at.

23 A gentleman was assigned to develop
24 the RFP for that particular audit capability, and,
25 for lack of a better word, it died a slow death.

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1 Q. We heard earlier today that the life
2 expectancy of some of the risk retention groups is
3 in the area of 50 percent. Does that cause you
4 any concern in light of the fact that New Jersey
5 has got two risk retention groups insuring --

6 A. It caused me -- yes, it does cause
7 me concern. On several occasions, back when this
8 process was going through about risk retention
9 groups and audits and so on, I had asked two
10 deputy attorney generals at various times to see
11 if they could come up with some kind of scenario
12 which we could give more control over risk
13 retention groups in New Jersey, and I never got
14 any answers.

15 Q. Do you think there should be some
16 auditing done of the insurers?

17 A. Oh, I think so.

18 Q. Did you try or have you been issuing
19 some directives to the private warranty plans over
20 the years to elicit voluntary compliance with them
21 in certain areas?

22 A. Yes.

23 Q. What kind of things have you done?

24 A. Well, anything from the -- one of
25 the initial ones, which was actually cloning the

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1 state administrative code as part of their
2 performance standard defects, so that every one of
3 the plans would comply with exactly what the state
4 had, in terms of what the performance standard
5 defects looks like, and that's everything from
6 Year 1 to -- of course, through Year 10. So that
7 was like one of the first directives I issued.

8 And then, you know, throughout the
9 process we issued directives on the state
10 registry. The fact is that the state legislature
11 passed this central registry and that they had to
12 comply. So that was a directive.

13 There were directives about
14 charging -- or not charging administrative fees so
15 the homeowners didn't have to pay 50 or \$75 to,
16 like, file a request for builder performance or
17 something like that.

18 It's gone all the way through to
19 most recently a more elaborate directive about how
20 the arbitration process works, the method of
21 repair, and most recently some directives
22 regarding how the builders file with the state
23 registry and notify the state registry of what's
24 going on and who are their member builders and so
25 on.

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1 So, throughout the years there have
2 been 11 or 12.

3 Q. Have you tried to achieve uniformity
4 among the private plan providers?

5 A. Yes. Generally, yes, we have with
6 respect to the performance standards, the key
7 thing, and each one has a different administrative
8 process.

9 For example, three of the plans
10 allow a grace period of 30 days for the homeowner,
11 but one allows exactly what the state plan allows,
12 and that's seven days. So, in that case they have
13 a little latitude to do things.

14 Q. And, on the performance standards,
15 have you tried to achieve uniformity between the
16 state and the private plans?

17 A. I have absolutely nothing to the
18 with the state plan.

19 Q. So, do you have any idea whether
20 there is uniformity there?

21 A. Oh, in terms of -- yes, well, it
22 came right out of the administrative code, so, in
23 term of just those standards, whatever they are,
24 whether it be the grading issue or grout falling
25 out of your tile, you know, all those issues, they

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1 are exactly the same as the state. The
2 administrative procedures of dealing with
3 complaints are different.

4 Q. Do you know anything about how the
5 state plan is monitored? Can you tell us whether
6 you think the monitoring level is the same on the
7 state plan versus the private plan?

8 A. I couldn't tell you.

9 Q. Are there a lot more workers,
10 employees, over on that side?

11 A. Well, according to the testimony
12 this morning, yes, I heard there were more. I
13 really don't have a headcount of who is actually
14 working there. I know they have several sections.

15 Q. Now, we mentioned earlier U.S.A.
16 Home Warranty, and it's our understanding that
17 that company applied to become a private
18 alternative new home warranty company in the State
19 of New Jersey during the 1990s, maybe around 1994.
20 Does that sound right?

21 A. Yes.

22 Q. And was there an intent or was there
23 an interest on the part of the plan reviewer to
24 reject their application because there wasn't
25 sufficient evidence that the applicant had assets

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1 to start the company?

2 A. That's true.

3 Q. And was the statutory financial
4 requirements -- or were the requirements waived
5 and were they permitted to start?

6 A. Well, the statutory requirements
7 basically say that they should have the capability
8 of, you know, being able to deal with and pay
9 claims and to handle the administrative process
10 associated with paying of claims. This particular
11 firm came in and they had a budget of 435 or
12 \$450,000 for their first year of operation for
13 their administrative costs, and they weren't able
14 to verify that they had those funds. It was all,
15 on their part, speculative about selling future
16 shares to people and so on.

17 Q. I saw something that they had
18 approximately one-sixth of the financial
19 requirement available. Do you recall that?

20 A. I recall a meeting that I was at
21 that that decision was made.

22 Q. Am I right that the decision was not
23 made by you?

24 A. That's correct.

25 Q. Do you know who made it?

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1 A. Director Connolly.

2 Q. Did you agree with it?

3 A. No.

4 Q. How about anyone else on your -- did
5 you have a staff at that point? Did you have
6 people that worked for you at that point?

7 A. Yes.

8 Q. And did they agree, do you know?

9 A. No.

10 Q. They did not agree, okay.

11 Do you remember talking to the
12 president of the company, yourself, at times?

13 A. Yes, I did. I did talk to him -- or
14 he called me, actually.

15 Q. Leonard Sendelsky?

16 A. Correct.

17 Q. What did he tell you, in terms of
18 what he was going to do or how he was going to do
19 it, do you remember?

20 A. Well, basically, it came when we
21 were questioning, I guess, his accountant and his
22 inability to provide a certified statement of
23 their assets and their ability to do what the
24 state regulations said. So he called me up and he
25 started to lobby initially, I guess, for his point

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1 of view, and then it sort of got escalated. He's
2 the kind of gentleman that escalates things
3 verbally, so, you know, it got off. It was a bad
4 sign.

5 Q. Did he tell you that he had written
6 the state regs?

7 A. Yes, he did.

8 Q. And did he tell you that he had a --
9 someone to help him with the start-up money or an
10 insured? Did he make some representations?

11 A. No. That's what our meeting was
12 about. The meeting was about talking about his
13 financial capability, and there were only six
14 people at the meeting, so I remember it, but I
15 can't remember all the details, but we really
16 didn't talk that much about proving the financial
17 capability of the project.

18 Q. Did he tell you how many builders he
19 would sign up?

20 A. Yes, as a matter of fact, I do
21 remember, because a lot of the stuff I wrote down
22 after the meeting, but otherwise I may not have,
23 but he said he could get 4,000 builders in his
24 program.

25 Q. And how many builders did we have

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1 registered in the state at that time?

2 A. Well, the total -- well, I don't
3 know about then, but right now there is around
4 8,000.

5 Q. He told you he could get 4,000 of
6 them?

7 A. That's what he said.

8 Q. Did he boast that he had even gotten
9 the DCA commissioner elected to the assembly?

10 A. Yes, something of that nature.

11 Q. Did he tell you he was president or
12 past president of the builders association?

13 A. He had a lot of experience in the
14 building -- the new home building industry and he
15 let it be known.

16 Q. Is that his name that's listed in
17 the lobby of the Department of Community Affairs?

18 A. Oh, on the plaque?

19 Q. Yes, on the placard.

20 A. Yes, his name is on the plaque
21 that -- you know, the building.

22 Q. Did he indicate that the insurer
23 would be -- did he, at some point, indicate that
24 they would have Travelers Insurance and that was
25 all they needed to qualify?

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1 A. I don't know the exact -- but he did
2 get Travelers Insurance to sponsor as a warranty
3 guarantor.

4 Q. And, so, he was -- not he, but
5 U.S.A. Home Warranty became an approved warranty
6 provider in New Jersey?

7 A. Oh, yes, they did. I didn't have
8 anything to do with their approval, but --

9 Q. I understand.

10 And how long were they an approved
11 warranty provider?

12 A. I think about 33 months.

13 Q. What happened?

14 A. Travelers pulled the plug on them.

15 Q. And, so, they lost their status as
16 an active provider?

17 A. Yes. They apparently -- I guess, if
18 they wanted to stay in business, they would have
19 got another guarantor, but I don't know the
20 intricacies because I recused myself from that
21 whole thing after the meeting of the -- the issue.

22 Q. Do you know how many active
23 warranties they had in the company at the time
24 Travelers pulled the plug?

25 A. No, not exactly. But, when they

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1 pulled the plug, they had some excess stuff that
2 was in the pipe that continued -- they were
3 allowed to continue doing it.

4 Q. According to reports by U.S.A. Home
5 Warranty, we've seen that they may have in the
6 area of 1720 active warranties in the state now.
7 Does that sound about right?

8 A. That could be, yes.

9 Q. What happens or what could happen to
10 warranties if a company ceases to function or the
11 insured -- something happens to the insured?
12 What's going to happen to the warranties?

13 A. Well, like we talked about earlier
14 with HOW and so on, it worked out. They set up a
15 process for dealing with it, even though the
16 warranty administrator was no longer around. I'm
17 not exactly sure how U.S.A. handled the fact that
18 they didn't have a warranty guarantor, and I don't
19 know how they were running their administrative
20 operation in order to assure, at least the first
21 two years, that the warranty defect complaints
22 were being handled.

23 Q. Let me make it specific. You have
24 two risk retention companies, right?

25 A. Right now we have two risk retention

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1 companies.

2 Q. And we've heard that the life term
3 of some is 50, 57 percent. Hypothetically -- and
4 we've got one of them that doesn't even have an
5 A.M. Best rating. This is a hypothetical
6 question. What would happen to those warranties
7 if something happened to those risk retention
8 companies?

9 A. If they went out of business, there
10 is no safety net at this point, I know, in the
11 state legislation, that would provide the
12 homeowners a remedy.

13 Q. Okay.

14 Now, I was wondering if you could
15 summarize for us some of the vulnerabilities that
16 you've seen in New Jersey's New Home Warranty
17 program. Some of the vulnerabilities or
18 weaknesses with respect to the homeowners.

19 A. Well, generally, I think there has
20 to be more publicity. It's a good program, it's
21 probably the only one in the country that is
22 organized this way, but I think it should be
23 publicized.

24 In the past I saw efforts on file to
25 do something like that, but they seemingly never

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1 get anywhere.

2 I think the homeowners have to get
3 some kind of Bill of Rights to tell them, when
4 they are buying a new home from a registered
5 builder, what they should expect from their Bill
6 of Rights, so they don't misunderstand what they
7 are getting.

8 Earlier on I think one of the
9 Commissioners indicated that he heard the jargon,
10 like a ten-year warranty. I always hear that. I
11 hear that a lot. It's a misnomer. That's -- when
12 I first took over, I had them print the word
13 "limited" everywhere the word "warranty" appeared.

14 Never was done in the past. However, that, in
15 itself, doesn't get people to understand what
16 their rights are. So, that's the first thing I
17 would say.

18 The other thing is that an all-
19 important issue is what's known as a preclosing
20 walk-through inspection. There actually have to
21 be ten items listed on there by the homeowner in
22 order for them to gain a remedy. If it's not
23 listed on a preclosing walk-through inspection
24 that the builder directs them through, they will
25 lose their right of recovery and the builder

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1 legally doesn't have to provide that remedy for
2 those ten items.

3 So, even a thing like that that
4 somebody could hand out prior to closing, either
5 from a sales office or from a qualified Realtor
6 that, when they are looking at a new home from a
7 registered builder, that, if they buy that home,
8 in the preclosing walk-through they should look
9 closely at these ten items.

10 Q. Well, what if they only list nine?

11 A. Who? The builder?

12 Q. Yes.

13 A. Well, I wouldn't know that unless I
14 get a complaint.

15 Q. Okay.

16 A. There is nothing in there that says
17 you have to do it.

18 Q. Okay.

19 A. You'll actually find out about it if
20 you read the very fine print. After you get your
21 warranty and, if you want to read the warranty
22 thoroughly, it's actually hidden in there. I
23 pulled these ten things out and I made a list and
24 people that called, I'd give it to them. But,
25 beyond that, they have no knowledge.

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1 They have a preclosing walk-through,
2 but somebody won't say, "Well, listen, if you've
3 got cracks and dents in your laminated
4 countertops, you better note them now or else we
5 are not going to replace those countertops." And,
6 if somebody is going through the house quickly,
7 they don't note that, then legally the builder
8 doesn't have to do anything about it.

9 Q. Okay.

10 Anything else?

11 A. Well, one of the things that's
12 happening, too, is that, because the warranty
13 companies -- they are not actually in New Jersey
14 anymore. At one time they actually had offices
15 here and they had personnel. They are all
16 regionalized now and so on.

17 What they do is they actually rely
18 upon the local code enforcement officials to be
19 their surrogate inspectors. They hope they do a
20 good job and, therefore, that the house that they
21 are going to insure gets a C of O. If it gets a C
22 of O, I think they are under the impression that
23 everything is okay. We heard earlier that there
24 is a difference between code defects and
25 performance standard defects. So there is that

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1 kind of issue that comes up.

2 The warranty standards were written
3 in about 1978. The industry has come a long way
4 since 1978. The changes haven't been made to
5 performance standards. I gave you the example of
6 the laminated countertops. Now we have
7 countertops that are made out of marble, they are
8 made out of granite, they are made out of concrete
9 that are stained. These things aren't listed.

10 If an arbitrator gets that, and he's
11 going over an arbitration and the arbitrator sees
12 that that's not one of the items listed, he may
13 not give that defect to the homeowner, in the
14 event that that's a problem. So I think the
15 standards, themselves, should be brought up to
16 date with the building industry and the progress
17 that they've made since 1978 in the kinds of, you
18 know, things that they are employing in home
19 building now.

20 The homeowners, again, feel that
21 they have this special relationship with their
22 builder and everything is going to be all right.
23 I don't want to, you know, throw rain on their
24 parade on their new house, but I think they have
25 to understand that in all cases it doesn't work

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1 this way, for whatever reasons. It could be that,
2 you know, builders aren't organized correctly to
3 deal with these things, it could be that they
4 overran their assets and can't, you know, make
5 call-backs, there is too much building going on.

6 There could be a lot of reasons.
7 Some of them could be devious, some of them may be
8 just legitimate, but the homeowner has to
9 understand that they have certain rights. Some
10 builders will tell the homeowners that you can
11 only make one defect list out at the end of 11
12 months or something before the program is over.

13 I saw one builder where they were
14 doing the final walk-through list in like the 50th
15 week. Well, in the 52nd week your Year 1
16 warranties are over and, if you don't make your
17 claim and you just talk to the builder, legally
18 the company doesn't have to step in the builder's
19 shoes anymore.

20 So, there should be something done
21 about that and get homeowners to know that they
22 can make a defect claim any time they want, not
23 just at certain intervals that the builder
24 selects. They can do it throughout the program,
25 if they want.

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1 The other thing was, we talked about
2 a lot of times the homeowner will get the
3 impression that the surrogates of the builder are
4 responsible. You know, the guy that lays the
5 tile, you know, talk to him, don't talk to me.
6 Well, under the state code the builder is the
7 responsible person they should be dealing with.

8 Sometimes the homeowner feels that
9 talking to the builder's warranty person is
10 guaranteeing their warranty. We had two companies
11 that came into New Jersey, one was called
12 IntegraTech and one was called ProHome. These
13 warranty service providers put another step
14 between the homeowner and the builder and a lot of
15 times people felt that, if they gave their
16 information of defects to a warranty service
17 provider hired by the builder, that they were
18 guaranteed their rights under the warranty, and
19 that wasn't exactly the case, because they didn't
20 notify the company directly per certified mail.

21 A lot of times we get -- and this
22 all goes, I think, back to the right kind of
23 publicity. A lot of times we get referrals from
24 the Division of Consumer Affairs at the Department
25 of Law and Public Safety. People send complaints

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1 there. If they send complaints there and it's
2 near the end of their warranty, and they hold it
3 there a month while they are analyzing it, and
4 then finally buck it down to us here in Trenton,
5 then those people have lost their rights.

6 So people should understand that,
7 yes, Consumer Affairs is a place to go, but it's
8 not the only place to go. You should read your
9 warranty first and don't misfile something with
10 another agency that might hold up the process of
11 determining when your claim was filed.

12 So there are improvements that
13 certainly can be made with the program.

14 MS. GAAL: That's all I have.

15 COMMISSIONER EDWARDS: You indicated
16 that your staff has shrunk over the last ten years
17 significantly to yourself. Have the number of
18 building permits shrunk and the number of
19 warranties covered shrunk?

20 MR. BUTKO: I can't speak to the
21 issue of the building permits, but we are in a
22 building boom right now, so I would assume that
23 they have increased in New Jersey, yes.

24 COMMISSIONER EDWARDS: But you don't
25 have any numbers that reflect the number of

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1 permits that were issued in, let's say, 1991,
2 '95 --

3 MR. BUTKO: Oh, we have that. I
4 personally, Commissioner, don't have that, but
5 that's information -- unless I get questions like
6 this from a body like this, I really don't get a
7 call to do that.

8 COMMISSIONER EDWARDS: You indicated
9 that the arbitrator is selected -- and I didn't
10 hear you -- by the builder, is that correct?

11 MR. BUTKO: No. They are paid for
12 by the builder. They are selected by the
13 arbitration service who assigns them. Arbitration
14 service is an independent service that has
15 employed arbitrators to do work for them.

16 COMMISSIONER EDWARDS: And they are
17 employed by the insurance company that is
18 underwriting -- who employs them?

19 MR. BUTKO: Well, indirectly. The
20 builder or the warranty company must pay the
21 arbitration service and they then, in turn, assign
22 the arbitrators, so there is a level of separation
23 between the warranty firm and the arbitrator.

24 COMMISSIONER EDWARDS: I thought I
25 heard you say that there needs to be -- maybe you

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1 can clarify this -- as part of your
2 recommendations is -- we try to find solutions --
3 a better link between the warranty claims and
4 defects in construction which are handled under
5 warranty and the Uniform Construction Code and the
6 defects in that particular code, and they don't
7 exist -- those linkages obviously don't exist
8 anymore, and/or inspections that are made at
9 the -- by the building inspectors in the various
10 communities where new home construction is being
11 made.

12 MR. BUTKO: The only link is a
13 tangential link between the codes and the
14 standards of the warranty. There can be
15 underlying factors for creating a defect. The
16 codes are basically for health and safety. The
17 warranty standards, although there are issues
18 there with health and safety, they are more or
19 less for performance and satisfaction with your
20 product.

21 For example, a code might say that
22 the rise and run on a step must be this height and
23 that height. That's a code. That's not in the
24 warranty thing. The warranty says if you have
25 squeaky steps. So that's the difference

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1 between --

2 COMMISSIONER EDWARDS: So,
3 basically, you are saying there is not a link
4 between the two. If the Uniform Construction Code
5 says the riser should be a certain height, if it's
6 not of that height, it's not a violation and not
7 covered by warranty, is that what you are saying?

8 MR. BUTKO: Right. Yes, right.

9 COMMISSIONER EDWARDS: I'm also
10 gathering that you believe that there should be a
11 better link between those two facts? If it's
12 supposed to be a three-foot riser, and it's only a
13 two and a half foot riser, and the code said that,
14 that should be proof that there is not -- if it's
15 a health and safety issue, that the standard in
16 which that house was supposed to be constructed
17 are not constructed?

18 MR. BUTKO: I don't think you are
19 going to get a hundred percent cross-acceptance on
20 all the items, but I think there is a lot of
21 latitude to do it on some items.

22 COMMISSIONER EDWARDS: And we might
23 recommend that there be a better link between
24 those two where it is applicable. If it was a
25 health and safety issue, I would assume it should

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1 be a warranty issue, also, but at least we should
2 be looking at that.

3 When I buy a car I get a warranty.
4 I think the last one I got was five years and
5 50,000 miles. The Uniform Commercial Code and the
6 common law have warranties of fitness for use that
7 are -- the basic standards for those warranties
8 have -- either in the Uniform Commercial Code or
9 in the common law have been for the useful life of
10 that particular object that's being manufactured
11 or sold or built, and, if it doesn't meet those
12 particular standards, it's a defect, and it is
13 covered by either a common law warranty or the
14 warranty under the Uniform Commercial Code.

15 When we read in newspapers and in
16 ads -- you mentioned before that in the brochures
17 that are used -- that contractors put out the HOW
18 program or the homeowners warranty program as if
19 it's a benefit to individual homeowners who are
20 buying a new home, and they use it as a sales
21 pitch.

22 In reality, that code that was
23 adopted, the homeowners warranty program in New
24 Jersey, the individual contracts limit the common
25 law warranty that people would have, if that

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1 didn't exist.

2 If the manufacturers of an
3 automobile didn't say there was a five-year,
4 50,000 mile warranty, it would be the useful life
5 of that automobile that would be the judge of how
6 long that warranty, in fact, lasts. So, perhaps,
7 in putting together a warranty program, and
8 allowing the building industry to perpetuate that
9 as a benefit to the public, it's really a
10 limitation on the public, and I think I'm right
11 about all that, and you have been, from my
12 perspective, outlining further limitations that
13 have developed in that warranty program that have
14 limited it beyond what I thought it was
15 historically, as I go back through my years of
16 government and look at it, to the point of almost
17 absurdity.

18 The warranty people are getting for
19 a house, a new house, in which they are
20 spending -- we heard one today of 1.6 million,
21 100,000, 200,000, \$300,000, may be the most
22 restricted and limited warranty I have seen in my
23 33 years of practice and in government service,
24 and I'm wondering if you can think of any warranty
25 that you know of that is more limited than the

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1 homeowners warranty -- new homeowners warranty in
2 New Jersey. Can you think of any?

3 MR. BUTKO: Well, plus the warranty
4 on the boilers or furnaces that are put in the
5 house are very limited, in terms of whether you
6 get -- and our warranty only extends as to what
7 the manufacturer's warranty on that furnace or
8 that boiler is given by the manufacturer, so
9 that's quite limiting.

10 COMMISSIONER EDWARDS: That's even
11 more limited than the HOW program?

12 MR. BUTKO: Right.

13 COMMISSIONER EDWARDS: Okay. Thank
14 you very much.

15 COMMISSIONER MARINIELLO: Just to
16 echo what Commissioner Edwards was saying, we
17 don't have a similar program like this for people
18 who are doing remodeling versus home construction,
19 right? We don't have a program like that?

20 MR. BUTKO: There is a
21 rehabilitation code that was passed. You would
22 have to ask Director Connolly about what that code
23 says, but, again, that's a code, it's not a
24 warranty.

25 COMMISSIONER MARINIELLO: What I'm

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1 getting at, though, is, essentially, if somebody
2 came in to remodel my kitchen, and two or three
3 years down the road I found out that, due to their
4 negligence, something was miscontructed or -- and
5 it had to be removed and then rebuilt, I would
6 have, in theory, the power to litigate that matter
7 two or three years down the road that I might not
8 have under a new home construction, where we are
9 expecting that, when we buy a new home, it's going
10 to be built almost as precisely as possible.

11 Is that your understanding, as well?

12 MR. BUTKO: That's what people
13 expect. That's why they are shocked when it's
14 not.

15 COMMISSIONER MARINIELLO: And this
16 homeowners Bill of Rights idea that you brought
17 up, and it's an interesting idea, but what I don't
18 understand is what's stopped us from having that
19 now? We have -- as I understand it, we have the
20 ability to know which homes are issued homeowner
21 warranties right after they are issued, do we not?
22 When the home is constructed, a CO is issued and a
23 policy is issued.

24 MR. BUTKO: That's true.

25 COMMISSIONER MARINIELLO: Have there

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1 been any attempts by the -- by your department to
2 notify people, to educate them? I'm not saying
3 this would have come under your specific area, but
4 to notify people and let them know these are what
5 your rights are?

6 We obviously have a body of evidence
7 that suggests that the lack of education has
8 resulted in significant problems. Do you know
9 whether or not any attempts have been made to
10 educate those people?

11 MR. BUTKO: As I said, I came across
12 a document years ago that looked like it was going
13 to be some kind of publicity campaign, but we
14 don't have one. Not that we couldn't. If you do
15 it in realtime -- if we could get realtime
16 information, computerwise, from the warranty
17 companies when policies are issued, of course you
18 could have your name and you could mail mailings
19 to them immediately when it starts.

20 COMMISSIONER MARINIELLO: Even
21 realtime isn't necessary. What you really need is
22 something that notifies them within 11 months, so
23 that they would know this is when your timeline is
24 going to run out.

25 MR. BUTKO: That's, yes, true.

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1 COMMISSIONER MARINIELLO: And, I
2 mean, this is the Bureau of Homeowner Protection,
3 right?

4 MR. BUTKO: That's what it's called.

5 COMMISSIONER MARINIELLO: And that's
6 what we should be doing and it shouldn't take a
7 rocket scientist or a panel like this to see that
8 these problems have existed for years and
9 something should be done to notify them and
10 educate them that their rights are going to be --
11 they are limited to begin with, and they are going
12 to be limited more a month from now, if you don't
13 do something about it.

14 I wanted to go back to the
15 arbitration issues. Deputy Director Gaal asked
16 you about arbitration. Do you get complaints from
17 people after the arbitration is over with that --
18 not just that they don't feel that the arbitrator
19 ruled correctly, but that the arbitrator didn't
20 give them the proper opportunity to present their
21 evidence and be heard?

22 MR. BUTKO: Every now and then.
23 There is not a preponderance of it. Everybody
24 hates to lose and, when you lose something and you
25 feel you presented your case well, and sometimes

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1 it -- you know, it happens. They do call and they
2 do make a complaint to me.

3 COMMISSIONER MARINIELLO: We have
4 heard -- and I know this isn't exactly your area,
5 but we have heard testimony from people,
6 arbitrators, themselves, who have told us that,
7 for these private warranty corporation
8 arbitrations, they receive about \$175 per
9 arbitration and, within an hour of one discussion
10 where an arbitrator told me he spent six hours on
11 an average home arbitration, I had another
12 arbitrator tell me he does the whole thing in an
13 hour.

