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# Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled & Disadvantaged!



*The Story of Bear Stearns Direct Involvement In  
And Support Of Predatory Lending In America!*

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# Predatory Grizzly "Bear" Attacking Elderly, Disabled, Minorities, Disadvantaged & Poor With Predatory Lending Scams & Frauds

## *Executive Summary & Overview Of Findings & Facts*

### INTRODUCTION

This report documents what is now known to be one of the largest predatory lending, servicing and financial scandals in America. The report documents and provides conclusive proof of widespread corruption, accounting fraud and abuse existing at Bear Stearns & Co., a major Wall Street investment bank and related subsidiaries.

This report is being provided as a service to Federal and State regulatory agencies; members of the media and press; politicians and congressional committees investigating predatory lending; concerned Bear Stearns stockholders; Bear's auditing firm, Deloitte & Touche; partners, employees and members of the board of directors of Bear Stearns; and civic, consumer and legal groups investigating predatory lending.

The objectives of this report are as follows:

- (a) Shed focus and light on Bear Stearns and its predatory lending practices;
- (b) Cause Bear Stearns to cease its predatory lending practices;
- (c) Cause Bear Stearns to change its policies, practices and procedures;
- (d) Insure that Bear Stearns complies with Federal and state laws and regulations;
- (e) Cause Bear Stearns to provide fair, reasonable and just compensation to the victims of its predatory lending abuses;
- (f) Provide regulators, lawyers, press, media, civic groups, Congress, State AGs and others investigating predatory lending with a "blueprint" and "genetic" map of how predatory lenders actually operate and their various schemes, scams and programming methods;
- (g) Focus attention on the national and community crises called predatory lending;
- (h) Educate consumers, the public, the courts, Congress and corporate America on the subject of predatory lending; and
- (i) Define and highlight actual predatory lending practices, schemes and abuses.

Bear Stearns & Co. [Bear Stearns] is one of the nation's leading "market makers" in what is called the mortgage backed securities market. From complex mortgage backed securities, collateral mortgage obligations and other mortgage "derivative" products, Bear Stearns has been actively involved in the development, placement and market ["manufacturing"] of mortgage securities in what is termed the sub-prime B & C markets for the past decade.

Sub-prime lending has recently come under intense scrutiny by various federal and state regulatory agencies, the U.S. Congress, state legislatures and various civic groups for "predatory lending" abuses. Attention, however, has been primarily focused upon unscrupulous mortgage brokers who use a variety of fraudulent, predatory and abusive practices to take advantage of elderly, disadvantaged, minority and disabled Americans.

Yet, what is unreported is that the mortgage brokers are mere "street" dealers that only sell, at the highest price, the supply "made available" to them with investment help from the "suppliers." Without the supply and support of "key suppliers" and "manufacturers" there would be no supply of such mortgages for the brokers to sell. The brokers only "make the deal" and then immediately "sell the deal" [the actual mortgages] to various Wall Street firms. Bear Stearns is one such firm. However, In Bear Stearns case, besides "manufacturing" and "supplying" the product for the dealers to sell, Bear also provides "enforcement and protection" though the use of various other subsidiaries and affiliates.

In Bear Stearns case, the enforcement and protection activities are left to EMC Mortgage Corporation in Las Colinas, Texas. Classified as a "mortgage servicer," EMC actually acts as "collectors and henchmen" to secure and collect mortgage mortgage loans with predatory provisions and even "usurious" debts. Unlike mob loan sharks and henchmen however, EMC employs a factory of collectors, lawyers and "foreclosure specialists" to literally steal the roof from under its customer's noses.

EMC Mortgage is one of the nation's leading practitioners of what is termed predatory lending. However, EMC is not an actual lender, but mortgage servicer. That is why I use the word "predatory servicing" in this report for it is after the loan is closed that EMC does its most damage. In reality, EMC operates like an "enforcer" for the suppliers [Bear Stearns and other investors]. Though a variety of abusive, aggressive and even illegal collection acts, EMC willfully engages in extortion and threats against its customers.

First, EMC intentionally programs its computers to unlawfully increase customer's payments and escrow and account balances. It' collectors then go to work to collect such unlawful payments. Then, by using threats against property, home and family, EMC collectors are taught by their own collection manuals to use "fear" as a method for collection.

Instead of threatening the breaking of bones however, EMC collectors threaten to take someone's home away, ruin their credit, destroy their business, and/or ruin their family unless the unlawful payment is made and continued to be made. When questioned, EMC refuses to provide rightful answers to their customer's questions about increases of their customer's payments.

EMC also uses a variety of doctored, fraudulent and confusing accounting records to support the collector's demands upon EMC customers. The customers, typically elderly, disadvantaged, minority and disabled homeowners who have high equity in their homes, usually do not possess the sophistication, education or means to challenge EMC and its collectors or fight their acknowledged "deep pockets."

While the pain and suffering of broken bones inflicted by mob henchmen and loan sharks may eventually heal or go away, the pain and suffering inflicted by EMC many times lasts a lifetime; costs a livelihood and occasionally even costs a life!

I have conducted a six year [over 8000 hour] investigation and examination of the mortgage banking, financing and predatory lending and servicing operations and practices of Bear Stearns and EMC. This report and the exhibits and evidence attached will detail my findings.

I have reached my findings, opinions and conclusions at great personal risk, suffering and cost to my family and I. However, their silence and ours cannot be bought. I will leave you to reach your own opinions, verdicts and conclusions by the careful reading of this report and a careful examination of the attached supporting exhibits and evidence.

It is my hope that this report, and the "decoding" of the various predatory lending scams, schemes and frauds perpetuated by Bear Stearns and EMC, will lead others to fight similar predatory lenders in America. I pray that your silence as well cannot be bought and that each of you who reads this report will take positive and constructive steps to end and stop this American nightmare!

## Key Findings

My investigation has included over 8000 hours of research, review, study, examination and analysis of over 100 personal interviews, depositions and testimony as well as over 100,000 pages of documents, legal discovery, and transaction histories.

This exam and investigation has uncovered massive wide-scale fraud, abuses, illegal and even criminal activity employed, sanctioned, paid for and supported by Bear Stearns & Co., EMC and various law firms and attorneys they retain. Over sixty [60] "individual" fraudulent schemes and scams have been identified.

The abusive, fraudulent, illegal and even criminal schemes and predatory lending and servicing practices by EMC and Bear Stearns uncovered and outlined below include:

- (a) Fraudulently and artificially increasing the amounts of EMC customer's principal balances so as to increase the allocation of interest payments to EMC from customers with adjustable rate mortgages and also thereby fraudulently increasing the payment of servicing fees paid by investors in various mortgage securities marketed by Bear and serviced by EMC;

- (b) Misrepresenting to EMC customers and courts across America the “true” ownership, sale, assignment, and chain of title of promissory notes, deeds of trusts and mortgages EMC claims to own but which many are owned by Bear Stearns and have been owned by others in mortgage backed securities and also through trustees such as State Street Bank & Trust and Banker's Trust;
- (c) Misrepresenting to customers and courts across America the alleged loss or destruction of promissory notes, deeds of trusts and mortgages EMC claims to own and have lost when such notes, deeds of trust and mortgages were assigned to various mortgage pools and investors and are being held by trustee banks as collateral for various mortgage backed securities marketed, placed and sold by various Bear Stearns companies and EMC affiliated and sister companies;
- (d) Misrepresenting to customers and courts across America the alleged loss or destruction of promissory notes, deeds of trusts and mortgages EMC claims to own and have lost when such notes, deeds of trust and mortgages are actually owned by others;
- (e) Delaying credits and adjustments to EMC customer’s escrow accounts, that EMC knows the customer is due, on or before impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer’s escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (f) Placing charges and debits to EMC customer’s escrow accounts, that EMC knows the customer does not owe, prior to impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer’s escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (g) Placing forced place insurance on top of an EMC’s customer’s own hazard insurance policy and charging the customer for a policy that EMC knows the customer does not owe, prior to impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer’s escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (h) Canceling EMC customer’s hazard insurance and then ordering forced placed insurance coverage at rates higher than the customer was previously paying and then placing such charges into EMC customer’s escrow accounts prior to impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer’s escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (i) Refusing to accept EMC customer’s hazard insurance policies that meet EMC’s insurance requirements and then ordering forced placed insurance coverage at rates higher than the customer was previously paying and then placing such charges onto EMC customer’s escrow accounts prior to impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer’s escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;

- (j) Refusing to accept EMC customer's hazard insurance policies that meet the requirements of the customer's mortgage terms without the payment of a "substitution fee" and then ordering forced placed insurance coverage at rates higher than the customer was previously paying and then placing such charges onto EMC customer's escrow accounts prior to impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer's escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (k) Failing to timely pay EMC customer's hazard insurance premiums from their escrow accounts and then ordering forced placed insurance coverage at rates higher than the customer was previously paying and then placing such charges onto EMC customer's escrow accounts prior to impound/escrow analysis dates so as to intentionally increase and inflate the actual amount of a customer's escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns;
- (l) Failing to inform customers that their payments or any portion of their payments are being held in a suspense account so as to intentionally hide such positive account balances and cause confusion about the proper amounts owed to EMC by their customers in an effort to intentionally increase and inflate the actual amount of a payment to EMC to increase EMC's revenue, income, cash flow, interest and investment returns;
- (m) Delaying the preparation and mailing of contractually obligated monthly payment coupons until after the actual due date called for in the customer's promissory note so as to intentionally cause a delay in payment of a customer's account so as to improperly assess, demand, and collect late fees caused by the direct actions of EMC so as to intentionally increase and inflate the actual amount of a late fee payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (n) Demanding overpayment of over-calculated escrow shortages [double or triple escrow billing] in addition to the shortage payment already calculated in the new escrow analysis so as to intentionally increase and inflate the actual amount of a customer's escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (o) Delaying credits, payments and adjustments to EMC customer's accounts, that EMC has already collected, cashed or received, on or before statement preparation dates so as to intentionally increase and inflate the actual amount of the payment that EMC claims is due, is demanding and/or collecting so as to cause EMC customers to send in overpayments that are placed into suspense accounts to increase EMC's revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (p) Placing various charges and debits to EMC customer's accounts, that EMC knows the customer does not owe, prior to impound analysis dates so as to intentionally increase and inflate the actual amount of a customer's escrow payment to EMC to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;

- (q) Placing amounts paid by EMC customers into suspense accounts and not crediting their accounts for principal, interest, escrow and other amounts due while at the same time sending monthly payment statements, demand letters and other collection documents that do not reflect or credit the amounts held in suspense in an effort to demand, extort and collect excessive payments from EMC customers that are not owed so as to increase EMC's revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (r) Unlawfully modifying the terms of EMC customer's loan documents in violation of RESPA and the customer's loan documents by sending so-called "welcome" letters that contain due dates and late fee assessment dates in advance of the actual due dates and late fee assessment date obligated under the loan terms so as to stimulate payments in advance of their contractual or lawful due date to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (s) Unlawfully modifying the terms of EMC customer's loan documents in violation of RESPA and the customer's loan documents by sending so-called "welcome" letters that contain principal and interest payment amounts that exceed the required monthly payment so as to stimulate overpayments of EMC customer's contractual and lawful monthly payments to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (t) Unlawfully modifying the terms of EMC customer's loan documents in violation of RESPA and the customer's loan documents by sending so-called "welcome" letters that contain escrow payment amounts that exceed the required monthly escrow payment so as to stimulate overpayments of EMC customer's contractual and lawful monthly escrow payments to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (u) Unlawfully modifying the terms of EMC customer's loan documents in violation of RESPA and the customer's loan documents by sending so-called "welcome" letters that contain late fee payment amounts that exceed the maximum allowed monthly late fee payment so as to stimulate overpayments of EMC customer's contractual and lawful late fee payments to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (v) Increasing and overstating payments due to EMC by customers that have high equity values in their homes so as to cause such customers to either pay EMC the overpayment or to dispute and refuse to pay the amounts and overpayments demanded by EMC so that EMC can assess, charge and collect late fee revenue directly attributable to their refusal to accept a customer's payment that was less than "one penny" less than what EMC claimed or demanded was owed;
- (w) Instructing EMC customers, who are disputing amounts claimed to be owed, not to send in a payment until the research on their account is completed,

then charging those same customers with late fees associated with the months the customers were told not to send in payments by EMC employees;

- (x) Using the due date instead of the statement date on monthly payment coupons sent to EMC customers to calculate late fees and demand, extort and collect excessive late fees and overpayment of late fees that are not owed to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (y) Placement into escrow accounts of debts and obligations not legally obligated or owed by EMC customers such as BPO fees, inspection fees, appraisal fees, legal fees and other expenses that are not owed or allowed by law to be placed into mortgage escrow accounts to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (z) Concealment of debts and obligations not legally obligated or owed by EMC customers such as BPO fees, inspection fees, appraisal fees, legal fees and other expenses as “misc.” adjustments to customer's accounts or escrow balances that are not owed or obligated to in an effort to increase revenue, income, cash flow, interest and investment returns;
- (aa) Misrepresenting non-recoverable advances such as BPO fees as “misc. legal advances” that are not only not owed but intentionally and fraudulently dumped into attorney fee demands made by EMC upon its customers to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (bb) Miscalculating and over-charging escrow accounts of EMC customers that are not owed in an attempt to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (cc) Miscalculating and over-charging principal balance accounts of EMC customers that are not owed in an attempt to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (dd) Miscalculating and over-charging payoff amounts on the accounts of EMC customers that are not owed in an attempt to increase revenue, income, cash flow, interest and investment returns to EMC and Bear Stearns;
- (ee) Billing, charging and assessing the attorney fees of EMC co-defendants in lawsuits as EMC's own attorney fees when in fact EMC has no claim to such fees and the co-defendants have made no claim for such attorney fees;
- (ff) Instructing EMC customers to take disputes and complaints about amounts owed, balances, payments and other “qualified” matters that customers had with previous servicers to those servicers when EMC has the legal and contractual obligation to address such matters under their so-called purchase as well as under RESPA;
- (gg) Refusing to address complaints and disputes from EMC customers about amounts owed, balances, payments and other “qualified” matters that customers had with previous servicers after EMC has taken over servicing of



- the loan when EMC has the legal and contractual obligation to address such matters;
- (hh) Refusing to address complaints and disputes from EMC customers and/or delaying responses about amounts owed, balances, payments and other “qualified” matters with EMC itself so that EMC can delay the dates of any filing of lawsuits so as to assert various waiver and statute of limitation defenses when customers ultimately file suit to protect their interests;
  - (ii) Failing to recalculate, amortize and adjust payments and interest assessments when errors, mistakes and overpayments have been found and documented on an EMC’s customer’s account;
  - (jj) Concealing the names of additional parties, litigants, owners in due course, trustees and investors who actually own; have an interest in EMC customer’s notes and/or have approved actions taken against EMC customers by EMC itself;
  - (kk) Collecting debts and obligations for others and concealing that fact and representing that EMC is collecting an obligation or debt of its own;
  - (ll) Conducting property inspections upon delinquent EMC customers and assessing, charging, demanding and collecting property inspection fees, in addition to late fees that are assessed and collected from customer’s whose note’s provide for such expenses and are part of liquidated damage “late fee” provisions of a customer’s account;
  - (mm) Conducting property inspections upon supposed delinquent EMC customers and assessing, charging, demanding and collecting property inspection fees in which the stated purpose of the so-called property inspection was to collect the EMC customer’s payment;
  - (nn) Diverting payments intended for principal and interest payments toward the payment of various fees and expenses not owed by EMC customers instead of payment to reduce principal balances;
  - (oo) Holding in suspense and not crediting partial and even full payments on dates received from customers who sent in more money than what was owed to advance pay their mortgage and reduce the principal balance of their loans;
  - (pp) Diverting payments intended for principal and interest payment toward the payment of various fees and expenses not demanded by EMC according to the terms and conditions of EMC customer’s promissory notes;
  - (qq) Assessing, claiming, demanding and collecting attorney fees for defense of the wrongful actions of EMC and terming such demands as attorney fees for “collection of a note” when in fact such fees are for EMC’s own defense;
  - (rr) Assessing, claiming, demanding and collecting attorney fees from EMC customers for defense of co-defendants in lawsuits with EMC for the wrongful actions of such co-defendant and terming such demands as attorney fees for

- collection of a note when in fact such fees are for EMC's co-defendant's defense;
- (ss) Assessing, claiming, demanding and collecting attorney fees for collection of a note when in fact the customer's note does not contain a cost of collection or litigation provision or clause as other EMC notes do;
  - (tt) Charging various legal expenses including expert, investigation and support fees and then assessing, claiming, demanding and collecting such fees by fraudulently concealing them as attorney fees;
  - (uu) Charging various legal expenses including copy, lunch, travel, parking, phone, postage and other expenses and then assessing, claiming, demanding and collecting such fees by fraudulently concealing them as attorney fees;
  - (vv) Retaliating against EMC customers and their families who have filed suit or made complaints to EMC or State and Federal authorities by continuing false and negative credit reporting and refusing to report accounts as being in dispute to credit reporting agencies;
  - (ww) Refusing to correct known false credit reporting in order to use as "blackmail" and "extortion" against EMC customers to get them to pay money EMC's knows is not obligated for;
  - (xx) Making demands for payment of principal and excess escrow payments in excess of interest, advances and expenses after EMC has accelerated a customer's note;
  - (yy) Making demands for payment of excess principal, interest and escrow payments far in excess of the actual interest, advances and expenses owed to EMC;
  - (zz) Failing to provide EMC customers with proper information and data on mortgage notes that have negative amortization provisions so as to cause deferred interest payments to be placed into the customer's account so as to increase interest payments, income, revenue and cash flow to EMC and Bear Stearns;
  - (aaa) Failing to follow the terms of EMC customer's promissory notes and altering key terms of promissory notes upon transfer of servicing in violation of RESPA and the actual terms of each customer's notes and mortgages;
  - (bbb) Providing false and fraudulent transaction and account data to EMC customers who have disputed transactions, account balances and payment demands by EMC;
  - (ccc) Intentionally failing to timely credit or adjust EMC customer's account from months to even years for expenses, charges and advances not owed;
  - (ddd) Paying inspection fees, attorney fees, late fees and other expenses from customer's payments before their application to principal and interest payments actually due in violation of the terms and conditions of EMC customer's promissory notes;

- (eee) Extorting sums and payments known not to be owed to EMC by threatening the credit of customers and illegal foreclosure of their homes;
- (fff) Intentionally extorting exorbitant sums and payments for attorney fees known not to be owed to EMC by threatening the credit of customers and illegal foreclosure of their homes;
- (ggg) Intentionally blackmailing EMC customers to pay sums not owed or legally obligated to in order to protect their credit reputation or foreclosure of their home;
- (hhh) Mischaracterizing the amount, type and status of EMC customer's debts with EMC by mislabeling, misrepresenting and misstating the types, nature and amounts of customer's payments, balances and credit and debit transactions;
- (iii) Intentionally reporting false and negative credit information to prevent customers from refinancing their loans;
- (jjj) Foreclosing on customer's loans and padding expenses via false affidavits to the courts so that the equity of borrower's homes can be stripped away;
- (kkk) Stripping equity in foreclosures by claiming non-recoverable advances such as BPO fees in the claim and lost rent when in fact EMC does not and has not intended to rent the foreclosed property;
- (lll) Seeking claims and recovery from U.S. government agencies such as VA, FHA and HUD for shortfalls after foreclosure in which EMC has hidden and padded non-recoverable advances and artificially inflated the principal balances by various means so as to secure a higher claim than it is rightfully entitled to;
- (mmm) Wrongfully foreclosing on customer's homes; increasing internal costs to equity strip the borrowers and then underbid the value of those properties by "buying them low and selling them high" as one EMC manager was quoted as saying to make a profit to the benefit of EMC and Bear Stearns.

### **Emc & Bear Stearns Illegal Activity & Noncompliance**

EMC and Bear Stearns willfully violate and fail to comply with various Federal and State laws, statutes and regulations. In order to save money and earn additional revenue, EMC and Bear Stearns has been found to violate the following Federal and State laws as well as RESPA and HUD policies, regulations and procedures, including, but not limited to:

- (a) Violation of the 20/60 rule and a failure to correct mortgage discrepancies, errors, and misapplications within 60 days after complaint;
- (b) Violation of the 20/60 rule by failing to acknowledge and investigate the Pews and other customer's continual written complaints and demands within 20 days of notice to the lender;

- (c) Violation of RESPA's 2 month limitation of escrow cushion by demanding more than lawfully allowed amounts of escrow deposits for taxes; escrow for wrongfully forced place insurance and refusal to credit the previous year's escrow charges in demands for payment when all and/or portions of those payments were included as part of escrow shortage calculations in subsequent year's escrow analyses' and payment demands;
- (d) Violation of RESPA's 2 month limitation of escrow cushion by demanding 7 month's worth of escrow for wrongfully forced place insurance that was represented as being credited to the Pew's account but was still be demanded in payment demands over a year after the represented credit;
- (e) Violation of RESPA in changing the terms and conditions of a customer's note when assigned or purchased;
- (f) Violation of RESPA's guidelines in calculating escrow payments and demands;
- (g) Failure to stop negative credit reporting for 60 days upon written disputes;
- (h) Abusive collection practices through threats of intimidation, ruin of credit and wrongful foreclosure of homes;
- (i) Failure to properly notify customers of escrow activity in their escrow account;
- (j) Misleading customers as to escrow activity and payments in their escrow account;
- (k) Misstating, mischaracterizing and misrepresenting the amount of payments due EMC and the status of customer's debts;
- (l) Violation of Truth In Lending Laws, Fair Credit Act & Debt Collection Laws;
- (m) Violations of various state and federal banking laws and regulations;
- (n) Violation of various state collection, consumer protection and deceptive trade practice laws;
- (o) Violation of HOEPA;
- (p) Violation of State & Federal RICO acts.

## Potential Criminal Activity Discovered

Certain potentially "criminal" behaviors have also been discovered and documented. Such criminal activity uncovered in this investigation include:

- (a) The obstruction of justice by the use of "corporate dummies" as corporate representatives in depositions who are purported and represented to have knowledge of facts, information and practices of EMC and Bear and who have little knowledge of facts or information, but have been coached and instructed to obstruct justice and provide perjured testimony by EMC corporate counsel and outside attorneys;
- (b) The obstruction of justice by the use of "corporate dummies" as corporate representatives in depositions instead of key executives who have actual knowledge of facts, information and practices of EMC and Bear and who have little knowledge of facts or information, but have been coached and instructed to obstruct justice and provide perjured testimony by EMC corporate counsel and outside attorneys;
- (c) The obstruction of justice by knowingly providing false and misleading affidavits, account histories, answers to interrogatories, deposition questions and trial and hearing testimony before courts across America;
- (d) The rubberstamping of affidavits filed with courts across America including affidavits signed by individuals without knowledge to the facts as well as individuals who are different than the individuals identified on the face and first page of the affidavits;
- (e) Reporting to courts that individuals purporting to have custody and control of pertinent documents and records when in fact such individuals and even EMC itself does not have direct control of the document and evidence referenced in the affidavits;
- (f) Representing to courts and litigants that documents do not exist or have been destroyed that in reality do exist;
- (g) Destruction, alteration and expropriation of records, documents and evidence including master tapes of major transactions, loan histories, computer comments, memos, depositions,
- (h) Sponsorship, approval and support of experts bought to conduct fraudulent analyses and reports to conceal known mistakes, wrongful actions, omissions, transactions and frauds;
- (i) Sponsorship, approval and support of witness tampering via paying off and buying fraudulent analyses and reports of auditors to conceal known mistakes, wrongful actions, omissions, transactions and frauds;

- (j) Invasion of privacy by hiring outside investigators to illegally obtain personal, credit, medical and business information on family members of customers and potential witnesses;
- (k) Fraudulently billing co-defendant's legal fees as its own and lying and misrepresenting such facts to the courts, litigants and investors;
- (l) Criminal trespass and theft of property in homes by investigators and agents of EMC and their attorneys litigating claims and foreclosures against EMC customers;
- (m) Falsification of business records, documents, promissory notes, and evidence presented in civil trials and foreclosures;
- (n) Intentionally providing false and perjured testimony to mislead litigants, attorneys and courts across America.