14 Doesn't that suggest that there is
15 an inequity in the system, based upon which
16 arbitrator you may have?

17 MR. BUTKO: It would seem that way,
18 but we have no control over who is selected. The
19 credentials are simple. You either have this
20 credential or you don't. You have to pass a
21 certain test at DCA and hold a certain license or
22 be an architect or an engineer. That's it.

23 In terms of training and all for
24 arbitrators, certainly that could be done. I know
25 the pool of arbitrators isn't that great. One

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1 firm, I think, only has maybe ten. They could
2 have more, if arbitrators are interested, but,
3 maybe as you say, because of the fee that they
4 get, it's not enough to entice them to pull them
5 off some other kind of work to be an arbitrator.

6 So that certainly is a possibility,
7 but, in terms of what they are paid, I guess the
8 argument would be that eventually somebody is
9 going to have to pay for it, so, if you raise
10 their fee from 175 to 500, and the builder has to
11 pay for it, well, I guess, indirectly the
12 homeowner is going to pay for it. Now, whether or
13 not that is going to be a value to a homeowner is
14 something that has to be decided by a group of
15 executives or administrators, or like yourself
16 making a recommendation whether that would be
17 valuable, because the cost is passed off
18 somewhere.

19 COMMISSIONER MARINIELLO: That's all
20 I have, Mr. Chairman.

21 COMMISSIONER FLICKER: Mr. Butko,
22 trying to approach this from a homeowner's point
23 of view, in the very first instance, the
24 homeowners, by and large, the ones you've dealt
25 with, have not read their warranties, correct?

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1 MR. BUTKO: There is a large
2 percentage that really haven't, yes, read them.

3 COMMISSIONER FLICKER: And, when
4 they do read them, a lot of folks don't understand
5 them, even with the changes you have tried to
6 make?

7 MR. BUTKO: That's true. We have to
8 guide them through the process and hopefully give
9 them the right information to proceed with what
10 they want to do. For an example, an election of
11 remedy, do they want to go to A or B? What do
12 they want to do?

13 COMMISSIONER FLICKER: And those
14 that have read it and even may understand it, they
15 still have, as you've described, and you mentioned
16 it several times, this emotional attachment to the
17 builder and perhaps they'll think that the builder
18 is going to come through and do the right thing?

19 MR. BUTKO: The most glaring example
20 was a project down in Barnegat Township called the
21 Mirage. It started with one person and wound up
22 with 180 complaints, which I did a survey on, and
23 a lot of those people, believe it or not, said
24 that they didn't want to make their builder mad.
25 They felt that the builder was going to come out

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1 and fix things.

2 COMMISSIONER FLICKER: And that's
3 such a common thing that you've seen -- I mean,
4 that seems to span geography and price ranges,
5 correct?

6 MR. BUTKO: Oh, it's unbelievable.
7 I had one person that said that they didn't want
8 to spend more than \$375,000 on upgrades in their
9 house, but the upgrades in the house had the same
10 problems as somebody that spent 90,000 on a
11 condominium. It would be the same concept.

12 COMMISSIONER FLICKER: So then, when
13 you get the -- and, by the time someone has called
14 you, they have already gone through a lot of
15 aggravation, I presume? I mean, you are not
16 dealing with a happy homeowner by the time you get
17 the call, is that correct?

18 MR. BUTKO: They are not angry at
19 me. I mean, they are angry at --

20 COMMISSIONER FLICKER: No, I'm not
21 suggesting they are angry with you.

22 MR. BUTKO: -- the process. I think
23 they are angry with the process. Here is the
24 deal, listen. It's the biggest purchase you are
25 ever going to make in your life. You made it --

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1 for a lot of newlyweds or senior citizens, you
2 know, it's at the beginning or the end of their
3 lives, they want this thing to be perfect, they
4 thought it was going to be perfect, everybody said
5 it was going to be perfect and it's not perfect
6 and they are -- and they want somebody to fix it
7 for them because the builder has all their
8 hard-earned money and they have the builder's
9 defects, so, yes, they are concerned. They go
10 through a process and they are, you know, angry.

11 COMMISSIONER FLICKER: So they
12 finally get to the point where they are calling
13 you and they want to do something and they go
14 through this process and then they are asking the
15 very builder who messed up in the first place to
16 repair it and they have to put their trust, that
17 little bit trust they still have, that the builder
18 is going to repair it.

19 MR. BUTKO: Very good. It happens.
20 By the way, the state administrative code says the
21 builder has to have the opportunity to repair,
22 replace or offer them money for that particular
23 defect. So they have to deal with the builder
24 until the builder defaults.

25 COMMISSIONER FLICKER: Which, again,

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1 puts the homeowner in this very difficult
2 situation where he wants to trust the builder, but
3 he's already coming to the point where he probably
4 doesn't trust the builder, so, then, when the
5 builder either stiffes him or sends a crew and
6 botches it even more, then you have the homeowner
7 come back to you and say, "What do I do now?"

8 I mean, do you think an education
9 campaign is really going to correct some of these
10 woes?

11 MR. BUTKO: I think, yes, it will
12 take away a lot of the fear of somebody actually
13 being afraid to call their builder because they
14 don't want to make them mad. That, by making out
15 this list once every six months or something, that
16 the builder is actually going to go through the
17 list, come back and fix everything on the list.

18 I mean, to make them aware that that
19 may not happen and they have an alternative --
20 either -- two alternatives, either the court
21 system or the alternative dispute settlement
22 process, that they do have something that they can
23 do.

24 COMMISSIONER FLICKER: And just a
25 question that's obvious. Your section, the Bureau

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1 of Homeowner Protection, covers 76 percent of the
2 warranties and there is one of you, and the
3 private -- or the plan that is -- that the state
4 administers, that obviously deals with the other
5 percentage and, if I was better in math, I would
6 give you that percentage, but, since I'm a lawyer,
7 not an accountant, suffice it to say that they
8 had, we heard earlier this morning, upwards of 19
9 or 20 folks.

10 I mean, do you know why there are 19
11 or 20 over here and you over here alone?

12 MR. BUTKO: I think that testimony
13 will come later. I have no personal knowledge of
14 why.

15 COMMISSIONER FLICKER: Do you think
16 we would be better served if there were more of
17 you?

18 MR. BUTKO: I think the section
19 could be -- and I'm not lobbying for this, because
20 I already did and it didn't work, but the point is
21 that, obviously, any section, whether I'm there or
22 anybody else is there, could be more proactive if
23 they had, you know, a certain amount of staff so
24 somebody could take their time to -- maybe
25 planning activities or publicity activities,

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1 rather than answering phone calls and guiding
2 people through a process, you know, that kind of
3 thing.

4 So, yes, it could help.

5 COMMISSIONER FLICKER: You said the
6 other section even has its own investigators?

7 MR. BUTKO: Well, they have
8 personnel that go out and look at defects, yes.

9 COMMISSIONER FLICKER: And that's
10 because in the other section the state actually
11 pays the money for the claim?

12 MR. BUTKO: You are going to have to
13 ask --

14 COMMISSIONER FLICKER: That's
15 rhetorical.

16 MR. BUTKO: That would be only
17 conjecture on my part.

18 COMMISSIONER FLICKER: In the other
19 section the state pays the claim, right?

20 MR. BUTKO: Yes.

21 COMMISSIONER FLICKER: Do you have
22 certain builders that you see time and time again
23 throughout the State of New Jersey -- people
24 complaining about certain builders?

25 MR. BUTKO: No. Just these large

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1 scale things. When something happens and the
2 whole town of senior citizens is out picketing,
3 yes, but usually it's a checkerboard kind of
4 thing.

5 Again, I don't see everything that
6 could be going on. A lot of people may drop the
7 process, a lot of people may become dissatisfied,
8 they may get answers that they didn't like. You
9 know, I don't know what happens out there. All I
10 know is the complaints that I'm getting and
11 usually -- it jumps around. Every now and then
12 you'll get one or two -- the same person -- same
13 builder come up to the top, but not all the time.

14 COMMISSIONER FLICKER: Just my final
15 comment. On behalf of all the homeowners in the
16 state, I want to thank you for your diligence.
17 We've heard nothing but wonderful things about you
18 and you deserve our applause and congratulations.

19 COMMISSIONER SCHILLER: Don't pack
20 up yet, Mr. Butko.

21 COMMISSIONER EDWARDS: Mr. Butko, I
22 have one more question for you before the chairman
23 asks his. Do you find that the homeowners
24 warranty program is an incentive to the builder
25 not to build a better house?

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1 MR. BUTKO: It should be.

2 COMMISSIONER EDWARDS: Is it? I
3 understand it should be.

4 MR. BUTKO: My own personal feeling,
5 when it starts -- it's like Napoleon invading
6 Russia. You have an idea, you are going in a
7 certain direction, you don't have enough assets to
8 back it up, you lose. In this building kind of
9 society, where everything is really running, you
10 can say that maybe they are outrunning their
11 ability to make call-backs, I don't know, or
12 moving too quickly. I don't know, you would have
13 to do a study on that, but it could be.

14 COMMISSIONER EDWARDS: You are
15 arriving generally at the conclusion, as I am,
16 that this homeowners warranty is not an incentive
17 for them in one way or the other? It's just kind
18 of a nuisance to them at this particular point in
19 time?

20 MR. BUTKO: If you -- and I didn't,
21 I haven't found it. If you go back and look at
22 the legislative history of the development of this
23 particular Act, then you can get an idea whose
24 testimony, who was involved, who were making the
25 speeches, and exactly what came of it and how it

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1 developed. I have no personal knowledge of how
2 the original thing developed. All I know is it
3 was in '78, and it could be updated.

4 COMMISSIONER EDWARDS: Yes, I do,
5 and I was around for a lot of that, so I have a
6 good sense of what that is.

7 Would you also say that, in reality,
8 it's our job in government not to make claims
9 under a warranty, but to make builders build their
10 houses properly so there are no claims? Isn't
11 that the ultimate objective here? And, if there
12 is not a big enough incentive or penalty, as the
13 case may be, positive or negative, that there is
14 always a percentage, particularly in the
15 construction industry, of people who will not be
16 as careful as they should and build at the level
17 of quality that they should. The ultimate goal of
18 the system should be not we need you sitting there
19 having a job. That's not personal. I want to be
20 sure you are employed, or retired, whatever your
21 options are.

22 MR. BUTKO: I'm past my retirement.

23 COMMISSIONER EDWARDS: But, wouldn't
24 you agree that we should have a system that has an
25 incentive that makes a builder do the right thing

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1 and not rely on the builder's goodwill to do the
2 right thing?

3 MR. BUTKO: Yes. Listen, I don't
4 want to throw dirt, but there are a lot of great
5 builders, great family builders out there that
6 have a name, they don't want to be muddied by --
7 you know, and there are bad builders. It's the
8 same in anything. The only thing, if you are
9 talking about some incentive, of course in Japan,
10 you build a bad house, it falls down, you commit
11 suicide.

12 I don't know what you can do here
13 between the two extremes.

14 COMMISSIONER EDWARDS: Thank you
15 very much.

16 COMMISSIONER SCHILLER: Mr. Butko, I
17 just want to refer to the insurance program,
18 itself. The only approval that the home
19 warranties -- the insurers or the administrators
20 get is through DCA? Do they have anything to do
21 or do they have to register with the insurance
22 commissioner?

23 MR. BUTKO: The only groups that
24 deal with the insurance commissioner would be
25 those that are not risk retention groups. The

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1 risk retention groups file a simple letter with
2 the insurance commissioner and that's what --
3 that's all we can get out of them.

4 COMMISSIONER SCHILLER: So,
5 basically, it's just DCA that regulates that end
6 of the insurance risk business?

7 MR. BUTKO: Well, we don't touch the
8 risk business at all. We have nothing to do with
9 that. They are domiciled under a federal Act in
10 another state. Both of them are in the State of
11 Colorado.

12 We could get reports from them when
13 they feel like doing reports out in Colorado with
14 their insurance commissioner, but our insurance
15 commissioner doesn't go out to Colorado to audit
16 them, nor do we.

17 COMMISSIONER SCHILLER: If they are
18 insuring 76 percent of the individual homes, would
19 it not be better or wouldn't it be something that
20 would be perhaps beneficial if they had to
21 register and be qualified by our insurance
22 commissioner, in terms of the wherewithal they
23 have to do it, since we lose -- I think
24 somewhere between 50 and 57 percent of the
25 companies go out of business?

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1 MR. BUTKO: You are asking about the
2 risk retention group?

3 COMMISSIONER SCHILLER: Yes.

4 MR. BUTKO: We have no control over
5 them under the federal legislation. I don't think
6 the State of New Jersey can control them to any
7 extent because of the federal statute.

8 COMMISSIONER SCHILLER: Thank you,
9 Mr. Butko. I appreciate your coming in and we
10 want to thank you very much, and we are all --
11 again, as Commissioner Flicker said, you've been a
12 very good witness for us.

13 We'd like to take a half hour lunch
14 break right now and then convene with the panel of
15 homeowners at 1:30.

16 (Recess called at 12:56 p.m.)

17 (Resumed at 1:39 p.m.)

18 COMMISSIONER EDWARDS: Good
19 afternoon. My name is Cary Edwards, I'm a
20 Commissioner on the SCI. As we heard this
21 morning, New Jersey's new home warranty system has
22 devolved, and I use that word, devolved, into
23 little more than a script of the worst sort of
24 consumer nightmare. You invest a ton of money,
25 maybe even your life savings, into a new home only

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1 to find that the place is poorly built, or, worse
2 still, that the mechanism represented to you as
3 the ultimate safeguard for your interests, the
4 warranty, isn't worth the paper it's printed on.

5 Why is this allowed to happen? What
6 is it about the warranty system and about the way
7 elements of that system are administered that has
8 led to what can only be described as a serious
9 consumer crisis?

10 Among the witnesses joining us this
11 afternoon will be a panel of homeowners who we
12 have here, a representative of the State
13 Department of Community Affairs, and from a
14 regulatory and oversight standpoint, DCA, as we
15 heard this morning, really is the critical agency
16 of state government when it comes to some of the
17 very difficult problems we have been examining in
18 this process, or at least they have been.

19 I personally look forward to their
20 testimony and their involvement in this. I would
21 note that, on rehabilitation projects, the lead
22 agency is probably the Division of Consumer
23 Affairs, because the Consumer Fraud Act does not
24 apply to new homeowners' warranties.

25 So, we look forward to hearing the

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1 testimony of this panel and the representatives
2 from DCA this afternoon on the Homeowner Warranty
3 program.

4 We have our first witnesses, I
5 guess, all of them? Jim?

6 MR. GLASSEN: Yes. Our first panel
7 are made up of a group of homeowners, Mr. Richard
8 Becraft, Valerie Cyr, Graham Fill and Victor
9 Donahue.

10 Could the panelists be sworn,
11 please.

12 RICHARD A. BECRAFT, VALERIE J. CYR,
13 GRAHAM FILL and VICTOR DONAHUE, after having been
14 first duly sworn, were examined and testified as
15 follows:

16 MR. GLASSEN: Mr. Becraft, would you
17 please state your name and address for the record.

18 MR. BECRAFT: Richard Becraft, 994
19 Treasure Avenue, Manahawkin, New Jersey.

20 MR. GLASSEN: And, Mr. Donahue,
21 would you please state your name and address for
22 the record.

23 MR. DONAHUE: Victor Donahue, 48
24 Highwood Road, West Orange, New Jersey.

25 MR. GLASSEN: And Ms. Cyr.

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1 MS. CYR: Valerie Cyr, 218 Brittany
2 Lane in Toms River, New Jersey.

3 MR. GLASSEN: And Mr. Fill.

4 MR. FILL: Graham Fill, 810 LaCourt,
5 Butler, New Jersey.

6 MR. GLASSEN: And, Mr. Fill, is your
7 attorney present with you today?

8 MR. FILL: Yes, he is.

9 MR. GLASSEN: And, counsel, would
10 you like to enter your appearance for the record.

11 MR. BEUKAS: Thank you, counsel.
12 Michael Beukas from the law firm of Fuhro, Hanley
13 & Beukas, on behalf of Barbara and Graham Fill.

14 MR. GLASSEN: Thank you, Mr. Beukas.

15 EXAMINATION

16 BY MR. GLASSEN:

17 Q. Mr. Becraft, if we could start with
18 you, did you close on your house at the end of
19 August, 1997?

20 A. I did.

21 Q. And can you describe your house, the
22 style of your house, for the commission, please.

23 A. It's a three-bedroom ranch home.

24 Q. And who was your builder?

25 A. Innovative Homes.

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1 Q. And, during the construction of your
2 home, did you notice problems as it was being
3 built?

4 A. Yes, we did. We live two blocks
5 away.

6 Q. Can you describe the types of
7 problems that you observed?

8 A. Well, it was inferior building
9 products. In wood terms, it was a Number 2 grade
10 of wood. Everything that was used was Number 2
11 grade. Fully knotted and -- it was very bad.

12 Q. Were there problems with the windows
13 and the window frames?

14 A. Everything. You actually could see
15 through them, the knots in them.

16 Q. And did you have some problems with
17 the insulation that you observed as the house was
18 being built?

19 A. The requirement is R-19 for under
20 your house and, if you went about a third of the
21 way underneath my house and went to the other side
22 of the house, you would find R-13, which was
23 supposed to be in the walls, but I guess they
24 figured that the inspector wasn't going to crawl
25 underneath there, he'd never see it, so....

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1 Q. And, when you say that you crawled
2 under the house, does that indicate that there was
3 a crawl space under your house?

4 A. Yes, it's a crawl space.

5 Q. And did you have any particular
6 problems with that crawl space?

7 A. Water.

8 Q. And could you describe those
9 problems that you had for the Commission.

10 A. Well, initially the whole -- it
11 rained severely and the whole crawl space filled
12 with water. Almost when the house was completed,
13 just before we closed.

14 They managed to get the water out of
15 there -- I won't go into how -- but the water
16 continues to come in. Over the years we've
17 managed the water now. We use sump pumps to get
18 rid of it.

19 Q. When you first encountered the
20 problem with the water and it continued filling
21 the crawl space, did that have an affect on the
22 foundation?

23 A. The force of the water actually
24 removed some of the concrete between the blocks.

25 Q. Could you describe that a little bit

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1 more for us.

2 A. Well, you could actually hear the
3 water -- the crawl space entrance is underneath
4 our bedroom, and at night you could actually hear
5 the water running underneath the house. It was
6 like you left the water on someplace when it was
7 raining outside, and that's how hard the water was
8 coming in.

9 Q. And what -- can you describe the
10 sound the water made?

11 A. Well, if you put water in the sink
12 and turned on the faucet and let it run into the
13 sink, that's exactly what it sounded like. The
14 water was there.

15 Q. And that's what you heard from your
16 bedroom?

17 A. That's what you hear in the bedroom.

18 Q. Although you attempted to revolve
19 your defects through the builder, did he avoid you
20 and refuse to return your phone calls, so that you
21 filed a warranty claim in February, 1998?

22 A. That's correct.

23 Q. If we could move on to Mr. Fill, did
24 you close on your house in January, 2001?

25 A. Yes, we did.

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1 Q. And could you describe your house to
2 the Commission, please.

3 A. It's a two-story house with a brick
4 veneer face.

5 Q. And who was your builder?

6 A. Majestic Home Builders.

7 Q. And did you notice any defects in
8 the house prior to your closing on your home?

9 A. Yes, I did.

10 Q. And can you describe some of those
11 defects that you noticed to the Commission.

12 A. The major one was water
13 proliferation into the basement. There was
14 phosphorescence on the block.

15 Q. And, when you say "phosphorescence
16 on the block," what do you mean?

17 A. It appears as though water had been
18 running down the wall of the basement in front of
19 the house.

20 Q. And this is before you moved into
21 the house?

22 A. This is before we moved in.

23 Q. And, on your original punch list
24 items, did it also include improperly installed
25 foundation ties?

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1 A. Yes, it did.

2 Q. And could you describe that, please.

3 A. The foundation ties weren't
4 installed according to the Uniform Construction
5 Code.

6 Q. And what did you understand your
7 water problem to be or --

8 A. I really didn't understand anything.
9 I just knew that the wall was wet. I'm not a
10 builder.

11 Q. And, at that point in time, that's
12 about all that you understood?

13 A. That's correct.

14 Q. And that was -- you could see the
15 water problem in your basement, is that correct?

16 A. That's true.

17 Q. And then did you hire an engineer to
18 look at the problem?

19 A. After having several discussions
20 with the builder, he was at a loss to actually
21 advise us what the problem was and suggested that
22 we retain the services of an engineer, which is,
23 in fact, what we did, and we obtained Mr. Peter
24 Engle.

25 Q. So, you first went to the builder

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1 and tried to resolve the issue directly with him?

2 A. On many occasions, yes.

3 Q. And he advised you that you needed
4 to hire an engineer to advise you what the problem
5 was, or him?

6 A. That's correct. He appeared to be
7 at a loss to suggest any solution.

8 Q. And what did Mr. Engle advise you?

9 A. Mr. Engle came out and made an
10 initial visual inspection of the front of the
11 property and advised that the brick veneer
12 appeared to be missing weep holes and flashings,
13 which apparently is part of the construction of
14 the wall system. He did some destructive testing
15 on the house to prove that water was actually
16 proliferating through the brick veneer and was
17 bridging across the mortar at the base of the
18 brick, into the cinder block, and then leaching
19 into the basement.

20 Q. And did you discuss the results of
21 Mr. Engle's advice with your builder?

22 A. Absolutely, at which stage he said,
23 "It's really not my problem." He had altered the
24 grade at the front of the house by putting in two
25 shrubs.

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1 Q. And what did you do after that to
2 remedy the situation?

3 A. Well, we were getting nowhere with
4 the builder and that's when we engaged the
5 services of Michael Beukas, our attorney.

6 Q. As, Mrs. Cyr, who was your builder?

7 A. They actually go under three names:
8 Continental Properties, WNF Developers and
9 Wellfleet Developers.

10 Q. And could you describe to the
11 Commission what type of home you have and the
12 problems that you associate with your home.

13 A. We have a two-story colonial and we
14 had four pages worth of problems, but what wound
15 up going to arbitration was basically the windows
16 that were not installed properly, and the result
17 of their not being installed properly, they've
18 actually -- the vinyl warped, they didn't tilt
19 properly, they didn't open properly. You needed
20 significant force to actually operate them.

21 We also had problems with walls that
22 were bowed, as well as trim that was mismatched.

23 Q. And, Mr. Donahue, could you explain
24 or describe to the Commission your background.

25 A. Well, I'm originally a Ph.D.

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1 biochemist and --

2 COMMISSIONER SCHILLER: Mr. Donahue,
3 excuse me, would you bring the microphone over --

4 MR. DONAHUE: Closer? Like this?
5 Is this better? I'm sorry. Thank you.

6 Originally, Ph.D. biochemist, I
7 became a pharmaceutical patent attorney and work
8 in New York.

9 BY MR. GLASSEN:

10 Q. And when did you close on your home?

11 A. In the summer of 2000.

12 Q. And who was your builder?

13 A. America's Dream Homes of West
14 Paterson.

15 Q. And would you describe your home to
16 the Commission.

17 A. It's a four-bedroom, center hall
18 colonial.

19 Q. And did you notice defects in your
20 home prior to closing?

21 A. We had some issues with the front
22 porch which were partly resolved. There were some
23 issues during construction. Basically they had
24 accidentally started with a somewhat incorrect
25 drawing plan, but there were no issues at closing

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1 other than some cosmetic ones generally
2 attributable to a punch list, I think.

3 Q. So, at the time of closing you had
4 what you would consider punch list items, cosmetic
5 in nature?

6 A. And what we thought would be a
7 reasonably very nice house.

8 Q. And, beyond that, you developed
9 additional problems with your home, is that
10 correct?

11 A. Well, we developed a very large
12 warranty claim which we believe we've now
13 vindicated and we expect the builder, indeed, will
14 be dealing with that shortly.

15 Q. And, after you moved in, you began
16 to notice the larger defects?

17 A. Correct. A number of very unusual
18 things happened, the first of which is, we are on
19 a shale ledge and the shale was used by the
20 builder for certain retaining wall structures.
21 This is a friable shale that basically melts at
22 the rate of approximately one inch per week or
23 month, if rain water hits it. This is exposed
24 material. So we became aware that there may be
25 issues with the site that we were not aware of.

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1 That was one thing that our site was having
2 serious issues.

3 Then, as the house cooled down from
4 the summer into the winter, we began to see quite
5 a number of issues. As wood members shrunk, we
6 began to have serious problems with stairs. All
7 of the nails popped in our main lower stairwell
8 because stairs were not properly supported. We
9 had some movement of kitchen counters and things
10 of the sort.

11 So, those are some of the main
12 things that began to appear, indicating that we
13 needed an architect, and, of course, our walls had
14 begun to fall apart.

15 We also noticed that all of the
16 mahogany boards on our huge deck had begun to pop
17 up and we discovered that the builder had used it
18 as a plywood platform in order to build the house
19 and laid the mahogany directly on the plywood, so
20 there was absolutely no chance of any water or
21 snow evaporating off the deck, the porch.

22 Q. So the problems were of such a
23 nature that you were required to hire an
24 architect?

25 A. Because I did not -- you could see

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1 them, but you wouldn't necessarily understand how
2 complicated they were, in terms of their origin.

3 Q. So the nature of the defects
4 required you to hire an architect to understand
5 them?

6 A. Certainly so.

7 Q. In addition, although not warranty
8 related, did the builder obtain a CO without
9 having a state soil conservation permit?

10 A. You are correct. This has been a
11 major issue in West Orange Township for over a
12 decade where DCA has desperately tried to make the
13 township comply with the state law and the town
14 has not. Not a single lot in my development had a
15 properly issued Certificate of Occupancy because
16 there never was a state inspection for soil
17 conservation.