All-in-all, EMC, Bear Stearns, Washington Mutual, SOA and their related attorneys, law firms and executives are directly participating in what can best be termed a "white collar criminal enterprise." While attempting to provide the illusion of a "normal" business practice, the harsh reality is that the abuses and predatory practices exhibited by these companies and individuals not only violates so-called industry standards, ethics and practices, but willfully violates various federal and state laws, codes, and regulations.

A detailed examination of all of EMC's compliance audits, complaints, complaints logs, court pleadings, settlement agreements, agreements, closing books, and other documents known to exist would shed further light and provide additional evidence on EMC's and Bear Stearns illegal behavior.

As one state regulator from New York said, if you're a mortgage company or bank and want to steal a hundred million dollars, would you do it all at once or steal many pennies, dimes and dollars millions of times?

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# Actions Affect The Public & Many Constituencies

*Actions Affect Public, Financial Markets, Customers, Shareholders & Employees*

## Effects On Bear Stearns' Publics & Key Constituencies

As exhibited below, the effects of Bear Stearns' and EMC's actions affect many direct and indirect constituencies. In light of recent litigation, public and regulatory investigations and the hits and shots that Bear has taken a "Predatory" Bear should willingly want to hibernate or cage itself, rather than being shot down by state agencies and regulators. This would minimize Bear's and EMC's exposure and prevent further attacks and harm upon the predatory Bear's victims.

Recently, Federal and state agencies, regulators, civic organizations and Congress have focused their attention on what's termed "predatory" lending and servicing practices. In light of such focus, EMC's and Bear's arrogance, ignorance, non-compliance of and abuse of the law is startling! This arrogance is reflected by EMC's own foreclosure manuals when customers are frequently referred to as "smucks" instead of borrower, Jane or John Doe or Smith.

The effects of Bear's behavior has a wide range effect on many, not just the EMC customers being abused. This includes Bear Stearns' own shareholders, investors, government and the public. Effects on specific segments of Bear Stearns' constituencies are as follows:

## Effects On Financial Markets

The effects of Bear Stearns' and EMC's actions on financial markets include:

- (a) Devaluing of various mortgage derivative products due to increased liabilities caused by predatory lending practices;
- (b) Failure of major banks and wall street firms if value of derivative products falls, interest rates rise and calls are made on credit enhancement guarantees;
- (c) Reluctance of corporations, mutual funds and other investors to invest in legitimate mortgage backed securities that are not predatory;

- (d) Increased government regulation and supervision.

#### Effects On EMC Customers

The effects of Bear Stearns' and EMC's actions on its customers include:

- (a) Illegal stripping of equity in EMC customer's homes;
- (b) Illegal foreclosure and loss of EMC's customer's homes;
- (c) Emotional and mental abuse and distress intentionally inflicted upon EMC customers;
- (d) Impairment of customer's physical and mental health;
- (e) Intentional infliction of emotional duress;
- (f) Intentional retaliation upon those smart enough to discover abuses;
- (g) Economic damages suffered by customers for intentional and wrongful reporting of credit, loss of property and payment of legal expenses;
- (h) Overpayment of non-obligated fees, expenses, advances, and payments by customers;
- (i) Increased payoffs of customer's mortgages and notes;
- (j) Divorce, family estrangement, death and imprisonment of EMC customers and their family members;



## Effects On EMC/Bear Investors & Trustees

The effects of Bear Stearns' and EMC's actions upon institutional investors and trustees related to their various subsidiary's mortgage backed securities include:

- (a) Increased liability if named in lawsuits by EMC customers where investors or trustees have been assigned an interest in such customer's mortgage;
- (b) Payment of advances for fees, legal expenses and liabilities caused by EMC's direct actions and fraud;
- (c) An outcry from shareholders and constituents regarding the support and finance of predatory lending practices;
- (d) A credit downgrading of mortgage backed securities marketed by Bear Stearns and serviced by EMC due to EMC's and Bear Stearns predatory lending practices;
- (e) A credit downgrading of mortgage backed securities marketed by Bear Stearns and serviced by EMC due to EMC's and Bear Stearns fraudulent accounting methods;
- (f) Payment of advances for fees, legal expenses and liabilities actually collected by EMC for its own benefit;
- (g) Increased principal payments and payoffs by customers who don't want to do business with EMC because of its abusive servicing practices;
- (h) Decreased payments and value of securities if customers exert rights to foreclosure or default based on the loss of promissory notes, deeds of trusts and mortgages by EMC;
- (i) Decreased payments and value of securities if customers exert rights to foreclosure or default based on the loss of loan and transaction histories by EMC or previous servicers;
- (j) Loss of interest in real estate by court and regulatory rulings of legal opinions or State AGs;
- (k) Increased and overpayment of "servicing fee" payments by investors, due to EMC's manipulation of customer's principal balances and failure to properly credit customer's accounts in a timely manner;
- (l) Ruling by courts, SEC or other government agencies that sales of securities were not "true sales" as represented to investors, SEC and security credit rating agencies;
- (m) Reduced value of market securities if rating agencies downgrade ratings;

- (n) Reduced marketability of market securities if rating agencies downgrade ratings or securities impaired by legal or regulatory decisions;

#### Effects On Bear Stearns Stockholders & Company

Bear Stearns and its shareholders, including the over 40% of shares held by employees can be affected in various ways including:

- (a) Reduced stock prices upon adverse legal and regulatory decisions;
- (b) Refusal of various communities like Chicago to do business with Bear Stearns due to the predatory practices of EMC and Bear Stearns;
- (c) Refusal of various corporations to do business with Bear Stearns due to the predatory practices of EMC and Bear Stearns;
- (d) Reduced stock prices upon news of adverse legal and regulatory investigations;
- (e) Reduced stock prices upon news of court award of damages, fines and sanctions;
- (f) Increase in legal expenses and fees to corporation due to unnecessary operational risks, assessments and decisions with a reduction to profit thereby reducing shareholder value, returns and dividends;
- (g) Increased focus and time addressing legal, noncompliance and regulatory issues;
- (h) Loss of business from communities, companies and governments not willing to conduct business with supporters of or predatory lenders themselves;
- (i) Negative press and media reports and harm to the company's image and reputation from the publication and exposure of repeated scandals;
- (j) Difficulty recruiting, hiring and retaining qualified employees, managers and executives who do not want to be associated with the company or its culture;
- (k) Increased exposure to liabilities and government oversight, regulation and sanctions.

## Effects On Bear Stearns Executives, Partners & Employees

Bear Stearns employees can also be directly affected by Bear's actions. Such effects could include:

- (a) Elimination of jobs due to cuts and layoffs resulting from jury awards, fines and sanctions or elimination of divisions due to regulatory or court pressures;
- (b) Criminal or regulatory prosecution of those, such as in the Harrington affair, of those who have knowingly or unwittingly supported, endorsed or participated in any of the fraudulent schemes employed by Bear Stearns and EMC;
- (c) Increased public scrutiny by the press, media, and regulatory agencies and officials of other activities;
- (d) Public publication and exposure of individuals and their home addresses who are directly responsible for Bear and EMC actions in the press, media and internet;
- (e) Public and private humiliation and embarrassment to those supporting illegal, criminal or unethical practices;
- (f) Loss in stock, fines or employment and even imprisonment to those supporting illegal, criminal or unethical practices.

## Effects On Local, State & Federal Governments

Local, state and federal governments are also affected by Bear Stearns' and EMC's actions. Some of the effects on government include:

- (e) Overpayment of false and fraudulent claims to EMC by federal government mortgage insurers such as VA, FHA and HUD;
- (f) Increased taxpayer expense in use and abuse of court systems to defend or prosecute Bear's & EMC's illegal actions;
- (g) Support and taxes exhausted by local, state and federal government for individuals who are forced to seek taxpayer support, living assistance, financial aid and living assistance;
- (h) Loss of tax revenue and income from taxpayers who are forced to file bankruptcy due to EMC's illegal or overstated demands and foreclosures;
- (i) Increase in abandoned homes due to predatory practices and wrongful foreclosures by EMC;
- (j) Costs, expenses and manpower taken by government to examine, investigate and prosecute Bear Stearns and EMC's operations.

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# The Business Of Bear Stearns, EMC Mortgage Corporation & It's Mortgage Operations

## *Bear Stearns Big Player In Predatory Lending Field*

### The "Mortgage" Business Of Bear Stearns

Bear Stearns has been one of the top underwriters of mortgage products every year for the past decade. During fiscal year 1999 the firm maintained its top-five leadership position in mortgage underwriting according to Securities Data Company. Innovation in products and structures is the cornerstone of their business. For example, in non-agency mortgages, they leveraged their structuring expertise to become the leader in the subordinated-credit securities marketplace.

Bear Stearns' Equities Group combines the efforts of sales, trading and research professionals to offer in-depth expertise in areas such as block trading, convertible bonds, over-the-counter ("OTC") equities, equity derivatives and risk arbitrage. Fixed Income provides distribution power for issuers in the primary market, liquidity for investors in the secondary market, research for institutional clients and offers expertise in products such as mortgage-backed and asset-backed securities, corporate and government bonds, municipal and high yield securities, foreign exchange and derivatives.

Bear Stearns' Investment Banking Group provides a variety of services to its clients, including capital raising, strategic advisory, mergers and acquisitions and merchant banking capabilities. Capital raising encompasses the Company's underwriting of equity, investment grade debt and high yield debt securities.

Bear Stearns business includes: market-making and trading in US government, government agency, corporate debt and equity, mortgage-related, asset-backed and municipal securities; trading in options, futures, foreign currencies, interest rate swaps and other derivative products; securities, options and futures brokerage; providing securities clearance services; managing equity and fixed income assets for institutional and individual clients; financing customer activities; securities lending; securities and futures arbitrage; acting as specialist on the floor of the NYSE and the AMEX; underwriting and distributing securities; arranging for the private placement of securities; assisting in mergers, acquisitions, restructurings and leveraged transactions; making principal investments in leveraged acquisitions; engaging in commercial real estate

activities; investment management and advisory; fiduciary, custody, agency and securities research services

Subsidiaries involved in various aspects of Bear's mortgage operations include:

AMC Real Estate Inc., Bear Stearns Asset Backed Investors Corp., Bear Stearns Asset Backed Securities, Inc., Bear Stearns Commercial Mortgage, Inc., Bear Stearns Home Equity Trust, Bear Stearns Investments Products Inc., Bear Stearns Mortgage Capital Corporation, Stearns Secured Investors Inc., Bear Stearns Secured Investors Inc. II, Bear, Stearns Commercial Mortgage Securities Inc., Commercial Asset Structured Securities Inc., CTC Services, Inc., Custodial Trust Company, EMC Funding Corporation, EMC Funding Corporation Two, EMC GP Capital Inc., EMC Mortgage Corporation, EMC Residential Mortgage Corporation, Structured Asset Mortgage Investments Inc. and Structured Mortgage Asset Corp. However, Bear Stearns and EMC have trustee relationships with State Street Bank & Trust and Banker's Trust as well.

## The Business Of EMC Mortgage

EMC Mortgage Corporation ( "*EMC*"), a wholly-owned subsidiary of The Bear Stearns Companies Inc. It was originally established as a full-line mortgage banking company to facilitate the purchase and servicing of what were supposed to be **whole loan** portfolios. However, evidence presented in this report will demonstrate that both EMC and Bear Stearns & Co. have intentionally misled investors, regulators and ratings firms. Certain transactions, including the SOA deal, were not actual whole loan sales, but rather sham sales that were classified as "true" sales to mislead investors, government regulators and borrowers.

EMC's claims its mortgage portfolios contain various levels of quality "*investment grade*" loans to various degrees of "*non investment grade*" loans. EMC also acquires mortgaged properties through foreclosure or deed-in lieu of foreclosure. Such mortgaged properties are commonly referred to as "*REO Properties.*" However, according to EMC employees virtually all customers and mortgages serviced are either delinquent, in default or foreclosure.

EMC was incorporated in the State of Delaware on September 26, 1990 and commenced operation in Texas on October 9, 1990.

EMC's principal business has been the purchase, assignment, sale, and foreclosure of non-performing residential mortgage loan portfolios and properties. Such real estate and loans have been traditionally acquired from the Resolution Trust Corporation ( "*RTC*"), failing thrifts, private investors and, most recently, from the Department of Housing and Urban Development through its auctions of defaulted Federal Housing Authority mortgage loans.

EMC's claims that its mortgage servicing portfolio consists primarily of two categories: (i) performing investment-quality loans serviced for EMC's own account or the account of Federal National Mortgage Association ( "*Fannie Mae*"), Federal Home Loan Mortgage Corporation ( "*Freddie Mac*"), private mortgage conduits and various institutional investors, and (ii) non-investment grade, sub-performing loans, non-performing loans and REO Properties serviced for EMC's own account and for the account of investors in various securitized performing and non-performing collateral transactions developed, sold, marketed and placed by Bear Stearns & Co. and related subsidiaries.

EMC's claims its operations resemble those of most mortgage banking companies, except that significant and special emphasis is placed on the "aggressive" collection of non-performing loans and their immediate liquidation wherever, whenever and however possible.

However, it is EMC's reputation as a "foreclosure factory" and "toxic mortgage waste dump" that EMC and Bear Stearns have built a thriving business on. EMC's utilization of predatory practices and extortionate threats make Mafia henchmen look merciful. While a broken leg or beating soon heals, the scars left by EMC's relentless attacks on consumers leaves borrowers wishing they would have borrowed money from a loan shark instead.

"Aggressive" collection tactics that EMC employees use include fear and intimidation by collectors that work for EMC. Many of these collectors are temporary workers that EMC uses. Collectors are paid bonuses on the amounts they collect.

EMC employees stated that EMC regularly fails to comply or honor state and federal laws, rules and regulations. They stated that it is cheaper for EMC to violate the law and fight those who choose to fight them.

They also called EMC "a foreclosure factory" that once you are in the system, you're just a number on an assembly line. They also suggested that the best way to beat EMC is to "sue the lawyers."

In one case, EMC sent collectors to a "disputing" customer's door in Oregon to collect 18¢. Yes 18¢! In the Pew case, EMC and it's lawyers have spent over \$1 million dollars defending a loan of approximately \$104,000.00 that the Pew's could pay with the stroke of a pen. By far, this case is the most visible example in the entire United States of predatory lending and servicing practices.

The investigation and this report conclusively proves that EMC and Bear Stearns actively supports, funds and encourages predatory lending practices. However, what is even more disturbing is that Bear Stearns & Co., via EMC, is "aggressively" involved in predatory lending and servicing practices directly.

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# Tracking & Hunting The Big Bad Bear!

## *Writer Discovers Wide-Scale Predatory Lending Frauds & Scams Through Victimization Of His Own Family*

### Overview Of Investigation

This investigation was conducted due to EMC's attempted wrongful and illegal foreclosure of Anthony and Matilde L. Pew's property in Dallas, Texas in 1994. EMC has claimed and demanded almost \$1 million in payment from the Pews for the pay off of a loan taken out with SOA in the original amount of \$109,000.00 in 1989. The Pews have paid SOA and EMC over \$100,000 since 1989 and have been forced to pay over \$250,000.00 in legal fees and expenses due to EMC's actions.

The loan had an approximate principal balance of only \$104,000.00 as of December 31 of 1999. For over 6 years, the Pews have and had offered to pay off their entire mortgage obligation to EMC or whoever could be shown to own the Pew note. The Pew's also had and have sufficient liquid resources to pay off their rightful loan balance in cash with a check. They also have access to a family trust that could have paid off the loan balance at any time for them.

However, EMC and its predecessor, SOA, fraudulently demanded anywhere from \$2000.00 to over \$20,000.00 in fraudulent excess charges and escrow payments from the Pew's prior to their filing of a lawsuit. At one point, in February of 1992, the Pew's annual tax payment was \$2602.28.

However, SOA demanded payment from the Pews for tax escrow in an amount of over \$3000.00 per month for a five month period! SOA then refused to provide a written breakout of how it calculated or arrived at this amount. The Pews refused to pay SOA without documentation or verification of how this amount was calculated.

Due to SOA's and EMC's actions, the Pews were forced to file a lawsuit in Dallas, Texas to prevent the non-judicial foreclosure of their second residence and demand a proper accounting of their loan.

To date, EMC and SOA have provided over twenty [20] different loan histories, accountings and expert opinions. Such histories do not match and many exclude tens of thousands in various wrongful and illegal transactions that have been documented to occurred on the Pew's account.

Instead, EMC and SOA embarked on a six year, over \$1 million dollar cover-up that has attempted to conceal the existence and nature of their frauds, abuses and predatory lending practices..

They have also attempted to conceal the fraudulent alleged sale of a \$2.3 billion mortgage loan portfolio from SOA to EMC that was actually a sham sale and really a creative financial scheme to save SOA from takeover by the Resolution Trust Company in the early 90s.

As illustration and proof of these abuses all one has to ask are these two simple questions. Why would a bank or mortgage company spend over \$1 million in attorney fees to “foreclose” on a \$104,000.00 obligation? And, since the Pews have been forced to spend over \$250,000.00 in legal related payments, attorney fees, accountants, expenses etc., couldn’t they have afforded to pay off in cash a \$104,000.00 loan balance?

EMC has refused to allow the Pews to pay off their mortgage loan with EMC without the payment of over \$750,000 in legal fees and non-recoverable charges. The demand is not only for wrongful and illegal charges, but for the fees and expenses they have incurred to “defend” the wrongdoing of their company and that of SOA as well.

Since the inception of their alleged purchase of the loan from SOA, they have demanded that the Pews pay off attorney fees and other “non-recoverable” fees and expenses that ranged from \$20,000.00 to over \$800,000.00. They have also demanded the pay off of their co-defendant, SOA, for their attorney fees even though SOA acknowledges that it never made a claim for such fees.

EMC has also demanded the silence, confidentiality and destruction of evidence in their lawsuit by the Pews that have been steadfastly refused. In court, EMC has attempted to paint the Pews as “McDonalds type Plaintiffs” which is an obvious reference to the infamous McDonalds coffee spill case. However, nothing could be farther from the truth. The Pews, while not wealthy, prior to their lawsuit as well as now, are financially stable and had liquid assets of approximately \$500,000.00 and little if any debt except for that claimed to be owed by EMC.

Mr. Pew is also the beneficiary of a family trust. The trust provides for a comfortable existence if it were not for the costs, expenses and fees related to the litigation that the Pews were “forced and coerced” to take against EMC. All to defend the white-collar theft of their property in an illegal non-judicial foreclosure action by EMC. EMC even told the Pews that the only way for them to get satisfaction on their claims against SOA, was to sue SOA. EMC claimed that it had no obligation to fix or correct the problems and mistakes of SOA, even though they claimed they purchased the Pew's note.

The principal loan balance of the Pew's loan is approximately \$104,000.00 and the property in question is valued at approximately \$160,000.00 although EMC claims to be putting the home up for sale at \$172,000.00. The Pews could have sold their property and recouped their equity or have written a check for this amount at any time. The foreclosure was not then and was never based on the Pew's inability to pay off their mortgage loan. To the contrary, it was the extortionate “demands” of EMC for the Pews to pay from \$20,000 to over



\$800,000.00 in fees and additional expenses related to EMC's and SOA's defense of the Pew's lawsuit

My investigation has also uncovered massive abuse and fraud upon "other" customers of EMC Mortgage and investors of mortgage backed securities sold by Bear Stearns that my estimates total over \$1 billion USD! Thousands of lawsuits and defenses have been filed across the nation against EMC and SOA alleging many of the same complaints made by the Pews. EMC and SOA have also received "tens" of thousands of similar complaints in writing and via the telephone that are documented in SOA's and EMC's call records and complaint logs.

This report also details what could be one of America's largest financial scandals ever, resulting from the development, placement and sale of various mortgage backed securities and "derivative" products by Bear Stearns. However, this report primarily focuses attention on the predatory lending and servicing practices of EMC Mortgage.

This report is the story of one of America's largest Wall Street investment bank's "direct" involvement in the development, making, and support of a nationwide system of predatory lending practices, frauds and abuses.

From the local aluminum siding or repair scam artist who does shoddy work to the unscrupulous mortgage broker who charges thousands in up front fees for a mortgage in excess of 18%, Bear Stearns and EMC Mortgage Corp. funds, supports, sponsors and even "services" many of these predatory lending con artists.

However, unlike the A.R. Baron scandal where Bear Stearns paid tens of millions in fines and claims, Bear can't claim ignorance of the clearing of fraudulent trades by others. Bear's own paw marks, scratches and attacks are firmly embedded upon its victim's backs! Their "trail" is now trackable. The hunt is now on to kill the Bear before it hurts any more families in America.

## Methodology Employed In My Investigation

I have conducted a thorough review and analysis of various documents sent to Anthony and Matilde Pew [Pews], produced by SOA and EMC in legal discovery as well as other documents secured by my own private investigation. Documents have come from ex-employees, employees, court files, lawyers, other litigants, EMC customers and state and federal government agencies and regulators.

I have examined and reviewed over 100,000 pages of documents and have spent over 8000 hours of analysis work over the past 6 years. Documents that have been reviewed and analyzed include:

The Pew's Mortgage Servicing File; Investor Prospectuses; Policy & Procedure Manuals; 10 K Filings; Deposition Testimony; Tax Records; Demand Letters; Payoff Quotes; Reinstatement Quotes; Payment Coupons; Monthly Statements; Loan Data Sheets; Closing Documents; Call Records; Foreclosure Notes; Customer Letters; Monthly Statements; Annual Statements; Annual Loan

Histories; Escrow Histories; Escrow Account Analyses; Customer Complaint Logs; Customer Complaint Letters; Internal EMC Audits; Compliance Records; Answers To Interrogatories; Court Pleadings; Findings of Independent Auditor; Internal Notes & Memos; Loan Servicing Records; Insurance Documents & records; CPI Computer System Files; Loan Accounting Records; Cancelled & Non-Cancelled Checks; Promissory Notes, Mortgages & Deeds Of Trusts; Court Records; Hearing Transcripts; Internet Pages; Annual Reports; HUD & Treasury Reports; CPI Training Materials; HUD & Fannie Mae Guidelines & Regulations; Federal & State Consumer, Banking, Credit & Lending Laws;

In addition, personal interviews and depositions were conducted with:

Current And Past Bear Stearns, EMC And SOA Employees, Temporary Help, Managers And Attorneys;; Financial Advisors And Brokers;; Mortgage Broker And Banking Officials;; Mortgage Lending And Servicing Experts;; Forensic Accounting Experts; Forensic Document Experts; Accountants; Banking And Mortgage Regulators; Federal Officials; Financial Analysts; Individuals, Organizations, State And Local Officials Investigating Predatory Lending Practices..

My investigation is still on-going and expanding. Additional documents need to be gathered and need to be analyzed and compared against what are believed to be and are represented as "Master Transaction Registers" and records of account between the Pews and SOA and EMC.

Since 1991, EMC and SOA have sent and produced over twenty [20] different transaction, loan and account histories on the Pew's account. Many of these "histories" contain omissions, redaction, manually altered figures, fraudulent entries, unverifiable entries, non-documented entries, journal entries, intentionally mislabeled entries, different codes, and other figures, labels, codes, entries and transactions designed to defraud, mislead, misinform, and throw off the courts, investigators, experts, accountants, the Pews and myself.

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# Documenting & Substantiating The Frauds & Predatory Lending Practices Of EMC

## *Unraveling The "Genetic" Code Of EMC's & SOA's Predatory Lending Frauds & Schemes*

### Statement

This report deals with my review, examination and analysis of the documents and interviews described above and an analysis of all documents gathered and produced. Particular emphasis is placed upon amounts claimed owed by SOA and EMC over the years; taxes, insurance, escrow, and misc. credits, payments and debits to the Pew's account and the way the Pew's loan was handled, serviced, charged and accounted for by both SOA and EMC.

### SOA Monthly Payment & Coupon Statement Scheme

Monthly payment and loan statements were a necessity and of great concern to the Pews and other SOA mortgage customers. The importance of these monthly payment statements were for the following reasons:

- (a) SOA did not and refused to provide payment coupon books to customers. As such, the monthly payment coupons were the only means to know how much was due to SOA each month;
- (b) Monthly payment statements attempted to break out payment amounts for what was due and what each payment was for;
- (c) SOA's Loan Commitment Agreement **[Exhibit 1]** and Promissory Note **[Exhibit 2]** stated that the Pews and other SOA customers "must" send their payments to a location designated by SOA;
- (d) SOA changed the designated location where payments should be sent several times while the Pews had an account with them;
- (e) Monthly payment statements would provide important account activity for the previous month. Such information would alert the Pews or other customers to any problems such as dates payments were recorded as being received, any missed payments, unapplied payments, late fees wrongfully assessed, escrow mistakes, insurance charges or any account activity out of the ordinary;
- (f) Without such statements, SOA was free to run amuck and take advantage of customers since they had no knowledge or proof of how SOA was "manipulating" their accounts;
- (g) The Pew's and other SOA customers had negative amortization clauses in their notes;

- (h) Without a monthly payment coupon, the Pews and other SOA customers would not be able to determine how much additional interest termed "deferred interest" was being placed upon their account;
- (i) Such deferred interest increased the actual principal balance of the Pew's and other SOA customer's accounts;
- (j) Increases to Principal Balances also affected the amounts that would be credited toward principal and interest payments;
- (k) The Pews and other SOA customers had the right to pay more than the regular scheduled monthly payment to avoid such deferred interest from being charged to their account or to reduce their principal balance;
- (l) Without this vital information each month, the Pews and other SOA customers really had no sense of where their mortgage balance or payments stood;
- (m) As such, it was difficult for the Pews to determine the amount to tender to SOA for payments owed since it was the Pew's desire to tender sufficient amounts to meet the fully amortized payment.

The loan documents executed by SOA and the Pews obligated SOA to send monthly statements to the Pews as provided in paragraph 3 of **Exhibit 1** attached. In addition, SOA's employees made numerous representations to the Pews that monthly statements would be sent. The loan evidenced by the loan documents is an adjustable rate mortgage ("ARM") which provides for monthly adjustments in the interest rate.

From the inception of the loan, SOA failed and/or refused to send monthly mortgage statements to the mailing and billing address as indicated in SOA's own internal records attached as **Exhibit 3** and as the Pews and I had instructed them to do.

Despite the fact that the Pews advised SOA several times to send monthly statements to their then-current residence and mailing and billing address in Michigan as provided in the documents attached as **Exhibit 4** SOA ignored these instructions. Because I, was in Dallas often running our family business, and because statements were incorrectly sent on a sporadic basis to Dallas, I made many payments on behalf of the Pews and dealt with SOA and EMC on the Pew's behalf since the inception of all matters between them.

SOA, from the outset, failed and then refused to send monthly statements to the Pews indicating the amounts owed pursuant to obligations under the loan documents. Despite the fact that SOA did not give the Pews notice of the amounts they owed each month, the Pews made good faith attempts to tender and pay SOA in accordance with the terms of the Note.

As evidenced by the document attached as Anthony Pew's Affidavit attached as **Exhibit 5** and the Exhibits attached to it, especially Exhibit G of **Exhibit 5**, SOA refused and sent back checks that the Pews tendered that were actually in excess of what the Pews owed SOA at the time.

SOA, by contract and by representation, agreed to send statements to the Pews on a monthly basis but failed to do so. As a result, the Pews were misled concerning the amounts SOA claimed were owed on their Note. In addition, the Note itself, attached as **Exhibit 2**, is internally ambiguous concerning the amount owed on a monthly basis. For example, paragraph 1 of

the Note indicates the monthly payments will remain at \$791.52 throughout the life of the loan, while a later paragraph indicates the amount of the payments is subject to change. This ambiguity, and others, made it difficult, if not impossible, for lay persons such as the Pews to know how much was owed. Notwithstanding the ambiguities contained in the loan documents, the Pews attempted to make payments on their Note as required.

#### SOA Extortionate Payment Demand Scheme

SOA made improper and extortionate demands and/or collected monies not due and owing under the Note and Deed of Trust attached as **Exhibit 6** such as excess late fees, interest attached to late fees, excess interest, appraisal and inspection fees, which sums were not properly chargeable to the Pews. Moreover, SOA actively and intentionally, as a matter of custom and practice, disguised such improper fees as misc. advances and legal fee transactions in its internal accounting records as demonstrated in **Exhibit 7 & 8**.

Furthermore, SOA refused all requests for comprehensible records regarding the Pew's Note and the charges made by SOA. They provided fraudulent and manually prepared or typed over account histories that did not reflect the Pew's actual account activity and altered, hid or concealed various transactions, credits, debits and account activity.

Evidence of such claims can be found in the attached affidavit labeled **Exhibit 9**. **Exhibit 9** is an affidavit with supporting exhibits that detail many of SOA's and EMC's fraudulent representations, fraudulent documents and misrepresentations to the Pews. An examination of this affidavit and the loan records and histories provided to the Pews clearly demonstrates the great lengths that SOA and even EMC went to conceal the frauds and misrepresentations taken upon the Pews.

## SOA Fraudulent Loan History Scheme

The fraudulent loan and transaction histories sent to the Pews attached as **Exhibit 7** redacted, omitted, altered or concealed:

- actual transactions;
- principal balances;
- year-to-date balances;
- life-to-date balances;
- escrow balances;
- suspense/unapplied balances;
- insurance advances;
- insurance payments;
- insurance credits;
- tax advances;
- tax payments;
- tax credits;
- impound adjustments;
- principal and interest adjustments;
- interest and principal; and
- other credits, debits and transactions on the account.

These allegations are supported by my affidavit attached as **Exhibit 9** and the exhibits attached to my affidavit. Anyone can easily question and see that these documents sent to the Pews were materially altered and contained numerous misrepresentations.

From the closing of the loan through transfer of the loan from SOA to EMC, SOA never sent the Pews payment coupons on a regular monthly basis. Furthermore, SOA also failed and refused to send monthly payment statements to the Pews after verbally agreeing to do so with the Pews on many occasions to do so. Attached as **Exhibit 10** are the only monthly payment statements sent to the Pews by SOA in almost 5 years.

SOA's failure and refusal to send monthly payment coupons to the Pews at their mailing and business address caused delays in payment by the Pews through no fault of the Pews. As such, SOA caused the assessment and collection of late fees to the Pew's account in the amount of \$2,167.75. The Pews have from the first month of the loan disputed all late fees assessed and collected by SOA.

To date, SOA has never provided the Pews an accounting of how they calculated late payments or which months late payments were assessed to the Pews. The "automatic" deduction of such late fees by SOA from Pew payments artificially inflated the Pew's principal balance and did not reduce such balances and also altered the amount being charged and credited toward the Pew's account for interest payments since the loan was an adjustable rate mortgage. Since the formula for crediting interest on an adjustable rate mortgage calculates the current principal balance multiplied by interest rate, any increase in the principal balance that was incorrect or unlawful affects each and every other calculation and credit towards interest made on an account.

As such, when an error or misapplication was discovered, a recalculation of the loan and adjustments to the amortization of the loan needed to be made. Such adjustments usually must be done manually. However, even after SOA and EMC learned of such problems with the Pew's loan, they never once properly adjusted the Pew's loan to reflect the proper credits and interest chargeable to the loan.

As told to me by SOA employees, these actions of SOA were knowingly conducted in order to generate additional income, revenue, cash flow, interest and investment revenue since SOA was a Savings and Loan in financial distress at the time. The Pews paid SOA on a regular basis upon their receipt of the actual monthly payment coupons sent by SOA. On behalf of the Pews, I paid, at SOA branch offices, the majority of payments to SOA through the end of 1991. This was done to expedite payment to SOA since SOA did not send statements to the Pews at their mailing and billing address.

Though an agent for the Pews at the time, I was not required or obligated to make payments such payments to SOA. He only did so on his family's behalf so as not to cause any further delays due to SOA's breach of their agreements with his family. The Pews later would reimburse me for such payments. Finally, after numerous breaches of agreements and misrepresentations by SOA to the Pews, I instructed my family to direct all phone inquires and requests for payments to him since SOA was not complying with the terms of their agreements with his family.

The Pews continually called and wrote SOA to demand that monthly statements be sent and that they be sent first to the Pews residence in Michigan and later to their residence in Florida. The Pews also demanded removal of all late fees charged to their account as well as the stop of such abusive practices by SOA and the clearing of any negative credit that was reported by SOA.

The failure to send proper monthly payment statements to the Pews caused much confusion and alarm to the Pews. They did not know how much money to send in as a payment to SOA to fully offset any negative amortization that was occurring on their loan. The monthly loan statements were the only means the Pews had available to them to see if their payments were being credited in a proper manner; on a timely basis and in accordance with the terms of their loan agreements with SOA.

According to employees of SOA, the failure of SOA to provide such basic information was an intentional act by SOA. It is believed that the failure to send monthly statements to the Pews and other SOA customers was done so by SOA to hide fraudulent, deceptive, prohibited and illegal charges that were being placed on the Pew's and other SOA customer's accounts.

An examination of the actual monthly statements sent against the loan histories and transaction registers that SOA provided the Pews clearly shows why SOA would intentionally refuse to send the Pews the required monthly statements.

## SOA Predatory Force Place Insurance Scheme

SOA engaged in a pattern of activity and instituted various policies, procedures and practices that would divert, and misapply payments made by the Pews and other customers to SOA. These policies included delaying payment or not paying the Pews and other SOA customer's own property insurance at all or when obligated to do so. SOA also refused to accept insurance of the Pews and other SOA customers.

After agreements to do so, SOA refused and failed to establish an escrow account for the payment of insurance on behalf of the Pews. SOA and EMC knowingly misrepresented in documents that payments for the Pews insurance were made from their escrow account as demonstrated in **Exhibit 11** which is a response letter from EMC to the Pews. As you can see, EMC clearly references payments from the Pews escrow account for insurance.

However, in fact SOA never maintained an escrow account for the payment of the Pews insurance even though both SOA and EMC represented to the Pews that they did. Also, SOA's own expert David Smith, years after the filing of the lawsuit by the Pews, misrepresents that such payments for insurance were made out of an impound/escrow account as reflected in his reports and spreadsheets attached as **Exhibit 12**.

SOA also, after agreements to do so, failed to send the Pews records and proof for the payment of insurance on behalf of the Pews that SOA made. To this date, after 10 years of requests, SOA has never provided the Pews with one copy of one cancelled check that SOA claims to have paid insurance for. Despite agreements and court orders to do so, SOA has never provided prior to litigation and during production of over 5000 pages of production any cancelled checks or the master insurance policy for any policy it placed on the Pews property.

Also, during the course of the Pews account with SOA, SOA's employees, including Terry Carr, made an agreement to send the Pews the name of the insurance carrier and policy number for the insurance SOA was placing on the Pews property. This is evidenced by **Exhibit 13** that are the internal notes of Terry Carr and SOA. Yet, even as noted by Mr. Carr's notes, SOA never sent the Pews this vital information so that they could secure their own insurance after SOA caused the cancellation of the Pews own insurance policies through nonpayment.

EMC and SOA knowingly mislead the Pews that an escrow account for payment of insurance did exist when in fact it did not and never did exist while the Pews account was with SOA. This representation was made to the court in affidavits by SOA's and EMC's expert witness with the full and complete knowledge of SOA and EMC that the expert's opinion affidavit and report was indeed false.

SOA also placed layers upon layers of fraudulently and wrongfully ordered forced place insurance from insurance agencies such as Commence Agency and Griffin Financial owned by SOA's parent company.



As demonstrated by the Insurance Affidavit attached as **Exhibit 14** and its attached Exhibits, SOA informed the Pews that they placed not one, not two, but three forced placed insurance policies on top of the policy that the Pews actually had in place.

SOA claims that only two policies were ever charged to the Pews account. However, this cannot be determined for a certainty since the accounting records and documents provided to the Pews are suspect at best. EMC and SOA claim that the computer-tape of the master transaction records of the Pews and over 8000 other customers from the alleged sale of loans to EMC from SOA were destroyed. Such records of a supposed \$2 billion dollar sale being destroyed or lost are suspect at best and criminal at worst and could be the intentional destruction of valuable evidence.

The placement of policies upon the Pew's property was the direct fault and confusion of SOA itself. SOA required that the Pews and other SOA customer's insurance carriers would provide them with a 30 day notice of cancellation prior to cancellation of any property insurance.

SOA would order forced placed insurance on the Pew' property when it received such a 30 day notice, even though days later SOA would receive a rescission of such notice as indicated in the documents attached as **Exhibit 15** to this report. Even after receiving notice that the Pew's insurance was in full force and effect, SOA would still order and charge the Pew's account many months later for forced placed insurance when SOA had full and complete knowledge that the Pew's insurance was properly maintained.

The actual cause of any failure to pay insurance premiums was not the Pews, but SOA's steadfast refusal to pay the Pew's own insurance carrier per their bills and requests to the carrier when SOA had informed the Pews that they were indeed paying the Pew's own insurance.

Requests by the insurance agency and the carrier as evidenced by **Exhibit 16** attached were ignored by SOA so that they could use their own insurance agency and earn money or actually charge the Pews and other customers for a policy that never really was individually paid for by SOA.

In either case, even if the Pews through their own fault failed to pay their insurance, SOA could have at any time paid the Pew's own policy and then billed the Pews for such policy or created an escrow account, as represented, for the payment of such policies.

SOA could have an excuse for a delay and a payment of a forced placed policy on top of the Pew's own policy. However, there cannot be or could never be an excuse by SOA for any placement of a forced placed policy that overlapped and duplicated coverage periods of previous forced placed policies that SOA itself had ordered on the Pew's or anyone else's property. Yet, this is what SOA by its own admission did to the Pews and potentially thousands of other customers.

The Pews requested many times that their insurance and taxes be escrowed after the opening of their loan . On 3/14/90, the Pews even faxed a written notice attached as **Exhibit 17** to SOA to do so. SOA did not honor this request, even though today all that it takes is a simple phone call to do so.

Furthermore, SOA refused to use the Pews' designated insurance carrier and insurance company as reflected in the document attached as **Exhibit 18** and signed by the Pews prior to the closing of their loan.

SOA's parent company's agencies reportedly collected a commission on the policies it ordered on the Pews' property. This was a severe conflict of interest. SOA maintained a master policy with such carriers and on information provided did not actually pay for the "individual" policies of the Pews and other SOA customers. Records indicate that SOA made "paper and journal entries" and never actually paid for the insurance policies it charged the Pews and other customers for.

Such policies, when charged, had a detrimental effect on the Pews and other customers. For one, such policies were three to five times higher than equivalent policies that could have been purchased by the Pews or from their designated insurance agent or carrier.

Second, such policies didn't provide liability and content insurance for valuables of the Pews and other customers. Policies with much better coverage and superior insurance were available for two to three times less than what SOA charged its customers.

The effects of such charges also caused much damage to the Pews and other customers. For one, payments were diverted from monthly payments for principal and interest and credits to interest and principal balances were negatively affected. Neither SOA nor EMC has ever gone and readjusted or recalculated the Pews' account for such credits due to the Pews.

These practices ultimately led to a class action lawsuit being filed against SOA and its parent company the H.F. Ahmanson Company in San Diego. The Pews opted out of this class action lawsuit within the required time frame. Portions of the complaints and allegations contained in the Pews' action against SOA and EMC are identical in nature to those exerted in the class action lawsuit against SOA. This class action suit was ultimately settled with the class by SOA's parent company, the H.F. Ahmanson Company, weeks before they agreed to a merger with the Washington Mutual. Such settlement was made to facilitate the merger and that Washington Mutual had full and complete information and knowledge of SOA's actions.

The insurance disputes also included the supposed escrow account that the Pews requested SOA to establish for payment of taxes and insurance on March 14 of 1990. On numerous occasions, SOA fraudulently and deceptively represented in phone calls and letters to the Pews that such payments for insurance were being made for "their" insurance policy from their escrow account. In fact, no payments were being made to the Pews' own insurer, CNA, or their designated agent, Hotchkiss Insurance.

EMC later continued this practice of fraud and deception when it informed the Pews in writing **[Exhibit 11]** via the U.S. mail and in phone calls over phone lines that SOA made payments for the Pew's insurance from their "escrow accounts."

SOA and EMC knew then and know now that SOA never once made any insurance payment from the Pew's escrow account established by SOA. Instead, SOA made what are termed "advances" to the principal balance of the Pew's loan for each charge for forced placed insurance SOA made on the Pew's account and to the account of thousands of other SOA customers.

At various times, and specifically from May of 1990 through January of 1992, SOA informed the Pews that they were paying the Pew's own secured insurance policy. Yet, in fact it was an insurance policy wrongfully and intentionally ordered by SOA that SOA was actually allegedly paying from the Pew's account. The Pews, as a precaution, continued to pay their insurer directly when notified that SOA had failed to pay the billed insurance premium from the Pew's escrow account. SOA refused to take or return calls to the Pew's designated insurance agent and agency or pay for their insurance policy with CNA and later Lloyds Insurance.

The refusals and actions of SOA caused 30 day cancellation notices to be sent to SOA as requested by SOA's own internal policies from the Pews and their insurance carrier. Days later, the CNA cancellation notices were rescinded when the Pews were forced to pay the insurance payments that SOA claimed and represented to the Pews it had paid from their escrow account.

Each time the Pews contacted SOA regarding this matter, they were assured that the matter was being taken care of and that no duplication of insurance existed and that SOA was paying the Pew's insurance. These assurances and representations were knowingly false and SOA wrongfully caused several policies to be placed upon not only the Pew's own insurance but on top of their own forced placed policies as well. In fact, SOA ordered and placed the wrongfully and fraudulently forced placed insurance policies on the Pew's property many weeks and even months after they had received notice that the Pew's own policy was paid for and in full force and effect.

SOA intentionally kept the Pews in the dark over payments and credits to their account with regards to insurance by refusing to send monthly payment statements detailing account activity, balances, credits, adjustments and debits as provided for in the agreements executed between the Pews and SOA.

Upon receipt of a cancellation notice by SOA from the Pew's insurer, SOA would immediately proceed to notify the Pews that it was ordering forced placed insurance on their property even though SOA had received notices days earlier or later that the Pew's policy was in full force and effect. SOA also used the U.S. mails to deceptively represent to the Pews that it placed policies and charged their account for policies they now claim never existed or were never charged to the Pew's account.

## SOA Over-Payment Demand & Misapplications

Beginning in February of 1991 and continuing until August of 1991, SOA began wrongfully and fraudulently deducting and diverting a total of \$846.72 from payments made by the Pews made that were intended to pay the rightful monthly payment they owed and were obligated for to SOA.

As evidenced by the attached affidavit labeled **Exhibit 19** and its exhibits, this fraud was carried out by deducting eight monthly payments of \$105.84 for the monthly payments due from 11/10/90 until 6/10/91 from payments the Pews made to SOA. These payments were intended to be applied to the Pew's account for payment of principal and interest first and then to any escrow payments due to SOA.

At the time, SOA had full and complete knowledge that the Pews had insurance on their property. They still continued to not only demand, but extort and collect such payments from the Pews while concealing their existence by refusing to account for or provide proof and evidence of such payments to insurers and refusing to send the Pews monthly statements detailing the account activity on their loan.

As if this were not enough, SOA then began on 5/22/91 to wrongfully deduct and divert a total of \$371.16 from payments the Pews made that were intended to pay the rightful monthly payment they owed and were obligated for to SOA. This was carried out by deducting four monthly payments of \$92.79 for the monthly payments due from 3/10/91 until 6/10/91 from payments the Pews made to SOA. These payments were also intended to be applied to the Pew's account for payment of principal and interest first and then to any escrow payments due to SOA.

SOA then deceptively represented to the Pews in writing via the U.S. mail and in telephone calls to the Pews that two other policies in the amounts of \$881.00 and \$1004.09 were charged to the principal balance of the Pew's account and later credited. This is evidenced by **Exhibit 20**. Yet, SOA failed and refused to provide the Pews with documentation and support for such charges and credits. SOA had full and complete knowledge that the Pews had insurance on their property.

Still, SOA continued to not only demand, but to intentionally mislead and confuse the Pews and other customers with regards to the status of their account concerning the charges and credits due to the Pew's and other SOA customers from forced placed insurance.

At the time, SOA was going through a terrible financial and liquidity crisis that put SOA, the nation's largest Savings and Loan at the time, in fear of and on the verge of collapse and/or takeover by the Resolution Trust Corporation. In an attempt to mislead, conceal and divert attention away from this crisis, SOA intentionally manipulated their customer's accounts and payments via a variety of fraudulent accounting schemes. These schemes were carried out to artificially and wrongfully report earnings, income and balances to the RTC, it's

stockholders, investors, the SEC and other Federal and state agencies and officials so as not to have pressure placed upon SOA for a government takeover or merger.

### SOA Benefits From Predatory Insurance Scheme

The forced placed insurance policies that were wrongfully placed upon the Pew's property and other SOA customers and allegedly charged to the Pew's and other SOA customer's accounts were placed by subsidiaries of the H.F. Ahmanson Company, SOA's parent, which were sister companies of SOA. These subsidiaries reportedly received commissions ranging from 20% to 35% on each policy if actually placed.