18 Since the development is built on a
19 shale ledge, there simply is no soil, which
20 explains many of our site issues.

21 Q. When you engaged the architect to
22 review your home, did you discover that the
23 builder had failed to file a proper set of
24 blueprints?

25 A. Yes. The builder -- there were no

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1 proper plans filed with the township reasonably
2 corresponding to the house, as has been separately
3 determined by DCA inspectors.

4 Q. And did you attempt to have the
5 builder repair the alleged defects? Did you deal
6 directly with the builder?

7 A. Well, originally, of course,
8 pre-arbitration we went to the warranty company
9 with a very long list of defects. We are in
10 arbitration because the builder offered only to
11 repair 25 of them on the explicit condition that
12 we would waive all other defects. Obviously, it
13 was necessary to vindicate the case in
14 arbitration.

15 Q. Did the builder call and offer to
16 buy the house back?

17 A. The builder has, on several
18 occasions, offered to buy the house back. That is
19 partly because the repairs are so massive. We
20 have an independent estimate, if we were to do it,
21 of a cash equivalent of over a hundred thousand
22 dollars, so it would be hard to do with a family
23 in it.

24 Additionally, we have massive
25 hillside issues which are not yet resolved,

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1 because, despite numerous directives from the
2 town, after three and a half years, checking ten
3 days ago, the builder still has not filed a site
4 remediation plan that the town can or could
5 approve and has not approved and, therefore, it
6 is, I think, reasonable to assume that the builder
7 wants us out of the neighborhood.

8 Q. Mr. Fill, after your encounter with
9 your builder, and apparently getting nowhere, and
10 weighing the option to either sue the builder or
11 file a warranty claim, you decided to do what?

12 A. We elected to put a claim against
13 the Homeowners 210 Warranty for a couple of major
14 reasons, one being cost. We thought that would
15 probably be the cheapest way to go. Also, the
16 amount of time that would be taken going through
17 the court process. Both of those assumptions
18 proved to be unfounded.

19 Also, the other thing is that we
20 took the option which we elected, but the builder
21 was covered by an insurance policy, should they go
22 into liquidation.

23 Q. And I understand -- so you elected
24 to go to arbitration, is that correct?

25 A. That's correct.

-PUBLIC HEARING-

1 Q. Now, I understand the first step in
2 filing for arbitration is to file your notice of
3 claim, is that correct?

4 A. That's correct.

5 Q. Could you describe to the Commission
6 what you went through in filing your notice of
7 claim.

8 A. There is a standard form which
9 Homeowners 210 Warranty supplied to us, which we
10 jointly completed with our attorney. In addition
11 to that, I mentioned before we did some
12 destructive testing of the home. We had still
13 photographs of that. We also had our expert's
14 testimony and we also had a videographer present
15 at the site, so we settled the three aspects, as
16 well as the written form.

17 Q. And then what happened? Was your
18 initial request for arbitration rejected?

19 A. Yes, it was, on the grounds that we
20 had supplied insufficient information for our
21 claim.

22 Q. So, if I'm correct, you included a
23 video showing the water defect, you had two
24 engineer reports specific to the defects that you
25 submitted, and you included the industry methods

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1 for repairing the defects in that initial
2 submission, is that correct?

3 A. That is correct.

4 Q. And that was rejected as being
5 insufficient?

6 A. It was rejected as being
7 insufficient.

8 Q. And, again, was it your attorney
9 that had to intervene in the process to enable you
10 to continue with the arbitration at that point?

11 A. It certainly was. This was the
12 start of many letters that were required to
13 actually try to circumnavigate the stonewalling
14 that occurred.

15 Q. And how did your attorney help you
16 in that process?

17 A. He threatened them to show just
18 cause as to why our claim was being rejected.

19 Q. And you went to arbitration, is that
20 correct, and presented all of your expert reports
21 and your testimony and video with respect to the
22 defects you were alleging? The six defects?

23 A. Yes, that is the case, but,
24 unfortunately, the arbitrator said right at the
25 onset he was going to give us ten minutes to

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1 present our case, which was quite considerable and
2 involved some technical aspects of how the wall
3 system should have been installed.

4 Q. But you were awarded three of your
5 six defects after the arbitration?

6 A. Yes, we were.

7 Q. And was one of them being the
8 improperly installed brick veneer?

9 A. That was awarded in our favor, but
10 the arbitrator did not give any method of repair
11 recommendations.

12 Q. And was the arbitrator that was at
13 that initial arbitration Stephen Rapp of
14 Construction Arbitration Services?

15 A. Yes, it was.

16 Q. Now, following that initial
17 arbitration, your builder filed a repair
18 specification document, which you found to be
19 nonresponsive, according to both UCC requirements,
20 warranty provisions and industry standards, and
21 then filed for a method of repair arbitration on
22 or about April in 2002, is that correct?

23 A. That is correct.

24 Q. Now, what did you understand a
25 repair specification document to be?

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1 A. That it should address all of the
2 issues that are involved with the item which was
3 awarded in our favor. It didn't address that the
4 brick veneer is part of the wall system. The
5 builder's RSD was simply to remove 18 inches of
6 brick veneer from the base of the house and
7 replace it, installing weep holes and flashings,
8 which is not part of the whole problem.

9 Q. So, his method of repair did not
10 address the problem that you were experiencing,
11 according to your engineer's recommendations?

12 A. Absolutely.

13 Q. And, so, you disagreed with him on
14 that and you went to arbitration over the repair
15 specification, the method of repair?

16 A. Yes, we did.

17 Q. Now, was that arbitration almost
18 closed out before it was heard?

19 A. Yes, it was.

20 Q. Can you describe to the Commission
21 your problems with having that part of the
22 arbitration heard?

23 A. The builder decided unilaterally
24 that he was going to move the date of the
25 arbitration, and, under the rules of CAS, a \$100

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1 fee was to be paid to them for changing the date.
2 The builder -- as we understood it, it was on his
3 onus to pay that and he elected not to.

4 Q. And what did CAS advise you, since
5 the builder owed them \$100?

6 A. They advised us as to the fact that,
7 if the \$100 wasn't paid, then, obviously, we've
8 come to an agreement with the builder and the file
9 would be closed.

10 Q. But it was the builder's
11 responsibility to make the payment, is that
12 correct?

13 A. Yes, it was.

14 Q. And he wasn't making the payment?

15 A. For obvious reasons.

16 Q. So who made the payment?

17 A. We elected to make the payment
18 ourselves.

19 Q. And that allowed you to continue
20 with the arbitration?

21 A. Yes, it did.

22 Q. And was Arbitrator Rapp also to
23 handle the method of repair arbitration?

24 A. Yes, he was.

25 Q. And was it at this arbitration that

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1 you learned from Mr. Rapp that he had at some time
2 become engaged in land development acquisition
3 dealings with Russ Giardino?

4 A. Yes, he was. I'm not sure whether
5 it was with actually Russ Giardino, the builder,
6 or whether it was with Majestic Home Developers.
7 He certainly said he had a relationship with
8 either party.

9 Q. And could you describe to the
10 Commission the circumstances under which you
11 became aware of this relationship.

12 A. We were sitting down at the start of
13 the arbitration and Mr. Rapp went through it and
14 advised us that he was an impartial arbitrator and
15 went to some great lengths to discuss this with
16 us, and then just his closing point was, "I
17 suppose no party here has any problem with me
18 entering into a business relationship with the
19 builder."

20 Q. And what was your response to that
21 comment?

22 A. Not on the record.

23 Q. Did Mr. Rapp recuse himself at that
24 point?

25 A. At no stage did he ever recuse

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1 himself.

2 Q. And did he continue as arbitrator?

3 A. No, because we elected not to have
4 him in our house any longer.

5 Q. And, if I'm correct, you had -- this
6 arbitration on this method of repair had been

7 scheduled, he had come to your house, you were
8 beginning to make your presentation, and he
9 disclosed this situation?

10 A. That is correct. Also we,
11 obviously, had the expense of having our attorney
12 with us and also our engineer.

13 Q. And that was the first instance that
14 you learned that he had this conflict?

15 A. It was, indeed.

16 Q. Did you eventually get a new
17 arbitrator in November, Paul Carrafa?

18 A. Yes, we did.

19 Q. And did you present to him all the
20 testimony that you've described earlier, the
21 videotape and the expert testimony and the
22 engineering reports?

23 A. We didn't actually submit it to him
24 personally, but I understood that CAS had
25 forwarded on to him all of the documentation.

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1 Q. And what came of that?

2 A. Mr. Carrafa said that he had read
3 through all of the information available to him
4 and was going to advise us of his decision within
5 a two-week period.

6 Q. And what decision did he arrive at?

7 A. He then ruled against us.

8 Q. And adopted the builder's method of
9 repair?

10 A. Adopted the builder's method of
11 repair without giving us any reasoning for doing
12 so.

13 Q. So, it was just basically a --

14 A. It was a one-sentence answer.

15 Q. And did you seek to determine if
16 there were some supporting facts for his decision?

17 A. Yes, we did. We went through CAS
18 and we asked for the explanation of the ruling.

19 Q. And did that involve an additional
20 fee?

21 A. Yes, it did.

22 Q. \$75 to pay for the facts upon which
23 the arbitrator was basing his decision?

24 A. That's correct.

25 Q. And did you receive a response?

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1 A. Yes. It was no response at all. It
2 just said the arbitrator had reviewed all the
3 information available and also testimony and that
4 was the end of the ruling.

5 Q. And from there did you request an
6 appellate arbitration?

7 A. Yes, we did.

8 Q. And did the new arbitrator -- was
9 that William Hulanick?

10 A. Yes, it was.

11 Q. And what was the result of that
12 arbitration?

13 A. We actually then won that final
14 arbitration with Mr. Hulanick, but, even so, he
15 didn't actually give the reasoning for his ruling
16 and didn't give a suggested method of repair.

17 Q. He just ruled in your favor?

18 A. He did.

19 Q. Well, at that point you had won the
20 case, is that correct? The arbitrations were
21 complete and you were satisfied?

22 A. Seemingly.

23 Q. And what happened?

24 A. Well, we then had to go through the
25 process again of actually going through the

-PUBLIC HEARING-

1 correct RSD, at which stage we started to involve
2 Ken Butko.

3 Q. And what happened there? Could you
4 describe your experience with Mr. Butko to the
5 Commission.

6 A. Mr. Butko was very, very helpful.
7 He put us on the right track and in contact with
8 the correct people, and I think during his
9 testimony he said that he has had words with
10 people and sometimes a pointed letter. I gather
11 that occurred in our case, as well.

12 Q. So you had problems -- even after
13 you had won the appellate decision, you
14 encountered some problems in collecting your
15 award, is that correct?

16 A. That is correct. We were spoken to
17 on many occasions by 210 Homeowners and also by
18 CAS.

19 Q. And it involved Mr. Butko getting
20 involved to help resolve that situation?

21 A. Yes, it did.

22 Q. And, I guess -- was it in September,
23 2003, a year and a half after your initial claim,
24 that you received your award?

25 A. Yes, it was.

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1 Q. Mr. Becraft, on or about February in
2 1998, did your warranty company, U.S.A. Home
3 Warranty, notify you that the builder had not
4 responded to their letters?

5 A. Yes, they did.

6 Q. And what did you do from there?

7 A. I went ahead and filed a claim
8 through the home warranty.

9 Q. And you had to go to arbitration,
10 correct?

11 A. Yes.

12 Q. And can you describe your initial
13 experience with going to arbitration to the
14 Commission.

15 A. It was extremely complicated. If we
16 didn't have a friend that was an attorney, we
17 probably wouldn't even have started the whole
18 thing.

19 Q. Was there one date set when the
20 initial arbitration occurred or did you have
21 problems just getting the arbitration under way?

22 A. Three different arbitrators even
23 before we saw one.

24 Q. And, so, you filed your complaint in
25 February and you finally got an arbitration date

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1 in April, is that correct?

2 A. April, that's correct.

3 Q. And can you describe to the
4 Commission what you were awarded as a result of
5 your arbitration?

6 A. \$19,000.

7 Q. But what were the specific things
8 that you were complaining of in the arbitration?

9 A. Flooring, cracked walls, water
10 coming through the foundation, leaking pipes,
11 floors ruined by the leaking pipes.

12 Q. And, when you got the arbitrator's
13 decision, did you agree with it --

14 A. Yes, I did.

15 Q. -- initially?

16 And did this decision give the
17 builder 60 days to comply?

18 A. Yes, it did.

19 Q. And this was the same builder who
20 failed to respond to your earlier requests and
21 failed to respond to U.S.A. Home Warranty?

22 A. Correct.

23 Q. So, they got an additional 60 days
24 before you could do anything?

25 A. That's correct.

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1 Q. So, this is right around July of
2 1998, is that correct?

3 A. Correct.

4 Q. And your complaint was filed in
5 February?

6 A. Yes.

7 Q. And would it be correct to say that
8 at this point there was no activity by the
9 builder?

10 A. That's correct.

11 Q. And no repair specification
12 document?

13 A. That's correct.

14 Q. And no contact by U.S.A. Home
15 Warranty?

16 A. Also correct.

17 Q. So, there was no activity going on
18 at your home, but you had received the award?

19 A. Yes.

20 Q. How did you -- what did you do next
21 to resolve the situation?

22 A. I never knew about the DCA, I never
23 knew that existed. I actually went to Consumer
24 Affairs in the State of New Jersey and they are
25 the ones that directed me to Mr. Ken Butko, who

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1 then started putting me on the right line.

2 Q. And before that you had contacted
3 U.S.A. Home Warranty several times, is that
4 correct?

5 A. Well, yes.

6 Q. And they told you to obtain three
7 estimates?

8 A. Which I did.

9 Q. And during this period of time was
10 there additional damage occasioned by the delay?

11 A. Yes.

12 Q. And what was the nature of that
13 damage?

14 A. The water, once again, was coming
15 in -- it's like the little Dutch boy and the dike.
16 The water just kept coming in.

17 Q. What did Mr. Butko do to help you?

18 A. He told me who I should have to talk
19 to.

20 Q. And did he tell you to call Mr.
21 Hessing of the Walnut Group?

22 A. Yes, he did.

23 Q. Could you explain to the Commission
24 who Mr. Hessing was.

25 A. He's an intermediary, I assume,

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1 between Travelers and U.S.A. Home Warranty.

2 Numerous phone calls before I actually got to

3 speak to the gentleman.

4 Q. And was Mr. Hessing helpful to you?

5 A. Not at all. Arrogant. He told me

6 there was nothing he could do about it and there

7 was nothing I could do about it.

8 Q. And how did you eventually resolve

9 the situation?

10 A. Well, actually I went back to Mr.

11 Butko again and I got a name from him of a lady

12 who belongs in Travelers Insurance and I contacted

13 Travelers myself, who was the underwriter for

14 U.S.A. Home Warranty, and they finally put some

15 pressure on and eventually, a year later, things

16 got taken care of.

17 Q. So it was a year when you finally

18 received the monetary award?

19 A. Award, yes.

20 Q. Do you still have a water problem?

21 A. Yes.

22 Q. Could you describe it for the

23 Commission.

24 A. It's -- water just continues to come

25 into the foundation. I've even resorted now to

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1 moving sump pumps outside of the foundation so I
2 can prevent the water from coming into the
3 foundation. It's manageable now, I mean, and
4 there is not much you are going to do about it
5 now.

6 Q. Mrs. Cyr, who issued you a home
7 warranty?

8 A. Residential Warranty Corporation.

9 Q. And why did you proceed with
10 arbitration?

11 A. Well, basically, the builder refused
12 to make the repairs, and the repairs that they did
13 make on some items were unsatisfactory to us, and
14 they kept insisting, "Are you going to
15 arbitration? Go to arbitration," which I found to
16 be -- I found that to be, you know, questionable,
17 why are they directing me to do it, but we did go
18 to a lawyer and the lawyer said, "Listen, you can
19 either have this hang up in court for years and
20 pay my fee for this or you can go to arbitration,"
21 and, basically, from a financial standpoint, we
22 had no other choice.

23 Q. Did RWC provide you with information
24 prior to your arbitration?

25 A. No. They are very, to coin a phrase

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1 that I'm probably going to make up is, homeowner
2 unfriendly. Totally. They did not try to help,
3 they did not try to work in our behalf with the
4 builder, try to resolve any of these issues, and
5 they basically said, "Okay, here is your letter,
6 you are going to have an arbitrator contact you in
7 a few weeks," and that's what happened.

8 Q. And did an arbitrator contact you?

9 A. Yes.

10 Q. Who was that arbitrator?

11 A. That was Richard Kosten.

12 Q. Did Mr. Kosten conduct an
13 arbitration in your home?

14 A. Yes, he did.

15 Q. And can you describe to the
16 Commission what happened?

17 A. Well, where do we begin? Basically,
18 he walked in the door, I could tell right away
19 that we were going to have a problem. He was very
20 unprofessional, he was unknowledgeable, he was
21 unfocused, he was unprepared. I'll give you an
22 example why I tell you that. He came in supplied
23 with just a writing utensil, a pad, and a wood
24 piece of 32 inches long, and he knew what he was
25 up against here with issues with bowed walls and

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1 with windows that were warped and weren't working,
2 and that is the sole equipment that he brought
3 with him. My husband had to supply him with a
4 level, amongst other things.

5 A couple other things that he did
6 was that he made, I thought, very unprofessional
7 comments, such -- to the effect that -- I
8 mentioned to him that, you know, these windows
9 should be operable to me and he said -- he did --
10 he, you know, moved them up and down and he says,
11 "Well, you know what, they really are hard to
12 operate, but, if an old man can do it, you should
13 be able to do it."

14 Then he also said -- he laughed
15 because we had mentioned that -- the windows were
16 actually operating pretty well that day because it
17 was a colder day, but the week before it was
18 actually warm, so we said to him, you know, "The
19 windows are actually working in the builder's
20 favor. Can we maybe reschedule this when it's a
21 little bit warmer?" And he turned to the builder
22 and he started laughing and he said, "Oh, this
23 must be a warm weather problem, huh?"

24 And then the other thing he
25 mentioned, which is the reason I said we had

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1 problems as soon as he walked in, is because he
2 said his experience lied in wood windows, not
3 these new vinyl windows.

4 I'm not in the building industry,
5 but I can tell you that vinyl windows, to me, are
6 not new, so -- and then another thing that he did,
7 he put down our home inspector's credentials
8 saying that, "Oh, he's not an architect, he's not
9 an engineer, he's just a home inspector, let me
10 see his credentials," and he just totally put down
11 our home inspector's report and that man's
12 credentials, which turned out to be more than what
13 he actually had in the building industry.

14 The other thing that he did is he
15 said -- well, he kept breaking out in stories.
16 He's examining a window, he's examining trim, and
17 he breaks out in stories about other arbitrations,
18 so he turns -- when we had mentioned about our
19 home inspector report, I asked him if he had
20 looked at it yet, and he said, "No." So I told
21 him, "Here it is, here is a copy," and he turned
22 around to the builder and he said, "You know, did
23 I ever tell you I had this arbitration once where
24 we had this house, the guy had all these
25 inspection reports, and it turned out they didn't

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1 even have an inspector come over to their house,"
2 which, to me, kind of insinuated that we were
3 amongst those type of people.

4 Q. Did you receive an award from this
5 arbitration?

6 A. Yes, we did. Of our 25 windows,
7 which all did not work properly we were awarded
8 eight. All the rest were not covered, and the one
9 that he actually said worked the worst out of all
10 of them was not even covered.

11 Q. What did you do after that?

12 A. Well, I -- the Office of Dispute
13 Settlement had sent out the award to us, so the
14 only name that I really knew was Bill Petitto, who
15 was handling, I guess, our arbitration. So I
16 called him up and I said, "Listen, this is what
17 happened with our arbitration. The award is
18 ridiculous, it's a joke," and I asked for this
19 fellow's resume, and he did send it over to me at
20 the end of January last year and I read his resume
21 and then pursued other action.

22 Q. At some point did you get in touch
23 with Mr. Butko?

24 A. Yes, I did.

25 Q. And what did Mr. Butko tell you?

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1 A. Well, I told Mr. Butko that the man
2 had no -- what I could see from the resume, he had
3 no hands-on experience, nothing really that would
4 indicate that he had worked in the building
5 industry or had any knowledge of it, except to the
6 RCS designation that he put down as experience,
7 and RCS stands for residential commercial
8 specialist, which he supposedly is certified.

9 So I asked Mr. Butko, you know,
10 "What exactly does this mean? Give me some
11 guidance here. How do I check out whether this
12 guy is actually possessing that, whether he
13 actually has these credentials," and he told me
14 that one of the things you could do, since it is a
15 builders inspection course, is to call the
16 builders inspection in the State of New Jersey,
17 for which he gave me the number, and I called them
18 and they had no listing for Mr. Kosten.

19 Q. So, you determined through your
20 investigation that Mr. Kosten was not properly
21 certified to conduct that type of arbitration?

22 A. Yes. I believe, from what I've
23 learned, Mr. Kosten does possess the actual
24 certification, but, when he got that certification
25 in 1988, they changed the law in 1998 to say that

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1 he had to take an Exam Module 1A for his RCS
2 designation and actually pass that Exam Module 1A,
3 which I understand is three actual exams, and he
4 did not.

5 Q. Did you speak to anyone else in the
6 state about this issue?

7 A. Yes.

8 Q. And who?

9 A. I contacted Bill Petitto from the
10 ODS again and he failed to take any action, so I
11 put together a letter, basically to everybody and
12 their brother in the government. I sent it to the
13 governor, I sent it to a couple senators, some
14 congressmen, and also I carbon-copied Mr. Butko in
15 on all those.

16 Q. And did you hear from anybody else
17 in the state?

18 A. Actually, Senator Ciesla's office
19 called me up and, shortly after receiving the
20 letter, the aide there had told me that she had
21 spoken to Mr. Petitto and Mr. Petitto had told her
22 that, "Yes, Mr. Kosten is indeed credentialed and
23 qualified to be an arbitrator for the ODS."

24 Q. Did you ever talk with Mr. Desch?

25 A. Yes, I did. I spoke to Mr. Desch

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1 and basically what he did is he asked me what --
2 we understand that -- he gave me a short history
3 of the whole arbitration in New Jersey, how the
4 arbitrators used to not need to be having any
5 industry knowledge, et cetera, et cetera, so I got
6 a nice crash course on the arbitration system, but
7 what it came down to is, he turned to me and he
8 said, "What do you want us to do about it?"

9 I said, "I want you to rule this
10 arbitration as null and void and have it redone."
11 So, he said, "Okay, I'll do that." So I said,
12 "Okay. Then I'd like for you to put this in
13 writing," because at that point I was not trusting
14 anybody, so he said -- he refused -- he did say
15 that he would vacate the arbitration. However, he
16 would not put anything in writing to me.

17 Q. Mr. Donahue, who is your home
18 warranty company?

19 A. 210.

20 Q. And did there come a time when you
21 consulted with an attorney and weighed the option
22 to either sue the builder or file a warranty
23 claim?

24 A. Yes. Concomitant with our hillside
25 issues, this had been an ongoing question.

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1 Q. And what were the reasons for your
2 decision to arbitrate?

3 A. Well, given that we also had
4 hillside issues, given the unpredictability of
5 court, and the fact that a large amount of
6 administrative evidence and, you know, agency
7 rulings would be useful and that they would
8 accumulate over time, we felt that both types of
9 things were at least -- you know, for the
10 beginning, should be handled in an administrative
11 way.

12 Q. And, when you filed your warranty
13 complaint, did you hire an architect to actually
14 draft the complaint and have your attorney review
15 it?

16 A. Well, yes, he had already been
17 retained, but, of course, he drafted the entire
18 complaint based on numerous inspections.

19 Q. And you received a response from
20 your builder stating that he would repair some
21 things if you released him from the others?

22 A. That's correct. Their construction
23 director issued a letter promising to fix 20 -- to
24 repair, inspect or replace 25 items, as long as
25 all other warranty items were permanently waived.

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1 Q. And, so, you went to arbitration and
2 an arbitration was to be held in February of 2002,
3 correct?

4 A. That sounds about right.

5 Q. And the initial arbitrator was Paul
6 Carrafa, is that correct?

7 A. Well, no, we never met Mr. Carrafa
8 because apparently, in connection with putting
9 together this rather lengthy case, he had retired
10 and moved on.

11 Q. And then who was your arbitrator?

12 A. For the original arbitration it was
13 Stephen Rapp.

14 Q. And did Arbitrator Rapp provide you
15 what you referred to as Rapp's rules?

16 A. Yes. This matter I deem very
17 serious. Being a lawyer in a gentlemen's club of
18 pharmaceutical patent law, I'd never seen anything
19 quite like this.

20 Arbitrator -- we had a large
21 complaint and there was no copy of plans
22 reasonably corresponding to this house on file
23 with the township, and the builder had not put
24 them there and the builder had not given us the
25 plans, and we have many serious issues, now with a

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1 very large award, where having access to those
2 plans would have been essential to the preparation
3 and making of our case.

4 Since we did not have them, the
5 arbitrator agreed and set up a discovery schedule,
6 wherein by, if a party refused to respond to a
7 discovery request of the other party, the
8 nonproducing party would be held to have lost the
9 point.

10 Q. So, you relied upon that rule of
11 procedure in prosecuting your arbitration?

12 A. And very clearly expected that all
13 of the needed documents, i.e., the blueprints,
14 which we never had and were not publicly available
15 anywhere, would be forthcoming, but the builder
16 refused to produce them.