SOA as a pattern of purpose, practice, policy and procedure did, with the intent to deceive, mislead and confuse the Pews and other SOA customers, maliciously and intentionally designed and implemented several fraudulent and deceptive schemes to force place insurance on its customer's accounts. This was done so that SOA could charge the Pew's and other customer's accounts to increase revenue and income to SOA directly and to its corporate parent the H.F. Ahmanson Company. The fraudulent and deceptive insurance practices and policies SOA implemented included:

- (a) wrongfully refusing to accept the insurance policies secured by the Pews and other SOA customers;
- (b) refusing to pay premiums to the Pew's designated agency and insurance carrier;
- (c) misleading the Pews that SOA was paying their insurance out of their escrow account;
- (d) refusing to properly account, detail and support the charges and credits for forced placed insurance policies to the Pew's and other customer's accounts;
- (e) failing to properly credit in a timely fashion credits due to the Pew's and other customer's accounts for cancelled forced placed insurance;
- (f) failing to properly credit in a timely fashion credits due to the Pew's and other customer's accounts for wrongfully ordered forced placed insurance;
- (g) failing to properly provide credits due to the Pew's and other customer's accounts for late fees wrongfully assessed and collected from the Pews and other SOA customers associated with wrongfully ordered forced placed insurance;
- (h) misleading the Pews and other SOA customers via monthly payment statement codes that payments for forced placed insurance were actually payments made by the Pews and other SOA customers;
- (i) intentionally refusing to send the Pews and other SOA customers monthly payment statements which would have detailed and identified the wrongful forced placed insurance charges, payments, credits and debits;
- (j) sending the Pews and other SOA customers manually prepared loan account and transaction histories that intentionally hid and concealed the wrongful forced placed insurance charges, credits and debits that SOA placed on the Pew's accounts;
- (k) placing and charging the Pew's and other SOA customer's accounts for forced placed insurance policies on their properties when they already had existing insurance on their properties;

- (l) sending the Pews false and misleading letters indicating that SOA had placed forced placed insurance on their property and charged and then credited their account when in fact no such insurance had ever been ordered and no such charges or credits made;
- (m) conspiring with EMC, SOA's and their experts and the independent court appointed auditor to hide, conceal, redact and omit insurance policies, transactions, charges, debits and credits that were made on the Pew's account with SOA;
- (n) providing the Pews via the U.S. mail, and on information and belief other SOA customers, with fraudulently altered and doctored documents, loan and account transaction histories that hid and concealed the wrongful insurance charges that SOA made on the Pew's and other SOA customer's accounts;
- (o) not actually paying for the insurance policies that SOA claims to have forced placed on the Pew's and other SOA customer's properties;
- (p) refusing and failing to provide and then concealing the existence of the Pews and other SOA customers with the policy numbers and carriers of forced placed insurance placed on their properties so that the Pews and other SOA customers would find it difficult to obtain their own property insurance from their own carriers; and
- (q) refusing to maintain or pay for, as agreed upon, the Pew's and other SOA customer's insurance policies that were superior in coverage to the SOA policies at two to three times less the cost.

SOA and its parent company, the H.F. Ahmanson Company and sister companies including Griffin Financial and the Commerce Agency directly benefited financially in commission, fee, interest, income and revenue from the frauds perpetuated by SOA upon the Pews and other SOA customers. These fraudulent financial gains occurred in several ways. However, chief among these methods was the way SOA allegedly paid for and then charged the Pew's and other SOA customer's accounts for the forced placed insurance wrongfully placed on their properties.

Instead of establishing an interest free escrow account for the payment of insurance as SOA represented to the Pew's and other SOA customers, SOA advanced sums for insurance and charged the Pew's and other SOA customers for such advances. The advances made to the Pew's account, and to the accounts of other SOA customers, had several direct financial consequences to the Pew's account. First, SOA would determine the amount of the advance by a formula tied to the amount of the outstanding principal balance. As such, the higher the outstanding principal balance on the Pew's and other SOA customer's accounts, the higher advance payment for ordered force placed insurance and repayment of such advance.

## SOA Predatory Advance, Escrow & Late Fee Scheme

SOA also considered advances for force placed insurance as an advance towards principal and wrongfully used such repayments for these advances as part of its calculations for late fees charged to the Pews and other SOA customer's accounts. Years later, when SOA discovered that its forced placed policies were wrongfully placed, SOA failed to credit the Pews and other SOA customers for the increase in late fees that were assessed and collected by SOA that were attributable and calculated from the wrongful force placed insurance advances.

On the Pews account in particular, this included an extra \$6.35 for late fees demanded, assessed and collected from the Pews with payments, SOA deemed late, associated with the \$105.84 wrongful repayment of the \$1,008.30 insurance advance charged to the Pews account on 9/24/90. It also included an extra \$5.57 for late fees demanded, assessed and collected from the Pews with payments, SOA deemed late, associated with the \$92.79 wrongful repayment of the \$884.00 insurance advance charged to the Pews account on 1/14/91. Evidence of these charges can be found in **Exhibit 8** attached.

The Pews mortgage and other mortgages of SOA customers were adjustable rate mortgages in which payments that the Pews and other customers made went to the payment of interest first and then to the payment of principal. The Pews mortgage could generate negative amortization. SOA diverted payments made by the Pews that should have gone to the payment of principal and instead was diverted to increased interest payments to SOA. This practice wrongfully increased the principal balance of the Pews and other SOA customer's mortgage loans and increased the amounts of interest that SOA charged the Pews and other SOA customers instead of properly reducing the principal balances of their loans.

This scam increased the revenue to both SOA and EMC and EMC had and has full knowledge of this practice by SOA and has failed to properly recalculate and re-amortize the Pews loan and other loans of SOA customers that EMC have serviced and demanded payments from. SOA also failed to properly recalculate and credit the Pews loan and loans of other SOA customers who SOA wrongfully charged for forced placed insurance.

## SOA "Stall" & "Delaying" Tactics Scheme

SOA failed and refused to properly investigate and respond to the Pews over all their disputes related to insurance charges to their account. In fact, SOA concealed and hid from the Pews throughout the life of the Pews loan many insurance charges and credits. The only response to any dispute ever provided to the Pews by SOA was on 1/23/92. This letter actually admitted errors and how SOA planned to fix their admitted errors. Instead, SOA failed to provide the Pews with documentation and support for such credits as well as did not address several of the other policies SOA claimed to have forced placed.

The fix that SOA claimed it had made in this letter was not done according to the master transaction register records of SOA **[Exhibit 8]**. SOA intentionally misrepresented the corrections and multiple number of adjustments, credits and debits related to the wrongful forced placed insurance that SOA conspired to conceal and hide from the Pews with EMC, its expert David Smith and Ike Guest.

SOA and EMC intentionally sent the Pews, via U.S. mail and telephone lines, computer and manually prepared transaction histories and spreadsheets that redacted, omitted, concealed and hid SOA's fraudulent insurance actions and the supposed credits and adjustments made to the Pew's account.

To date, EMC, SOA, its expert David Smith and Ike Guest have continued to perpetuate this fraud and hide and conceal in their reports, schedules and spreadsheets all of the wrongful insurance transactions and adjustments committed by SOA when compared to the master transaction register of SOA.

When SOA placed multiple forced placed insurance policies on the Pew's account, it artificially and fraudulently inflated the outstanding principal balance of the Pew's account thus increasing the amounts of interest paid to SOA. It also increased the amounts of advances for forced placed insurance policies that SOA charged to the Pews.

#### SOA & EMC Concealment Of Fraud After Suit Scheme

David Smith, SOA's and EMC's expert, prepared an affidavit in support of a summary judgement motion filed on behalf of SOA and EMC on May 1, 1997 that was attached with a spreadsheet he had prepared. This spreadsheet purported to represent all of the transactions that occurred on the Pew's account with both SOA and EMC. His affidavit and spreadsheet are attached as **Exhibit 21**.

However, David Smith failed to disclose the existence of a \$930.00 insurance advance that SOA placed upon the Pew's account on 2/4/93 and then later transferred to EMC. David Smith, in his 4/7/97 spreadsheet attached with his affidavit in support of EMC's and SOA's summary judgement motion, knowingly, willfully and intentionally reflected this \$930.00 insurance advance which was actually a debit transaction as a principal reduction of \$930.00 on 9/1/93.

Both EMC and Washington Mutual had and have full and complete knowledge of the wrongdoing of SOA with regards to insurance matters through their due diligence efforts. EMC, SOA and Washington Mutual have also received lawsuits, complaints and disputes identical in nature to the Pew's complaints about SOA's insurance practices from former SOA customers.

EMC employees even went so far as to admit wrongdoing by SOA to the Pews and other customers with regards to tax, insurance and escrow payments but refused to properly investigate and correct the wrongful and fraudulent charges, fees and misapplication of payments by SOA.



Instead, as a matter of practice, policy and procedure, EMC would demand “payment to the penny” of their demands from the Pews and other SOA customers who had very legitimate disputes and complaints related to SOA's tax, insurance and escrow payments and accounting of such activity.

Attached are EMC's own internal notes as **Exhibit 22** and other response letters to customers attached as **Exhibit 23**. EMC, as a matter of practice, policy and procedure, instructed the Pews and other SOA customers that any complaints or disputes they had with SOA had to be taken up with SOA directly. This is in direct contradiction of SOA's Servicing Transfer Letter of 8/16/93 attached as **Exhibit 24** and against the provisions of the Real Estate Settlement & Procedures Act [RESPA].

EMC claimed it had no obligation, right or need to rectify or correct problems associated with SOA's or other previous servicers account which they had purchased since those were SOA's or other servicers problems. A review of **Exhibit 25** by EMC's corporate counsel clearly proves this attitude.

EMC's counsel also stated to me that SOA's acts for SOA's insurance mix-ups were no reason for the Pews to sue EMC and demand payment of any damages. As such, EMC acknowledged by and through it's own employees and attorneys that it knew of the existence of wrongful actions by SOA pertaining to tax, insurance and escrow payments and accountings for such.

Furthermore, prior to the filing of the Pew's lawsuit against EMC and SOA, EMC had full and complete knowledge of SOA's mishandling, irregularities, problems, failures and prohibited activities of the insurance, tax and escrow payments and accounts of other SOA customers.

In addition to due diligence performed prior to sale, immediately after the alleged sale and transfer, EMC received a plethora of complaints from former SOA customers whose loans they serviced regarding like, similar and identical complaints and disputes associated with SOA's handling and servicing of their loan.

This is evidenced by just a sample of the many dispute letters and responses to disputes by EMC contained in **Exhibit 26** related directly to EMC's knowledge of SOA's wrongdoing, problems and actions.

EMC's and Bear Stearns executives, managers, law firms and employees have and had full and complete knowledge through its own investigation of the Pew's and other customer's complaints of SOA's servicing problems, mistakes, wrongful actions and fraudulent activities.

In fact, EMC executed indemnification agreements with SOA in the claimed sale and servicing agreements between SOA and EMC. A review of **Exhibit 27** will document this. This agreement provides for the indemnification of EMC for the prior bad acts of SOA and the repayment to EMC of any expenses and damages incurred by it for SOA's actions.

As such, EMC ignored and willfully failed to investigate and act upon the complaints, disputes and problems made by the Pews and other customers against SOA or previous servicers who EMC had purchased loans from.

Such indemnification agreements and also repurchase clause also made the sale not a "true sale." In fact, the sale that was represented to the Pews, government agencies and regulators as a true sale "without recourse" was actually a complex derivative "financing scheme" and sale of servicing rights, not of mortgages since the sale actually had full recourse provisions and was not a sale without recourse.

EMC fraudulently represents to the Pews on their note that is attached as **Exhibit 28** that the sale from California Loan Partners to EMC was made "without recourse" while the testimony of EMC's own dummy corporate representative states that the sale was "with recourse. The servicing agreement between SOA and EMC attached as **Exhibit 27** also shows that the sale had recourse provisions.

The practice of refusing to investigate the Pew's and other EMC customers, who had been customers of SOA, and their complaints was intentionally carried out by EMC to circumvent the Pews disputes, complaints and claims. It also made it extremely expensive, difficult, frustrating, aggravating and time-consuming as possible for the Pews and other SOA customers to correct problems and protect their rights.

This policy was also intended to stretch out and delay any possible claims a customer may exert in litigation by EMC's claim of waiver or a running out of statute of limitations.

This was done so that EMC would not have to expend funds, manpower or time on such actions which would have had an effect on reducing its profitability and also increasing its liability in other causes and actions that were filed against EMC and/or SOA. EMC and Bear Stearns benefited from and are the direct benefactor of SOA's ill-gotten and fraudulent gains that it had allegedly purchased at a substantial discount from SOA.

#### EMC & Bear Stearns Gains & Profits From SOA Frauds

EMC and Bear Stearns received or claimed to receive the ill-gotten gains of SOA that included:

- (a) increases to the principal balance of the Pew's and other SOA customer's accounts;
- (b) prohibited inspection fees placed upon their accounts;
- (c) accumulated and additional interest gained from wrongful advances, late fees and interest on wrongful advances to their account;
- (d) appraisal fees wrongfully charged to their accounts;
- (e) late fees wrongfully assessed and charged to their accounts;
- (f) excessive late fees assessed and charged to their accounts;
- (g) credits due to their accounts;

- (h) recalculations of principal and interest and amortization due their accounts due to the intentional and wrongful actions of SOA; and
- (i) various other fraudulent schemes perpetuated by SOA upon the Pews and other SOA customers and later concealed by SOA, Washington Mutual, Bear Stearns, EMC and their executives, managers, experts and attorneys.

SOA and EMC employed and do employ a variety of fraudulent and deceptive schemes using the U.S. mail as well as telephone lines located in various states throughout the U.S. These schemes include extortionate demands to make payments not owed by the Pews and other SOA customers. SOA threatened the credit worthiness and livelihoods of the Pews if they refused to pay the extortionate demands made by SOA.

A review of Anthony Pew's affidavit attached as **Exhibit 5** and the exhibits attached to that affidavit clearly shows and proves such fraudulent and extortionate schemes.

A prime example of such extortion was the 2/7/92 demand letter attached to **Exhibit 29.A** that SOA sent to the Pews and later made demand upon in phone calls to the Pews. Even according to the independent auditor's schedule of payments in his report, this letter attempts to maliciously and intentionally extort over \$19,000 in wrongful, fraudulent and prohibited charges from the Pews. Such actions were also instituted against other SOA customers.

Long prior to the 2/7/92 demand letter sent to the Pews by SOA, the Pews had long standing disputes over the crediting of payments, tax payments, insurance payments, escrow charges, late fees and the accounting, administration and handling of the Pew's account with SOA. The Pews disputed the wrongful placement and charges for forced placed insurance on the Pew's property when in fact they had insurance on their home.

Yet to date, SOA or EMC has ever explained how such a dramatic and extortionate demand was ever made upon the Pews. Shortly thereafter, after the continued refusals of SOA to provide the Pew's with proper explanations, accounting records and documents, the Pews refused to remit any additional payments to SOA in excess of what the Pew's own calculations provided.

When the Pews attempted to tender such amounts that they attempted to calculate, SOA refused to accept such payments. The auditor's report shows that some of these payments were actually in excess of what was due and owing to SOA at various times.

In an effort to conceal these frauds and wrongful acts, SOA, Washington Mutual, Bear Stearns, EMC and their attorneys, agent and experts conspired with each other and tampered with witnesses including the independent auditor.

This was done to try and adjust EMC's and SOA's records to reflect different transaction, principal balances, credits, debits, escrow balances, advances and other transferred on the Pews account. The loan histories, dispute responses and explanations sent to and communicated to the Pews previously were all fraudulent and consisted of different amounts and figures.

One such history actually excluded a \$4,512.06 payment made by the Pews in January of 1993. EMC and their expert, David Smith, claim in this same spreadsheet and affidavit **[Exhibit 21]** that there were no payments, credits, debits, escrow payments, advances, charges or other similar transactions with SOA from January 1, 1993 until transfer to EMC in September of 1993.

These “missing” transactions were later discovered not by EMC's expert or the court appointed auditor, but I as part of my over 8000 hour investigation of EMC's and SOA's actions and activities concerning the Pew's and other SOA customer's accounts.

EMC and their expert claim in affidavits **[Exhibit 21]** filed with the Dallas District Court in support of Summary Judgement that the attached spreadsheets of both EMC and EMC's expert account for each and every credit, payment and “transaction” to the Pew's account with both SOA and EMC. These affidavits are false and fraudulent and EMC, Bear Stearns, Washington Mutual and their experts and counsel have full and complete knowledge of this. The false and fraudulent affidavits of both David Smith and EMC's representative, Annette Mitchell, are contained with the summary judgement motion filed by EMC in early 1997. Proof that such affidavits are false and fraudulent is conclusive.

EMC's expert, David Smith, has prepared at least two additional spreadsheets dated 7/31/97 and 4/7/98 attached as **Exhibit 12** which he produced during his deposition. Each of these spreadsheets reflect additional changes, adjustments, credits, debits, balances and transactions that were not reflected in his 4/7/97 spreadsheet attached with his affidavit in support of EMC's and SOA's summary judgement.

Furthermore, EMC and SOA incorporate into responses for production and interrogatories signed with affidavits that verify such responses, the so-called independent auditor's report **[Exhibit 29.B]** as answers to questions regarding amounts of payments, insurance, tax and other transactions that occurred on the Pew's account with both SOA and EMC. Yet, this report includes amounts of payments, insurance, taxes and other transactions that occurred on the Pew's account with both SOA and EMC that David Smith and EMC did not include in their spreadsheets attached with their affidavit in support of EMC's and SOA's summary judgement motion.

Since 1991, [over nine years now] the Pews have been complaining about the accounting of the their loan with SOA and EMC as well as credits, debits, late fees, misc. fees, and adjustments and transactions from virtually the inception of the Pew's loan with SOA.

The origination of the Pew's lawsuit against EMC and SOA was a direct result of suspected fraud and wrongful accounting. The failure of EMC and SOA to properly account for and provide details, explanations and support for charges, credits, adjustments and transactions that occurred on the Pew's account with both SOA and EMC, could not be tolerated any longer.

Yet, as evidenced by EMC's motion for summary judgement and the affidavits and spreadsheets prepared by both their expert and corporate representative, EMC then and still to this date can not only properly document and account to the Pews for all of the transactions that occurred on the Pew's account.

Still, to this date, in order to defraud the Pews and cause the Pews irreparable harm, EMC and SOA through Washington Mutual still knowingly, willfully and intentionally hide, conceal, misrepresent, deceive and mischaracterize the Pew's account and transactions that occurred on their account.

This is proven by evidence! First, despite changing his spreadsheets and accounting on the Pew's account at least two times, EMC's and SOA's expert David Smith has not supplemented, removed, altered or amended the affidavits and evidence in support of their summary judgement motion filed on May 1, 1997. EMC, Bear Stearns, Washington Mutual and their counsel have full and complete knowledge of the falsely filed affidavit.

EMC, SOA, Washington Mutual, Bear Stearns, Ike Guest, David Smith and their counsel are fully aware that such a change, amendment or alteration to Smith's affidavit would conclusively prove and support the Pew's allegations in their lawsuit against EMC and SOA. If done, the Pews could have easily obtained summary judgement on numerous counts of the Pew's suit that would only result in a trial on damages against EMC and SOA.

Instead, EMC, SOA and their counsel, and their expert have continued to deceive and defraud the Pews and the courts by knowingly, willfully and intentionally misrepresenting and characterizing the status and amounts of the Pew's debt as well as transactions that occurred on their account.

In proof of this allegation, SOA, EMC, Bear Stearns, Washington Mutual, their expert, their counsel and the so-called independent auditor have colluded together to mislead, hide, conceal, misrepresent and mischaracterize unapplied, suspense, escrow, insurance, tax, inspection fee, attorney fee, and other transactions that occurred on the Pew's account.

#### SOA & EMC Concealment Of Fraudulent Escrow Scheme

One of the major misrepresentations, mischaracterization and frauds concern the Pew's escrow account and transactions. Three years after preparation of his report and spreadsheet, that was to detail and account for the Pew's account with SOA and EMC, they have failed to amend knowingly false and fraudulent affidavits and reports filed with the Dallas District Court in the Pew's action against EMC and SOA.

EMC's expert in his affidavit **[Exhibit 21]** in support of his report states in paragraph 4. "I have prepared a spreadsheet of my own which accounts for all dollars received, applied, and charges made by both EMC Mortgage Corporation and Home Savings of America on the Promissory Note and Deed of Trust at all times from April 17, 1989 to the present. The spreadsheet attached hereto as Exhibit A accurately sets out my findings and conclusions regarding the handling of the Pew's account."

This spreadsheet did not account for the SOA transactions on the Pew's account from 1/1/93 to 9/16/93. Smith, EMC and SOA knowingly attempts to conceal and hide EMC's and SOA's fraudulent representations concerning, taxes, insurance

and escrow by intentionally concealing, disguising and misrepresenting what he and EMC and SOA know are tens of thousands of dollars in unapplied/suspense transactions as impound/escrow transactions.

Proof of this fraud is obtained by a review of 031 and 041 unapplied/suspense transactions that are documented by the master transaction registers of SOA **[Exhibit 8]**. Most alarming is David Smith's response to the 9/30/97 fax attached as **Exhibit 30** concerning an "Impound" question from Ike Guest. In this fax, Mr. Guest requests an explanation and detail of an \$11,796.34 dollar "impound" transaction that is reflected not only on David Smith's spreadsheet of 4/23/97, but also his spreadsheet of 7/31/97.

In his response via a letter and explanation dated 10/17/97 **[Exhibit 31]** there is no question that Mr. Smith and his clients [SOA, EMC and Washington Mutual] had full and complete knowledge that there was "never" an impound/escrow transaction of \$11,796.34. Yet, such an exaggerated amount for escrow is listed on both of his spreadsheets to this date as an impound/escrow account. In fact, as evidenced by the second page of this response, this transaction was actually a very large unapplied account transaction. The title of this page that Mr. Smith himself created is titled "Application of Unapplied Balance" in big bold type.

As if this were not enough to prove the concealment and fraud, Mr. Smith then goes on to detail the various transactions. The transactions include an \$814.31 late charge; \$10.00 service charge; six [6] loan payments of \$1,168.58 and three [3] loan payments of \$1099.98 as well as an appraisal fee of \$275.00 and a supposed charge of \$365.81 for outside counsel.

As evidenced by an SOA Escrow Transaction History **[Exhibit 32]** sent to the Pew's for the time frame of 1/1/93 to 9/1/93, there was never such an escrow transaction on the Pew's account. In fact, none of the transactions listed under Impounds and Impound Balance on his 4/23/97 spreadsheet attached to his affidavit are escrow transactions. They are all unapplied/suspense transactions and not impound/escrow transactions.

EMC, SOA, Bear Stearns, Washington Mutual, Mr. Smith and their counsel have for over nine years and six years of litigation knowingly, willfully and intentionally concealed, hid, misrepresented and mischaracterize these transactions. They have disguised them in an effort to further mislead and confuse the Pews, their agents, attorneys and intentionally set them and their experts on a wild goose chase.

They intentionally wanted the Pews and I to spend as much time, money, energy and resources trying to find the needle in one of the over dozen haystacks in order to pick the lock and unlock the dozens of fraudulent schemes. Such schemes and literally "thousands" of misrepresentations, mischaracterization and omissions related to the Pew's account with EMC and SOA have been identified.

EMC had and has full and complete knowledge that such an effort would be virtually impossible to let alone uncover and discover, but to determine exactly what the schemes were and document each and every fraudulent accounting scheme, practice and instance of abuse. The Pews received estimates of between \$250,000 and \$500,000 to do all of the forensic and mortgage accounting that needed to be conducted in their case. SOA and EMC knew this.

They know how much they have spent on their own “limited exercise” with their experts and the auditor who they tampered with and know the costs involved would have been enormous to review, evaluate, analyze and reconcile each and every document provided to the Pews.

## SOA & EMC Predatory & Abusive Collection Practices

Since the inception of the Pew's lawsuit against EMC and SOA, EMC and their counsel repeated the mantra “tell of what we did wrong and we’ll fix it.” “If we did anything wrong, we’ll fix and let’s get along with this loan.” However, EMC's arrogance, pattern of corruption and illegal racketeering activity cannot be fully realized until you speak with other customers that they have intentionally ruined and the many lives they have affected and destroyed.

Both SOA and EMC used extortionate methods to extort money from the Pews and other customers of SOA and EMC. EMC made a practice and policy to refuse payment, payment offers, or payoffs that were 1¢ less than what they claimed was owed. They did this even when they knew and had full knowledge that the demands they were making were based on previous fraud, missing documents, erroneous facts, mistakes and willful miscalculations and computer programming. Such fraudulent schemes were designed to increase cash payments, cash flow, investment income and revenue to EMC their parent and affiliated companies and investors.

Such an arrogant, unconscionable and obnoxious approach is easily reflected in an examination of EMC's documents, practices, policies, procedures and even the manuals that govern such procedures and policies. EMC and SOA would use the threat of foreclose and the ruining of the Pew's and other customer's credit and business as a loaded gun to their heads in order to squeeze and extort more money from them.