17 Q. And what happened concerning those
18 discovery rules?

19 A. Well, there was the minor -- a
20 minor -- minor little thing and then a major one.
21 The first minor thing that happened was we got a
22 note from CAS saying that the arbitrator had
23 changed the rules, in that he would like to
24 conduct the inspection first without us having had
25 the benefit of these plans on hand. And, of

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1 course, that partly cripples our argument. He
2 wants to have a look-see before we've been able to
3 completely make our case, and I would rather have
4 had them in the beginning, but what he said was,
5 "But, you are allowed to send in a brief after my
6 inspection and you can include further comments
7 based upon your inspection of these documents with
8 the brief."

9 Q. So, did your architect provide that
10 brief which identified all the issues?

11 A. Yes, he did, but the brief was
12 unable to make any mention of anything that might
13 have been in the plans because the builder had
14 still refused to produce any plans or any of the
15 requested documents. So we had no documents.

16 Q. Would you say that the homeowner is
17 led to believe that, when he receives a warranty,
18 that warranty would cover what the construction
19 code was supposed to cover, the safety and
20 integrity of his home?

21 A. Well, can I finish the first issue?

22 Q. Oh, please.

23 A. You actually -- we jumped.

24 So, the result of this was then
25 that, having first had our access to documents

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1 that were clearly promised, or at least that we
2 would receive a favorable ruling if we were denied
3 access to them, what happened then is that the
4 arbitrator simply said, "Forget it," and he simply
5 ruled against us on all items that we would have
6 won, had these documents been, you know, we
7 believe reasonably available.

8 So every item that we might have
9 won, had we had access to these documents so we
10 could prove our case, we were just donked out of
11 court and we never got access to the documents.
12 We were set up and cut off at the knees.

13 Q. So, in other words, he changed the
14 rules in the middle of the game?

15 A. Without ever telling either us -- it
16 has nothing to do with the builder. He just
17 changed his rules, told nobody, and walked away.

18 Q. I'm sorry I interrupted your answer.
19 Back to my other question.

20 With respect to the warranty and the
21 Uniform Construction Code, would you have expected
22 the warranty to cover Uniform Construction Code
23 issues, in your instance?

24 A. Not necessarily. I mean, we have
25 quite a number of code issues. By the way, thank

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1 you very much for the code enforcement section of
2 DCA. They've done, I think, a marvelous job of
3 diligently moving around the house, and that was
4 much appreciated.

5 I wouldn't necessarily expect that,
6 and I will give you one amazing example, though.
7 In our house there is no bracing of any of the
8 pipes in the basement that carry water. The
9 Sheetrock covers them all and none of the braces
10 were put in. So all of the pipes shake and, if
11 you shut off any valve anywhere in the house, all
12 the pipes in the house rattle because there are no
13 clips, so all of the Sheetrock has to come down
14 and all the clips have to come in. The finished
15 basement is a mess.

16 But where this starts is where the
17 water comes into the house, the big trunk where it
18 comes in from underground. This thing is
19 completely loose. In every house it's as solid as
20 a wall, and this pipe -- you could shake it around
21 like tinsel. When we pointed this out to
22 Arbitrator Rapp, he looked at me like he didn't
23 believe it and thought we were crazy, and, so, he
24 basically went to put a huge amount of pressure on
25 it expecting it to move by one millimeter. You

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1 know, ha ha, idiot homeowner. It moved by 18
2 inches and he nearly fell flat on his face.

3 So, I mean, you know, you would
4 think, with such a massive failure to properly
5 brace the pipes, that something like that should
6 be covered, but apparently it's not, but it is
7 covered as a code defect.

8 Q. And what was the result of this
9 initial arbitration?

10 A. Well, we won about 95 items,
11 including some that were very important. We lost
12 quite a number of items, including some that were
13 blatantly obvious, including obvious serious
14 leaking concrete cracks in the basement. We
15 have -- basically, because the basement staircase
16 is not properly supported and constructed and
17 actually is apparently a unit diverted from a
18 different model, the stringers cut and it's
19 hand-crafted by the foreman, basically it has
20 vibrated considerably and all of the Sheetrock has
21 been forced to move and all of the nails have nail
22 popped in the entire staircase well, which has to
23 be rebuilt.

24 I mean, this is blatantly obvious to
25 this arbitrator. The nails are out, the whole

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1 thing is shaking, and he walks away from it. How
2 he could see the cracks in the concrete and walk
3 away from that, I don't know, either, but he did.

4 Q. So, you had a decision whether to
5 request a clarification or modification or go to a
6 direct appeal of the arbitration, is that correct?

7 A. Correct. A very interesting point.

8 I fought over it with my lawyer
9 quite a bit as to what to do, and in the end he
10 was smarter than I and he guided me correctly,
11 which is that, first of all, an appeal in these
12 situations is possibly, as we've seen already,
13 something that could be dispensed with over the
14 phone or by an appellate arbitrator only looking
15 at a little piece of paper, not actually coming
16 out to see the house.

17 And, indeed, if you have the state
18 plan and not a private plan, I'm not even sure
19 there is an appeal at all, but, nonetheless, the
20 original decision is entitled to deference, and,
21 so, especially in a situation where the appellate
22 arbitrator can dispense with it on paper without
23 ever having looked at it, my attorney finally
24 convinced me that the safest thing was not to
25 allow this nut to put more things in the record

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1 that would, you know, make it look like he really
2 diligently looked at it and he really thought
3 about it and everything was the way it was.

4 So, we walked away from a
5 clarification and went to an appeal, and that was
6 the correct decision by my attorney.

7 Q. And did Arbitrator Hulanick come out
8 to hear your appeal?

9 A. Yes.

10 Q. And did he eyeball the things that
11 you described as -- that Mr. Rapp did or did he
12 conduct his arbitration in a different manner?

13 A. Well, I mean, since I'm a patent
14 lawyer, Arbitrator Hulanick came across as a much
15 more professional, intelligent fellow, and I
16 thought that he did a marvelously generally
17 diligent job. I mean, he knew his stuff, whereas
18 Arbitrator Rapp was simply eyeballing bowed walls
19 with his eyes from four feet away, not looking at
20 my engineer's tool. He was up there with coins
21 and measures and accurately measuring it with his
22 eyeballs one second away from it.

23 So, I think, on the whole, he did a
24 much better job. Unfortunately, he said something
25 right before the builder got there which really

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1 just floored us, and I think you could imagine how
2 scary this would be to a regular homeowner, and we
3 haven't seen resolution of it here. He said,
4 quote, "My supervisor has told me that I'm only
5 being paid four hours for this hearing."

6 Q. And how many items did you have on
7 your list?

8 A. This house has -- well, there is
9 about 280 items on the list. Some are simply
10 cosmetic because the punch list was not taken care
11 of, some are duplicates. Let's say we have about
12 230 items in a three-story house, which worked out
13 to 1.2 minutes per item in 4300 square feet. It's
14 physically not possible to do it. He was
15 exhausted at the end, and he didn't finish and he
16 never came back.

17 Q. Did he take notes as he went along?

18 A. Yes. If he had stayed 20 minutes
19 more, that would have been, you know, perfect. We
20 got 90 percent of what really mattered, because he
21 just collapsed. Did his four hours and 15 minutes
22 and that was the end of it.

23 Q. And did Mr. Hulanick award you an
24 additional 53 items?

25 A. Yes, including some cosmetic things

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1 left behind, but a lot of the big, big things that
2 really mattered came through on that appeal.

3 Q. Is one of those examples the
4 staircase?

5 A. Sure. Also, we need to have
6 complete re-installation of a massive custom
7 Corian countertop. That's one. We have much
8 better resolution of porch issues. There is a
9 large -- a complete re-installation of a bathtub.
10 Big things came in on the appeal.

11 Q. Mr. Donahue, it's now January of
12 2004, nearly two and a half years after you filed
13 your initial request for dispute settlement. Are
14 you still arbitrating your defects?

15 A. No. The arbitration is complete and
16 I think that -- the builder's architect, I think,
17 in fairness to him, is diligently going to go
18 about the business of making it right. I have no
19 idea whether he will fix the house before the hill
20 comes down, but I do believe that they are making
21 a sincere effort to begin to fix the house, and
22 they have a new foreman who I think is a very
23 alert, intelligent fellow. So I'm hopeful.

24 Q. Dollar-wise, could you describe
25 generally for the Commission how much expense

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1 you've incurred related to the resolution of your
2 defects to date?

3 A. Well, it's a little hard to say
4 because I have these massive hillside issues which
5 are kind of intertwined because I used the same
6 expert, so -- but I would say that, allocated to
7 warranty issues, it's probably \$60,000.

8 Q. Mr. Becraft, for the Commission
9 generally, could you describe your experience with
10 the arbitration process?

11 A. The arbitrator, himself, when we
12 finally got the third arbitrator, was very good.
13 Naturally, we didn't have a representative from
14 the builder. The representative that showed up
15 was from the insurance company. He was a young
16 fellow and the arbitrator was an older fellow and
17 the arbitrator actually just took it over.

18 I have nothing evil to say about the
19 arbitrator. I mean, he gave us almost 80, 90
20 percent of what we asked for. I have nothing evil
21 to say about him and that, to me, was fine.

22 Q. Do you have any recommendations you
23 could make about the process that might help?

24 A. Just simplification, that's all.

25 Q. Mr. Fill, in previous testimony you

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1 described your home warranty process as a
2 nightmare.

3 Could you explain that comment to
4 the Commission a little bit.

5 A. I don't think my opinion has
6 changed. It's probably just a longer nightmare
7 now.

8 Every opportunity we were
9 stonewalled by either CAS or 210. If it hadn't
10 been for our lawyer seeking for just cause, I
11 don't think we would have got anywhere.

12 The whole process, I think, for a
13 layperson, is very, very difficult to get through.
14 There seemed to be a trap at every corner. I
15 think my colleagues here have hit on it. The
16 demeanor of the arbitrators changes dramatically
17 and, fortunately, Mr. Hulanick was probably the
18 best that we had. Stephen Rapp had a very unusual
19 demeanor, and certainly on the second case where
20 he should have recused himself.

21 Mr. Carrafa, he had some interest, I
22 think, in our case, but there was never going to
23 be any longevity because at the -- we had sort of
24 a mid-arbitration break and he said that he was
25 off to Florida in two weeks. That would take him

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1 out of it. So I didn't have a lot of confidence
2 in the results there, or I don't believe that, if
3 we had a problem, that it could have been resolved
4 by him.

5 Q. Ms. Cyr, I want to give you an
6 opportunity to make any recommendations you have
7 from your experience to the Commission.

8 A. Well, from what I see as a
9 layperson, I see that everybody -- basically,
10 everybody is in bed with each other here. You've
11 got -- builders are buying from the warranty
12 company, the warranty company hires the ODS and
13 other arbitration companies, and basically the
14 builders are paying for these arbitrators to come
15 out.

16 So, it's one big circle and we are
17 the homeowners and we are not included in that
18 circle. So there is -- the integrity of the
19 entire system and what was supposed to be a good
20 thing protecting homeowners -- the integrity is
21 compromised because there is no oversight, there
22 is no watchdogs here for the homeowners and
23 everything seemed to be slanted toward the
24 builders.

25 Why would a builder -- I have a

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1 problem. Why would a builder tell me to go to
2 arbitration, unless they knew that it was going to
3 be a better outcome for them, from a financial
4 standpoint?

5 And they denied that they know each
6 other, too. When we had our second arbitration
7 the arbitrator and Mr. Falls, who actually is the
8 deputy director of the Office of Dispute
9 Settlement, basically his boss, came out to this
10 one now, and we asked -- in front of Mr. Falls, we
11 asked Clive Usiskin, who was the new arbitrator,
12 "Have you done any work for Continental Property,
13 lawfully WNF, do you know them," and right off the
14 bat he said "No."

15 Well, the builder comes in and the
16 builder says, "Hey, Clive, how you doing? Long
17 time, no see." Why lie about that? And the other
18 thing is, as we were talking toward the end, the
19 service tech from the builder said, "Oh, yes, I
20 remember you, Mr. Falls. You spoke at a seminar
21 that I attended over at RWC."

22 So they are all entangled here and
23 there doesn't seem to be anybody who is the
24 watchdog looking after our interests.

25 Q. Mr. Donahue, I know you've been

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1 through a lot and are well versed in the law. If
2 you could provide some of the recommendations that
3 you think the Commission might benefit from.

4 A. Well, I think what the legislature
5 needs to focus on is making this work for a
6 typical family. My wife and I are affluent and we
7 can keep this going forever, if we have to, to
8 eventually get our house fixed, but these things
9 involve generally large amounts of money, measured
10 by the standards of any family. So having a
11 warranty program that works efficiently is very
12 important.

13 It's also important that it not be a
14 Band-Aid for broader problems. My township has
15 serious problems of diverting money from code
16 inspectors to other programs so that basic
17 inspections are never performed. There is no
18 evidence of any inspections in our basement during
19 its construction. The town can't show that they
20 ever happened. A lot of our problems are in the
21 basement. So a lot of pressure can be taken off
22 the warranty program if we have better town
23 function in the beginning.

24 There clearly needs to be better
25 training for arbitrators, I think, not only from a

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1 scientific or engineering standpoint, but simply
2 from an administrative law standpoint of how to
3 administer their job. Obviously, what Mr. Rapp
4 did cannot be done by a judge. You can't change
5 the rules. So these kinds of things need to be
6 addressed.

7 At the same time, I don't think that
8 they are all that expensive. I mean, some of
9 these things can be outlined on a blackboard,
10 perhaps, in some afternoon training class, so
11 those are a couple of things.

12 If the Atlantic County decision is
13 going to stand, and it's not going to be
14 legislatively changed, then put state code into
15 the warranty. There are a number of other things.

16 Quickly, I don't understand why it
17 is necessary -- although it's clearly logical that
18 one would want to have an architect, because they
19 will pick up things that a homeowner won't pick
20 up, it's also true that not everybody can afford a
21 top notch architect and a whiz-bang New York real
22 estate attorney. There are homeowners who might
23 want to do this cheaply.

24 My question to DCA is, "Why should a
25 homeowner have to spend money on a challenged RSD

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1 where they are forced to hire an architect? Some
2 of these items are straightforward.

3 Additionally, the expert testimony
4 provided by the builder is provided by his own
5 handyman. I mean, can't a homeowner oppose a
6 handyman and get into the arbitration without
7 spending an extra \$5,000? There is a number of
8 ways for people to save money around the edges of
9 this that may be very important to many, many
10 families.

11 Again, the fact that an appeal can
12 be dispensed with over the phone or on a written
13 record without actually viewing the defect again,
14 and that those in the state plan don't even have
15 appeal rights, I think that these are significant
16 issues.

17 There are minor ones, such as the
18 modification clarification rule is hopelessly
19 impossible to read. There is no oversight over
20 CAS. We don't have time to go into this, but who
21 is over CAS? CAS has done awful things in my
22 case. I have a file this big of them thumbing
23 their nose at my family. They have thrown my
24 letters out saying that they won't read them
25 because they are not submitted by a lawyer, when I

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1 have a lawyer, but they have no rule against
2 nonlawyer submissions. There is no rule against
3 that. It is a way for a homeowner to save money.
4 And, so, if a homeowner doesn't want to spend \$250
5 an hour for every paper that goes in there, they
6 should have the option to send things in on their
7 own. There is a risk, but it gives them an
8 option.

9 For CAS to throw my stuff out by
10 saying "It's not submitted by your lawyer," there
11 is no rule for it, and then there is no regulation
12 when they go wrong. I mean, I must say, I've had
13 no help from the homeowner portion of DCA in
14 getting them under control. They do what they
15 want in Texas and they are out there.

16 Now, you can sue them and you can go
17 for interlocutory appeal in a courtroom in Newark,
18 but that's \$15,000 bang right there and, if you've
19 only got \$10,000 of warranty complaints left, and
20 it's 15,000 for interlocutory appeal, you've got a
21 problem that never goes away, and nobody goes that
22 route.

23 So, there are many -- well, I sense
24 that you need to go on, but you need to look at
25 every step, and there are ways to improve it and

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1 make it more economical, and arbitrators need
2 better training to get it right the first time.

3 MR. GLASSEN: Thank you very much.
4 I have no more questions.

5 COMMISSIONER EDWARDS: Mr. Donahue,
6 what about the rest of your problems, besides the
7 homeowners warranty problem, which is the
8 underlying shale and structural problems? Can you
9 describe that a little better for me and how it
10 got there and what is the cause of that problem?

11 MR. DONAHUE: Well, I don't know the
12 origin, but apparently I live on a shale slope,
13 which actually is -- the upper portion of my lot
14 is literally a major geologic boundary in northern
15 New Jersey where the shale underlies the upper
16 level trap rock basalt. That boundary goes right
17 through the top of my lot.

18 Up above, on upper level home sites,
19 they have to dynamite to make room for a water
20 line. Down below we have shale reprocessed by
21 many, many glacial events, so that literally it's
22 like half shale half powder and all of the
23 cosmetic retaining walls and some other rocks in
24 major retaining walls are just scooped up from the
25 surrounding material, so, when you have rain hit

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1 them, they turn to dust.

2 Also, I only had about one-quarter
3 of an inch of soil on my entire hillside. There
4 is a state requirement of about five inches of
5 soil. Most of my neighbors do not have this.
6 Their water irrigation lines are only one inch
7 down into their grass because they can't go any
8 deeper. On my hillside that's a serious issue.

9 So there have been a large number of
10 inspections about stabilizing the hill. Right now
11 it actually is a matter that is before the
12 Secretary of Agriculture because he has been on --
13 trying to get some understanding from DCA
14 concerning site issues that aren't physically
15 touching the house, but, nonetheless, affect
16 overall site stability, and why those issues
17 couldn't also be brought under DCA's jurisdiction.

18 Historically, the problem is that in
19 my town the town's building department simply
20 refused to perform these state-mandated
21 inspections.

22 Additionally, I have slopes that
23 exceed the maximum standard generally allowed of
24 two-to-one, and I have walls that do not meet any
25 engineering standard or conform to the developer's

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1 agreement.

2 So this is a very expensive fix, and
3 a lot of this became massively apparent after we
4 bought the house when things that I saw were rocks
5 literally -- this is hard to describe because I
6 have a rock collection. I have literally
7 exploding rocks. I have pieces of shale that
8 absorbed so much rain water over a period of two
9 days that they pressurized and blew apart. I
10 mean, I could find pieces of rock ten feet away
11 from where they were a rock.

12 So this is a major remediation
13 issue, and I would imagine that the honest issue
14 here is that the builder had a hillside that was
15 more complicated to deal with than they thought
16 and this explains what I didn't know, which is
17 that builders have been trying to build on this
18 hill for many years, and it's very hard and costs
19 go up and then other issues domino.

20 COMMISSIONER EDWARDS: Do you have
21 any idea how the builder got the original
22 approvals and was allowed to build there?

23 MR. DONAHUE: Well, I mean, he filed
24 plans. I think the problem is that our town isn't
25 very good at necessarily looking at plans and

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1 things don't necessarily conform to plans. Our
2 site inspector actually is a mechanic. I clearly
3 understand from our building department that the
4 site inspector was simply a mechanic being trained
5 and that, when he signed the C of O on our
6 property, he had really no idea what he was
7 looking at. And this also bothers me in the sense
8 that I'm from Washington, D.C., and I didn't know
9 that these solid blocks were going to
10 disintegrate, and these people have lived here
11 their whole life. I mean, I think everyone in
12 West Orange knows about West Orange shale, so, if
13 you were a local, I think you would know that you
14 shouldn't be building walls out of that, and I
15 think people in the engineering department knew
16 that, but the people who signed the CO -- it was a
17 mechanic and he did not know.

18 So then all of these things become
19 grandfathered and they become expensive, and I
20 have originally a letter from the builder's
21 original attorney advising the town that I
22 probably washed my own soil away. I mean,
23 every -- five people, at the request of the
24 Secretary of Agriculture, have walked over that
25 hill. There is no soil. To put the soil on it

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1 that's supposed to be there by law is probably 100
2 dump trucks. It's graded down and my house is
3 below grade level.

4 So nobody in our town was watching.

5 COMMISSIONER EDWARDS: Is the
6 foundation of the house on that same shale or not?

7 MR. DONAHUE: I don't know exactly
8 what it's on. I would say the town believes that
9 it is reasonably close to being physically on the
10 shale. I would know, but I don't know, because I
11 did have into my sales contract that experts on my
12 behalf would have the opportunity of inspecting
13 the footings when they were put in, but I got the
14 notice that the footings -- I should rush out for
15 a footings inspection 12 hours before it happened
16 and, when we got there 12 hours later, they were
17 half covered, so we don't know and the people in
18 the town don't remember, and I guess the best
19 guess is that it's very close to being physically
20 on rock.

21 COMMISSIONER EDWARDS: So your
22 recommendations, from our perspective -- we are
23 talking about the homeowners warranty today --
24 also go beyond that and get into the actual lot
25 approvals, engineering approvals and inspection

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1 process and the quality of the inspection teams
2 that exist in various municipalities?

3 MR. DONAHUE: Sure.

4 COMMISSIONER EDWARDS: Would that be
5 a good summary?

6 MR. DONAHUE: And that will take
7 pressure off the warranty and, with a little
8 better training of some of these arbitrators so
9 they don't make procedural guffaws, I think that
10 would help, and somebody has to look at this
11 nested relationship of how CAS mysteriously
12 manages to be out there where nobody can regulate
13 them.

14 Mr. Glassen has a detailed file for
15 me on how they don't even address their letters.
16 I am the addressee of many letters from them I
17 didn't get because, even though I'm the addressee,
18 they mail it to my lawyer, who is the cc copy
19 recipient, and I have missed some deadlines
20 because my lawyer thought I had one due date and I
21 thought I had another, because a copy of that
22 letter goes to Homebuyers Warranty and they mail
23 it back to me, "Dear Homeowner, here is your
24 letter," so I've got one date from Homebuyers
25 Warranty and he's got another date from CAS, and

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1 we are both working together, even though CAS
2 doesn't want me to send in a letter separately on
3 slightly different due dates, you know, and then
4 the head of CAS, clearly in the file, has called
5 me a confused homeowner, and he even called me
6 confused because I expected an appeal that worked
7 and he's tried to remind me that an appellate
8 arbitrator is only obligated to make a cursory
9 review. I don't think that that's beneficial to
10 New Jersey to have someone out there who is only
11 making a cursory review.

12 I have to say that my appellate
13 arbitrator saved my house. I mean, he's got a
14 procedural problem of how CAS pays him, which
15 apparently DCA cannot, for whatever reason,
16 address, but the physical fact is he saved my
17 house and put it on a path to repair.

18 COMMISSIONER EDWARDS: Assuming the
19 footings are good.

20 MR. DONAHUE: Well, there is a rock
21 down there somewhere.

22 COMMISSIONER EDWARDS: Thank you
23 very much.

24 COMMISSIONER MARINIELLO: Mrs. Cyr,
25 are your windows replaced now?

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1 MRS. CYR: They are replaced.
2 Actually, what wound up happening -- this is an
3 interesting story -- we were originally awarded, I
4 think, eight windows and we were awarded eight on
5 the second arbitration, and they were all
6 different windows, but, yes, they did put in the
7 windows and I still -- all the other 17 of them
8 still operate pretty poorly.

9 COMMISSIONER MARINIELLO: Including
10 the eight that the original arbitrator said didn't
11 need to be replaced?

12 MRS. CYR: No, those are okay. But,
13 interestingly enough, when I was speaking to Mr.
14 Desch and I asked him to please move forward and,
15 you know, make another arbitration, he said to me,
16 "You may not like the results of this one any
17 better."

18 So, when I get eight the first time
19 and I get eight the second time, I'm thinking he
20 knew something, so -- yes, but it's as resolved as
21 it's going to be, other than going to the
22 compliance arbitration, which costs us money to
23 do.

24 COMMISSIONER MARINIELLO: How about
25 you, Mr. Fill? What is the status of the repair?

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1 MR. FILL: At the moment we are
2 waiting for some warmer weather so that we can
3 replace the brick veneer. We could have actually
4 had the whole thing completed just before the fall
5 last year, but the insurer on the warranty side
6 was stonewalling us. They wanted us to sign a
7 release to say that we would not put in another
8 claim against them before the work had even been
9 started, let alone completed.

10 COMMISSIONER MARINIELLO: I want to
11 thank the four of you. This is a very complicated
12 issue, and hearing it from individuals who have
13 been through it and the frustrations that you've
14 been through is very useful to us as a Commission.
15 Some of you -- it looks like Mrs. Cyr has owned
16 her home for about two years, more or less, and
17 Mr. Becraft, you've owned yours for --

18 MR. BECRAFT: Six.

19 COMMISSIONER MARINIELLO: -- six
20 years, and all of you still have some issues,
21 significant to each of you, which tells us
22 something about the way this system is and how
23 important it is that people like us take a look at
24 it and, hopefully, come to some honest
25 recommendations on.

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1 I want to appreciate -- let you know
2 how much we appreciate the time that you've put in
3 and how -- I figured -- just loosely calculating
4 in my head, I've got it figured, between the four
5 of you, you've spent \$100,000 or more just trying
6 to defend your own position, and that doesn't
7 include the amount of frustration that you've
8 dealt with, which is immeasurable, in terms of
9 dollars. I want to thank you for bringing that to
10 our attention and for letting us know how this
11 affects each of you in a real tangible, personal
12 manner, versus how we tend to look at things in
13 terms of statutes and paper pushing. This is very
14 helpful to us. Thank you.

15 MS. CYR: Thank you.

16 MR. FILL: Thank you.

17 MR. BECRAFT: Thank you.

18 COMMISSIONER SCHILLER: We'd like to
19 thank you for coming in and, as the commissioner
20 said, it's very time consuming. The battle is
21 obviously not over and, hopefully, we'll be able
22 to weigh in on it and do some constructive
23 recommendations that will hopefully help keep them
24 on the road, so I want to thank you once again for
25 coming.

-PUBLIC HEARING-

1 MS. GAAL: The next witness is Carl
2 Savage.

3 I would ask you to remain standing
4 and we'll have the reporter place you under oath.

5 CARL F. SAVAGE, after having been
6 first duly sworn, was examined and testified as
7 follows:

8 EXAMINATION

9 BY MS. GAAL:

10 Q. May we have your name, please.

11 A. Yes. My name is Carl Savage.

12 Q. And, Mr. Savage, what is your
13 occupation?

14 A. I'm the vice-president of a company
15 called Microstamping Corporation in Somerset, New
16 Jersey. We are a manufacturing company.

17 Q. And did you purchase a home in New
18 Jersey?

19 A. Yes, I did.

20 Q. And when was that?

21 A. The home was purchased in May of
22 1998.

23 Q. Who was the developer of the home?

24 A. The developer of the home was Alex
25 Falcinelli and Richard Paini under the corporate

-PUBLIC HEARING-

1 name of Harmony Residential.

2 Q. Harmony Residential, okay.

3 And how much did you pay for your
4 home?

5 A. \$356,000 and change.

6 Q. And that was in 1998?

7 A. That is correct.

8 Q. During the construction of the home
9 did you notice what you then considered to be
10 significant problems with the home?

11 A. The major issue we noticed during
12 construction was early on in the process the
13 foundation was collapsed in -- a part of the
14 foundation was collapsed during the backfilling
15 process.

16 Q. Part of the foundation was collapsed
17 during the construction?

18 A. That is correct.

19 Q. And is that something you
20 discovered?

21 A. That is something I discovered, yes.

22 Q. And what did you find out had
23 occurred?

24 A. Apparently the builder was playing
25 golf in Florida for the week, I believe it was in

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1 January or February. He had instructed the
2 excavator to backfill the foundation, which was
3 poured probably three weeks prior to that. The
4 excavator suggested he not do it, that the soil
5 was extremely wet and to wait. He was told to do
6 it anyway. During that process the front part of
7 the house, which also has a wrap-around porch with
8 an eight-foot foundation, did collapse and that
9 also collapsed the front foundation of the house
10 in, as well.

11 Q. Now, did you, at that point, talk to
12 the builder about what had happened?

13 A. When he came back from golfing, yes.

14 Q. And what did he say he was going to
15 do?

16 A. He said that this is not an uncommon
17 occurrence, that he was going to, as he called it,
18 butt splice the foundation, cut off where he
19 deemed it was acceptable and re-pour the damaged
20 part of the foundation.

21 Q. Let me get that word again. What
22 was it?

23 A. He called it a butt splice.

24 Q. Okay. And he said this was not
25 unusual when it happened?

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1 A. That's correct.

2 Q. And did the builder do something to
3 fix it at the time?

4 A. Basically, the builder had the
5 cement contractor come back out, remove the
6 damaged concrete, saw cut a fresh seam, and pour a
7 new section of foundation.

8 Q. Now, at the time you closed on the
9 home, did you see any problems connected to that
10 basement?

11 A. There was a minor amount of water
12 coming in at one of those splice areas, yes.

13 Q. And did the builder say that he
14 would take care of it?

15 A. Yes, he said he would.

16 Q. So you moved in expecting it to be
17 taken care of?

18 A. That is correct.

19 Q. And at that point was that the major
20 problem that you saw?

21 A. That was the major -- we had roughly
22 a long punch list. He was a couple months late in
23 finishing the house. Our family was moving from
24 Connecticut down to New Jersey, we had sold our
25 other home. We were under time constraints, so

-PUBLIC HEARING-

1 there were some issues that he did have to finish
2 prior to the close of the house, such as sanding
3 of the hardwood floors, some minor trim issues,
4 but the water problem was one of the problems on
5 the punch list.

6 Q. So, if I understand you correctly,
7 you were under pressure, if that's the right word,
8 to close on that house at the time?

9 A. That's correct.

10 Q. Now, as time went on, did you see
11 additional problems with your home?

12 A. Yes. Basically, I closed on the
13 home, my wife was still in Connecticut with the
14 kids. I would have Power of Attorney.

15 The day after the closing she walked
16 in and noticed the hardwood floors were not
17 correct. She noticed a lot of little items that I
18 just didn't pick up on that we added to the punch
19 list at that time.

20 Q. And did other conditions begin to
21 develop?

22 A. Yes. As time went on throughout the
23 summer -- we actually closed on the house in May.
24 Throughout the summer we started noticing the
25 cupping and crowning of the hardwood floors,

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1 whereby, if the kids would slide on the floor in
2 their socks, they would actually get slivers from
3 the edges of the wood coming up. Multiple cracks
4 in the Sheetrock.

5 We noticed in our master bedroom --
6 there is a little sitting room off to the side --
7 there was a raise in the elevation of about an
8 inch to an inch and a quarter. The upstairs
9 hallway foyer area we noticed is actually crowned,
10 whereby, if you held an eight-foot straight edge
11 on one end, you would be up about an inch and on
12 the other end it would be up about the same
13 amount.

14 Water continued in the basement. If
15 you remember, the 1998 period was one of the most
16 severe droughts we ever had, so that water problem
17 didn't really surface until the following winter,
18 whereby water just constantly poured in through
19 the crack.

20 Q. Was there a separation in the master
21 bedroom and the garage?

22 A. Yes. It's basically -- the
23 separation effect is there is the main house and
24 there is the garage area. The sitting room is
25 actually part over the garage area. It appeared,

-PUBLIC HEARING-

1 from our standpoint, that a whole section had
2 shifted.

3 Q. Any ceramic tiles pop?

4 A. We have ceramic tile throughout
5 quite a bit of the house. A lot of ceramic tile,
6 the grout was cracking, the tiles popping right
7 off. The kitchen cabinets, both the base cabinets
8 and the wall cabinets, were pulling away from the
9 wall and separating. Many of the doors in the
10 house would not close, including exterior doors,
11 because they were warped.

12 Q. So, these conditions became evident
13 over time?

14 A. They became evident over time and
15 became more severe over time.

16 Q. Any problem with the ridge beam?

17 A. The ridge beam in the house -- it's
18 a two-story, four-bedroom colonial with a very
19 tall roof. When we started seeing the problems in
20 the basement, and the water conditions were not
21 resolved after many attempts by the builder, he
22 suggested we contact a structural engineer to look
23 at it. While the engineer was looking at that, we
24 also asked his opinion on issues like the hardwood
25 floor, the continued cracking of the Sheetrock

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1 after multiple repair attempts.

2 He did some very quick analysis and
3 determined that the ridge beams in the attic for
4 the roof were undersized and there was, as he
5 called it, substantial deflection causing the roof
6 to actually move under certain stress, such as
7 high winds or other type of load forces.

8 Q. If I heard you correctly, you said
9 the builder told you to hire an engineer?

10 A. Correct. The builder basically was
11 at a loss for how to handle the water problem in
12 the basement.

13 Q. And at whose expense was that
14 engineer to be hired?

15 A. My expense.

16 Q. Now, the water problem in the
17 basement at that point, how bad had it become?

18 A. Bad enough whereby the first real
19 rain we had after we moved into the home wasn't
20 until early on in the winter. We had about two
21 inches of water in the entire basement.

22 Q. And that would be the winter of '98?

23 A. The winter of '98, early '99,
24 correct.

25 Q. Now, all of this that we are talking

-PUBLIC HEARING-

1 about is noticed by you and this is all after the
2 CO is issued?

3 A. That is correct.

4 Q. Okay.

5 You mentioned a moment ago the
6 builder didn't know what to do about the water.
7 Did the builder have any response to these other
8 problems you were noticing?

9 A. The builder suggested that most of
10 those items were what he considered punch list
11 items. That, even though we had repaired the
12 Sheetrock multiple times, he suggested we give it
13 about a year, wait for the house to go through one
14 entire heating and cooling cycle, and then he
15 would come back and fix the balance of the issues.

16 He said, relative to the hardwood
17 floors, he disagreed with our assessment of the
18 hardwood floors. He said that the finish on the
19 hardwood floors was acceptable, irregardless of
20 our children getting slivers, and that he would
21 not cover that.

22 Q. So, the builder told you to wait a
23 year?

24 A. Correct.

25 Q. And did you eventually contact your

-PUBLIC HEARING-

1 home warranty company?

2 A. Yes. In January of 1999, after the
3 major water problem in the basement, and after
4 months of either no response, inappropriate
5 responses, multiple repair attempts which failed,
6 we pursued the home warranty process.

7 Q. And who is your home warranty
8 company?

9 A. U.S.A. Home Warranty.

10 Q. Now, did you file a timely request
11 for dispute settlement, according to the terms of
12 the warranty?

13 A. Yes, we did, in January of 1999.

14 Q. And did you request a formal dispute
15 settlement?

16 A. That is correct.

17 Q. Did U.S.A. Home Warranty send
18 someone out to examine your home?

19 A. Yes, they did. They sent an
20 engineer from a company called MaGrann Associates
21 to investigate our claim.

22 Q. And to do some sort of an inspection
23 report on your house?

24 A. Correct.

25 Q. And did the MaGrann report

-PUBLIC HEARING-

1 essentially agree with the majority of the defects
2 that you claimed?

3 A. No. He agreed with every one of
4 defects we claimed.

5 Q. He agreed with every one?

6 A. Every single one, and he found some
7 on his own, quite honestly.

8 Q. He found more?

9 A. Right.

10 Q. Okay.

11 At that point what did you have to
12 do to move the process forward?

13 A. At that point we were told that
14 within a reasonable amount of time we would
15 receive a report from MaGrann, through Home
16 Warranty, which we did, approximately 30 days
17 later, and at that point the builder was
18 instructed through Mr. Sendelsky at Home Warranty
19 to supply us with our RSD, repair specification
20 document.

21 Q. Did you have to escrow any money?

22 A. At the time of the closing things
23 such as the front lawn were not done yet, the
24 hardwood floors had yet to be finished, the
25 driveway had not been paved, and we did escrow, I

-PUBLIC HEARING-

1 believe it was, \$12,000 in total, of which, by the
2 time we filed a claim, we had released about
3 5,000. There was roughly \$7,000 left in escrow at
4 that time.

5 Q. And who did you have to escrow it
6 with?

7 A. With our attorney.

8 Q. Now, at that point did you expect,
9 based upon the warranty book and the procedures,
10 that you were going to get that RSD, that repair
11 specification document?

12 A. That's what our belief was and
13 that's what we were told by Mr. Sendelsky.

14 Q. And who was Mr. Sendelsky?

15 A. He was the -- well, I guess now
16 there are two of them. One is the president and
17 one is the chairman of Home Warranty Corporation.
18 I'm not sure which one I was speaking to. All the
19 letters and documentation was from Leonard
20 Sendelsky, signed "Chairman of Home Warranty."

21 Q. Did your attorney expect the same
22 thing you expected?

23 A. Yes, he did.

24 Q. Were you ever advised by U.S.A. Home
25 Warranty as to whether or not a repair

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1 specification document was required?

2 A. Yes. They told us that one was
3 required. They informed us -- even a copy of a
4 signed letter to the builder -- that they would be
5 expecting one in what they called a timely manner.

6 Q. Did they tell you how long a timely
7 manner was supposed to be?

8 A. No, they didn't.

9 Q. How long did it take?

10 A. Roughly four months.

11 Q. Four months you waited for an RSD?

12 A. Correct.

13 Q. And did the warranty company ever
14 make any representations to you as to whether they
15 could or could not do something without that RSD?

16 A. They said that that was the next
17 step of the process and they really couldn't force
18 the builder to comply, to give us an RSD. They
19 would just keep pressuring him until such time as
20 he did comply.

21 Q. So, some months later you got an
22 RSD?

23 A. That's correct.

24 Q. That would be from Harmony
25 Residential?

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1 A. That was from Alex Falcinelli of
2 Harmony Residential.

3 Q. And did that document describe or
4 tell you how the repairs were going to be made?

5 A. Not really. It started by saying
6 the number one problem with water in the
7 basement -- it stated that the water in the
8 basement problem had been corrected, which it had
9 not been.

10 He did not go into details as far as
11 how to fix the hardwood floors, the tile, or any
12 other issues. He just basically said he agreed
13 with them and he said, "Fix and/or repair as
14 necessary."

15 Q. So, you are saying the RSD began by
16 saying the water problem had been corrected?

17 A. That is right.

18 Q. And it was worse than ever?

19 A. Absolutely.

20 Q. Were there any industry standards
21 used or performance standards or anything in that
22 RSD as to how those repairs were going to be made?

23 A. Yes. The home warranty booklet
24 specifically mentioned the National Oak Flooring
25 Institute of America. At the time the builder

-PUBLIC HEARING-

1 disagreed with our claim on the hardwood floors,
2 we contacted them directly, talked to their
3 technical supervisor. He sent us quite a bit of
4 literature on the specific issue of cupping and
5 crowning, the reasons for it, what's acceptable
6 and what's not, and at that point we were very
7 confident we were fully within our rights that the
8 floor was not up to standards.

9 Q. Did you and your attorney have some
10 concern or difficulty to accept that RSD as a bona
11 fide document?

12 A. Absolutely. It was incorrect,
13 incomplete, and didn't fulfill, in our opinion, or
14 Mr. Sendelsky's, the intent to which it was
15 supposed to.

16 Q. So, you are saying that Mr.
17 Sendelsky agreed with you that it wasn't adequate?

18 A. Yes, he absolutely agreed that it
19 was not adequate.

20 Q. Did he tell you that or write that
21 to you?

22 A. He told us that.

23 Q. Did U.S.A. Home Warranty direct the
24 builder to prepare an RSD with the requisite
25 details?

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1 A. No, he didn't.

2 Q. Did he tell you whether he could or
3 he couldn't?

4 A. No. Basically, he told us that we
5 needed to stop generating paperwork and accept the
6 RSD as it's stated, or go to the next level in the
7 process.

8 Q. So, I just want to make sure I
9 understand you. Mr. Sendelsky tells you he didn't
10 think it was adequate, either, but he told you to
11 stop generating paperwork?

12 A. Correct.

13 Q. And did they do that by letter?

14 A. They did that by letter to our
15 lawyer. My lawyer, Ron Peles, of Greenwich
16 Township, had many conversations with Mr.
17 Sendelsky, as I did.

18 Q. So, basically he's saying, as I
19 understand you, accept the RSD, go forward with
20 arbitration, or pursue some other avenue?

21 A. That is correct.

22 Q. Let me see if I get this right. You
23 have a builder who hadn't been able to repair the
24 defects after several failed attempts, am I right?

25 A. Actually, he made conditions worse

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1 in some cases.

2 Q. You had an option to accept that
3 after what you had been through with the builder
4 and gave him another attempt to repair it?

5 A. That's correct.

6 Q. You had an RSD document that you
7 didn't feel, and everyone seemed to agree, didn't
8 even specify how the repairs would be made?

9 A. That's correct.

10 Q. And you can choose to go to
11 arbitration in a system that I guess you probably
12 felt hadn't worked real well for you?

13 A. Well, it was not only that. Our
14 impression of arbitration and Mr. Sendelsky's
15 comment about arbitration were when the homeowner
16 and the builder disagree on the issues. There is
17 no disagreement on the issues. Absolutely none.

18 It was strictly a matter of how they
19 were to be fixed and basically who was going to
20 bear the burden of cost of those repairs. So
21 arbitration, in our opinion, was an invalid remedy
22 to the situation.

23 Q. And the last option, according to
24 what U.S.A. Home Warranty told you, was to what,
25 litigate to protect yourself?

-PUBLIC HEARING-

1 A. Pursue other options.

2 Q. And what did that mean to you?

3 A. Litigate.

4 Q. So -- I'm not going to guess. You
5 tell me. Which door did you pick?

6 A. What we thought was the one that
7 would work, which would be the litigation route.

8 Q. So you chose litigation.

9 As a result of the litigation, what,
10 if anything, happened?

11 A. Well, the litigation strung out for
12 a series of years, believe it or not. We were
13 instructed to hire a structural engineer, the same
14 gentleman that originally came out to look at the
15 home. Ironically enough, there were no
16 dimensional blueprints for the home, either
17 through the builder or on the record at Greenwich
18 Township. The building inspector said our home
19 was a prototype home and, therefore, detailed
20 plans need not be filed.

21 That's another story, but basically
22 our home is not a prototype home. It's
23 dimensionally far different than the prototype
24 plans on file. Mr. Ken Stoyack, our licensed
25 engineer, performed basically a calculated study

-PUBLIC HEARING-

1 on the home, as far as the stress factors, the
2 load-bearing walls and a lot of calculations in
3 determining which -- from a structural standpoint
4 only, what the defects were.

5 Q. Did you receive a damage award?

6 A. Yes, we did.

7 Q. And how much was it?

8 A. \$80,000.

9 Q. Did you receive the money?

10 A. No, we did not.

11 Q. Why not?

12 A. Well, basically, Harmony
13 Residential, as it's called, even though the
14 owners are operating under many different names,
15 is currently -- there are no assets left for
16 Harmony Residential, with the exception of a few
17 performance bonds, of which we have received
18 \$9,000 from the Township of Hopatcong in Warren
19 County, and there is still an \$18,000 performance
20 bond in Greenwich Township for the same
21 development that we live in.

22 Q. Did someone describe Harmony
23 Residential as a shell corporation?

24 A. Yes. During the depositions --
25 pretrial depositions, one of the partners, Richard

-PUBLIC HEARING-

1 Paini, who is basically a financial backer, said
2 that Harmony Residential is nothing but a, quote,
3 unquote, shell corporation.

4 Q. So, one of the owners of the company
5 called it a shell corporation?

6 A. Absolutely.

7 Q. And I think you just mentioned that
8 some of these principals or all of these
9 principals continue to build in New Jersey?

10 A. They continue to build. They are no
11 longer building together, but they both have
12 multiple corporations under different names and
13 are currently building homes in Warren and
14 Hunterdon County.

15 Q. Were there problems with your home
16 that you feel were directly connected to
17 construction code issues or inspections?

18 A. Absolutely.

19 Q. What kind of problems?

20 A. Well, first the -- the issues of
21 ridge beams and the size of the beams. The
22 blueprints of the home are not available. Mr.
23 Degan, the township official, testified under oath
24 during the trial that he not only probably
25 wouldn't see the defects, but, since he didn't

-PUBLIC HEARING-

1 bring plans to the site to inspect it, he wouldn't
2 know whether they were in or out of specification.

3 Visual attributes, such as ridge
4 beams and the boards that basically go into them,
5 are visually out of code. Both of the experts who
6 testified, not only mine, but the expert for
7 Harmony Residential, both testified under oath
8 that, had Mr. Degan looked at those, he should
9 have noticed that they were, indeed, not up to
10 code specifications.

11 Q. So both experts testified about
12 that?

13 A. Correct.

14 Q. Now, any of the repair work that
15 you've done at your home, was it done under the
16 direction of a licensed engineer or using any
17 sealed blueprints or anything like that?

18 A. At that point, no, it was not.

19 Q. So, any work the builder did do was
20 not using blueprints or --

21 A. No, it was not.

22 Q. Okay.

23 Was the work performed by the same
24 builder?

25 A. The attempted repair work?

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1 Q. Right.

2 A. Both by himself and his
3 subcontractors.

4 Q. Did the construction official come
5 out and inspect it?

6 A. No, he didn't. To my knowledge, at
7 that point, he did not.

8 Q. None of the repair work, to your
9 knowledge, was inspected?

10 A. Correct.

11 Q. Now, was there ever, to your
12 knowledge, any Notices of Violation issued against
13 the builder?

14 A. There were quite a few Notices of
15 Violation. One, in particular, to our home. Once
16 we found out that major repair work was done on
17 the home without a sealed engineer's specification
18 and without the proper permits being filed, we
19 requested of Mr. Degan to file a Notice of
20 Order -- Penalty against Mr. Falcinelli.

21 After months of letters and phone
22 calls and getting the Township of Greenwich
23 township committee involved, a Notice of Penalty
24 was, indeed, filed against Mr. Falcinelli.

25 He had other notifications filed,

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1 also. He built his own private residence in the
2 township, moved into that for a period of a couple
3 months without having of a C of O. He had also
4 built a rental home in the property, allowed
5 tenants to move in without a C of O. I do not
6 believe that he was actually issued an Order of
7 Penalty on that, because he did get the proper
8 documentation, once he found out that he was,
9 indeed, caught.

10 Q. So, you had -- you pressured the
11 city to issue violations?

12 A. That's correct.

13 Q. Did you ever speak with anyone at
14 DCA regarding the problems with your home?

15 A. Yes. Once the lawsuit was finished
16 and we were still having issues, I did contact, by
17 letter, Mr. Gerry Grayce. I detailed the
18 situations at hand and basically asked him to look
19 into Mr. Degan's actions for the main purpose of
20 not having anybody else go through the same
21 situations I did. My opinion was I should not
22 have been issued a C of O for the home.

23 Q. Did anyone at DCA ever disagree with
24 the alleged code violations?

25 A. I sent the letter back a little more

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1 than a year ago, in December of, I believe it was,
2 2002. I was just notified within the past month
3 by Mr. Rick Broder, the investigator who worked on
4 my case, that they did, indeed, find some issues
5 in Mr. Degan's performance. They had imposed a
6 \$250 fine and quote, unquote, further education
7 necessary, but he also stated during that same
8 conversation that he personally disagreed with the
9 findings of both experts, both mine and the
10 builder's experts' testimony given at trial. That
11 he did not believe that the building code defects
12 were there, in some cases, or as serious as they
13 were represented by both experts.

14 Q. Now, these were two expert
15 engineers?

16 A. Licensed engineers in the State of
17 New Jersey. Structural engineers.

18 Q. One was yours, one was the
19 builder's?

20 A. That's correct, and they did not
21 disagree on any of the issues.

22 Q. And he indicated he disagreed with
23 that?

24 A. That's right.

25 Q. Was he, do you know, a licensed

-PUBLIC HEARING-

1 engineer?

2 A. I asked him that specific question
3 and he stated "No," but he was a carpenter and his
4 basic general knowledge of carpentry led him to
5 believe that the conditions were not as severe as
6 stated by both experts.

7 Q. Did he come out and look at the
8 house?

9 A. He came out and looked at the house
10 probably five or six months ago.

11 Q. How much money have you personally
12 expended in connection with the defects in your
13 home?

14 A. Thus far, between legal fees,
15 engineering fees, court costs, we spent over
16 \$80,000 just in that end alone, and thus far I've
17 put about 30 to \$40,000 of money into repairs, and
18 with still a lot to do. The total repair estimate
19 on the home was approximately \$134,000 of
20 structural remediation needed in the home.

21 Q. So you still have repairs left?

22 A. Still have a long way to go, yes.

23 Q. Do you have any estimate of what's
24 left to be done, in terms of dollars?

25 A. Well, the estimates -- I'm doing a

-PUBLIC HEARING-

1 majority of the work myself under the direction of
2 a licensed engineer. Without labor it's about 60
3 to \$65,000.

4 Q. Do you feel you were protected at
5 all by your New Jersey new home warranty?

6 A. Not a bit.

7 Q. Do you have any recommendations for
8 the Commission?

9 A. Well, the only recommendation I
10 would make is the home warranty process obviously
11 is not working. The concerns that I do have, it's
12 not just with the home warranty, but it's also the
13 general liability insurance the contract is
14 covered -- doesn't cover negligence.

15 The Harleysville Insurance Company,
16 who represented the builder during the suit, and
17 was subsequently denied -- denied pay against the
18 claim is stating that builder negligence is the
19 root cause for my problems, and builder negligence
20 is not covered. My suggestion would be to enforce
21 a policy whereby, at the time of the closing, a
22 negligence -- basically, a blanket or umbrella
23 policy is implemented with a reputable insurance
24 company sanctioned by the state to cover
25 situations such as this.

-PUBLIC HEARING-

1 It's ridiculous that homeowners such
2 as myself, the only people who did nothing wrong,
3 are the ones that suffer the financial burden that
4 we are going through. As I look at the claim
5 today, even though there is still an outstanding
6 judgement, the only monies I possibly can recoup
7 is the \$18,000 from the Township of Greenwich, and
8 even they, for the past year and a half, have been
9 reluctant to release that. They are trying to
10 hold onto that money to cover some other expenses
11 that Harmony Residential and Mr. Falcinelli still
12 owe the township.

13 MS. GAAL: That's all I have.

14 Before I turn you over to the
15 Commissioners, I just want to thank you
16 personally. I know you've been to two hearings
17 and we appreciate your coming back a second time.

18 MR. SAVAGE: Thank you.

19 COMMISSIONER FLICKER: Mr. Savage,
20 if I understand correctly, your builder didn't do
21 what they should have done, the construction
22 officials in your town didn't do what they should
23 have done. When it was repaired, that wasn't
24 adequate. The construction official still didn't
25 do what they should have done. Then the Home

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1 Warrant program failed you, DCA failed you,
2 litigation was only marginally successful.

3 Do I have it right?

4 MR. SAVAGE: Yes. Basically, poster
5 child type syndrome. And even the litigation,
6 successful, as far as getting a judgment,
7 successful, as far as -- I'll never even recoup
8 the legal fees I put into this. So, as I look at
9 it, if any one of those situations had performed
10 to the intent they were supposed to, I probably
11 wouldn't be in the situation, starting from never
12 receiving a C of O. And, if that happened, the
13 home warranty had worked, if any of those
14 processes had come close to meeting the needs they
15 were intended, we would not be in this \$200,000
16 financial situation we are right now.

17 COMMISSIONER FLICKER: I'm sorry
18 that buying and building a home became such a
19 nightmare for you, but thank you for coming down
20 and talking to us.

21 MR. SAVAGE: Thank you.

22 COMMISSIONER EDWARDS: Do you have
23 any recommendations with reference to the Home
24 Warranty program?

25 MR. SAVAGE: Eliminate it. It's not

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1 worth the paper it's written on and what's really
2 egging me is I had to pay for it.