In one case, EMC sent collectors to a customer’s door and threatened foreclosure proceedings for him supposedly being 18¢ in arrears. This case is well documented. EMC also retaliates against those who question them or threaten to take some form of legal or agency action against them. For example, it is the law [RESPA] that when a dispute is made to EMC or any other mortgage company, that credit reporting be stopped for at least 60 days until the dispute can be fully researched, responded to and corrected. EMC's own manuals show this policy as well as how easy it is for someone to do.

In the policy, all that is necessary is once a dispute is made by a customer, all EMC has to do is have anyone, including a secretary, just type in an “\*” [asterisk] into a selected field on a computer screen. That’s all! But, time and time again after six years of litigation and virtually a year of previous disputes and complaints, EMC, not once, ever typed an asterisk into this field or stopped reporting negative credit on the Pews.

These actions were based on direct threats of abusive actions by employees and counsel for EMC. “Pay us what you owe us and we’ll stop reporting your credit as being bad.” “You need the credit for your business so why don’t you pay us what you owe.” “Pay us now, get this loan on the track it needs to be in and then we’ll

investigate your disputes and answer accordingly.” “We’re not responsible for the problems and disputes you had with SOA, if you want to protect your property or your credit, you’ll pay us now what is owed and then go take up any complaints you have with SOA with them since we’re not responsible for their actions.” “If you don’t pay us, we’ll ruin your family’s credit and your business.”

These are just a handful of the threats exerted against the Pews and I over the years from EMC. EMC's willful conduct and effort to destroy and ruin the Pews and I are again realized in an exchange in the law offices of Settle & Pou between myself and an individual representing EMC named Brad Cope. After discovering a number of problems with the previous servicers account in a deposition, a heated exchange was conducted in which counsel for EMC said “pay us what you owe us, get this loan back on track and we’ll fix your credit and pay your attorney fees.” Such a suggestion was met with a strong response on behalf of the Pews.

Such a suggestion was made after two years of damages incurred to my family and our family’s business interests and he was flatly told where to place such a suggestion. Cope, on the other hand, issued a threat and said “don’t push us, we can push you and push back much harder and much stronger than you can.”

Cope was right. Instead of trying the facts in this case for over six years, EMC, Bear Stearns, Washington Mutual, SOA in direct conspiracy and cooperation with their counsel have engaged in a pattern of corruption, obstruction of justice and fraud to cover-up their illegal actions. This has been done in an attempt to destroy the Pews, their family, their credit, lives, livelihood, business interests, business property and business opportunities. They have also intended to intentionally inflict emotional and mental duress through a pattern of abuse, harassment, invasion of privacy, defamation and slander that is intended as retaliation for the Pews exerting their legal rights under the law. Their actions have been unconscionable, let alone illegal and potentially criminal!

EMC selectively purchases customers based on analysis. Such customers are selected based on a relative higher LTV ratio on the property of the mortgage they purchased and a note holder who is elderly, ethnic, non-English speaking, lower-income, or in financial distress. In other words, they prey on those who are least able to fight back the abuse or extortionate efforts in the sub-prime B and C markets. As such, EMC and Bear Stearns can exert pressures and abuses upon the customers by assessing, demanding and in some cases as in the Pew's case, extorting money through threats of intimidation and abusive tactics.

EMC's allegedly purchases or services loans from previous servicers that they know were bad or fraught with systematic errors, misapplications of funds, missing payments, missing titles, missing notes and other servicing nightmares left over from the old savings and loan scandal days and unscrupulous mortgage brokers. This "toxic waste" dump as one EMC employee put it results in EMC's servicing of nothing more than what they consider delinquent accounts and undesirable customers who EMC refers to in its manuals as "smucks!" **[Exhibit 33]**.

Yet, EMC immediately attempts to collect and foreclose on such notes even when they do not have possession of the records of account from the previous servicers or even when they have knowledge of wrongdoing of the previous servicer. When a dispute arises, EMC ignores, does not respond in a timely fashion according to



law, does not credit accounts at all or in a timely fashion according to law and does not properly investigate, research, credit, adjust and take corrective actions at all or in a timely fashion.

When credits are due, such credits are delayed as long as possible so as to earn additional revenue, interest and fees by miscalculation of principal balances on loans and escrow accounts. In one case, EMC delayed the credit of \$92.00 it knew was owed and to be applied to the Pew's account in September of 1993 that was not supposedly credited, and against the escrow balance not principal balance as supposed to be until the end of July 1994. This was done to hundreds and potentially thousands of additional customers who were due far greater credits in excess of \$1000.00.

EMC also took a year to remove the unnecessary force place insurance it wrongfully ordered on the Pew's property in October of 1993 when the Pews had insurance on their property and had complied with EMC requests for such insurance and proof of insurance. EMC failed to investigate or rectify the Pews complaints with regard to this insurance policy and took over a year to credit the account. Yet, even after a credit was supposedly issued, EMC still incorporated \$2,077.11 in payment demands, affidavits filed with courts in support of money claimed owed by the Pews when in fact this amount was supposed to be credited back. EMC let this amount remain in the escrow payments of \$754.52 from 3/10/94 through 4/10/94 as per an escrow analysis provided in litigation production. EMC had full and complete knowledge, even after a supposed credit in late 1994, that the Pews did not owe this money. Yet, EMC still sought payment of this money all the way through 1997 when it changed its accounting and demands to the Pews to hide it's illegal and extortionate demands and wrongdoing.

EMC knowingly filed several affidavits with the Dallas District Court claiming an amount to be owing and due that EMC had full and complete knowledge were misleading and mischaracterized the status of the Pew's debt. It also attempted to defraud them by extorting payments and amounts not owed or obligated to, even during legal proceedings.

EMC has claimed in previous testimony and in responses to interrogatories that the Pews "have no legitimate complaints" when in fact they have direct knowledge that many of SOA's and EMC's own reports, demands, transactions and accounting were fraudulent and misrepresented the facts to the Pews. However, if EMC and their counsel would even admit one mistake, let alone fraud, misrepresentation or mischaracterization, they could not with clean hands and a straight face claim one dollar out of the over \$900,000 they claim the Pews owe them for defending their illegal actions.

As such, EMC and their attorneys continue a pattern of fraud, deception and concealment until stopped by the courts or a State or Federal agency. EMC also hires, rates and compensates their attorneys and their collectors based on their "aggressiveness" and amounts they collect. This directly and deliberately leads to a pattern of abuse, misconduct and misrepresentations made to the Pews and other customers in order to secure some sort of compliance in payment or other term and then later claim such agreement was not made.

To clearly show EMC's arrogance, obnoxious and total disregard for the rights of the Pews and other customers, one only has to look at a collection of form letters that are sent to EMC's customers when they reach the foreclosure process. Such form letters, instead of referring to a generic customer as John or Jane Doe or John Smith as in other form letters EMC has in other departments, list EMC's customers as "SMUCKS." This can only be described as evidence of EMC's arrogance, mindset, demeanor, training and responses in dealing with the Pews and other customers.

EMC and their experts have knowingly provided over twenty separate versions of loan and account transaction histories. These histories contradict each other, exclude transactions that occurred and intentionally conceal, hide, misrepresent and mischaracterize transactions that occurred on the Pew's account to prevent them from learning what happened to their account and to cost them time, money, aggravation and frustration.

This was intentionally done to prevent the Pews, their counsel and experts from determining how their account was actually handled and compare it to "how" it "should have been handled." Most importantly, is to compare to "what" EMC and SOA actually represented to the Pew's how their account was being handled.

#### SOA & EMC Fraud Upon Court & Witness Tampering

EMC, Bear Stearns, SOA, Washington Mutual, David Smith and their counsel also colluded and conspired with the independent auditor, to cover-up and conceal the fraudulent actions and abuses of SOA and EMC. This is clearly evidenced by an examination of documents discovered wherein the auditor had prohibited ex-parte communications and dealings with SOA and EMC and their counsel and experts during and after his audit.

The auditor, Ike Guest, even went so far as to commit perjury. In his deposition he claims that he had no assumptions or basis in which to examine or calculate an escrow account. However, he had over six years worth of escrow records and reports that he "intentionally" ignored so as to conceal the frauds and abuses of SOA and EMC that he was informed of according to his own notes and work product.

In fact, the auditor, a former partner in Deloitte & Touche [Bear Stearns & Washington Mutual's accounting firm] went to great lengths to conceal their fraud and to intentionally mislead the Pews, their experts and I further. He even did extensive work for SOA and EMC, after the audit was complete, that he claims was done for free!

After being provided with direct evidence of his fraud and the fraud of SOA and EMC, he retained counsel and filed various false and malicious motions to prevent his testimony or further deposition on the facts discovered.

As illustration of these frauds, the transactions of \$1168.58 and \$1099.98 payments listed on David Smith's response to Ike Guest **[Exhibit 31]** about an "Impound" transaction each consists of \$253.88 in escrow payments. Furthermore, not one of the transactions listed in SOA's escrow account

statement for 1993 **[Exhibit 32]** are reflected on their spreadsheets. What is even more incredulous, is that none of SOA's escrow transactions for 1992 are contained, including a \$2,602.28 escrow payment for taxes on 3/26/92 that is not reflected. None of the \$253.88 escrow payments for payments due from 12/10/91 to 12/10/92 and paid by the Pews are reflected. Also, various unexplained \$00.10 transactions are also not reflected in his spreadsheet.

The records prove that SOA mishandled the Pew's escrow account and the annual analysis and adjustment dates for their escrow account. In further proof of EMC's fraud, EMC's expert, David Smith, in spite of having full and complete knowledge that the figures contained in his report in support of his affidavit are false, prepares yet another spreadsheet on 4/7/98 attached as **Exhibit 12.A**. This spreadsheet provided to the Pews in production continues to misrepresent and mischaracterize the transactions that occurred on the Pew's account.

This spreadsheet still does not reflect the SOA escrow account transactions and reports unapplied/suspense transactions, including the \$11,796.34 unapplied transaction that he and EMC are fully aware are not impound/escrow transactions.

Additionally, Mr. Smith has included the \$4512.06 payment made on 1/27/93. This payment was not reflected in his spreadsheet attached with his affidavit in support of EMC's and SOA's Summary Judgement motion. He has now changed his spreadsheet at least twice and has not amended his affidavit or supplemented his report to the District Court in Dallas, Texas even though EMC, SOA, their counsel and Mr. Smith are fully aware that such report and affidavit are false.

In fact, the Pews are in possession of two additional spreadsheets that Mr. Smith has prepared that reflects a \$930.00 insurance advance on 2/4/93 as well as multiple transactions that occurred on the Pew's account. They were not and still to this date have not been supplemented or amended even though both EMC and SOA as well as their respective counsel know for a fact that Mr. Smith's affidavit and his attached report is false, fraudulent and misleading. This, three [3] years after the actual filing of their motion.

Still, SOA and EMC as well as their attorneys, David Smith and Ike Guest attempt to cover-up and conceal the wrongful and fraudulent actions of both SOA and EMC with concerns to the insurance frauds and transactions that occurred on the Pew's account while with SOA and later EMC.

## SOA Predatory Late Fee "Churning" Scheme

In addition to the deceptive and fraudulent insurance schemes that SOA carried out, SOA executed a number of practices, policies and procedures designed to increase and "churn" late fee revenue to SOA. These deceptive and fraudulent practices included:

- (a) the delayed crediting and posting of payments made at SOA branches to the Pew's and other SOA customer's accounts so as to incur, assess and collect late fees caused by the delayed crediting and posting of payments;
  - (b) assessing, demanding and attempting to and collecting the payment of late fees from the Pews and other SOA customers in advance of the date they were contractually due;
  - (c) making advances to the Pew's and other SOA customer's accounts and then considering such advances as part of principal and interest payments due and calculating, assessing, demanding and collecting a 6% late fee attributable to such advances;
  - (d) calculating, assessing and collecting a 6% late fee attributable to a \$2.19 principal reduction on the Pew's account on 12/17/91;
  - (e) calculating, assessing, demanding and collecting a 6% late fee attributable to wrongful forced placed insurance advances made on the Pew's and other SOA customer's accounts;
  - (f) intentionally refusing to and failing to send monthly payment coupons to the Pews at all so as to intentionally cause the Pews and other SOA customers to be late in the payment of their monthly payments to SOA so that SOA could assess, demand and collect a late fee from them;
  - (g) intentionally refusing to and failing to send monthly payment coupons to the Pews and other SOA customers at their residence and mailing addresses so as to intentionally cause the Pews and other SOA customers to be late in the payment of their monthly payments to SOA so that SOA could assess, demand and collect a late fee from them;
  - (h) intentionally sending what monthly payment coupons they did send to the Pews and other SOA customers on a "receipt and bill" system so as to intentionally cause the Pews and other SOA customers to be late in the payment of their monthly payments to SOA so that SOA could assess, demand and collect a late fee from them;
  - (i) calculating, assessing, demanding, charging and collecting late fees on wrongfully placed inspection fees placed upon the Pew's and other SOA customer's accounts;
  - (j) calculating, assessing, demanding, charging and collecting late fees on wrongfully charged forced placed insurance advances placed upon the Pew's and other SOA customer's accounts;
  - (k) calculating, assessing, demanding, charging and collecting late fees on wrongfully charged tax advances placed upon the Pew's and other SOA customer's accounts that should have been charged to their escrow accounts;
- and

- (l) calculating, assessing, demanding, charging and collecting late fees in advance of their actual due dates; intentionally misapplying and placing payments received from the Pews and other SOA customers into a non-interest bearing suspense/unapplied account that SOA had direct access to and use of and which SOA did not apply to the Pew's payment for principal and interest on a timely basis or even for several months which SOA actions intentionally caused the Pews to be in arrears so that SOA could assess, demand and collect a late fee that was not owed or due from the Pews and other SOA customers.

By intentionally using the schemes, policies and practices contained above, it was SOA's direct and malicious intent to delay payment to and/or crediting of the Pew's and other SOA customer's payments to their loans so as to cause the assessment, demand and collection of inappropriate late fees.

As evidence of this practice, please examine **Exhibit 34** attached which is an affidavit certifying the amount of late fees assessed and collected from the Pews in their account with SOA according to SOA's records.

From June of 1989 through March of 1993, SOA assessed and collected approximately \$2,167.75 in late fees. The Pews have disputed and still dispute to this date the legitimacy of these late fees due to breach of SOA's agreements with the Pews and the wrongful actions of SOA that were the direct cause of the assessment and collection of late fees from the Pews. SOA also assessed additional late fees that EMC now claims are owed and due to EMC due to a transfer by SOA to EMC.

#### SOA Predatory Unapplied/Suspense Account Scheme

SOA's own internal written policy directed that amounts held in unapplied accounts be held no more than a maximum of 45 days except for loans in bankruptcy and who have a repayment plan in place.

SOA violated its own policies by holding payments and portions of payments made by the Pews in unapplied for as long as seven months before their application. Except for a couple of occasions, SOA didn't inform the Pews in writing or in telephone calls to the fact that monies they paid to SOA were in fact being held in suspense accounts and diverted away from crediting to their account. The Pews and I believed such payments were going to pay principal, interest and escrow payments only,

SOA, not once, ever provided the Pews with any explanation or reason why SOA would take their payments and not apply them, but make use of such payment for its own benefit. In essence, SOA, in its desperation and need for income and revenue, would make itself interest free loans from the Pew's payments and other SOA customers to be repaid weeks or even months later at SOA's own behest and without the Pew's knowledge or consent to such actions.

SOA would further complicate matters by not informing the Pews and other SOA customers that substantial sums of money were being held in an unapplied account and had not been credited to their payments or the principal balance of their account. To further this scheme, SOA would then shortly after receiving a payment that it placed in an unapplied account, use the U.S. Mail to send a demand letter to the Pews and other SOA customers that demanded payments from the Pews. SOA used extortionate tactics such as threatening to foreclose on the Pews' and other SOA customer's properties and ruin their credit.

### SOA's Predatory "Payment Extortion" Scheme

One prime example of this SOA extortion scheme occurred between January 1 and April 1 of 1992. SOA had not sent the Pews any monthly statements detailing the amounts of their payments, payment, credit and debit activity to their account or support for all of the forced placed insurance policies that SOA informed the Pews it had placed on their account and charged their account for. The Pews had been disputing late fees and the assessment and collection of late fees from July of 1989 and had disputed all amounts claimed to owed to SOA without proper written verification and support of what SOA claimed was owing and due.

The Pews sent both SOA and EMC written and faxed complaints. Such complaints are attached as **Exhibit 35**. The disputes included the payment of the Pews' taxes, insurance, escrow and monthly payments as well as any other miscellaneous charges that SOA had applied to the Pews' account. The Pews and I could not reconcile or ascertain how SOA arrived at its payment demands and requests for payments without monthly payment statements or account histories detailing the application of credits, debits and all transactions to the Pews' account with SOA.

SOA, in its own internal memo dated 10/17/91 attached as **Exhibit 36** states that the Pews are "disputing the amount that has been paid and the amount that is due." Yet, the Pews made numerous complaints about all fees, expenses, charges, escrow, taxes and insurance to their account.

However, SOA's only response to the Pews on 1/23/92 attached as **Exhibit 37** only outlines their response to only a few of the insurance issues and problems with the Pews' account. It does not address each and every insurance policy placed on their account, payments to their accounts, late fee charges to their account; inspection fees charged to their account; taxes charged to their account or how their money was applied, adjusted or credited.

In conversations with the Pews, employees of SOA did admit to them that there were many complaints with and problems occurring at SOA's tax and insurance departments and that they would fully investigate the Pews' complaints and disputes. An SOA employee later informed me that SOA had screwed up the establishment of the Pews' escrow account for the payment of their taxes. He also stated that SOA had placed multiple layers of insurance on their home that needed to be credited.

As a solution to the Pews disputes and complaints, he was going to “spread out” the repayment of any taxes or insurance premiums actually due over 18 months. This was supposed to be accomplished by placing such a repayment into the Pews escrow account so as not to cause any hardship to the Pews due to SOA’s own admitted mistakes. He said that the next monthly statement the Pews would receive in January of 1992 would reflect such activity and corrections to their account.

**Exhibit 38** is a copy of an internal SOA manually prepared payment escrow calculation that supports the employee's statement to Mr. Pew and I.

He informed the Pews that the new monthly payment for escrow for the taxes and insurance due to SOA would be in the vicinity of \$375.00 per month. However, he said that the actual figures would be contained in an upcoming statement that the Pews would receive prior to their next payment due date on 1/10/92.

I agreed to remit a check on behalf of the Pews to SOA in the amount of \$2500.00 to cover any existing principal and interest payments due and provided that SOA would finally send the monthly payment statement and coupon that the Pews had been requesting for over a year. I made a payment to SOA as agreed and then stopped that payment from being processed when SOA did not honor its agreement with me on behalf of the Pews. The Pews never received the monthly loan coupons and statements they had requested detailing the amounts owed on their account nor the accounting of how their previous payments were handled nor the verification of taxes and insurance paid and credited to the Pew's account with SOA.

Later, upon threat of SOA's employees, I made a \$2,500.00 cash payment at an SOA branch to insure that SOA would comply with its agreements. This cash payment is not properly and fully reflected on the Pew's loan histories and only portions of the payment are included as credits to the Pew's account.

Instead of complying with its agreements, SOA furthered its deception and fraud by causing to be sent via the U.S. Mail, conflicting and contradictory demand letters and so-called delinquent notices in the months of 12/91 and 1/92 which are attached as **Exhibit 39**. SOA then sent the Pews a response to their complaints in a letter from Clark Helzer dated 1/23/92 attached as **Exhibit 37** in which SOA admits certain so-called errors and mistakes on its part and its solution on how they were going to fix the problems. *This letter was the “only” letter the Pews “ever” received from SOA that addressed even one of their myriad of complaints and disputes with SOA from the inception of the loan in June of 1989 until the transfer of the loan to EMC in September of 1993.*

In this response letter to the Pews, SOA only addresses two of the forced placed policies it issued and charged the Pew's account for. It fails to mention the charges and credits for other SOA forced placed policies that SOA placed on the Pew's property or informed the Pews that such placement and charges occurred and this letter does not even address even one tax or escrow transaction and other disputes. It also fails to address the late fees charged to the Pew’s account, inspection and other fees that the Pews had disputed. It also does not provide an accounting and detail of transactions, charges, payments, credits and debits with supporting documentation that the Pews had requested from SOA.

The monthly payment coupon promised by SOA to arrive by 1/10/92 never was sent and terms of the agreement reached regarding the repayment of all taxes and insurance through the Pew's escrow account in the vicinity of \$375.00 per month for 18 months was never received as well.

Instead, SOA via the U.S. Mail and in telephone calls to the Pews used and made extortionate demands for tens of thousands of dollars that were not even owed or due to SOA under the terms of the Pews promissory note and deed of trust. When the Pews disputed these amounts in writing and in telephone calls, SOA still claimed that the amounts demanded in writing and via telephone were in fact due and owing.

An examination of Anthony Pew's affidavit and the attached exhibits to that affidavit attached to this report as **Exhibit 5** clearly demonstrates such extortionate demands by SOA which have to this date been intentionally and fraudulently concealed to the Pews, courts and their experts and counsel by EMC, SOA, Bear Stearns, Washington Mutual and their respective executives, law firms and counsel.

To illustrate this extortion demand, please examine the following that is now known from a forensic accounting of the Pew's records and SOA's master transaction register.

In an internal SOA document attached as **Exhibit 38**, that was not provided to the Pews until the discovery process of their litigation, SOA shows that the Pews owe SOA the sum of \$1,289.28 for the monthly payment due on 11/10/91. This payment was broken down as \$914.70 attributable to the payment of the regular monthly principal and interest payment and \$374.58 attributable to an advance payment to be paid over 18 months. Arguably, this is most likely the approximate \$375.00 the SOA employee informed Mr. Pew and I that the Pews would pay monthly to their escrow account for the payment of all current and back taxes and insurance that SOA claimed due. Yet, as evidenced by this document, the representations made to the Pews were in fact deceiving, misleading and fraudulent.

This document reflects that the \$374.58 was actually being treated as an advance and not as part of the Pew's escrow account as they were informed. Further, the document reflects that the 12/10/91 monthly payment due from the Pews was \$1,543.16. This payment was broken down as \$914.70 attributable to the payment of the regular monthly principal and interest payment and \$374.58 attributable to an advance payment to be paid over 18 months and \$253.88 for an impound payment for a term of 12 months.

As evidenced by **Exhibit 40**, on 12/17/91 SOA sent to the Pews a Delinquent Notice that claims that the Pews owe SOA the sum of \$11,230.28 for five [5] past due payments on their loan. On 1/21/92 SOA sent to the Pews a Delinquent Notice that claims that the Pews owe SOA the sum of \$13,455.28 for four [4] past due payments on their loan. On 1/26/92 SOA sends to the Pews a Delinquent Notice that claims that the Pews owe SOA the sum of \$12,156.62 for three [3] past due payments on their loan. On 1/30/92 SOA sends to the Pews a Delinquent Notice that claims that the Pews owe SOA what is believed to be the sum of \$15,283.84 for six [6] past due payments on their loan.



Taking into consideration the \$2500 payment that I made on the Pews' account and then intentionally caused to be uncollected due to the breach of SOA's agreements, there is no support, justification or lawful obligation by the Pews to pay any of these conflicting demands. In an attempt to remedy the situation, and after threats of coercion and intimidation by SOA employees, I then made a cash payment of \$2,500.00. I then later again attempted to make a payment at an SOA branch of \$5000.00 on or about 1/30/92 and was told that the sum was insufficient to bring the Pews up-to-date on their loan. I was also told that the payment could not be accepted for that reason and additionally the payment is not in certified funds.