3 COMMISSIONER EDWARDS: Should we
4 replace it with anything?

5 MS. SAVAGE: I don't know what you
6 can replace it with. I mean, my recommendation,
7 as far as having an insurance policy of some
8 sorts, not necessarily a home warranty -- in my
9 opinion, the home warranty is a bunch of
10 contractors policing a bunch of contractors. It's
11 politically motivated, it doesn't have the
12 enforcement rights to do anything, and it's a
13 bureaucracy that can just drag things out. It's
14 more for the protection of the builder than the
15 protection of the homeowners.

16 I would like to see some other
17 type -- even if it's a state agency, some other
18 sort of system that, if I'm going to pay money
19 into it, at least have it such that it's going to
20 be there to protect my knees.

21 I've heard conversations today that
22 U.S.A. Home Warranty, in reality, should have
23 never been sanctioned in the State of New Jersey.
24 If I wasn't infuriated then, I sure am now.

25 The same government that is supposed

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1 to be here to protect us is the one that
2 ultimately started this whole fiasco. And it's
3 the Township of Greenwich, it's the building
4 inspector, it's the group in Trenton that
5 sanctioned Home Warranty. I just don't know where
6 it ends. I don't see how a person -- even though
7 I'm not as affluent as some of the other people
8 I've heard today, I thought that I had enough
9 financial resources to have the right thing happen
10 in the long run and, after \$80,000 of money thrown
11 down the drain, which I'll never recoup, I have to
12 question my own judgment. You would think that
13 good would prevail, but that's not the case here.

14 COMMISSIONER EDWARDS: Thank you
15 very much.

16 COMMISSIONER SCHILLER: Mr. Savage,
17 thank you very much for coming in and adding to
18 the information base that we need. Thank you.

19 MR. SAVAGE: Thank you.

20 MS. GAAL: Mr. Chairman, we'd like
21 to take a short break before Mr. Fallon falls
22 down.

23 COMMISSIONER SCHILLER: We'll resume
24 at 3:30.

25 (Recess called at 3:20 p.m.)

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1 (Resumed at 3:33 p.m.)

2 COMMISSIONER SCHILLER: Ladies and
3 gentlemen, please.

4 Counsel, call the next witness,
5 please.

6 MS. GAAL: Peter Desch.

7 Mr. Desch, would you stand just for
8 a moment and be placed under oath by the reporter.
9 PETER DESCH, after having been first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MS. GAAL:

13 Q. Thank you. You may be seated.

14 May we have your name, please, for
15 the record.

16 A. Peter Desch.

17 Q. And you are employed by DCA?

18 A. Employed by the Department of
19 Community Affairs, yes.

20 Q. What is your position there?

21 A. I'm the chief of the Bureau of
22 Homeowner Protection.

23 Q. How long have you held that
24 position?

25 A. I've served in that capacity since

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1 about 1987.

2 Q. And, just briefly, how long have you
3 been employed at DCA?

4 A. Since 1976.

5 Q. Now, the Bureau of Homeowner
6 Protection, we've heard a little bit about it, and
7 it operates in connection with the New Home
8 Warranty and Builders Registration Act, am I
9 right?

10 A. And others, yes.

11 Q. And do you know when that program
12 was started in New Jersey?

13 A. The Act -- the New Home Warranty and
14 Builders Registration Act was enacted in 1978.

15 Q. Are there a number of main functions
16 that your office has? Maybe three or four of them
17 that you have?

18 A. In addition to warranty?

19 Q. No. In the warranty area.

20 A. Well, under the Warranty Act we are
21 responsible for approving and monitoring the
22 private warranty plans. You had some testimony on
23 that. We are responsible for registering all new
24 home builders, regardless of what plan they are
25 in.

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1 Q. Right.

2 A. And taking actions against builder
3 registrations for various causes, so we have a
4 registration section, plus we have a compliance
5 section that deals with compliance throughout the
6 bureau.

7 We have a warranty enrollment
8 section, which is a section that deals with the
9 builders that participate in the state warranty
10 plan that enroll their homes with the State
11 Warranty Security Fund, and then we have a claims
12 administration staff and a claims investigation
13 staff.

14 Q. Now, I recognize you weren't
15 involved in enacting the legislation, but do you
16 have any understanding as to how the program came
17 about?

18 A. Well, I think the preamble to the
19 legislation deals with that. I think Commissioner
20 Edwards probably also mentioned that he has a lot
21 of knowledge on that. I was not there.

22 Q. We understand that.

23 A. It's totally anecdotal on my part to
24 understand that the legislature was looking for a
25 remedy to the types of problems that people were

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1 running into. As testimony here revealed, these
2 problems haven't gone away. They wanted to
3 offer -- you know, you are looking at the United
4 States, you are looking at 50 states and,
5 typically speaking, at the time in 1978, any --
6 any conflict between a homeowner and a builder
7 that had to be resolved formally only could be
8 resolved in court. I believe in 49 other states
9 that's still the case.

10 I think New Jersey decided to
11 establish a procedure in the Warranty Act that
12 provided a -- an alternative to homebuyers and
13 builders that some of these disputes could --
14 could be remedied through an arbitration process
15 and to leave the courts out of it.

16 Q. So, from what you understand, they
17 were trying to find some alternative to
18 litigation?

19 A. Exactly.

20 Q. Have you anecdotally heard that the
21 program was something perhaps offered by builders?

22 A. Well, when the legislature
23 determined that they wanted to take this course,
24 the obvious thing to do is to look to see what's
25 out there. What was out there in 1978 was that

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1 the National Association of Home Builders was
2 offering a warranty plan, it was called the
3 Homeowners Warranty, somewhat of a generic term
4 for what we do, but Homeowners Warranty was a
5 creation of the National Association of Home
6 Builders. It had an alternative dispute
7 resolution mechanism built in. It also had
8 objective standards for -- for -- performance
9 standards for what is and what is not a defect
10 under -- under the limited warranty.

11 Q. So, did that program become the
12 basis for what we have in New Jersey?

13 A. Absolutely.

14 Q. And is that what's been so commonly
15 referred to as the HOW program?

16 A. Yes, everything is referred to as
17 the HOW program --

18 Q. Okay.

19 A. -- but, technically, the Homeowners
20 Warranty Corporation was the -- was the model for
21 the -- the legislation.

22 Q. I think I saw you here most, if not
23 all, of today. Am I right?

24 A. That's correct.

25 Q. We heard some testimony today that

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1 three-quarters of the builders in the State of New
2 Jersey are registered under the state warranty
3 plan and three-quarters of the new homes are
4 warrantied through the private plans.

5 Do you agree with that number?

6 A. Yes, that's a valid assessment of
7 what the population looks like.

8 Q. And also we've heard today that,
9 based on our assessment, that the private plan
10 side represents and services about 181,000
11 warranties and the state plan services about
12 56,000 home warranties. Does that sound about
13 right?

14 A. About right.

15 Q. Is that something that you -- and I
16 don't mean, necessarily, you, personally, but
17 DCA would have focused on prior to our inquiry?
18 Was that the kind of thing that you all were aware
19 of and focused on before we started asking
20 questions?

21 A. We understood that those were
22 roughly the dimensions of the market.

23 Q. You were aware of that?

24 A. Sure.

25 Q. One of the issues that you heard

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1 about today is the fact that there is only one
2 individual, Ken Butko --

3 A. Um-hum.

4 Q. -- who is assigned to deal with the
5 private plan program and that there are
6 potentially 181,000 warranty claims or issues
7 there.

8 Why is there only one person?

9 A. It's all we need.

10 Q. That's all you need?

11 A. That's all we need.

12 Q. And have you ever considered needing
13 more people or putting more people on?

14 A. Considered? Sure.

15 Q. And has he asked for more help?

16 A. He was -- well, Ken even expressed
17 in his testimony that he had asked, when we
18 decided not to replace a person who was retiring,
19 and then a second person -- actually, two. The
20 secretary retired, also.

21 To give you a whole rundown of the
22 staff, I would be more than happy to do that. In
23 terms of the workload and dimension, that's what I
24 do as a manager, I look at workload. I -- there
25 may be 180,000 warranties out there, but,

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1 technically speaking, when you look at private
2 plan warranties and what we do, we have four
3 approved private plans, they are up for renewal
4 every two years, that's two plans a year, that's

5 one plan every six months, and I'm sure your
6 investigators can bear me out on this because
7 they've looked at all our data, we've certainly
8 made everything possible -- we made everything
9 available to them, and you find that the one
10 person -- and he's doing a great job for us, no
11 doubt about it, but he was dealing with maybe
12 something less than a hundred complaints over the
13 last year, not counting, obviously, a number of
14 phone calls that he may not have actually created
15 a file on, and I don't think you heard Mr. Butko
16 complain that he's overworked or that he can't
17 keep up with it. He can, he does, and he does a
18 very good job at it, but we really don't need
19 additional staff.

20 The other thing you should
21 understand is that the way the bureau is organized
22 doesn't necessarily require Mr. Butko to do every
23 possible thing that needs to be done. We have a
24 builder registration section that does a lot of
25 work checking things for Mr. Butko, if he has a

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1 question about a builder, what plan he's in, what
2 warranty might be available. Other people check
3 that to see -- if we get a phone call and someone
4 says, "I have a problem with my builder," the
5 first thing we usually check is what warranty plan
6 is involved. Mr. Butko doesn't have to get
7 involved in that. Someone else does.

8 We have a compliance section that
9 serves the entire bureau, which means that, if Mr.
10 Butko is at his wits end in getting, as he called
11 it -- you know, his persuasion of getting the plan
12 to do the right thing or to follow their thing or
13 to correct them, and it comes up.

14 We do things a little bit
15 differently in New Jersey and a lot of the staff
16 out in Pennsylvania or out in Colorado, when they
17 hire them, they are not used to dealing with New
18 Jersey, so it requires a guy like Ken Butko to get
19 on the phone once in a while and say, "In New
20 Jersey you do it this way," and that's what
21 happens.

22 Q. Do you think that all the people
23 with problems are getting to Mr. Butko?

24 A. Well, I doubt that very much. That
25 would be a foolish statement for me to make. Ken,

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1 in fact -- and he said that, it was his
2 suggestion, I recall it very vividly, when he
3 said, "The only way" -- because it was also in the
4 context of doing a survey, you know, and he said,
5 "The only way we can really be sure that people
6 know is to make sure that the plans put our name
7 and our telephone number in the book," and, so, we
8 required the plans to do that, and certainly you
9 would anticipate that, if someone is having a
10 problem -- I know I don't read my warranties.

11 Q. Right.

12 A. You know, they go into a drawer
13 somewhere, I would never read them, but, if I had
14 a problem, I would read it, and then I would come
15 across the name.

16 We did that. I don't know of many
17 agencies that require that. I don't see that in
18 my homeowners insurance policy or anything like
19 that, but we did that, and, so, you would hope
20 that people would, if they see that, and that was
21 our effort to make sure that they could contact
22 us.

23 Q. Do you know how many major
24 structural defects have been claimed or reported
25 by New Jersey homeowners in both the private and

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1 the state plans?

2 A. I -- I don't know it offhand to
3 testify here. I can certainly get that number for
4 the state plan, you know, in a very quick period
5 of time.

6 Q. How about on the private side?

7 A. Just ask. We would ask. If we
8 needed to know that, we would ask.

9 Q. That's my question. Is it reported
10 to you?

11 A. If we ask.

12 Q. But it isn't normally reported?

13 A. No.

14 Q. Okay.

15 A. If we had a need to know it, we
16 would ask, they would tell us.

17 Q. How about the --

18 A. And, by the way, it is reported in
19 some census, insurance books and so on, but, quite
20 frankly, it's not something we require them to
21 report on a regular basis.

22 Q. What about the problems that are out
23 there with the defects claimed that don't
24 technically qualify as a major structural defect?
25 Is there any -- is there any requirement that the

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1 private plan warranty companies report that
2 information to you so you get some sense of what's
3 going on out in the construction world?

4 A. Well, we really do feel we have a
5 sense of what's going on out there because, unlike
6 a lot of state agencies that just regulate, we are
7 actually operating a warranty plan.

8 Q. No. I'm talking about the private
9 plans.

10 A. I don't -- I don't -- they are not
11 required to report and, if it's not a major
12 structural defect, no, they don't. We would not
13 know that.

14 Q. Have you considered or has anyone
15 over there considered any potential changes to the
16 warranty provisions, such as making -- extending
17 the coverage for material and workmanship or time
18 deadlines? Any of those --

19 A. Discussions -- I mean, I've worked
20 there since 1987. I have an excellent staff. I
21 have good people that work diligently to try to
22 make things right, to do it right, and, yes, there
23 is always discussions about what changes we can
24 make and, you know, one of the things that the
25 Commission should understand is that, when you are

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1 dealing on a -- on a -- on an executive branch
2 level, you are dealing with your regulations and
3 improving the program you can deliver. The
4 warranty really is defined in the statute, which
5 makes it a matter of -- of, you know, policy
6 recommendations to the legislature.

7 Q. Have there been any that you are
8 aware of?

9 A. Over the years there has been -- you
10 know, I -- presumably, there are some. I don't
11 really know. I can't really testify on that.

12 Q. Have you advanced any?

13 A. I have had discussions with people
14 on this. I have not advanced any.

15 Q. Okay.

16 Do you collect any statistics at all
17 or analyze complaints on the private plan side to
18 see if there are any patterns or abuses?

19 A. I would rely on Mr. Butko to do
20 that. I assume he does look at that. You know,
21 it's the focus of the agency to get it corrected.
22 It's always been our focus that, if someone
23 contacts us, they are not really interested in our
24 statistics, they are interested in getting their
25 house fixed, and, so, when you do that, you are

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1 basically solving the problem, getting it
2 corrected. That sort of settles the case.

3 Q. I guess my question goes more toward
4 maybe not the ones that finally get to him, in
5 terms of complaints, but, rather, any overall
6 filings that are made on the private side by
7 homeowners in general. Did you look at that at
8 all?

9 A. I don't -- I'm not really quite sure
10 what you are asking for.

11 Q. Do you keep any records or collect
12 any data as to what claims are filed by homeowners
13 against the private plan warranties overall?

14 A. Yes, there are reports that are done
15 on a quarterly and a semi-annual basis, in terms
16 of the participating builders and number of claims
17 and that sort of thing overall.

18 Q. And do you study those at all? Can
19 you give us any sense of any trends one way or
20 another? Anything along that line?

21 A. I really have not prepared to do
22 that.

23 Q. Okay.

24 Do you have any idea how many
25 complaints your office has received on the private

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1 plan side?

2 A. I looked at -- for the last 18
3 months or so, I looked at a hundred and -- about a
4 hundred.

5 Q. And can you tell us how they broke
6 or --

7 A. Well, you know, people contact us
8 more often than not because they are having a
9 problem with their builder, and what we try to do
10 initially with them is to -- to sort out what
11 their problems are, to help them identify the
12 problems with respect to what might be covered
13 under the warranty, what issues they might be
14 dealing with, in terms of other remedies that
15 they've already taken. You know, you mentioned
16 escrow on a case that came up.

17 You know, people do try to protect
18 themselves at the closing by holding money in
19 escrow, which is, you know, obviously, an
20 excellent idea. And then we direct them to their
21 warranty plan, if -- you know, if coverage is
22 available.

23 Q. Now, the hundred you looked at,
24 those are private plans?

25 A. That was all private plan, right.

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1 Q. Was that in anticipation of coming
2 here?

3 A. No, no. It was -- it was a while
4 ago.

5 Q. Now, we've heard little bit about
6 this today and I just want to clarify this from
7 you. Do you have a procedure in place to audit
8 automatically referred alleged construction code
9 violations over to the DCA's Regulatory Affairs
10 office?

11 A. You are actually -- what you mean
12 is, do we refer a letter that alleges
13 construction --

14 Q. Right.

15 A. No.

16 Q. No?

17 A. We don't have an automatic
18 procedure.

19 Q. Did -- was there one at one time?

20 A. No.

21 Q. Do you refer some over there?

22 A. Yes.

23 Q. And who makes the decision? You?

24 A. I like to see them all.

25 Q. Okay.

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1 A. You know, I do like to see them all
2 that are going out. I just like to know what my
3 people are referring.

4 Q. But you are the one that makes the
5 decision as to what --

6 A. Generally speaking, I do see them,
7 yes.

8 Q. Is there any reason why you don't
9 send them all over?

10 A. The reason is that a lot of them
11 aren't necessarily articulated in a way that would
12 make me think that the code official had made an
13 error or that there actually is a code violation.
14 Some -- first of all, the idea of contacting my
15 agency means you are filing a warranty claim,
16 which means that the service we are trying to
17 provide is to provide a warranty service.

18 I don't think very often the people
19 that mention code violation as a defect or, if
20 they have a defect and what they are saying about
21 the defect, are all that interested in whether or
22 not the monitoring section of the department that
23 monitors the performance of construction officials
24 is advised.

25 Q. Hasn't it occurred to you or anybody

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1 over there that it might be important for them to
2 know if --

3 A. Well, there is a lot of --

4 Q. Excuse me.

5 -- violations are being missed by
6 construction officials?

7 A. Well, I think -- I think -- and if I
8 work -- quite frankly, I work very closely with
9 the guys in Reg Affairs and we deal with a lot of
10 cases together. A lot of their staff worked for
11 warranty at one time. I've worked with the head
12 of that office since 1987 and I know them to be a
13 very professional and caring group and I know that
14 they are all over the state every day looking at
15 just what you said.

16 I think they have a very good idea
17 of who -- you know, where a code official's
18 responsibilities lie, what training they might
19 need, what they are missing and so on.

20 Q. So you don't think referring any of
21 these allegations might help them out, in terms of
22 detecting patterns or picking up something they
23 weren't aware of?

24 A. Well, a lot of cases -- like, for
25 example, a lot of cases that I'll get across my

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1 desk I know they already know about and they
2 already have an investigation. A lot of the
3 letters that are written to us will even indicate
4 that they've already contacted so and so in Reg
5 Affairs.

6 Q. Do you report --

7 A. So why would I refer such a thing,
8 if they've already contacted, and, in fact, Reg
9 Affairs -- I'm sorry, I don't mean to use the
10 shorthand. The Office of Regulatory Affairs may
11 actually refer that person to us, saying, you
12 know, "We'll come out and look, you know, but you
13 have problems, you need to solve your problems,
14 you should file a warranty claim." So we'll get a
15 letter that says, "I have code problems."

16 Q. Did the Office of Regulatory Affairs
17 or anyone else ever tell you not to send them
18 over?

19 A. Not per se.

20 Q. What does that mean, "Not per se?"

21 A. Not to say, "Don't ever send
22 anything." You know, they may have said, "Don't
23 send the de minimis cases, don't send the ones we
24 already know about, don't do this, you know, we
25 are getting -- we are getting duplicates of the

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1 same thing."

2 Q. Did you tell anybody on our staff --

3 A. You have to understand, it also
4 looks like you're -- you know, the public is very
5 sensitive to the fact of being, you know, brushed
6 aside and being directed to other agencies, and
7 our agency tends not to do that. We tend to, you
8 know, try to respond to what we need to respond
9 to.

10 Q. Well, we weren't suggesting that you
11 boot it over there. I'm suggesting that you
12 notified them in addition to performing your
13 duties.

14 A. I would have to testify that I
15 believe, if there was anything we thought they
16 needed to know, or at least I thought they needed
17 to know, I would certainly send it over there.
18 I've never been reluctant to send them a case that
19 I thought they needed to look at.

20 Q. Now, in July of 1995 U.S.A. Home
21 Warranty was admitted as a New Jersey home
22 warranty private plan provider, am I right?

23 A. I wouldn't be sure on the date, but,
24 yes.

25 Q. Do you know if the Department of

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1 Community Affairs waived any statutory
2 requirements concerning the financial security of
3 the company by allowing them to provide
4 certification of only one-sixth of their purported
5 operating income?

6 A. I know we did not.

7 Q. You did not?

8 A. You said "Statutory."

9 Q. Excuse me?

10 A. You said, did we waive any statutory
11 requirements? We didn't wave any statutory
12 requirements.

13 Q. Did you waive any requirements?

14 A. There was a requirement -- there is
15 a requirement in our regulations that basically
16 requires an applicant to show us an audited
17 financial statement.

18 Q. And was that waived?

19 A. I'm not -- I think it was, in the
20 sense that this was a start-up company and they
21 couldn't show us a financial statement from a year
22 because they hadn't existed, and, so, using what I
23 considered common sense at the time, we looked at
24 what we were trying to accomplish. We focused on
25 what we thought we needed to know, in terms of the

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1 viability of the company.

2 Q. And was that done over some of the
3 concerns of your staff?

4 A. Yes, it was.

5 Q. Can you name any other examples of
6 home warranty companies where such requirements or
7 any requirements were waived?

8 A. You know, I've been a regulator
9 since 1987, I deal with warranties, planned real
10 estate development and some other areas, and I
11 have to say that, when a regulation -- when you
12 are faced with a situation where the regulation
13 doesn't make sense or that it -- or that the
14 applicant can show another way of addressing the
15 issue, that we have waived them, and I couldn't be
16 specific as to which ones or how or why, it's just
17 that it's just -- part of the process of being a
18 regulator, you know, is to -- you know, is to be
19 open to the idea that an applicant may have
20 another way to -- to address a problem.

21 Q. Do you know if U.S.A. utilized a
22 builder to perform homeowner defect
23 investigations?

24 A. I don't know that.

25 Q. Would that cause you concern, if

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1 they did?

2 A. A -- a person was actively building?

3 Q. Yes.

4 A. Not actually. I'm not sure it
5 would. You would almost have to look at the
6 circumstances.

7 Q. Do you know that U.S.A., for a
8 period of time, was using Construction Arbitration
9 Services as an informal inspection service as well
10 as a formal arbitration service?

11 A. I did not know that until you
12 pointed that out to me a week or so ago.

13 Q. And, as the chief of the Bureau of
14 Homeowner Protection, do you -- do you have any
15 concerns about that?

16 A. Well, let me preface my -- my
17 comment by saying that most of the time warranty
18 companies do defect inspections because they want
19 to save themselves the expense of paying for an
20 arbitration, and, so, they'll want to go out with
21 one of their own staff to meet with the homeowner
22 and the builder and basically say to the builder
23 or the homeowner, you know, "This is -- here is
24 the book, it's clearly not covered," and then say
25 to the builder, "This is clearly covered. Why are

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1 we going to arbitration on something that's
2 clearly covered?"

3 I was surprised when you told me
4 that, because that implies that they are paying
5 the fee anyhow and still doing a defect
6 inspection, rather than -- rather than going to
7 arbitration.

8 I don't know that -- that that's
9 necessarily a problem. I'm not the brightest
10 person in the world sometimes, but I don't
11 necessarily see that as necessarily a problem. I
12 was just surprised that they did it.

13 Q. Now, we've heard some frustrating
14 stories today from two homeowners today alone,
15 Carl Savage and Richard Becraft, and both of them
16 had to deal with U.S.A. Home Warranty, and you
17 probably are aware and heard that the particular
18 company wasn't secured about three years after it
19 became an approved warranty administrator. They
20 don't feel that they were protected by their
21 homeowner warranty company.

22 Were you aware of their stories
23 before today?

24 A. Briefly before today, yes -- no.
25 Actually, Mr. Savage, because I know he contacted

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1 the agency. Mr. Fill, was it? Was it Mr. Fill
2 was also U.S.A. Home?

3 Q. Becraft.

4 A. Becraft, no, I wasn't aware of his
5 situation.

6 Q. Having heard them today, do you have
7 any concerns?

8 A. Concerns, yes. I don't know their
9 cases, and I don't know their cases well enough to
10 comment on them from a point of view of a
11 regulator of private plans, to see whether or not
12 there was a problem or not. It's certainly a
13 concern of anybody in my position that -- was it
14 Mr. Becraft that testified to a lot of
15 stonewalling? I don't recall because of the four
16 gentleman -- but certainly that would be a
17 concern.

18 Q. So, one of those homeowners never
19 got to your bureau?

20 A. I don't know that.

21 Q. Okay.

22 A. Yes, I don't know that. Ken Butko
23 doesn't always tell me who he's working with in
24 straightening out.

25 Q. Now, just for example, with respect

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1 to U.S.A. Home Warranty, if a company like that
2 goes completely out of business, who is going to
3 pick up and service those warranties?

4 A. In a warranty application process we
5 do require that the warranty guarantor, which you
6 would call the underlying insurer, basically takes
7 responsibility from day one, if the warranty
8 administrator fails.

9 Q. Now, we also heard today that two of
10 them are risk retention groups.

11 A. That's correct.

12 Q. And one of them does not have an
13 A.M. Best rating or didn't as of a few months ago,
14 am I right?

15 A. Correct. I heard the testimony,
16 yes.

17 Q. And you also heard that the life
18 expectancy, if you will, of some of these risk
19 retention groups is about 50 percent, in the case
20 of home warranties it's 57 percent.

21 A. Um-hum.

22 Q. Does that cause you any concern as
23 the chief of the Bureau of Homeowner Protection in
24 New Jersey, as to whether there could be a problem
25 for our homeowners?

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1 A. Well, it certainly could be a
2 problem. I think -- I think the Commission should
3 know that, when the Risk Retention Act was passed,
4 it was part of the Reagan administration, the
5 Reagan/Bush deregulation reforms, and it's a
6 federal law that preempts. I believe there have
7 been several efforts by the State Commission of
8 Insurance -- Departments of Insurance -- they have
9 an organization of the state commissioners -- that
10 have made attempts to have the congress amend the
11 law to give -- to give each state more authority
12 over risk retention groups in that context. And I
13 don't think their efforts have been entirely
14 successful, but they have made that effort.