In the 1/23/92 SOA response letter to the Pews, SOA claims that \$6,874.81 is owed as of that date. As such, on 2/4/92 Mr. Pew causes to be drafted a certified check in the amount of \$6,874.81 attached as **Exhibit 41** as directed by SOA on the phone and this payment is made on that day at the West Boca Branch office of SOA. The payment is reflected on SOA's master transaction register **[Exhibit 8]** on page 411,568.

SOA delayed the posting, processing and crediting of this payment until 2/11/92 when it wrongfully conducted a transaction that sends \$3,757.59 to SOA's unapplied account to increase the unapplied balance to \$4,374.81. Then, SOA only pays three [3] monthly payments of principal and interest in the amounts of \$914.70 and three [3] monthly payments of escrow in the amount of 10¢ for the 8/10/91, 9/10/91 and 10/10/91 monthly installments due SOA as well as a repayment of an advance, now known to be for taxes, in the amount of \$372.82.

SOA had full control, custody and deposit of the certified funds of the Pews in the amount of \$6,874.81 as of February 4, 1992. As can be computed by using the above figures and documents, there is no conceivable way that the Pews ever did lawfully or contractually owe or could have owed the figures claimed to be due and owing to SOA in its delinquency notices.

To further compound this SOA fraud and extortion scheme, SOA with the malicious intent to defraud the Pews, did demand payment on 2/7/92 **[Exhibit 42]** attempting to extort the amount of \$18,633.67 from the Pews. SOA issued threats against person and property via the U.S. Mail and telephone services if the Pews refused to comply with their request. SOA claimed that the \$18,633.67 was due for all payments and fees obligated by the Pews to SOA from 8/10/91 through 2/10/92 for a total of seven [7] monthly installment payments. This would mean that SOA was claiming the Pews owed \$25,508.48 for the payments due from 8/10/91 through 2/10/92. The regular monthly principal and interest payment for the monthly installment dates from 8/91 through 2/92 were \$914.70 each and totaled a combined \$6,402.90 for seven payments. When you subtract \$6,402.90 from the figure of \$25,508.48 you get a figure of \$19,105.58 that SOA is demanding and attempting to extort from the Pews for all payments, fees, taxes, insurance and escrow other than the regular monthly principal and interest of \$914.70 for seven months.

Yearly taxes and property insurance on the Pews property were approximately \$2608.28 and \$600 respectively. The Pews had paid SOA for the 1989 taxes though its payments and for all insurance SOA claimed was owed. In fact, in the letter of 2/23/92 SOA states that the Pews were in fact owed a credit to their account for almost \$2000.00 for all the wrongful overcharges relating to forced placed insurance. As such, this demand meant that SOA was attempting to extort, at a minimum, over \$15,000 from the Pews with threats of coercion, harm and intimidation.

This extortionate demand is not only unconscionable but also usurious. There is no conceivable way that SOA could lawfully or contractually justify this amount as being owed by the Pews. Again, the Pews disputed these demands in letters, faxes and phone calls to SOA such as included in **Exhibit 43**. Yet, SOA verified the amounts demanded in the letter of 2/7/92 via phone and refused to accept any payment from the Pews for less than what SOA claimed was owed. Such verification came weeks and even months after the letter was sent and SOA finally applied, although wrongfully, the payment of \$6,874.81 on 2/4/92.

As such, due to the attempted extortion of the Pews by SOA, the Pews refused to tender any more money to SOA until all amounts SOA demanded from them were verified and accounted for. SOA failed and refused to do so as requested in writing, faxes and phone calls to SOA by the Pews. I then instructed my family to have all communication from SOA directed towards me so that I could address the issues directly since the Pews were elderly, ill and disabled and did not have sufficient legal knowledge to confront and challenge SOA.

#### SOA Account, Balance & Transaction Frauds

SOA intentionally refused to breakdown the numbers it demanded in demand letters it issued to the Pews. It also intentionally refused to send the required monthly loan coupons it agreed to send in writing prior to closing and in subsequent verbal agreements reached over the phone with the Pews in an effort to secure payment. It intentionally and continually sent doctored, altered, fraudulent, misleading, conflicting and contradictory demands for payment, loan histories, year-end summaries of account, delinquent notices, statements and other documents with the intent to mislead, confuse and defraud the Pews and extort unlawful sums of money from them.

On 2/21/92 SOA claims to have caused to be created and sent to the Pews a document [**Exhibit 44**] that purported to be a corrected monthly escrow analysis for escrow payments. This document claimed that the current monthly impound payment that SOA claimed was due from the Pews was an astronomical \$2602.28 per month. It claimed that the new monthly impound payment due from the Pews would be \$253.91. There is no evidence anywhere in any of SOA's records or in the reports of Ike Guest or David Smith that such an amount was ever calculated as part of a the Pew's payment or credited or charged to their account. In fact, the contrary is known.

The Pew's escrow account with SOA was, via the testimony of Lionel Antunes, established by SOA in November of 1991. The terms of such an escrow agreement were originally agreed upon between Marshall Emerson of SOA and I as evidenced by **Exhibit 38**. Mr. Emerson claimed that SOA had made numerous mistakes and that their insurance and tax departments were overworked, understaffed and executed poorly and failed to timely make payments from SOA customer's escrow accounts. Furthermore, he admitted to the wrongfully forced placed insurance policies placed on the Pew's property and to the receipt and existence of the Pews requests to escrow their taxes and insurance in early 1990.

He represented to me that after SOA's research and investigation were complete with regards to the Pew's taxes, insurance and escrow complaints, that SOA would spread any shortages that existed over 18 months. Instead, after a four year forensic review, analysis and reconciliation of SOA loan histories and the documents sent to the Pews, it has been determined that Mr. Emerson's representation to the Pews that shortages would be carried out over 18 months from the Pew's escrow account never occurred.

Instead, SOA did in fact deduct \$2602.28 from the Pew's payment intended to go toward the payment of principal and interest as was represented by SOA for the payment of one year's taxes. This \$2,602.28 payment was attributable by SOA to the monthly installment payment due for 11/10/91.

Furthermore, a forensic accounting of this letter recently completed by the Pews determined that this letter attempted to extort from and defraud the Pews of over \$15,000! The accounting, based on the master transaction register provided by SOA in production indicates that SOA demanded, misrepresented and attempted to extort four [4] separate payments of \$2,602.28 for taxes from the Pews for the 11/10/91 through 2/10/92 monthly payments due in addition to an amount of \$372.82 that was being charged to the Pew's account for the 10/10/91 payment through 2/10/92 monthly payments.

The \$372.82 was supposed to be the total amount of escrow charged by SOA to the Pews on a monthly basis for 18 months due to SOA's claimed mix-ups and problems according to Mr. Emerson. Yet, it is Mr. Emerson himself who authors and signs the 2/7/92 letter that attempts to defraud and extort unconscionable sums of money from the Pews and goes back on the agreements reached with the Pews and I on behalf of the Pews. This is further supported by the SOA's internal call notes which note many, but not nearly all, of the telephone conversations between the Pews, SOA and I.

The call records as well as SOA's master transaction register make reference to some sort of placement and removal of a "payment plan" associated with the \$372.82 payments for taxes that were charged to the Pew's account.

In actuality, SOA and Mr. Emerson continued their pattern of fraud, deception, deceit and extortion by representing one thing to the Pews and even documenting the representation, then completely doing the opposite to intentionally harm and defraud the Pews to the benefit of SOA.

Evidence of SOA's attempt to extort money from the Pews and further defraud them is found in the master transaction register of SOA [Exhibit 8] and the numerous principal and interest adjustments as well as adjustments to the impound account that were recorded, like musical chairs, from 8/2/91 through 9/9/92.

Review of SOA's master transaction register [Exhibit 8] reflects the following:

On 8/2/91 SOA processed a tax advance in the amount of \$2,544.88 and charged this amount to the Pew's account with repayment with interest in the amount of \$266.85 per month for ten [10] months starting with the 10/10/91 monthly payment. This transaction was conducted during the period of the Pew's disputes with SOA over taxes and insurance. *On 8/15/91 SOA sent via the U.S. Mail a letter to the Pews [Exhibit 45].* This document was sent to the Pew's property address and not their mailing address as reflected in SOA's internal records. This was the only notice the Pews received from SOA pertaining to this particular transaction and the related repayment schedule.

On 8/19/91 SOA processed a tax advance in the amount of \$1,016.35 and charged this amount to the Pew's account with repayment with interest in the amount of \$105.97 per month for ten [10] months starting with the 10/10/91 monthly payment that was added to the previous amount of \$266.85 to give a total of \$372.82 payment for a total repayment of \$3,561.23 plus interest in tax advances made on 8/2/91 and 8/19/91 over ten months from 10/10/91 through 7/10/92 payments. SOA failed to send the Pews notice of this transaction or an increase in their monthly payment or escrow account.

On 8/13/91 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$72.40 which increased the amount of the Pew's payment for monthly principal and interest from \$1,234.54 to \$1,306.94 effective with the 6/10/91 payment due. SOA intentionally refused and failed to send the Pews notice of this transaction or notice of this increase in their monthly payment as contractually obligated to.

On 8/22/91 SOA processed an impound adjustment transaction to the Pew's account in the amount of \$2,602.28 which increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$2,602.28 effective with the 11/10/91 payment due. SOA failed to send the Pews notice of this transaction or notice of this increase in their monthly payment for escrow.

SOA did however send a letter dated 9/15/91 [Exhibit 46] in which SOA advises the Pews that they are establishing an impound account and requiring the Pews to have \$2,602.28 in their impound account to cover the payment of taxes for the monthly payment due 11/10/91. This letter however is a further attempt to intentionally confuse, deceive and defraud the Pews and an attempt to extort sums of money not contractually or legally obligated to be paid to SOA from the Pews. This letter goes on to further misrepresent to the Pews that the escrow account that is being established to pay their taxes would have a monthly impound payment of \$216.86.

SOA never once in the history of the Pews' loan ever processed an impound transaction in the amount of \$216.86 nor did any year-end escrow statement from SOA or SOA document, coupon or record ever show that the amount of \$216.86 was ever billed to the Pews for payment of escrow.

At this time, the Pews were disputing all amounts claimed to be owed by SOA. The disputes included all charges, fees, taxes, insurance and insurance since the Pews were not being provided with monthly statements or any documents which listed and documented the various transactions occurring on the Pews' account. The Pews also believed, which was later confirmed, that SOA was overcharging them for charges and fees not owed to SOA as evidenced by SOA's letter of 1/23/92 **[Exhibit 37]**.

On 9/5/91 SOA processed an impound payment transaction from the Pews' escrow account in the amount of \$2,602.28. The Pews were not notified on this transaction until a year later when they received a year-end escrow statement from SOA **[Exhibit 47]**.

On 8/27/91 SOA again processed an impound adjustment transaction to the Pews' account in the amount of \$2,602.28 which supposedly increased the amount of the Pews' payment for monthly impounds from \$00.00 to \$2,602.28 effective with the 11/10/91 payment due. However, SOA had already processed such a transaction on 8/22/91 and there is no corresponding transaction that subtracted this transaction then charged it again. As such, the validity and authenticity of the records of SOA is questionable and cannot be completely relied upon.

On 10/14/91 SOA processed a principal and interest adjustment transaction to the Pews' account in the amount of \$7.06 which increased the amount of the Pews' payment for monthly principal and interest from \$1,306.94 to \$1,314.00 effective with the 7/10/91 payment due. SOA intentionally refused and failed to send the Pews notice of this transaction or notice of this increase in their monthly payment statement as contractually obligated to.

On 11/4/91 SOA processed a principal and interest adjustment transaction to the Pews' account in the amount of \$105.84 which reduced the amount of the Pews' payment for monthly principal and interest from \$1,314.00 to \$1,208.16 effective with the 7/10/91 payment due. SOA intentionally refused and failed to send the Pews notice of this transaction or notice of this decrease in their monthly payment as contractually obligated to. Furthermore, this decrease in the principal and interest charge was the result of an admitted overcharge by SOA for forced placed insurance that SOA wrongfully placed upon the Pews' account.

As such, all demands and requests for payments, as well as payment transactions, that included the \$105.84 amount from 11/30/90 when the \$105.84 principal and interest adjustment was first made through 11/4/91 when it was removed were wrongful, deceptive, contractually not obligated for and in violation of various state and Federal laws.

All documents mailed to the Pews during this time period via the U.S. mail contained material misrepresentations of the amounts owed to SOA by the Pews and/or a mischaracterization, misrepresentation and over-statement and demand of the status of their debt.

In addition, SOA, EMC, Bear Stearns, Washington Mutual and their experts and law firms, while having complete knowledge of this overcharge, have never in eight years gone back and recalculated principal and interest adjustments and credits to the principal balances of the Pew's account as of the date of each overpayment. They have also ignored the crediting as well as associated increases in late fees that SOA assessed and collected from the Pews resulting from this overcharge.

This transaction was and has been intentionally and fraudulently concealed, hidden, redacted and altered in the SOA loan histories provided to the Pews by SOA as well as by EMC when the loan was assigned. Furthermore, both Ike Guest and David Smith in their reports and affidavits in support of their reports intentionally and fraudulently ignore, redact, omit, alter and conceal the existence of this transaction in their schedules, reports and spreadsheets.

On 11/7/91 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$92.79 which reduced the amount of the Pew's payment for monthly principal and interest from \$1,208.16 to \$1,115.37 effective with the 7/10/91 payment due. SOA intentionally refused and failed to send the Pews notice of this transaction or notice of this decrease in their monthly payment as contractually obligated to. Furthermore, this decrease in the principal and interest charge was the result of an admitted overcharge by SOA for forced placed insurance that SOA wrongfully and fraudulently placed upon the Pew's account.

As such, demands and requests for payments, as well as payment transactions, that included the \$92.79 amount from 1/14/91 when the \$92.79 principal and interest adjustment was first made through 11/7/91 when it was removed were wrongful, deceptive, contractually not obligated for and in violation of various Florida state and Federal laws. All documents mailed to the Pews during this time period via the U.S. mail contained material misrepresentations of the amounts owed to SOA by the Pews. SOA and EMC never adjusted for such fees or for the associated late fees charged to the Pew's account.

This transaction was and has been intentionally and fraudulently concealed, hidden, redacted and altered in the SOA loan histories provided to the Pews by SOA as well as by EMC when the loan was assigned. Furthermore, both Ike Guest and David Smith in their reports and affidavits in support of their reports intentionally and fraudulently ignore, redact, omit, alter and conceal the existence of this transaction in their schedules, reports and spreadsheets.

On 12/17/91 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$200.67 which reduced the amount of the Pew's payment for monthly principal and interest from \$1,115.37 to \$914.70 effective with the 8/10/91 payment due.

On 12/18/91 SOA processed an impound adjustment transaction to the Pew's account in the amount of \$00.10 which increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$00.10 effective with the 8/10/91 payment due. SOA intentionally refused and failed to send the Pews notice of this transaction or notice of this increase in their monthly payment as contractually obligated to. Furthermore, it is inconceivable that such an amount

could ever be considered an impound amount for payment of any taxes or insurance since it is so insignificant. Additionally, SOA was imposing an increase in the impound payment of \$2,602.18 on the same date. When the \$00.10 is added to the amount of \$2,602.18 the result is \$2,602.28 which SOA adjusts and increases on 8/22/91 and 8/27/91 respectively.

There is no justifiable reason why this transaction appears again nor why \$00.10 was deducted from the \$2,602.28 in the first place other than to further confuse and deceive the Pews.

On 12/18/91 SOA processed an impound adjustment transaction to the Pew's account in the amount of \$2,602.18 which increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$2,602.18 effective with the 11/10/91 payment due.

On 1/10/92 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$372.82 which increased the amount of the Pew's payment for monthly principal and interest payments from \$914.70 to \$1,287.52 effective with the 10/10/91 payment due.

On 1/17/92 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$372.82 which decreased the amount of the Pew's payment for monthly principal and interest payments from \$1,287.52 to \$914.70 effective with the 8/10/91 payment due.

On 1/21/92 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$372.82 which increased the amount of the Pew's payment for monthly principal and interest payments from \$914.70 to \$1,287.52 effective with the 10/10/91 payment due.

On 1/28/92 SOA again processed an impound adjustment transaction to the Pew's account in the amount of \$2,602.28 which supposedly increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$2,602.28 effective with the 11/10/91 payment due.

On 1/30/92 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$372.82 which decreased the amount of the Pew's payment for monthly principal and interest payments from \$1,287.52 to \$914.70 effective with the 8/10/91 payment due.

On 1/30/92 SOA processed an impound adjustment transaction to the Pew's account in the amount of \$00.10 which increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$00.10 effective with the 8/10/91 payment due.

On 2/11/92 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$372.82 which increased the amount of the Pew's payment for monthly principal and interest payments from \$914.70 to \$1,287.52 effective with the 10/10/91 payment due.

On 2/11/92 SOA again processed an impound adjustment transaction to the Pew's account in the amount of \$2,602.28 which supposedly increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$2,602.28 effective with the 11/10/91 payment due.

On 2/20/92 SOA again processed an impound adjustment transaction to the Pew's account in the amount of \$2,348.40 which supposedly increased the amount of the Pew's payment for monthly impounds from \$00.00 to \$2,348.40 effective with the 12/10/91 payment due.

However, the master transaction register and records of SOA indicates that this transaction should have been a reduction instead of an increase as indicated by the letter "N" next to the \$2,348.40 transaction amount listed. This again proves that SOA documents can be manually altered and transactions can be fraudulently manipulated to provide amounts, figures, calculations and posting dates that are contrary to the representations made. In fact, there is no way to ascertain if these records are the actual records of SOA at the time in question or were fraudulently recreated years later to hide the fraudulent transactions that SOA conducted at the time.

To illustrate this point, when \$2,348.40 is subtracted from the \$2,602.28 a figure of \$253.88 is obtained which is the new monthly escrow payment that SOA was charging the Pews. This is confirmed by the transaction that occurred on 3/26/92 when SOA, yet again, made another impound transaction in an amount of \$253.88. SOA claims that an increase from \$00.00 to \$253.88 occurred on this date. However, again there are no corresponding transactions that reconcile and balance these transactions out.

On 9/9/92 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$372.82 which decreased the amount of the Pew's payment for monthly principal and interest payments from \$1,287.52 to \$914.70 effective with the 12/10/91 payment due.

SOA knowingly, willfully and intentionally refused and failed to send the Pews notice of any of the principal and interest and impound adjustment transactions reflected above or notice of such increases or decreases in the Pew's monthly payment statement as contractually obligated to.

These transaction were and continue to be knowingly, willfully, intentionally and fraudulently concealed, hidden, redacted and altered in the SOA loan histories provided to the Pews by SOA as well as EMC when the loan was assigned. Furthermore, both Ike Guest and David Smith, in their reports and affidavits in support of their reports to the District Court in Dallas Texas, did knowingly, willfully, intentionally and fraudulently ignore, redact, omit, alter and/or conceal the existence of these transactions in their schedules, reports, spreadsheets and testimony.

EMC, SOA, Bear Stearns, Washington Mutual, David Smith, Ike Guest and their agents and counsel are fully aware of these misrepresentations and frauds and have actively participated in a conspiracy to prevent their clients from facing testimony with regards to the various frauds and misrepresentations highlighted in this report.



SOA claims that a \$253.88 escrow adjustment and payment would begin on 12/10/91 and be for 12 months. EMC later used this same amount plus the addition of \$00.01 from an unexplained adjustment to claim escrow due for tax and insurance escrow payments due SOA and EMC beginning in March of 1993 and ending with the February 1994 payment. However, SOA's internal records and correspondence sent to the Pews by SOA indicates that the actual escrow payment was adjusted with an increase of \$94.14 by SOA on 2/23/93 with that made the monthly escrow payment for the next 12 months beginning with the 4/10/93 payment, including all applicable shortages for a total of \$347.98.

This transaction as well as and has been knowingly, willfully, intentionally and fraudulently concealed, hidden, redacted and altered in the SOA loan histories provided to the Pews by SOA as well as EMC when the loan was assigned. Furthermore, both Ike Guest and David Smith, in their reports and affidavits in support of their reports to the District Court in Dallas Texas, did knowingly, willfully, intentionally and fraudulently ignore, redact, omit, alter and/or conceal the existence of this transaction in their schedules, reports, spreadsheets and testimony.

EMC claims in its affidavits to the court, in documents produced to the Pews and in testimony that the Pews owed SOA and then EMC the sum of \$253.89 for monthly escrow payments due SOA and EMC from 3/10/93 until 2/10/94.

In fact, both SOA and EMC had and continue to have knowledge of the actual escrow amounts that were adjusted, charged, billed, credited, debited, placed and made to the Pew's account as well as representations to the Pews. However, at various times, it has been the position of EMC and their attorneys that an escrow account did not exist. Yet, as shown by the overwhelming evidence attached as **Exhibit 48**, there was an escrow account that was established by both SOA and EMC. EMC, SOA, their experts, counsel and even Ike Guest wish to conceal the transactions of the escrow account since such transactions misrepresented, mischaracterize and intentionally over-calculated to deceive, defraud and extort additional income and reserves of money from the Pews that they did not legally owe.

Mr. Guest even goes so far as to testify that he had no assumptions or information available him to determine escrow amounts due and that the deed of trust and note, contrary to what is in the documents, did not provide for the establishment of an escrow account. Mr. Guest colluded with EMC, SOA and their experts and counsel to conceal and intentionally not examine the Pew's escrow account so as to conceal and hide obvious fraud and misrepresentations.

## SOA & EMC Predatory Inspection Fee Scheme

The Pews were never notified by SOA that property inspections were being conducted on their property or that they were being charged for such inspections. In fact, contrary to SOA's assertions, many of these inspections were actually collection efforts by SOA.

SOA never informed the Pews that money was being directly diverted from the Pew's payments without notice to pay for property inspections. In fact, SOA intentionally concealed such inspections by referring to them as misc. advances and legal fees in their loan histories.

David Smith and Ike Guest in their reports, even after having complete knowledge of such property inspections being charged to the Pew's account as evidenced by their notes and personal handwriting in **Exhibit 49**, intentionally redact, hide and conceal these transactions in their reports to the courts and to the Pews [**Exhibits 21 and 29**].

The following are some of the property inspection transactions that were charged to the Pew's account by SOA:

On 4/12/91 SOA processed an advance in the amount of \$8.50 with interest of \$00.08 for a total of \$8.58 to be repaid in a term of one month effective with the 6/10/91 monthly payment due from the Pews.

On 5/16/91 SOA processed an advance in the amount of \$8.50 with interest of \$00.08 for a total of \$8.58 to be repaid in a term of one month effective with the 7/10/91 monthly payment due from the Pews.

On 10/14/91 SOA processed a principal and interest adjustment transaction to the Pew's account in the amount of \$7.06 which increased the amount of the Pew's payment for monthly principal and interest payments from \$1,306.94 to \$1,314.00 effective with the 7/10/91 payment due.

On 12/17/91 SOA processed a collection of an advance in the amount of \$15.50 with interest of \$00.13 for a total of \$15.63 that be collected with the 7/10/91 monthly payment due from the Pews.

The Pews did not know that such an advance was for the repayment of wrongful charges in the form of property inspection fees that the Pews and other SOA customers were not obligated to pay. Both SOA and EMC knowingly, willfully and intentionally misrepresented to the Pews and other SOA customers as legal fees and misc. advances.

After the discovery of the fact that SOA and EMC conducted and charged for such property inspections on the Pew's and other SOA and EMC customer's properties, EMC and SOA then knowingly, willfully and intentionally misrepresented to the Pews and their attorneys the nature and reasons for such inspections in deposition testimony.

SOA and EMC knowingly, willfully and intentionally misrepresented to the Pews and continue to misrepresent to its customers that these inspections are to protect and preserve the properties in question. In reality, both SOA and EMC have used and continued to use property inspections as a method for collection of a debt and notification to SOA and EMC customers of a debt. They even have someone come to the door of customers to harass, alarm and annoy them in violation of Federal and State consumer collection laws

Both SOA and EMC have knowingly, willfully, intentionally and fraudulently concealed, hidden, redacted and altered the SOA loan histories provided to the Pews by SOA as well as EMC when the loan was assigned that hid and attempted to conceal the fact that the Pews did not owe such fees. Such fees were never requested or demanded to be paid by SOA and SOA without notice did in fact charge and collect such fees from the Pews from payments intended to reduce the Pew's principal balance.

As such, all principal balances and representations of amounts due and applications of principal and interest since the deduction and payment of the first property inspection are incorrect and misstate the status of the Pew's account with both SOA and EMC.

In further support of this fraud, both Ike Guest and David Smith, in their reports and affidavits in support of their reports to the District Court in Dallas Texas, did knowingly, willfully, intentionally and fraudulently ignore, redact, omit, alter and/or conceal the existence of these inspection fee transactions in their schedules, reports, spreadsheets and testimony when they had full and complete knowledge of these fees.

This was done at the behest and request of EMC and SOA's counsel who knew such fees posed a class action liability to both SOA and EMC.

SOA and EMC have knowingly, willfully and intentionally misrepresented inspection fees to the Pews and other SOA and EMC customers as a legal fee or misc. advance. SOA and EMC knew then as they know now that inspection fees were wrongfully placed upon, charged and advanced to the Pew's account and accounts of other SOA and EMC customers. These customers were not contractually obligated to be charged for such fees. EMC and SOA, under the liquidated damages provisions contained in the late fee clauses and sections of their promissory notes, both availed themselves of any remedy.

Furthermore, common law prevails under a liquidated damages provision, when the party attempting to collect the liquidated damages, which in this case were EMC and SOA, are only allowed to obtain the actual amount of their liquidated damages unless state or federal law supercedes and allows for a higher percentage or formula as late fee compensations to banks, trusts, mortgage servicers and other financial institutions.

Regardless, since EMC and SOA availed themselves of the liquidated damages provision in assessing, demanding and collecting a late fee to serve as liquidated damages for all expenses and damages relating to a payment by the Pews being late, then were estopped from asserting an additional claim for so-called property inspections as well as property inspections that were actually used as collection methods and activities by EMC and SOA.

EMC's testimony was clear. EMC automatically orders a property inspection on a monthly basis when a customer is delinquent with a payment. If the inspections were for the real intention and use of property inspections [which is the preservation of property, especially those properties located in , dangerous, dilapidated and run down neighborhoods] then a “monthly” inspection of a property in “good” condition and in a “good” neighborhood as referred to in property inspection reports would appear to be rather redundant. EMC and SOA property inspection documents clearly show that EMC and SOA use such inspections as collection vehicles and devices.

### SOA Fraudulent Document & Loan History Scheme

Many of the impound, principal and interest adjustments recorded on SOA’s master transaction register do not correlate or reconcile with the immediate preceding and succeeding adjustment transactions leading to the conclusion that fraudulent and/or intentional altering of the document or the actual transactions has occurred.

Furthermore, in the only loan histories ever sent to the Pews various fraudulent representations and misrepresentations are made including:

- (a) principal balances don't match;
- (b) year-end and beginning balances don't match;
- (c) supposed escrow transactions are not accounted for;
- (d) payments and other transactions are omitted and excluded;
- (e) year-to-life information is actually year-to-date information;
- (f) and in the proof is in the pudding, computer entries on the original documents that have never been provided are actually whited out and typed over with a typewriter and do not match the actual master transaction register of SOA.

Additionally, SOA's master transaction can not be relied upon since it does not match other SOA records provided and certain balances do not correspond with previous transactions.

SOA intentionally refused and failed to send the Pews notice of impound, principal and interest adjustment transactions or notices of any increases in their monthly payment statements as contractually obligated to. In fact, these transactions were, and still to this date have, been knowingly, willfully, intentionally and fraudulently concealed, hidden, redacted and altered in SOA loan histories, expert’s reports, affidavits, spreadsheets and other documents provided to the Pews by SOA as well as EMC.

Both Ike Guest and David Smith in their reports and affidavits in support of their reports intentionally and fraudulently ignore, redact, omit, alter and/or conceal the existence of these transactions in their schedules, reports and spreadsheets.

The deception and fraud perpetuated on the Pews was even more significant when agents, representatives and employees of SOA and EMC verified and validated the amounts, charges and extortionate demands to the Pews and I from January of 1992 through July of 1993. Throughout this time, SOA misapplied payments intended toward the payment of principal and interest to excessive tax escrow payments, late fees, inspection fees, force placed insurance advances, appraisal fees, tax penalties and other charges not approved, accepted or agreed to by the Pews.

SOA continued its pattern of fraud and deception with the Pews by not addressing, answering, or responding to their verbal, written, certified and verified disputes, complaints, questions, requests and the needs of the Pews regarding amounts claimed to be due and owing, late fees, escrow payments, taxes, insurance, misc. fees, statements and the other duties and obligations of SOA.

SOA then went to the extent of attempting to foreclose on the Pew's property if they did not pay the extortionate demands and claims for payment exerted by SOA and it's employees. The Pews and I again issued letters, faxes and verbal complaints and disputes to SOA with no response except to threaten foreclose and the ruin of the Pew's credit and businesses if their extortion demands were not paid. In the face of such threats, the Pews did again pay SOA the sum of \$15,708.66 to stop the unlawful attempt to foreclose on the Pew's property on 8/27/92.

This is evidenced by **Exhibit 50** but not credited to the Pew's account until the date processed date of 9/2/92 and date received date of 9/1/92 even though SOA received this payment on the 27<sup>th</sup>. Furthermore, Karen Turner in her own notes in **Exhibit 50** states that such payments would be credited toward the Pew's payment by 9/3/92. The amount paid by the Pews is almost \$10,000.00 more than what the auditor claims the Pews owed at the time.

## SOA Violation Of Loan Agreements & Delayed Payments

According to SOA's Master Transaction Register **[Exhibit 8]**, SOA against the terms of the Pew's note and against Ms. Turner's representations to the Pews referenced in her own notes did not credit any of the Pew's payment to any monthly payments due until 10/23/92.

Instead, against the terms of the note, SOA first processed a 052 transaction on 9/9/92 for the payment of a tax advance and on the same date did make another 052 transaction in the amount of \$1,437.00 for the payment of disputed force place insurance SOA had ordered on the Pew's property and charged their account for.

In an incredulous transaction that is not even documented in SOA's Master Transaction Register **[Exhibit 8]**, SOA takes \$275.00 out of the Pew's account on 10/19/92 for a 041 transaction unapplied debit that actually was for the payment of an appraisal fee that the Pews were not obligated for and was against the terms of the Pew's note.

This was validated by the testimony of EMC's corporate representative. SOA concealed this transaction from the Pews and they were never informed of this transaction until a few years after litigation.

On 10/23/92 SOA processed a 038 transaction in the amount of \$814.31 for the collection of late charges the Pews were disputing since the Pews had refused to pay SOA their previous extortionate demands and SOA refused to accept payment from the Pews of what the Pews had calculated their obligation to be. In addition to this transaction, SOA also processed a 039 transaction for collection of a \$10.00 service fee.

All of these transactions after the \$15,708.66 payment by the Pews on 8/27/92 were made prior to any application of this payment to the Pew's account for the payment of principal and interest payments as called for in the Pew's promissory note.

Again, SOA provided misleading, deceptive, fraudulent and contradictory responses via the U.S. Mail and telephone in an attempt to defraud the Pews and secure more money than was legally obligated to be paid to SOA. The Pew's continued their disputes when they received SOA document 51 dated 8/26/92 that was supposed to detail how the Pew's account would be credited with the money that was being sent.

#### SOA Fraudulent "Accounting" Of Pew's Loan

The Pews disputed all fees and amounts claimed by SOA in excess of what was owed for actual principal and interest payment, taxes minus penalties, insurance at the Pew's previous insurer's rate. They also said they would not pay SOA any attorney fees since the Pews had at all times offered to pay the "rightful" amounts owed if SOA could support those figures. This was done after the Pews received confirmation in January of 1992 that SOA had indeed been overcharging them and which response was still not sufficient to respond to the Pews disputes and complaints.

At the same time the Pews are still in dispute with SOA, SOA issues an extortionate demand of \$18,633.67 that attempted to extort over \$15,000.00 from the Pews. SOA still had not answered any of the tax, late fee, other fee, payment amount questions, complaints or disputes the Pews made.

In fact, they had provided further misleading, deceptive and false statements while still failing and refusing to send the Pews "any" monthly statements at all or an accurate accounting of their account or responses to their many disputes in writing and phone calls. This is evidenced by Anthony Pew's affidavit and the exhibits attached as **Exhibit 5**.

The Pews had proof that SOA was overcharging them for over a year when SOA admitted this in their letter of January 23, 1992 **[Exhibit 37]** which clearly shows that the Pews disputes and claims for over a year were valid. As such, after receiving the extortionate demand of 2/7/92, I instructed my family not to remit any more funds to SOA until they provided a complete and accurate accounting of the Pew's account.

The Pews and I also informed SOA this and instructed them in writing and by phone to send proof for such demands and copies of all checks for taxes and insurance they claimed to have paid. SOA also claimed that the amounts in the letter of 2/7/92 were accurate and valid and they claimed the majority of such amounts were for back taxes and insurance. SOA never, and still to this date has never provided support and documentation for the amounts claimed to be owed in the 2/7/92 letter. SOA has also never once in ten years addressed or responded in any letter or response except the 1/27/92 letter any of the Pews complaints and disputes.

The Pews continued their disputes and complaints to SOA and never stopped disputing the amounts claimed to be owed by SOA and demanding strict proof thereof. Also, the Pews tendered amounts to SOA that were returned or refused to be accepted at branch offices for payment.

As such, SOA basically estopped the Pews from making any payments on the Pew's account and breached their agreements, commitments and contracts with the Pews.

On 4/3/92 SOA sent yet another demand letter **[Exhibit 52]** to the Pews in which the letter demanded payment of \$7,950.36 for payments due from 12/10/91 through 4/10/92 and \$6,332.31 demanded for payments due from 12/10/91 through 4/10/92.

Again, this document attempts to extort money from the Pews not owed and conceals the fact that \$485.01 is being held in an unapplied account and has not been paid or credited toward the Pew's account even though such money was received on 2/4/92 over two months earlier.

Representatives of SOA refused to send the Pews a detailed written accounting, breakdown and detail of how such amounts were calculated to be due and owing. They also refused to provide the Pews the monthly payment statements and account activity that the Pews had requested for years and Ms. Turner agreed to send.

To this date, SOA has refused to provide such a detail accounting on how the amounts claimed due in this letter were derived or calculated. In deposition testimony SOA claims not to know how such figures were arrived at and also claims that the Pews could ascertain such calculations and details from the internal records of SOA and EMC that were produced. However, such documents intentionally were not identified so as to continue to mislead, confuse and defraud the Pews and divert them away from SOA's fraudulent actions.

On or about 8/20/92 the Pews again contacted SOA and informed them they were disputing all amounts claimed to be owed since SOA had not provided the Pews any monthly statements or the documentation for the amount of money SOA claimed was due and owing. Specifically, the Pews disputed amounts for taxes and insurance payments and escrow since they had not received any verification on such transactions as previously requested from SOA on dozens of occasions.

Between 8/20/92 and 8/25/93 I sent SOA numerous letters and faxes disputing the amounts claimed by SOA and requesting an accounting on the Pew's account as well as monthly statements. During this same time, the Pews and I held several conversations with SOA employees and was given contradicting information about amounts due for taxes, insurance and payments being claimed due by SOA. SOA threatened to go ahead and foreclose on the Pew's property unless they paid SOA the money they were claiming to be owed by SOA only via a phone call without the support documentation or verification requested.

I vehemently disputed such amounts and demanded in phone calls, letters and faxes to SOA written verification and breakouts of the amounts claimed to be owed and due to SOA.

I held several conversations with SOA and after lengthy discussions with the Pews did reluctantly, under protest and duress and under threat and intimidation by SOA of extortionate demands did allow my family to pay SOA on 8/27/92 the sum of \$15,708.66. This payment was intended by the Pews to pay all principal and interest due and taxes but not insurance, late fees, or any other fees.

In an 8/26/92 fax to the Pews attached as **Exhibit 51**, SOA did knowingly deceive and defraud the Pews despite knowing of their complaints and disputes. In this fax, sent to the Pews over U.S. phone lines, SOA did misrepresented that their monthly installment payments due for 4/10/92 and 5/10/92 were \$1,205.65 when in fact such payments due were \$1,168.58 for the 4/10/92 and 5/10/92 payments due. SOA knowingly, willfully and intentionally, in an effort to deceive, defraud and extort money from the Pews that they were not legally obligated for, did demand payment of this amount in order for the Pews to avoid repossession of their property.

The fax sent to the Pews by SOA did knowingly, willfully and intentionally misrepresent that their monthly installment payments due from 6/10/92 through 8/10/92 were \$1,137.05 when in fact such payments due were \$1,099.98 for 6/10/92 through 8/10/92 payments due.

SOA also failed to represent to the Pews in this fax that they would charge \$275.00 for a wrongful appraisal fee to their property which SOA did on 10/19/92. On 10/19/92 SOA took \$275.00 from the Pew's account for the payment of an unauthorized appraisal on their property. They took this money from the Pew's unapplied balance without detailing where this money was diverted to in their records or any other documents sent to the Pews prior to litigation.

Furthermore, this payment was in violation of the Pew's note which directed the application of all payments received by SOA to be paid toward monthly principal and interest payments due first and then to other amounts.

Also, Karen Turner of SOA informed me that all money received would be paid toward the payment of principal and interest payments by the first week of September and the Pews would then receive a monthly payment statement from SOA.



In an effort to conceal SOA's fraud from the Pews, this transaction was misrepresented to the Pews as a reduction in escrow and later as a reduction in the Pew's unapplied balance with no corresponding support in SOA's documents sent to the Pews or in SOA's master transaction register to show how the \$275.00 was spent until production in litigation many years later.

On 8/27/92, the Pews did deliver to SOA a certified check in the amount of \$15,708.66 under protest, duress and dispute as evidenced by **Exhibit 50**. As evidenced by SOA's own internal notes **[Exhibit 53]** me, on the same date and on behalf of the Pews, did protest, complain and dispute the amount of payment demanded and extorted by SOA.

SOA informed the Pews that this amount would be the total reinstatement of their account and that such funds would be credited to their account upon receipt. SOA also said that the Pews would receive monthly payment statements, a complete accounting of their account and a complete investigation and review of their complaints and disputes as well as a written response to such complaints and disputes.

SOA never followed up on the Pew's complaints and disputes and did not send the Pews their monthly payment statements, a complete accounting of their account nor a written response responding to their disputes as represented.

In contrast, SOA did deceive and defraud the Pews to their detriment via a number of additional fraudulent schemes and deceptive practices. These fraudulent schemes and deceptive practices included delaying the credit of and diverting, misapplying, and taking money extorted by SOA from the Pews and paid by the Pews.

While SOA accepted the payment from the Pews on 8/27/92, the payment was received by SOA's Karen Turner on 9/1/92 and not credited until 9/2/92. SOA's Karen Turner in her own internal notes **[Exhibit 53]** states that such payments were to be applied to the Pew's monthly payments and account by 9/3/92 which SOA knowingly, willfully and intentionally did not intend nor do in a further effort to deceive and defraud the Pews.

These actions were done by SOA with the intent to assess and collect additional fee income to the Pew's detriment and use their money to SOA's benefit. In essence, SOA gave itself an interest free loan and in effect increasing SOA's cash balances, reserves, liquidity and accounts at a time when SOA was in financial distress.

SOA financially benefited by not applying the \$385.62 on a timely basis to the Pew's payments and reducing the Pew's principal balance. This increased the amount of money that was applied to the payment of interest and reduced the amount of money applied to principal on the Pew's account for the 9/10/90 through 12/10/90 payments due SOA.

## SOA Fraudulent Charges & Fees Placed On Accounts

As such, SOA knowingly, willfully and intentionally sent the letters of 12/15/92 and 12/18/92 [**Exhibit 54 and 55**] to the Pews via U.S. mail with the knowledge that they were attempting to collect money from the Pews that they did not owe. These letters did not reflect the wrongful charges of SOA for the \$275.00 appraisal fee that was not owed by the Pews as well as the additional \$385.62 that was taken from the Pew's account and not accounted for.

EMC's own corporate rep acknowledged in a deposition that this charge was wrong and was not allowed to be charged to the Pew's account. To date, neither SOA nor EMC has credited the Pew's account or changed their affidavits and reports filed with the District Court in Dallas. Both SOA and EMC and their attorneys and experts had and have complete knowledge of these facts and have made, sponsored and supported perjured testimony and affidavits to the direct detriment of the Pews and I.

According to SOA's master transaction register, as of 10/23/92, The late fee balance claimed to be owed on the Pews account was \$0.00 and all claimed late fees assessed paid through the 8/10/92 installment payment. The principal and interest payment due to SOA for the 9/10/92, 10/10/92, 11/10/92 and 12/10/92 monthly installment for principal and interest was \$846.10 as reflected on SOA's master transaction register.

The monthly escrow payment claimed to be due for this same time frame from 9/10/92 through 12/10/92 was \$253.88 for a total monthly payment due of \$1,099.98 per month.

The monthly late fee that SOA assessed for the 9/10/92 through 12/10/92 payments was \$50.77 which is 6% of the \$846.10 monthly principal and interest payment. On 12/15/92 SOA sent to the Pews via the U.S. mail a Notice of Foreclosure as attached as **Exhibit 56**. In this letter, SOA claims the Pews are in default even though SOA had not sent the Pews a monthly payment statement or breakout of amounts claimed to be due as agreed to by SOA's Karen Turner. This letter again was an attempt by SOA to extort money from the Pews and threaten theft of their property as well as the ruin of their credit unless the Pews paid SOA the amount of \$4,461.29.

The auditor claims in his report that the Pews were actually owed \$572.47 as of this date and SOA has testified that the Auditor's report reflects the amounts due to SOA by the Pews.

However, as we now know, in addition to the thousands of dollars that SOA diverted, misapplied and overcharged the Pews, this amount was still yet another attempt to extort money from the Pews that was not owed. As of this date, SOA was holding \$90.94 in the Pew's unapplied/suspense account as indicated in SOA's master transaction register and its letter to the Pews of 12/18/92 [**Exhibit 55**].

SOA does not account to the Pews for \$275.00 which it charged the Pews for an appraisal that was not allowed to be charged to their account and does not account at all for \$385.62 that mysteriously disappeared from the Pew's account and was unaccounted for in any of SOA's records produced to the Pews from 10/23/92 when SOA withdrew \$11,521.34 from money then held in the Pew's unapplied/suspense account until 3/10/93 when the missing \$385.62 mysteriously reappears as a reduction in principal transaction on SOA's master transaction register.

SOA claims in the auditor's report and in correspondence to its expert that this figure was for the payment of attorney fees. SOA's Karen Turner represented to the Pews that they would not charge the Pews any attorney fees if they remitted the extortionate demand of \$15,708.66 since the Pews had been and were still disputing all amounts SOA claimed to be owed. SOA informed me that there was some form of mix-up with the taxes that SOA was working on resolving. The foreclosure never went ahead since the Pews tendered, under duress and protest \$15,708.66 at the Boca SOA branch 343 on 8/27/92

SOA informed the Pews this payment would be applied immediately to their account so as not to cause any additional late fees to be assessed to their account. SOA also insured the Pews that they would send the Pews a monthly payment statement as well as an accounting for all of the money tendered.

According to SOA's master transaction register **[Exhibit 8]** SOA, against terms of the Pew's promissory note and representations to the Pews, took the \$275.00 for an appraisal fee on 10/19/92 before applying any applications of the Pew's \$15,708.66 payment toward the payment of the Pew's monthly installment which was finally done on 10/23/92. On 12/10/92 SOA assessed a property inspection fee of \$7.00 effective with the 1/10/93 monthly payment. SOA also assessed \$00.05 in interest for such fee.

### **SOA's Refusal To Document & Adjust Accounts**

The Pews continued to complain to SOA and dispute the amounts claimed to be owed by SOA until SOA provided the Pews with a verified accounting of what they claimed money was owed for and how that money was being applied. As such, after phone calls by SOA employees threatening foreclosure and the ruin of the Pew's credit if payment was not made, the Pews again under duress, protest and intimidation did once again succumb to the extortionate demands for payment by SOA.

As such, for years, SOA refused to act upon the disputes and complaints of the Pews. Under threats and intimidation, the Pews were forced, intimidated and coerced into sending in the payments demanded by SOA. Yet, time and time again, SOA intentionally, willfully and fraudulently made false and fraudulent representations to the Pews. SOA never would honor its agreements to send the Pews a proper accounting of the Pew's account or the monthly payment statements they agreed to provide.

Such acts were an intentional attempt and scheme to collect money from the Pews that they were disputing. SOA knew that such sums were not owed. This pattern of conduct was also carried out against other SOA customers as well.

SOA continues its pattern of deception, fraud and extortion when on 3/10/93 it issues another demand letter to the Pews **[Exhibit 57]** claiming that they were in default of their loan. SOA still had not responded to the Pew's complaints and a full and complete accounting of their loan. In this letter, SOA demands a payment of \$3,417.47 for the Pew's alleged delinquency. An examination of SOA's master transaction register clearly shows that as of 3/10/93 the only payments that the Pews could possibly be delinquent on were the 1/10/93 and 2/10/93 payments since they were paid though the 12/10/93 payment installment on their account.

However, in its demand, SOA assumes that the Pews are delinquent with their 3/10/93 monthly payment when the payment isn't even due till that day and SOA has no knowledge if the Pews had or had not made such payment when this letter was drafted.

Based on SOA's master transaction register, the payment demanded by SOA in this letter of \$3,417.47 is composed of a payment of \$846.10 for the amounts of regular monthly principal and interest due for payments due on 1/10/93, 2/10/93 and 3/10/93; an amount of \$15.00 for inspection fees improperly assessed to the Pew's account for the 1/10/93 payment; \$00.09 in interest improperly assessed to the Pew's account related to the \$15.00 inspection fees for the 1/10/93 payment; \$253.88 in escrow payments for taxes related to the payments due on 1/10/93, 2/10/93 and 3/10/93; \$51.67 for a late fee assessment related to the 1/10/91 monthly payment where SOA is charging the 6% late fee on the \$15.09 in inspection fees and interest as well as \$50.77 for the late fee SOA assessed for the 2/10/93 payment due.

Yet again, SOA claims the Pews are delinquent in advance of any real knowledge that the Pews had not made a payment on 2/10/93. SOA is declaring a payment due in advance of any real knowledge that the payment is due since the due date of the Pew's payment is the 10<sup>th</sup> of each month.

## SOA Advance Late Fee Collection Scheme

SOA in the 3rd paragraph of this letter then goes on to demand and claim that if the Pews did not make payment to SOA by 3/10/93 which is the exact same date of this letter they would owe of \$3,468.24.