15 And currently, as Mr. Butko
16 testified, the Department of Insurance in the
17 state where it's domiciled has -- has -- has
18 authority. But, unlike other insurance, the other
19 states do not.

20 Q. Now, as we understand it -- well,
21 let me ask you this. Do you monitor the
22 arbitrators?

23 A. No, we do not.

24 Q. Not at all?

25 A. No -- well, I'm not quite sure

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1 exactly what you mean by the word "monitor," but,
2 common usage, no, we don't monitor the
3 arbitrators.

4 Q. Why did you become involved in the
5 Valerie Cyr arbitration involving the arbitrator
6 Richard Kosten?

7 A. Well, Mrs. Cyr, as she testified,
8 had a concern that Mr. Kosten wasn't qualified.
9 She certainly wants to challenge his
10 qualifications. She investigated it, she
11 contacted our office through Mr. Butko. There was
12 an effort to verify Mr. Kosten's qualifications,
13 which took some time because I think, as she
14 alluded to, the college where he took the course,
15 the RCS course, didn't keep records back that
16 long, so it took -- they didn't have a transcript,
17 so we -- there was some effort to get that, there
18 was some effort to get the testing results and so
19 on and so forth to check his qualifications,
20 and -- and during the process she had contacted
21 me. I talked to her on the phone, I think, at
22 least twice.

23 Q. And ultimately you took some action?

24 A. Yes.

25 Q. And the action was?

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1 A. I told the arbitration company that,
2 since it turned out that Mr. Kosten hadn't passed
3 the certification test, that he didn't meet the
4 regulatory requirements for an arbitrator, and
5 that they should re-do the arbitration.

6 Q. Well, what about the 300 or more
7 other homes or homeowners who had arbitrations
8 done by him while he wasn't qualified?

9 A. Well, I think -- well, it's -- it's
10 certainly something to be asked. We looked at
11 that. We -- I looked at it, I looked at the law.
12 The -- basically, the law on arbitrations says
13 that, if you have a problem with an arbitrator or
14 you need to challenge an arbitration under New
15 Jersey law, you have to go to the Appellate
16 Division of Superior Court.

17 I don't think -- I have to say
18 that -- well, let me just leave it at that. You
19 had a follow-up question.

20 Q. Why did you ask for a new
21 arbitration for her and not do it for the other --

22 A. Well, Mrs. Cyr's case hadn't even
23 been -- the builder hadn't even been ordered to
24 comply with the award when she raised the issue,
25 so it wasn't something that had been done.

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1 In fact, since her warranty plan --
2 Residential Warranty Corporation is one of the
3 private plans, using the same office -- I'm
4 looking at the chart you had up there -- using the
5 state office of Office of Dispute Settlement,
6 their process, when they send out an arbitration,
7 requires an acceptance by the owner, and I don't
8 think at that point Mrs. Cyr had even accepted the
9 award.

10 Q. Well, what about the other 300?
11 They didn't have a qualified arbitrator, either.
12 That's what I'm trying to focus on.

13 A. Well, you know, I want to get away
14 from the word "qualified" and, in Mr. Kosten's
15 defense, Mr. Kosten was an arbitrator since the
16 inception of the program.

17 Q. I'm not worried about his defense.
18 I'm worried about the homeowners.

19 A. Well, what I'm saying is, you used
20 the word "qualified," and I believe Mr. Kosten was
21 very qualified to do arbitrations. I don't think,
22 when we changed the regulations, since he was an
23 arbitrator for many, many years before that, and
24 he had already taken the course, you know, it was
25 one of those things that slipped between the

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1 cracks of the arbitration company. They missed
2 it.

3 You know, Mrs. Cyr had -- was
4 aggrieved and I felt it was the right -- maybe I
5 was wrong. Maybe I should have said there is
6 nothing I can do, but I just felt that the right
7 thing to do under those circumstances was to call
8 ODS and say, "Look, he doesn't -- you know, we've
9 looked, he doesn't meet the qualifications, you
10 should do another arbitration."

11 Q. But not for the other 300?

12 A. The other 300 homes that he had done
13 during that period of time were arbitrated,
14 resolved, and I have no reason to believe that
15 anybody was aggrieved by it.

16 Q. So, it was a question of --

17 A. And, I also -- by the way, I also
18 don't think I had the authority to do anything
19 more than what I did, which is, I asked ODS to
20 vacate the award. Ms. Cyr testified that I
21 wouldn't put it in writing. What I told Mrs. Cyr
22 on the phone was, "I will make sure they do this,"
23 because I had already talked to them about it, and
24 she said, "I want it in writing." I said, "You'll
25 get a letter from them because they are the people

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1 administering the arbitration process and,
2 therefore, they are the people that should issue
3 the letter." And, in fact, they did issue a
4 letter.

5 Q. Did you consider the circumstances
6 of that arbitration to be possibly flawed?

7 A. I don't -- I don't know in what way
8 you mean.

9 Q. Well, I'm just wondering if there
10 are certain circumstances where you think --

11 A. I always thought Richard Kosten was
12 a decent arbitrator and I thought he did a good
13 job.

14 Q. Now, do you get involved at all in
15 finding out how much arbitrators are paid or how
16 they are paid?

17 A. Well, we have to -- we have to pay
18 for that with ODS for ourselves. I don't know
19 what the private plan --

20 Q. On the private side.

21 A. Yes, they do it pretty much, I
22 think, the same way. It's a fee per case.

23 Q. Have you heard today that they get,
24 at least in some instances, a flat fee per case?

25 A. I know the arbitrators that work for

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1 ODS, the Office of Dispute Settlement, and do our
2 cases get paid a flat fee. The fee goes up if
3 it's over a certain number of items.

4 Q. Do you know approximately how many
5 items it would have to get to in order --

6 A. I think it's over a hundred and
7 twenty-five.

8 Q. Has anybody thought about the fact
9 that that is potentially a program or programmatic
10 glitch that allows almost a disincentive for the
11 arbitrator to spend a lot of time on it? I mean,
12 you know, on each defect?

13 A. I -- I -- I think you could say
14 that. I think that's a hypothesis that you could
15 put out there, but I also think that people that
16 accept this work and do this work know what they
17 are getting into and do a -- and try to do good
18 job for it. I mean, we all get paid different
19 salaries, and it's not necessarily related to how
20 much work we do.

21 Q. Do you have any basis for what you
22 just said with respect to the private plan
23 arbitrators?

24 A. Well, a lot of the arbitrators that
25 work for the private plans also work -- you know,

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1 since they are doing it on a fee basis, there is
2 no reason why they can't sign up for three or four
3 arbitration panels.

4 You know, I mean, in the old --

5 Q. Other than the fact that they may do
6 a good job and so forth, do you have any
7 objective --

8 A. Well, I mean, it's the same people.
9 I mean, we see the arbitrations that we get under
10 our plan back and we know what we see when we go
11 out on a compliance inspection under our plan, so
12 we know whether we think the arbitrators are doing
13 a good job on our plan and, since some of those
14 same arbitrators are working on the private plan
15 side, I'm assuming they do the same quality work
16 on the private plan side that they do for us.

17 Q. Concerning conflicts or even an
18 appearance of a conflict, would you consider that
19 arbitration to be flawed? If there was a conflict
20 on the part of the arbitrator or even the
21 appearance of one to the homeowner, would that
22 concern you?

23 A. Through the decision, like I said,
24 under New Jersey law, you could probably challenge
25 that arbitration in the appellate division, if

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1 need be.

2 Q. The homeowner can challenge it in
3 the appellate division?

4 A. Yes, as a -- with a conflict of
5 interest issue like that. I don't exactly know
6 what the conflict was, as it was articulated here,
7 but, you know....

8 Q. Do you know if arbitrators are
9 required to notify homeowners directly of a
10 possible conflict?

11 A. I'm lost. It's always been my
12 understanding that they are ethically bound to
13 identify a conflict.

14 Q. Do you know if they are bound to
15 identify it to the homeowner or to the service
16 that they work for?

17 A. Well, they should recuse themselves,
18 if they have a conflict. I mean, it can occur
19 when you walk in the door.

20 Q. I'm asking you, do you know if there
21 is any requirement for the arbitrator to tell the
22 homeowner if there is a conflict --

23 A. There is certainly an ethical
24 requirement to disclose a conflict.

25 Q. There is?

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1 A. There always is.

2 Q. Okay.

3 If there were an arbitration where
4 the homeowner produces qualified expert testimony,
5 including videos or other documentation and
6 experts, and a builder presents no evidence, but
7 the ruling is in favor of the builder, would that
8 kind of process cause you any concerns?

9 A. Well, I don't know what you mean by
10 "that kind of process." It's the duty of any
11 judge or arbitrator to weigh the evidence that's
12 presented, and what weight they give to the expert
13 testimony is -- you know, is the weight that they
14 give it.

15 A builder could be construed as an
16 expert themselves. You know, it's like, you
17 know -- I mean, we all know what expert witnesses
18 bring to the table, in a sense. They bring their
19 expertise and, you know, they bring their case.

20 Q. So, hearing something like that
21 wouldn't cause you a concern?

22 A. Well, I don't really know what you
23 mean by that. Certainly, an arbitrator is going
24 to be there -- certainly, if the homeowner has
25 expert reports and so on and so forth, you know,

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1 they certainly should be given some weight. But,
2 depending on the defect and what the builder has
3 to say about it -- I mean, the builder obviously
4 has knowledge concerning the defect and the
5 construction of the home that the arbitrator would
6 have to consider.

7 Q. Now, would it surprise you to learn
8 that about ten days ago one arbitrator currently
9 working in New Jersey testified before the
10 Commission that he doesn't even pay attention to
11 disclosure forms the arbitration service gives him
12 to fill out, and he regularly works for builders
13 and developers? Does that bother you?

14 A. Yes, that would bother me.

15 Q. It does bother you?

16 A. Yes. Well, you say he actually is
17 employed by builders and developers?

18 Q. He does work for them.

19 A. Yes. I mean, it would be certainly
20 something we would want to check on.

21 Q. How would you check on it? You
22 don't gather any information concerning
23 arbitrators or conflicts or disclosure or anything
24 else.

25 A. Would the Commission refer that

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1 person to me and their testimony so that I could
2 check on it?

3 Q. No. Well, my question is, you don't
4 do that as a regular practice, do you?

5 A. Would such a person just admit that
6 to me, if I wrote them a letter?

7 Q. I don't know.

8 A. I'm just curious as to what you are
9 driving at. You had somebody --

10 Q. The way this works is I ask the
11 questions, you answer them.

12 A. Well, you know --

13 Q. So, my question is, if you don't
14 collect that kind of data --

15 A. Well, what kind of data are you
16 suggesting we collect? A person who admits that
17 they don't do the job right?

18 Q. Information about arbitrators,
19 information about who they work for, information
20 about potential conflicts, information about
21 whether they are working for builders and
22 developers, that kind of thing.

23 You don't collect that at DCA, am I
24 right?

25 A. No, we don't collect that.

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1 Q. And there is no requirement that you
2 collect that?

3 A. That's correct.

4 Q. Is it true or have you heard that
5 homeowners would pursue litigation, if they had
6 the wherewithal to do so? Is that something
7 you've learned?

8 A. No.

9 Q. You haven't heard that from
10 homeowners? That, if they had the money or the
11 wherewithal, they probably would go to court, but
12 they don't have the money, so they don't --

13 A. I'm not saying that no one ever said
14 that. I don't think it's a model of behavior.

15 Q. Okay. Is it anything you've heard,
16 though, throughout the process?

17 A. I guess. I don't know. I can't
18 say.

19 Q. Do you know or have any involvement
20 in the training program for arbitrators?

21 A. We expect that the arbitration
22 companies train their arbitrators. Have we
23 participated in the past?

24 Yes, we have.

25 Q. But are there any requirements that

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1 you set down for the training of the arbitrators?

2 A. No.

3 Q. None?

4 A. No.

5 Q. Would it surprise --

6 A. Well, as you said, the regulations
7 do require that they have the RCS license or be --
8 you know, in certain circumstances be a design
9 professional.

10 Q. Within the last couple weeks we
11 learned from one arbitrator under oath -- he
12 testified that his training consisted of a one-day
13 seminar in Texas which was not even specific to
14 New Jersey's program requirements.

15 Hearing that from me, does it
16 concern you, as the head of New Jersey's homeowner
17 protection office?

18 A. It could be a concern, sure.

19 Q. Now, we talked a little about two of
20 the four warranty providers involved, these risk
21 retention groups. Setting aside, you know, the
22 federal laws and so forth, based on what you've
23 heard today and based on their statistics, do you
24 have any concerns about them writing these
25 warranties in New Jersey?

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1 A. I'm sorry. Could you repeat it?

2 Q. The risk retention groups.

3 A. Oh.

4 Q. Any concern -- and also let me just
5 expand it. Any concern about whether these
6 insurers should be audited?

7 A. I -- I certainly have a concern. I
8 think we've had a concern about risk retention
9 groups since the law was passed. I would -- I
10 would love to see more involvement in our
11 Department of Insurance overseeing them.

12 Q. You think it should be over in the
13 Department of Insurance?

14 A. Oh, absolutely. I think they are
15 qualified to do it and I think it would be
16 ludicrous for our agency to develop that
17 expertise, since it already exists in the state.

18 Q. How about auditing the home warranty
19 providers? Do you think there should be some
20 auditing of the home warranty providers?

21 A. In what regard?

22 Q. Financial. In terms of their
23 financial capabilities and so forth.

24 A. No. I mean, it's -- I don't think
25 it's where I would put my resources, if I had to.

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1 I don't see that I have that much of a problem
2 with it, in terms of their financial wherewithal.

3 Q. Did you hear some of the
4 recommendations or suggestions Mr. Butko had this
5 morning?

6 A. Yes.

7 Q. Do you agree with any of them?

8 A. I'm not quite sure what -- which
9 ones -- I mean, I don't have a list of them here,
10 so I don't -- he didn't -- the things he said are
11 certainly worth considering. He had some
12 suggestions that I think -- you know, he's an
13 intelligent guy. He's been in this business
14 almost as long as I have and I value his opinion.

15 Q. Do you recall any that you
16 particularly, you know, listened to or thought
17 that we should consider?

18 A. I think the Commission should
19 consider all the suggestions that have been made.
20 I think there have been a lot of good suggestions
21 made.

22 Q. When you testified in private
23 session recently, and we asked you if you had
24 recommendations concerning the New Home Warranty,
25 Builders Registration Act, or the operation of the

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1 program, you told us that your recommendations --
2 in essence, you told us that your recommendations
3 were only made to your superiors.

4 Is that correct?

5 A. Yes.

6 Q. And then when I pressed you somewhat
7 and asked you if you had any that you could recite
8 for us, you indicated that you didn't have any,
9 other than I think what you called, quote, mundane
10 technical recommendations.

11 Is that correct?

12 A. You asked me if I had ever made
13 recommendations and I said I've certainly made
14 technical recommendations on the rules. I also
15 said to you that I believe my director and my
16 commissioner were anxious to talk to the
17 Commission about recommendations --

18 Q. Right.

19 A. -- that they had, and other things,
20 and I felt that, since I was involved in
21 discussions with them about that, that it was
22 proper for them to put forward the recommendations
23 that they felt that -- that the agency should put
24 their support behind.

25 Q. Well, don't worry about them, we

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1 will get to them. You are here --

2 A. I'm employed by them and, so, I
3 worry about them.

4 Q. Okay.

5 Well, you are here today and you are
6 under oath before the full Commission. Can you
7 think of any area that you would suggest that we
8 consider to improve the program or change the law
9 that would benefit homeowners in this state?

10 A. Well, you know, there has been
11 some -- there has always been discussion about the
12 limited nature of the warranty. The warranty was
13 created, as I said -- you had testimony on it.
14 It's a ten-year warranty for major structural
15 defects. A major structural defect is a fairly
16 serious defect to a new home.

17 From first year coverage, which is
18 fairly comprehensive, to when that ends and then
19 you have major structural defects, there is a lot
20 of things that can go wrong with the house. Leaks
21 can occur after the first year when the caulking
22 dries out and is cracked. Bad flashing and things
23 like that occur. People go through a first year
24 with a drought situation and find out they have
25 water in their basement after the first year.

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1 There is a lot of things that could
2 be expanded, in terms of the warranty coverage.
3 There is always improvement -- in fact, you could
4 almost make an improvement in everything and every
5 aspect of everything you do and, you know,
6 certainly we've endeavored to do it.

7 I think we've come a long way since
8 1978 in a lot of these areas, trying to, you know,
9 either -- both strong-arm the system and tweak the
10 system into a better performance. So, we could
11 start from the very beginning and go through the
12 entire program and the whole process and
13 including -- including things that the Commission
14 has touched on, like builders that go bankrupt
15 before they finish the houses. The bankruptcy
16 laws were touched on. You know, forming limited
17 liability corporations to build houses and things
18 like that. Things that are certainly clearly
19 outside of my area, you know.

20 Understanding -- understanding about
21 what you are getting into, the representation
22 people get from attorneys at closing versus
23 sometimes they don't even have attorneys at
24 closing. I've had attorneys complain that they
25 aren't allowed to put escrow money down because of

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1 the warranty and, you know, you go, "Well, of
2 course, you are allowed to hold escrow, unless
3 your contract forbids it."

4 And contracts are an issue. People
5 buy new homes, they think that that contract the
6 builder gives them is some sort of standard
7 contract. They are not. They are all different.
8 You need to decide that you are going to have to
9 look at that stuff first.

10 People are sold on a location and an
11 idea and there is a lot -- there is an awful lot
12 involved in making that investment.

13 Q. Well, my question is, do you have
14 any? There is a lot, but do you personally, based
15 on your --

16 A. I'm not -- I didn't know what you
17 were going to ask me here, so I didn't come with
18 the preparation of my kit of recommendations, so
19 I'm not prepared to testify on that.

20 Q. I'm not asking you to make any up or
21 bring some up for you. My question is, have you
22 made any prior to today?

23 Very simple question.

24 A. And my answer would be "No."

25 MS. GAAL: No.

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1 That's all I have.

2 COMMISSIONER EDWARDS: The staff in
3 your office handles 24, 25, 27 percent of the
4 number of warranty complaints that are made in the
5 state through the state claim system, is that
6 accurate?

7 MR. DESCH: Well, I -- that would be
8 accurate, if the same percentage of warranties --
9 the number was -- Commissioner, the number was the
10 number of warranty issues, not the number of
11 claims.

12 COMMISSIONER EDWARDS: Right.

13 MR. DESCH: Yes.

14 COMMISSIONER EDWARDS: How many
15 claims are actually made through your office?

16 MR. DESCH: We get -- we get
17 about -- we issue about 6,000 warranties a year,
18 and we've been doing that, I think, for the last
19 seven or eight years, so we've been fairly steady,
20 in terms of our -- the demand on our services.
21 Out of that 6,000 or so warranties, and sometimes
22 it's 4800 and sometimes -- you know, it's varied,
23 but it's around that chunk. We get about 600
24 claims.

25 So, out of 6,000 warranties, we

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1 generate about 600 claims a year. Now, obviously,
2 those 600 claims don't come from those same 6,000
3 warranties, because it's a ten-year cycle, but --
4 but that's what we deal with. I mean, in terms of
5 me looking at, you know, how many staff people we
6 need and how we do the job, I'm looking at 6,000
7 warranties, 600 claims, a hundred of them or so
8 will develop into something that we need to pay
9 out on.

10 COMMISSIONER EDWARDS: The
11 statistics probably should be the same for the
12 private sector, too, shouldn't it?

13 MR. DESCH: Yes, I would think they
14 are running roughly the same.

15 COMMISSIONER EDWARDS: About 10
16 percent and then about -- whatever the
17 percentage --

18 MR. DESCH: Yes, um-hum.

19 COMMISSIONER EDWARDS: So, it
20 wouldn't be unfair for us to make that
21 extrapolation as to the number of claims that
22 would exist in the private sector?

23 MR. DESCH: Correct.

24 COMMISSIONER EDWARDS: Now, I'm also
25 gathering that you believe, and I think you

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1 probably have accurately interpreted the primary
2 responsibilities under the statutes and the regs,
3 that you have no fundamental responsibility to
4 supervise and/or ensure and/or verify and/or even
5 know how many claims are made in the private
6 sector, that that is really not the responsibility
7 of your office, which is why you only have one
8 person working on it?

9 MR. DESCH: Right. Commissioner, I
10 wouldn't say, necessarily, we don't have the
11 responsibility of -- if we needed to know it. I
12 mean, if we felt we needed to know it because we
13 felt we had a problem with the company and said,
14 "Look" -- and we would.

15 Like I said, we only have four
16 plans. If we call them up and ask them for
17 information, we generally get it from them, you
18 know, fairly quickly.

19 COMMISSIONER EDWARDS: I'm sure you
20 do, and I'm sure they'll respond, because
21 ultimately you could make their life a little
22 miserable, if you wanted to, but not significantly
23 because you don't have a lot of control over that.

24 Is that accurate?

25 MR. DESCH: Well, you know, if we --

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1 COMMISSIONER EDWARDS: And I'm not
2 saying that you don't make claims, I'm not -- you
3 don't collect data.

4 MR. DESCH: Right.

5 COMMISSIONER EDWARDS: You don't
6 feel that your responsibility is to know what's
7 going on in that industry on the private side.
8 You only respond to something that comes to you.
9 You don't feel any responsibility or believe you
10 have any.

11 MR. DESCH: I would agree, I would
12 agree with that. I don't collect information just
13 for the sake of collecting it, and I don't require
14 people to report it just for the sake of reporting
15 it. If I don't need it, I don't ask for it.

16 COMMISSIONER EDWARDS: You are
17 not -- you don't have a report, you don't need
18 it --

19 MR. DESCH: Right.

20 COMMISSIONER EDWARDS: -- it's not
21 your responsibility, that's somebody else's
22 problem, in reality.

23 MR. DESCH: Well, I don't know who
24 else's problem it is, but --

25 COMMISSIONER EDWARDS: I'm not

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1 really -- Peter, I'm not trying to find fault with
2 you in this process. I'm trying to understand --

3 MR. DESCH: I would just like to
4 say, our standard is, if we can develop a pattern
5 with a plan -- I think one of our standards for
6 not approving a warranty plan or taking an action
7 against a warranty plan under the regs, if we see
8 a pattern where they are not settling claims, that
9 we would take an action. And that's what we look
10 for through the complaint process, if we are
11 seeing a pattern like that, you know, that's
12 egregious, that would require -- and that's what
13 we look for.

14 COMMISSIONER EDWARDS: But you don't
15 do any affirmative work to try to find out how
16 well they are performing, correct?

17 MR. DESCH: Right.

18 COMMISSIONER EDWARDS: So you have
19 no knowledge about really what they do and you
20 don't want to get any knowledge about what they do
21 to make that affirmative decision? I think it's
22 obvious to me, and I --

23 MR. DESCH: I think my thought
24 process goes a little more like, if I'm looking at
25 the complaints we are getting, and we are

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1 resolving them and, if they have 600 claims and I
2 have 600 claims -- and they have more, obviously,
3 because, as you mentioned, I only have a quarter
4 of the market, they have the rest, therefore, if
5 I've got 600, they've got --

6 COMMISSIONER EDWARDS: 18,000 --

7 MR. DESCH: Right.

8 COMMISSIONER EDWARDS: 18,000

9 policies --

10 MR. DESCH: Policies and --

11 COMMISSIONER EDWARDS: -- and 1800

12 claims.

13 MR. DESCH: 1800 claims. Sorry,

14 sir.

15 If I'm only getting a certain number
16 of complaints out of -- generated out of that
17 number, then I don't see that I need to go further
18 to see if there is a problem. I'm not -- so I
19 don't see it in what we are getting, so my
20 indicators are not pointing in that direction.

21 COMMISSIONER EDWARDS: It's obvious
22 to me that you don't do that, and is --

23 MR. DESCH: But we don't do it.

24 COMMISSIONER EDWARDS: Now, let's go
25 back to your own operation. Could you explain to

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1 me how you handle internally the claims that fall
2 within your jurisdiction.

3 MR. DESCH: Yes. We have a group of
4 clerical staff, essentially, that will receive all
5 incoming correspondence on warranty claims,
6 they'll put together a physical package which will
7 be the complaint -- essentially, to make a
8 warranty claim in the first two years what you
9 need is two things. One is, you need to say that
10 you want to go through the warranty plan, which is
11 a form, could be a letter -- we usually make them
12 sign a form. On that form you need to disclose
13 whether there is a lawsuit pending, because it's
14 an election of remedy issue, and whether you are
15 withholding money in escrow, and the second thing
16 you need is that you've notified the builder.

17 So it's a complete list of the
18 defects that you've said to the builder, "I want
19 you to fix these things." Those are the two
20 things.

21 Once we receive those two things,
22 and presuming it's timely filed and so on, we
23 create a physical record, we create a database
24 computer record, and we ship it over to the
25 arbitration service that we use, the Office of

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1 Dispute Settlement. At the time we send it to the
2 Office of Dispute Settlement we send a letter to
3 the builder that says, "A request for warranty
4 arbitration has been filed against you, you'll be
5 contacted by the arbitration service." We send a
6 letter to the homeowner that says, "We've received
7 your package, you'll be contacted directly by an
8 arbitrator," and then we pend the case waiting to
9 get the arbitration back.

10 The arbitration service receives the
11 case, they assign it to one of their fee
12 arbitrators. The fee arbitrator gets on the
13 phone, based on the information we sent, calls the
14 builder, calls the homeowners, arranges for a
15 meeting, conducts the meeting.

16 At the meeting the arbitrator,
17 essentially -- under the state plan, as Mr. Butko
18 and -- and Deputy Director Gaal had indicated,
19 it's a little bit different because we have
20 different abilities. The arbitrator will ask
21 whether the parties want him to ultimately be an
22 arbitrator for the case. If they say yes, and 90
23 percent of the people say yes; that is, the
24 builder and the homeowner say yes, he takes the
25 testimony, he takes the reports, he reviews the

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1 defects, and ultimately goes back to the
2 arbitration company where an award of arbitration
3 is issued.

4 The award of arbitration is sent to
5 us, we send it to the parties, the builder and the
6 homeowner, that is, and put a cover letter on it
7 that says -- basically, it says -- to the
8 homeowner it says, you know, "An arbitration award
9 has been rendered. You must make the home
10 accessible to the builder during normal business
11 hours to do the work." We tell the builder that
12 he's got a certain amount of time to perform, we
13 tell both of them that access has to be granted,
14 and we send the homeowner a form letter to send
15 back to us in the event -- you know, basically it
16 says, "In the event the builder does not comply
17 with this award, send this form back to us so that
18 we take the next steps."

19 Most of the time we don't hear
20 again, because the builders do get the award and
21 they do take care of the stuff in the award. When
22 they don't, we hear from the homeowner that the
23 builder did not comply. We then send one of my
24 claims staff, one of my investigators out from the
25 warranty program, who takes the arbitration award,

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1 arranges a meeting with the builder and the
2 homeowner, and does what we call compliance
3 inspection.

4 At the compliance inspection our
5 claims -- we call it -- the title is claims
6 analyst. The claims analyst reviews the defects
7 that were awarded in the arbitration, discusses
8 the issues with the homeowner and the builder, and
9 may do one or two or three different things,
10 including giving a time extension to the builder.
11 Usually that's granted, if there has been access
12 or weather issues. You know, people have
13 vacations scheduled, they have illnesses that come
14 up, or, essentially, in the cleanest case, they'll
15 come back, make a decision that the builder, in
16 fact, did not comply with the award.

17 We then issue the homeowner a work
18 list and -- well, it's basically an inspection
19 report and a work list. The work list basically
20 tells the homeowner that they should submit two
21 independent bona fide estimates back to the
22 program from a contractor of their choice to
23 remedy these defects -- you know, the defects that
24 had been awarded in the arbitration that hadn't
25 been addressed by the builder, and then they

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1 basically settle the claim based on the estimates
2 submitted.

3 At the same time that they make a
4 finding that the builder did not comply with the
5 arbitration award they refer it to our compliance
6 staff and our compliance staff opens a case
7 against the builder. The law provides and our
8 regulations provide that, if a builder does not
9 comply with an arbitration award, his builder
10 registration can be suspended, and we take those
11 actions routinely.

12 COMMISSIONER EDWARDS: And did you
13 go through this process about 600 times a year,
14 based on the 10 percent number of general -- the
15 general claims process that you have?

16 MR. DESCH: Yes, and that 600 number
17 does include major structural defects, which we
18 handle directly as a, basically, claim against the
19 fund. Really most of this is first and second
20 year dispute settlement.

21 COMMISSIONER EDWARDS: And would you
22 say that you are successful, from your
23 perspective, in representing the interests of the
24 homeowners in New Jersey?

25 MR. DESCH: I think, by and large,

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1 we are. I think there is always exceptions. I
2 think that people come at us from different
3 directions, they come at us from different
4 perspectives, in terms of what their needs are and
5 so on, but I think, by and large, if you look at
6 the numbers and you look at what's been done, I
7 think the program has been fairly successful. I
8 wouldn't want to see it taken away.

9 One of the worst things I hear on
10 the phone from homeowners is the idea that they
11 decided to sue their builder, they were
12 successful, and they have a judgment now that they
13 can't collect. One of the things about the
14 warranty is it's not -- clearly, you know, it's
15 not a panacea.

16 I mean, in 1978, when the
17 legislature passed this, if they thought they were
18 accomplishing more, then maybe they hoped for
19 more, but it's --

20 COMMISSIONER EDWARDS: Yes, we did.

21 MR. DESCH: I listened very
22 carefully, but, you know, it -- it does accomplish
23 what -- a lot of what it meant to do. It does
24 provide -- most of the claims we pay out on are
25 not worth going to litigation on. Most of the

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1 defects, most of the punch lists -- it's just too
2 expensive.

3 So, really, in 49 other states you
4 have no other recourse. You either eat it or you
5 decide, you know, to, you know, hire a lawyer and
6 spend more money on attorney fees than you are
7 going to ever recover, and the warranty program is
8 much -- is much more efficient, it provides -- it
9 provides an answer. It may not be the answer you
10 want when an arbitrator rules against you. You
11 know, it's -- obviously, most people don't file
12 claims for things they don't think should be
13 fixed, but -- you know, we pay out a lot of money
14 and we help a lot of people, and I think my staff
15 is very satisfied. Most of the people we deal
16 with, they get their cases resolved and they get
17 them resolved satisfactorily.

18 COMMISSIONER EDWARDS: I heard your
19 answer before about not wanting to upstage the
20 director or the commissioner with reference to
21 recommendations on the homeowner warranty program.

22 I would request that you request to
23 meet with the director and your commissioner to
24 come up with recommendations with reference to the
25 homeowner warranty program, exclusive of what we

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1 do involving other issues involving DCA and the
2 inspection process, which are still, I think, the
3 common -- I look forward to dealing with those and
4 the constructive things you can do, but we are
5 very anxious to deal with the problem and deal
6 with the facts.

7 You seem to be doing a much better
8 job -- let me put it this way. The citizens of
9 New Jersey are much better served by what DCA is
10 doing and what your office is doing on state
11 claims than the private sector gets, and it's more
12 than clear to me that we dropped the ball in the
13 private sector. Now, who dropped the ball, why
14 the ball got dropped, we want to find that out,
15 but we really want it solved in the final
16 analysis.

17 So I would ask you to put that in
18 two categories. One, recommendations on how you
19 would correct the modifications to the existing
20 warranty program as the state does it, and how we
21 will deal with the private sector program. Many
22 suggestions have been out there, including
23 licensing of builders, as opposed to just
24 registration; qualifications of builders,
25 prequalifications of what they do.

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1 It's my belief, as I said earlier,
2 that we should be preventing the claims from being
3 made in the first place and, if we deal with that
4 on a couple levels, we might be able to serve the
5 people in New Jersey a lot better. Not one person
6 doesn't complain, of the 20 counties that we've
7 received them from in numerous -- too numerous to
8 mention numbers, that we should have solved their
9 problem. That doesn't even get to the ones that
10 aren't presently suffering some kind of a problem.
11 They are just falling between the cracks.

12 So, I'm convinced the system isn't
13 working as well as it could, that new homeowners
14 are not as protected as people who do alterations,
15 because we have the Consumer Fraud Act to rely on,
16 it's a lot better, and we could do a lot better on
17 a bunch of levels.

18 I would like you, with your
19 expertise on the homeowners warranty program, to
20 see how we could make the home warranty program
21 better. Should it be a ten-year program, not a --
22 a real ten-year program, not a one and two-year
23 program, which is what it is?

24 For instance -- anything like that.
25 And how do we deal with the private sector side of

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1 that and, if government is doing what it should be
2 doing, which it isn't, to oversee the private
3 sector so that it performs at the same level that
4 the state seems to be performing at.

5 So, if you could do that, I wouldn't
6 ask you to upstage the director, who I've known
7 for too many years, and the commissioner, who I
8 also know, to have delivered that information to
9 us. We want that. So, if you could do that, I
10 would appreciate it.

11 MR. DESCH: I appreciate that,
12 Commissioner. I know that they are anxious to
13 address those things to the Commission.

14 COMMISSIONER EDWARDS: We'd like to
15 get that before we go into our next hearing.

16 MR. DESCH: Okay.

17 COMMISSIONER EDWARDS: That's all I
18 have.

19 COMMISSIONER FLICKER: Mr. Desch,
20 just my curiosity is overwhelming. Before these
21 hearings and before the SCI began collecting data,
22 did the disparity between the state plan and the
23 private plan come to the attention of the folks at
24 DCA?

25 MR. DESCH: You know, you used the

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1 word "disparity." I wish we had more of a market
2 share. I really, you know, wish that we had 80
3 percent of the warranties and I -- and I -- and,
4 if you could manage that, then I think I would
5 address Mr. Edwards' concerns, that we would solve
6 half that problem because we would be the
7 warrantor of all these houses.

8 When you say "disparity," we are
9 doing 25 percent of the market. I'm glad we are
10 doing 25 percent of the market. I think,
11 generally speaking, builders are a little bit, you
12 know, government shy. I don't get the disparity
13 issue, in terms of, yes, they are doing more
14 business than we are.

15 COMMISSIONER FLICKER: I'm not
16 really talking about the amount of business. I'm
17 talking about the apparent level of satisfaction.

18 MR. DESCH: Oh. You know, I have a
19 hard time with that. I think, when you look
20 logically at way the Commission is looking at it,
21 and I don't want to say that people don't have
22 problems, because they clearly do. I've been
23 doing this since 1987, I know there are things
24 that don't work for some people, but, again, the
25 overwhelming numbers during the period of time

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1 that you are talking about, you are talking about
2 300 -- you had a figure on there. You had 300,000
3 homes and you had a man from the SCI testify he
4 had 50 complaints. I can't even do the percentage
5 on that. That's less than one-tenth of
6 one-thousandth of a percent, in terms of the
7 complaints.

8 Now, we all know that those 50 are
9 the ones that manage to contact the SCI, but, in
10 terms of overall satisfaction, I don't think you
11 are looking at a statistically significant number,
12 but we do -- which isn't to say that the problems
13 that were presented we shouldn't find ways to
14 correct, and I don't think they are always that
15 difficult to do, but, when you start talking about
16 these disparities, I have a hard time with the
17 numbers.

18 COMMISSIONER FLICKER: I don't think
19 it was just 50 complaints. I mean, we had 180
20 complaints in one housing complex alone. I mean,
21 I think you are talking about 50 different
22 developments or builders, et cetera.

23 I'm talking about we had panels
24 today and we had discussion today from folks from
25 all over the state who had -- or were involved in

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1 the private plan and expressed similar, I'll call
2 them, horror stories about their experience with
3 the warranty process, the arbitration process,
4 and, quite frankly, their dissatisfaction with
5 DCA. So, when I talk about disparity, I'm talking
6 about the service those citizens of the State of
7 New Jersey appear to be getting, vis-a-vis the
8 service that's provided to the homeowners whose
9 homes are in the state plan.

10 Does that make sense?

11 MR. DESCH: You mean a disparity
12 between the service that homeowners in the state
13 plan get versus homeowners in one of the private
14 warranty plans?

15 COMMISSIONER FLICKER: Yes, both of
16 whom have appeared today and testified, and all of
17 whom had story after story after story, and we
18 have to cull down -- you know, these were
19 obviously folks that were culled out of many,
20 many, many others who also had horror stories.

21 MR. DESCH: Frankly, I would love to
22 leave this table today with you having the
23 impression that we don't have complainants in the
24 state plan, but we do have people in the state
25 plan that complain on the same -- not on the same

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1 types of things, but types of things that were
2 discussed. Filing of a claim that is out of time,
3 things like that. Not agreeing with our claim
4 settlement, where we say it shouldn't cost that
5 much to fix this problem and, yet, the homeowner
6 insists that it does. I mean, we do have
7 complaints.

8 COMMISSIONER FLICKER: I'm not
9 suggesting you don't and I'm not suggesting that
10 there is going to be any process that satisfies
11 everyone. That just defies human nature. There
12 are going to be those who are unhappy no matter
13 what plan they are in, but were these -- when I
14 use the word "disparity," it sounds like the folks
15 in the plan that you administer directly, the
16 state plan, don't seem to be as distressed as
17 those in the private plan.

18 Would you agree with that?

19 MR. DESCH: I'm going to want to
20 agree with that. I'm going to want to agree with
21 it because, obviously, we've put a lot of time and
22 effort in running what we think is a very good
23 program, and I have -- you know, my staff has
24 direct control over running that program, whereas,
25 with the private plans we are regulating. It's a

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1 different thing when you regulate versus run.

2 COMMISSIONER FLICKER: And my
3 original question was, before we started gathering
4 information and before these hearings were
5 scheduled, was that disparity discussed and was
6 there some attempt to address it?

7 MR. DESCH: Well, part of the
8 problem is, when it's a complaint about the state
9 plan, we have all the facts at our disposal. We
10 have the people who are being quoted, as to have
11 said the information, we have the letters, we
12 have -- we are in control of it.

13 My concern, as the bureau chief, is
14 more that, when there is complaints about the
15 private plan there is so much we don't know,
16 because the people that they are talking about
17 aren't on our staff and we don't have a way of
18 checking it immediately, so our approach,
19 basically, is to get the complaint and try to
20 resolve it directly with the plan in that way.

21 And sometimes, you know, we'll have
22 to say, well, you know, they are saying they got
23 misinformation on the telephone. That can be very
24 frustrating for me and it can be very frustrating
25 for Ken Butko, but, when we call the plan and say,

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1 you know, "The allegation is that you gave the
2 wrong information," and they check and they get
3 back and they say, "No, the homeowner
4 misunderstood," there is not really too much
5 further we can go with it.

6 So I think my frustration level
7 there has to do with the fact that we don't have
8 full control, as a regulator, when we deal with
9 the private plans and we don't have reason to
10 believe -- we don't have sworn affidavits, we
11 don't -- you know, some of these things can't be
12 verified independently, so you are always in that
13 Never-Never Land of not really knowing what the
14 facts are, but, nevertheless, trying to plow
15 through and get the problem resolved, and that's
16 what we've tended to do with our private plan
17 section with complaints.

18 COMMISSIONER FLICKER: I realize
19 you've indicated you don't want to jump ahead and
20 take the thunder away from your director and
21 commissioner, but it would certainly seem like the
22 one person that all the homeowners deal with the
23 most is the arbitrator, and a good arbitrator
24 sounds like some -- someone who could alleviate a
25 lot of the issues that we've heard today, or at

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1 least someone who seems fair.

2 Has it ever been discussed or
3 thought of or recommended that DCA have some role
4 in overseeing the arbitrators?

5 MR. DESCH: Well, I think, you know,
6 that we've looked at it -- if you look at the
7 statute and you look at what the legislature was
8 attempting to accomplish, what they wanted to make
9 sure was that the arbitrations were independent of
10 the builder and independent of the plan, in a
11 sense. So there is no role in the legislation for
12 the Department of Community Affairs to be an
13 appeal agency for arbitrations or to -- or to do
14 that, and we would be just -- we would be prone, I
15 think, to say, "Well, you know, the arbitrators,
16 you know, they work for you or" -- so -- you know,
17 so we are not going to get a good deal because --
18 I mean, people have all kinds of ideas. I mean,
19 we get a lot of letters where people say, "I
20 understand the warranty program is going down the
21 tubes and that's why you are not paying my claim,
22 because you don't have the money," and that's
23 never been true, but that's what people think.

24 And you want to avoid that. I think
25 the legislature dutifully avoided it by saying the

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1 warranty plans aren't the arbitrators. You know,
2 we aren't the arbitrators. We have to hire a
3 company to do our arbitrations for us. We are
4 fortunate in New Jersey that the Office of Dispute
5 Settlement exists, and they are a very good group
6 of people who are, you know, very good with it,

7 too, which is -- they don't just do this, they do
8 other types of mediation services.

9 COMMISSIONER FLICKER: Well, it
10 certainly sounds like, if the private plan had
11 access to similarly situated arbitrators, we
12 wouldn't be hearing some of these horror stories.

13 MR. DESCH: That's true, and one of
14 the private plans actually uses the Office of
15 Dispute Settlement now because they decided that
16 would be in their best interest.

17 COMMISSIONER FLICKER: Mr. Desch,
18 thank you very much.

19 MR. DESCH: Thank you, Commissioner.

20 COMMISSIONER SCHILLER: Mr. Desch,
21 on the state side you said there are about 600
22 claims a year and you settle about a hundred? I
23 believe that was your testimony.

24 MR. DESCH: Yes, it's something
25 along those lines. Obviously, the numbers vary

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1 and, in fact, Commissioner, these numbers are all
2 very knowable. I would give -- I would do a
3 report. As a matter of fact, I think your chief
4 accountant or your --

5 COMMISSIONER SCHILLER: I'm not
6 interested in --

7 MR. DESCH: Yes, okay, but that's
8 roughly the numbers.

9 COMMISSIONER SCHILLER: And those
10 are -- what you referred to as the hundred
11 settlements are usually the second year claims?

12 MR. DESCH: First and second year.
13 Well -- all right.

14 COMMISSIONER SCHILLER: Well, which
15 is it?

16 MR. DESCH: Well, it's all of them,
17 actually.

18 COMMISSIONER SCHILLER: What I'm
19 looking for here is how many of these claims get
20 booted just because they are out of time?

21 MR. DESCH: You know, I -- again --

22 COMMISSIONER SCHILLER: Roughly.

23 MR. DESCH: I don't know.

24 COMMISSIONER SCHILLER: You have no
25 idea how many claims are just rejected for being

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1 out of time?

2 MR. DESCH: Right here now, no, I
3 don't.

4 COMMISSIONER SCHILLER: It seems to
5 me that one of the most glaring things about the
6 limited home warranty that we have, that claims
7 are always -- or large numbers, both in the
8 private and public sector, are out of time. When
9 you see something that you've seen that is a
10 pattern over the years since 1978, it would be
11 almost demanding that there be a remedy made,
12 either in the statute, in terms of extending the
13 warranty, or changing the whole concept of the
14 limited warranty.

15 I mean, it's just incomprehensible
16 to me why this doesn't emerge as one of the
17 glaring errors in the home warranty program.

18 MR. DESCH: I think my view on that
19 issue is, whenever you establish a deadline, you
20 are going to have people that fall on the other
21 side of that deadline. If you extend that
22 deadline, you are still going to have people fall
23 on the other side of the deadline.

24 COMMISSIONER SCHILLER: I didn't ask
25 you that. I want to know --

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1 MR. DESCH: Well, I think you did,
2 actually, Commissioner, because --

3 COMMISSIONER SCHILLER: No. I said
4 I want to know how many of these claims are
5 rejected simply because they are out of time.

6 MR. DESCH: If I determined -- and
7 my answer -- my answer -- because you are asking
8 me why I don't know that offhand, and the reason
9 is, although it's probably a knowable number, I
10 could check our database to find out, the reason I
11 haven't addressed it, and I disagree with your
12 hypothesis on this, which is, you are always going
13 to have people that file late. Just because you
14 extend a deadline, doesn't mean you've all of a
15 sudden captured that population.

16 COMMISSIONER SCHILLER: That wasn't
17 my question. How many people were out of time on
18 either a one-year or a second-year claim, which is
19 a big difference from being out of time on a
20 ten-year claim, okay? That's what I'm getting at.
21 And to simply give a cavalier answer that somebody
22 is always going to be out of time is not what your
23 office is about. Your office is about --

24 MR. DESCH: No, it wasn't -- sir --
25 forgive me, sir.

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1 COMMISSIONER SCHILLER: Excuse me,
2 let me finish. Your office is about protecting
3 the homeowner, and we are looking for ways to help
4 your office and other offices in the state do
5 that. I think one of the things would be to --
6 and I think you suggested it -- was the analysis
7 of the limited warranty and the time frames in
8 there.

9 It would seem to me that, when we go
10 from 600 claims made to a hundred settlements,
11 that 500 claims are thrown out, I just would like
12 to get an idea of --

13 MR. DESCH: Oh. Let me clarify
14 that. No, that's not what I said.

15 What I said was, of the 600 claims
16 made, a number of them are going to be -- and,
17 believe me, forgive me, all of these numbers are
18 knowable. The answer to your question as to how
19 many claims are made out of time, I would be more
20 than happy to go back to my office, run that
21 number, and send it to you. There is no problem
22 with that.

23 Of the 600 claims made, what my
24 point was is that, when a case goes out to
25 arbitration and a builder is told this is what he

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1 has to do under the warranty, most of the time the
2 builder does that. It's only when he doesn't do
3 that that it becomes a claim for us to settle.
4 That's where I'm getting to the hundred from the
5 600. I'm not rejecting 500 claims because they
6 were imperfect in some way.

7 COMMISSIONER SCHILLER: That's what
8 it sounded like.

9 MR. DESCH: Well, then, I'm glad you
10 asked that, because that's not what I intended to
11 convey.

12 COMMISSIONER SCHILLER: The second
13 part of that is, it seems to me that you've made
14 the distinction between running the program and
15 also regulating the program when you referred both
16 to the state and private sector --

17 MR. DESCH: Sure.

18 COMMISSIONER SCHILLER: -- private
19 sector being where you regulate. It also seems
20 that we should probably pay more attention to some
21 of the regulations that we have over there and it
22 should be more monitored than what it is now.

23 Whether you agree with one person
24 handling that or not, I have no idea, that's not
25 my job, but it certainly seems to me that we

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1 should have more regulation both on the
2 arbitrators, both on the private sector and
3 solving people's problems who have it with the
4 private sector, just like you try to do on the
5 state side, and that's, I think, a key issue that
6 you should look at in terms of your own internal
7 stuff and how you can better regulate the private
8 sector, and I think that, along with what
9 Commissioner Cary is referring to, might be
10 included in the regulations. Not just how you can
11 better improve the state plan, but how we can
12 better regulate these private companies and come
13 up with better answers for homeowners when they
14 make these claims.

15 Again, it seems to me that a glowing
16 point is the limitation on the warranty, itself,
17 that has to be analyzed. We haven't changed that
18 since 1978. It seems like it's a long overdue
19 analysis that we should come back with, in terms
20 of what we think the warranty should look like in
21 2004.

22 MR. DESCH: I think that's an
23 excellent idea. I certainly would not argue any
24 of your points, Chairman.

25 COMMISSIONER SCHILLER: I have

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1 nothing further. Mr. Desch, I appreciate your
2 coming in and I want to thank you very much.

3 MR. DESCH: Sure.

4 MS. GAAL: I have one more point for
5 Mr. Desch, please. I just want to clarify
6 something.

7 When we said "complaints" and we put
8 those dots on the map, those are not individual
9 homes. Those are just complaints that came to us.
10 They represent, in many, many -- in most -- the
11 vast majority, multiple homes. Some of those
12 represent developments with a couple hundred
13 homes, some of them represent developments with
14 400 homes.

15 So the bottom line is, we are
16 talking about thousands and thousands of homes,
17 not 50 homes, which you said. Just since November
18 those 21 complaints represent thousands of homes.
19 I just want to clarify that.

20 MR. DESCH: I appreciate that. I
21 didn't understand that when it was testified to.

22 COMMISSIONER SCHILLER: Just one
23 thing more, Mr. Desch. I just was wondering, when
24 Mr. Butko testified -- I meant to ask you this
25 before -- he said that you asked him not to refer

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1 the complaints over to the Regulatory Affairs
2 division. Was there any reason for that?

3 MR. DESCH: I just wanted to see
4 them, Mr. Chairman. I -- I'm the bureau chief, I
5 like to know what's going outside of my bureau to
6 other agencies.

7 COMMISSIONER SCHILLER: Did you tell
8 him to send them to you or --

9 MR. DESCH: Yes.

10 COMMISSIONER SCHILLER: -- not to
11 send them over there at all?

12 MR. DESCH: No. Send them through
13 me.

14 COMMISSIONER SCHILLER: Thank you.

15 We want to thank everyone for their
16 appearances today and for their testimony here.
17 This will conclude these proceedings for now.

18 As I indicated at the outset, this
19 is an ongoing investigation and the Commission
20 intends to hold additional hearings at a time and
21 place to be announced, but, before we officially
22 adjourn, I have some closing observations.

23 Based upon the evidence and
24 testimony we've heard and seen here today, it is
25 plain that New Jersey's New Home Warranty system,

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1 in both its public and private sector forms, is
2 itself in need of extensive re-examination, repair
3 and renovation. This system needs to be buyer
4 friendly.

5 It is unconscionable that in the
6 21st century, in an era in which the mere flick of
7 a switch brings us crystal-clear images from the
8 surface of Mars, hard-working, law-abiding
9 citizens here at home are victimized by a system
10 that cannot decipher and implement the simplest
11 features of a warranty. It is inexcusable that
12 unsuspecting buyers, already saddled with the
13 effects of shoddy construction in their own homes,
14 must bear the additional burden of searching for
15 redress in a system that seems designed to work
16 against their interests. Something must be done,
17 and through this process, by publicly exposing and
18 examining the extensive flaws of that system, we
19 have taken an important first step.

20 When all the issues are exposed and
21 all those who have an interest are heard, the
22 Commission will issue a final report of this
23 investigation to the legislature, the governor and
24 the citizens of New Jersey. That report will
25 incorporate the full public hearing record, as

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1 well as significant additional investigative
2 material developed as part of this process.
3 Central to that report will be a comprehensive
4 package of reform, recommendations and, rest
5 assured, the New Home Warranty system will be at
6 the top of our list.

7 Meanwhile, we will welcome and
8 invite suggestions from the home-buying public,
9 the building industry, the regulatory community
10 and state and local government agencies. Write to
11 us or use the convenient new E-Mail link at our
12 website. As I said this morning, this is not an
13 academic exercise. We do not conduct
14 investigations merely to compile an investigative
15 record. Our goal is to fact find and to make
16 recommendations to encourage and assist in the
17 development of a strong and effective statutory
18 and regulatory structure that truly serves the
19 best interests of the consumers and taxpayers of
20 this state.

21 We will be conducting one more
22 series of hearings, at least, and hopefully we
23 will be getting all of our conclusions out as soon
24 as we possibly can.

25 So we thank you again for your

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1 attention to these most important matters, and
2 these hearings stand adjourned.

3 (4:50 p.m.)

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C E R T I F I C A T E

I, Sean M. Fallon, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Certified Shorthand Reporter
XI00840
Notary Public of New Jersey
My commission expires 4-29-08

Dated: _____