When you subtract \$3,468.24 from the \$3,417.47 claimed in this letter to be owed as of the same date you receive a remaining amount of \$50.77. \$50.77 is the exact amount that is associated with a 6% late fee [or charge as SOA sometimes refers to it] associated with the \$846.10 monthly installment due on 3/10/93. Even if the Pews were not disputing their account and late fees and even if they were ever late on a payment, the Pews could not be late until the 15<sup>th</sup> day after 10<sup>th</sup> when their payment was due on a monthly basis. This would make the late fee assessment date the 25<sup>th</sup> of each month. This is again conclusive proof of SOA's fraudulent and deceptive schemes to charge the Pews and other SOA customers a late fee 15 days in advance of such late fee even being due, let alone the regular payment due on the same date of 3/10/93.

This fraudulent scheme is further proved up by internal documents and records of SOA which are titled "Foreclosure Checklists" **[Exhibit 58]** and which clearly prove this fraudulent scheme. At the bottom of these two documents there is a heading labeled "Summary of Collection Efforts" where to the immediate bottom right of this heading you see printed "Overpaid LC or Unapplied n/a." The "Overpaid LC" portion of this statement is meant to mean Overpaid Late Charges. It is inconceivable to contemplate how any customer could ever overpay a late charge unless the late charge was overly assessed, demanded and paid or was assessed, demanded and paid in advance of its actual due date.

Such demands constitute demands for interest and excess interest than the law provides when calculated on an annual basis. SOA knowingly, willfully and intentionally created and carried out this fraudulent scheme.

Furthermore, the letter of 3/10/93 refers to another installment being due which directly implies a monthly payment installment. In an effort to further confuse the Pews, despite their many complaints, SOA intentionally represents that their monthly installment due for 3/10/93 is \$50.77 when in fact it is actually a late charge that couldn't be owed or assessed until March 25, 1993.

On or about March of 1993, a gentleman named Terry Carr of SOA contacted the Pews again about payments that the Pews were disputing. Mr. Carr tried to explain over the phone what SOA claimed was owed, but the Pews or I could not understand where Mr. Carr arrived at his figures and they continued to dispute the amounts claimed owed by Mr. Carr and SOA.

## SOA Fraudulent Scheme Of Hiding Loan Transactions

Mr. Carr then agreed to provide the Pews a transaction history of their account from inception of the loan to the present for the \$20.00 they had paid **[Exhibit 59]** that would detail each and every charge, credit, debit, payment and fee assessed to the Pew's account. Mr. Carr did then go on to prepare a transaction history **[Exhibit 60]** that was knowingly, willfully and intentionally created by SOA to further defraud the Pews and conceal and hide SOA's continuous fraud and abuse on their account.

SOA sent the Pews fraudulent, misrepresentative, misleading and redacted loan account and transaction histories that intentionally hid unauthorized, fraudulent, deceptive, prohibited, and wrongful charges including inspection fees, interest charged for inspection fees, an appraisal fee, money not applied to account that disappears from their account and other related fees and expense.

The SOA transaction history "SOA/Carr Transaction History" **[Exhibit 60]** was prepared and sent to the Pews by Mr. Carr on 5/19/93. This document alone, after dozens of disputes and complaints by the Pews I further deceives, defrauds, misleads and confuses the Pews. The loan history prepared by SOA and Mr. Carr to "clarify" and "explain" their account did exclude, omit, and/or misclassify escrow transactions, unapplied credits and debits, late fees, insurance advances, tax advances, tax payments, escrow payments, deferred interest charged and other transactions in cumulative total of approximately \$20,000.00.

This is supported by the affidavit attached as **Exhibit 61** and the exhibits attached to this affidavit.

SOA in the transaction history Mr. Carr sent to the Pews via the U.S. mail, in an effort to cover-up their previous fraudulent and wrongful action, did also knowingly, willfully and intentionally omit or hide 038 late fee transactions on the Pew's account. This included a \$113.20 late fee collected 038 transaction on 11/30/90 that was knowingly, willfully and intentionally reflected as a credit to principal transaction on the SOA transaction history Mr. Carr sent to the Pews.

The SOA transaction history Mr. Carr sent to the Pews also omitted a 038 late fee collected transaction in the amount of \$814.31. EMC and its expert, David Smith, had full and complete knowledge of these transactions and did also knowingly, willfully and intentionally misrepresent, deceive and defraud the Pews and conceal the fraudulent, deceptive and wrongful actions of SOA.

On 4/12/93 SOA sent via the U.S. mail a document titled Adjustable Rate Mortgage Notification **[Exhibit 62]** that knowingly, willfully and intentionally misrepresented, deceived and attempted to defraud the Pews by collecting more money that they were legally obligated to. In this document, SOA claims that the Pew's monthly payment beginning on 6/10/93 would be \$1,468.38. Yet, SOA's letter to the Pews of 6/30/93 **[Exhibit 63]** indicates that the payment due SOA for the 6/10/93 monthly installment was \$1,444.73. The difference of such payments is \$23.65.

During this time SOA continued to knowingly, willfully and intentionally refuse to send the Pews monthly payment statements as agreed upon. Except for the monthly payment statements originally sent, the fraudulent demand letters and requests over the phone, SOA's only notice to the Pews of their monthly payment was the annual adjustable rate notification that SOA sent the Pews.

SOA represents in paragraph 2 of the Pew's promissory note **[Exhibit 2]** that the amount of their monthly payment would be adjusted on June the 10<sup>th</sup> of each year and such adjustment would not increase or decrease by more than 7.5% of the previous monthly payment for principal and interest. SOA also confirmed to the Pews via the telephone that their new monthly payment beginning on 6/10/93 would be \$1,468.38 per month till June of 1994.

The representation made to the Pews in this notification was knowingly made to deceive and defraud the Pews and extort from the Pews money not owed and amounts not due. Based upon the internal records, documents and "SOA Master Transaction Register" it is now known that the monthly payment of \$1,468.38 that SOA represented to the Pews was composed of the following: \$782.64 for regular monthly principal and interest payments; \$314.07 for an insurance advance; \$278.35 for monthly escrow payments for taxes; \$69.67 for monthly escrow shortage payments; and \$23.65 for inspection fees.

To illustrate the extent of SOA's fraud and deception, the \$23.65 in wrongfully charged inspection fees, even if rightfully owed, were only the total of \$23.65 that was wrongfully assessed by SOA to be paid for an effective term of one month for the payment due 1/10/93. As such, any inclusion of this amount is an over-demand and fraudulent attempt to extort money not owed by the Pews to SOA. Such over-demand for twelve months would amount to \$283.80.

Furthermore, the \$314.07 charge for the wrongfully ordered force placed insurance was to be repaid for a period of only three months beginning with the April 10, 1993 payment and ending with the June 10, 1993 payment. As such, this amount should not be included as a part of the monthly payment and even if it were a valid charge, it would only be attributable to the 6/10/93 payment alone. As such, SOA knowingly, willfully and intentionally misrepresents to the Pews that they owe \$314.07 for eleven [11] months which would total an over demand for payment of \$3454.77 from 7/10/93 through 5/10/94.

SOA also demands payment for an escrow shortage of \$69.67 that was not owed because SOA had previously and knowingly, willfully and intentionally delayed the credits of the Pew's payments to not reflect a payment to escrow when the escrow analysis was being conducted so as to fraudulently inflate their monthly escrow payment for a shortage not owed that was actually a surplus if SOA had timely credited the account.

As such, SOA knowingly, willfully and intentionally attempted to defraud and extort from the Pews additional payments of \$69.67 for 12 months which were not owed or legally obligated for and totaled an over-demand of \$836.04.

The Pews still continued their disputes, questions and complaints during this time period. Mr. Carr had several conversations with me during this time period. However, the SOA transaction history Mr. Carr sent to the Pews was still

misleading as that I could not decipher the insurance, tax, and escrow transactions. As such, the Pews disputed amounts owed for tax and insurance transactions until documentation in the form of cancelled checks, bills, vouchers and the similar documents would be provided to the Pews to verify all tax and insurance payments and credits on their account. I also demanded that my family's credit be fixed due to the damage it was doing to our family business as well as a removal of all late fees since the inception of the Pew's loan since it was SOA's mistakes that caused such problems.

These disputes were not only made my phone calls with SOA but followed up in a letter from the me to Terry Carr of SOA dated 6/21/93 **[Exhibit 64]**. In less than seven days SOA responded to the Pews with another extortionate demand letter dated 6/30/93 **[Exhibit 63]** SOA didn't even attempt to respond to the Pew's or my complaints, disputes and requests. Instead, they made another demand and extortionate threat instead of properly responding according to the Pew's complaints and disputes.

The agreements reached between Terry Carr of SOA and I on behalf of the Pews is supported by SOA's own internal records and call reports **[Exhibit 13]**. On 7/27/93 Mr. Carr calls the Pews and asks if they have received the "tax and insurance info" and Anthony Pew responds that he's not sure since Mr. Lavalley takes care of his account and resides at the property. I instructed the Pews not to take any phone calls from SOA to in order to avoid the harassment, threats and intimidation of SOA and its employees.

He told them to always have SOA employees call him that he was responsible for approving any payments and for taking care of all disputes. This is supported by Mr. Carr's own notes.

A careful review of both the Pews and SOA's production in the Pew's litigation shows that SOA never sent the Pews any documents or response to their disputes as they had failed to do on every other occasion, except one, before. In fact, instead of a response to their disputes, the Pews received their check back returned not cashed and another threat. Mr. Carr make a notation in his call records on 6/30/93 **[Exhibit 13]** that he has received the important insurance information that the Pews were requesting. He writes in this report "I will note account with this info but borrower needs to be sent this information." "She stated she will have Dave send this." The Pews never received any of this information.

On 6/14/93 **[Exhibit 13]** Carr writes that the Pews are disputing taxes and insurance and that they wanted to buy their own insurance but SOA hadn't provided them with information necessary to do so. Mr. Carr notes that on 6/23/93 he received a fax from borrower disputing taxes and insurance. His notes states that the Pews would send \$5,013.17 to cover principal and interest payments only. Also, Mr. Carr's notation states "he will not pay insurance and taxes until he gets information from each department as to what time frame they are charging him." On 6/23/93 **[Exhibit 13]** Mr. Carr also notes "gave copy of fax to Roffi in Tax department who in turn gave it to Ingrid for response."

An additional matter that Mr. Carr agreed, on behalf of SOA to do for the Pews, was to supply and send to the Pews the policy # of the current force placed insurance policy SOA had placed so that they could secure their own insurance.



The Pews had attempted to secure this information from SOA before, yet SOA gave conflicting information that prevented the Pews from obtaining their own adequate coverage at a reasonable price. Each agency would request from the Pews the policy number of the current insurance policy in effect.

Mr. Carr agreed to do all these things except remove all late charges without discussing that with management. He also said that sending in the \$5,013.00 for a "total reinstatement" would go a long way toward getting the Pews satisfaction on their disputes and showing good faith on the Pew's behalf. However, SOA's actions would be their last hurrah before allegedly selling away the servicing rights and loans to Bear Stearns and EMC.

### SOA & EMC "Alleged" Sale Of "Servicing" Rights

Such sale took place on or about July 19 of 1993. However, according to the Sales & Servicing Agreements **[Exhibit 27]** between SOA, California Loan Partners and EMC, SOA was to service the loans under EMC's direction until the service transfer date which took place on or about 9/1/93 on the Pew's loan according to EMC's and SOA's representatives.

As evidenced by SOA's own internal documents including the "SOA Call Notes as well an "SOA Internal Memo" dated 6/23/93 **[Exhibit 65]** from Dave Evans to Terry Carr, SOA was supposed to provide the Pews in writing the policy number of the forced placed policy they had ordered and charged the Pew's account for.

This memo clearly states in what is believed to be Terry Carr's handwriting "spoke to ins dept will send information to borrower," which SOA never did and can be proved by SOA's only response which is their letter of 6/30/93 to the Pews in which no response at all or reference to any of the Pew's complaints or disputes are even addressed.

The letter does not address the promises and agreements made by Mr. Carr including the sending of the policy numbers and documentation for all tax, insurance and escrow payments by the Pews and SOA.

SOA from the date of the Pews complaint of 6/23/93 through even today's date seven years later, SOA has never responded to the Pew's complaints or disputes at all, let alone the time limitation of 60 days imposed by RESPA.

Immediately, preceding their transfer of service to EMC in September of 1993, SOA knowingly, willfully and intentionally caused the cancellation of the forced ordered insurance policy it had placed on the Pew's property without warning or notice and without previously providing the Pews the policy # of such policy, as agreed, so that they could obtain their own insurance month's earlier.

To leave the Pews and their property without insurance demonstrates a complete lack of controls and willful disregard for the property rights of the Pews. SOA also cancelled the policies of other SOA customers whose loans were being sold to EMC.

After six years of investigation and litigation the following is known:

- (a) SOA as a pattern of purpose, practice, policy and procedure did, with the intent to deceive, defraud, mislead and confuse the Pews and other SOA customers, maliciously and intentionally refuse to send the Pews monthly payment statements, as agreed to with the Pews in their loan agreements with SOA, so as to intentionally prevent the Pews and other SOA customers from identifying, discovering and disputing the existence of fraudulent, deceptive and prohibited charges to their account;
- (b) SOA as a pattern of purpose, practice, policy and procedure did, with the intent to defraud, the Pews and other SOA customers, intentionally and fraudulently increase interest and fee revenue to SOA by refusing to send the Pews monthly payment statements, as agreed to with the Pews in their loan agreements with SOA, so as to intentionally prevent the Pews and other SOA customers from the timely payment of their accounts so as to intentionally place the Pews and other SOA customers in arrears so that SOA could assess and collect late fees that were deceptively and fraudulently charged to the Pews and other SOA customer's account;
- (c) SOA as a pattern of practice, policy and procedure did, with the intent to defraud the Pews and other SOA customers, increase late fee revenue to SOA by refusing to accept payments that were less than what SOA claimed was owed from the Pews and other SOA customers who disputed their account balances, monthly payments and prohibited or unknown charges to their account. This practice was executed by SOA with the intent to prevent the Pews and other SOA customers from timely payment on their accounts. This practice was intentionally designed to wrongfully place the Pews and other SOA customers in arrears so that SOA could assess and collect late fees that were deceptively and fraudulently charged to the Pews and other SOA customer's accounts;
- (d) SOA as a pattern of practice, policy and procedure did, with the intent to defraud the Pews and other SOA customers, increase late fee revenue to SOA by intentionally delaying credit and posting of payments made by the Pews and other SOA customers at SOA branch offices. SOA would allow payments at a local branch as agreed upon in the loan documents executed by the Pews and other customers. SOA, on occasion, would actually instruct the Pews to make payment at a branch. Payments made by the Pews and other customers at SOA branches would be received at the branch and a receipt issued by the branch location of SOA on many occasions. SOA would send these payments to its loan processing center in Pasadena, California and intentionally delay crediting and posting of such payments to the Pews and other SOA customer's accounts for several days. This deceptive and fraudulent practice by SOA was intended to make the Pews and other SOA customers "late" with their payments so that SOA could assess and collect a late charge. Since the Pews and other SOA customers did not receive a regular monthly statement or accurate loan histories, such intentional delays in posting payments and the associated late charges assessed and collected by SOA from the Pews and other SOA customers were fraudulently and deceptively hidden;

- (e) SOA as a pattern of practice, policy and procedure did, with the intent to defraud the Pews and other SOA customers, increase late fee revenue to SOA by wrongfully placing forced place insurance on the Pews property when the Pews had their own insurance in place. Both SOA and EMC also deceptively and fraudulently represented to the Pews, the Dallas District Court and the Pew's experts that such insurance charges were transactions in the Pews "escrow account." In fact, SOA never once ever made an insurance transaction related to the Pews escrow account with SOA from inception of the loan until transfer to EMC. Instead, SOA advanced sums for wrongfully forced placed insurance on the Pew's property and added such advances to the Principal Balance of the Pew's and other SOA customer's loans. Such advances were then considered by SOA to be part of the monthly principal and interest payments. SOA and EMC did intentionally hide this deceptive and fraudulent practice by telling the Pews and other SOA customers that the insurance transactions were part of the Pew's escrow account with SOA;
- (f) SOA on the majority of occasions did not provide notices to the Pews or other SOA customers of such changes in the principal and interest charges as required in the loan documents executed by the Pews and other SOA customers. SOA then went on to calculate, assess and collect late charges of 6% based on the monthly portion of the forced placed insurance advance that was charged to the Pew's and other SOA customer's accounts that SOA fraudulently attempts to claim was part of the principal and interest payment. Later, SOA allegedly credited the Pew's account for excess payments that were diverted from intended principal payments by the Pews. However, SOA did never credit back the portion of the late fees that it assessed and collected from the Pews that were attributable to the portions of the monthly payments that were related to the monthly repayment for the wrongful forced placed insurance ordered and placed by SOA;
- (g) SOA with the intent to defraud the Pews did intentionally and fraudulently increase interest revenue to SOA by refusing to send the Pews notices of changes in the adjustable monthly interest rate, as agreed to with the Pews in their loan agreements with SOA, so as to intentionally prevent the Pews and other SOA customers from knowing what their rightful monthly principal and interest payments were;
- (h) SOA with the intent to defraud the Pews did knowingly, willfully, intentionally and fraudulently delay the timely payment of the Pew's and other SOA customer's account so as to place the Pews and other SOA customers in arrears so that SOA could assess and collect inspection fees that were deceptively and fraudulently charged to the Pews and other SOA customer's accounts;
- (i) SOA with the intent to deceive, defraud, mislead and confuse the Pews, as well as obstruct justice, did knowingly, willfully and intentionally prepare and send the Pews via the U.S. mail fraudulent, misrepresentative, misleading and redacted loan account and transaction histories that contained whited out transactions typed over with false figures that do not match the internal and master accounting records of SOA;

- (j) From 1991 until 1997, SOA with the intent to deceive, defraud, mislead and confuse the Pews, as well as obstruct justice, did intentionally prepare and send the Pews fraudulent, misrepresentative, misleading and redacted loan account and transaction histories that were intentionally and manually altered to hide fraudulent and prohibited charges on the Pew's account;
- (k) From 1991 until 1997, SOA with the intent to deceive, defraud, mislead and confuse the Pews, as well as obstruct justice, did intentionally prepare and send the Pews fraudulent, misrepresentative, misleading and redacted loan account and transaction histories that were intentionally and manually altered to intentionally hide principal, unapplied, advance, escrow and year-end balances on the Pew's account;
- (l) From 1991 until 1997, SOA with the intent to deceive, defraud, mislead and confuse the Pews, as well as obstruct justice, did intentionally prepare and send the Pews fraudulent, misrepresentative, misleading and redacted loan account and transaction histories that were intentionally and manually altered to intentionally hide escrow and suspense activity on the Pew's account;

#### SOA & EMC Predatory Force Place Insurance Scheme

However, SOA acted in direct concert with EMC in that on the date of cancellation, EMC placed a binder on the Pew's property as well as other SOA customers whose loans they were assuming. On the date of cancellation of the forced place policy by SOA, SOA had already charged the Pew's account \$930.00 plus interest.

On 9/5/93 SOA sent the Pews an "Insurance Notification" **[Exhibit 66]** that informed the Pews that their policy was scheduled to renew on 10/7/93. This notice again does not respond to the Pew's request for a policy number and does not contain either the policy number nor name the insurance carrier that supposedly has the policy on the Pew's property as SOA and Mr. Carr had promised.

On 9/13/93 Dependable Insurance Company, at the behest and direction of SOA, did send the Pews a letter of cancellation **[Exhibit 67]** stating that SOA had cancelled their insurance as of 9/1/93 and that a credit of \$92.00 would be credited to the loan balance of their account. As such, when SOA sent the Pew's its Insurance Notification on 9/5/93 it had full knowledge that it had already cancelled the Pew's policy without notice to them of such cancellation.

Furthermore, both EMC and SOA had complete knowledge that EMC was servicing the loan at that time and it had not at that time provided any notice to the Pews of cancellation or renewal. Additionally, according to other documents, EMC had ordered a binder on the Pew's property and did not inform the Pews that there was a lapse of insurance on their property. EMC knowingly, willfully and intentionally did not notify the Pews of any lapse of their insurance nor did they promptly take prudent actions to allow the Pews to secure their own insurance.

Instead, in a scheme knowingly, willfully and intentionally created to secure additional cash flow and revenue from the Pews and other EMC customers, EMC fraudulently and deceptively charged, demanded and collected from the Pews and other customers additional escrow money not legally owing to invest, use and obtain interest and profits on their own behalf and the behalf of its parent company, Bear Stearns and their investors.

The escrow account was a non-interest bearing account that EMC had full and complete control over and on information and belief did not segregate payments from. As such, EMC's intention was to use the extra money to fraudulently inflate the earnings, income and assets of itself and its parent company, Bear Stearns.

Finally, in a letter dated 10/16/93 **[Exhibit 68]** EMC finally informed the Pews that when their loan was audited, EMC did not find a hazard insurance policy. In fact, EMC had full and complete knowledge before such claimed audit, that the Pews did not have a policy since it participated in the cancellation of the policy SOA had placed on the Pew's property. EMC also had already placed an insurance binder and paid \$1.00 for such binder to their insurance carrier. As such, this letter by EMC is outright deceitful and misleading. In the third paragraph of this letter, EMC states "to avoid unnecessary force placed insurance on your loan, please provide a policy within thirty [30] days of this notice.

The Pews went ahead and secured a policy with All-State within the prescribed thirty days and did call and inform EMC of this fact via the toll-free number provided. They were referred to a Misti Schuler in the foreclosure department of EMC at extension 2633. Ms. Schuler did not properly respond to the calls placed to her or return any of the calls that the Pews made.

EMC then sent to the Pews a letter dated 10/25/93 **[Exhibit 69]** that informed them that EMC had "renewed" their insurance and that a premium of \$1,311.87 was billed to their account. This was done by EMC only nine [9] days after the previous letter sent to the Pews requesting an insurance policy and 21 days ahead of the thirty days that EMC provided them to "to avoid unnecessary force placed insurance" on their loan. In the 3<sup>rd</sup> paragraph of this letter, EMC again informs the Pews that they have the option to secure their own coverage from their own agency and company. Yet, EMC refused to accept the Pew's insurance when sent and made demands not contained in their previous agreements with SOA including a demand to pay a \$10.00 fee for EMC to accept their insurance **[Exhibit 70]** as provided in a letter of 12/16/93.

I informed EMC that the only obligation the Pews had was to keep insurance on the property and notify EMC of such insurance and that any further questions could be addressed with All-State, but the Pews would not provide EMC with a payment of \$10.00 to accept their policy.

## EMC Accounting & "Welcome Letter" Scheme

On or about 9/24/93, EMC did cause to be sent to the Pews monthly payment coupons for a due date of 9/1/93 **[Exhibit 71]**. EMC sent these statements to the Pews with full and complete knowledge that the amounts and dates stated in this letter and the attached coupons were indeed false, deceptive and an attempt to secure additional cash from the Pews and other customers while EMC sorted things out with their problematic loan servicing operations.

According to EMC, the purchase of loans from SOA was at the time the largest purchase of loans by EMC and one of the largest purchase of loans anywhere. It involved over 8000 loans with a value of over \$2 billion. Yet, at the transfer date to EMC by SOA, EMC had possession of all pertinent data in their computer systems and knew which dates the Pew's loan were due on as well as the past due date when a late fee, if appropriate, could be assessed **[Exhibit 72]**.

In monthly payment coupons that EMC sent to the Pews and other EMC customers, EMC takes a very similar page out of SOA's "How to Defraud Customers" book by stating that there is no past due amount and the amount of the new payment was \$1,099.98 for a payment due on 10/1/93 and 11/1/93 with \$00.00 past due or for other assessments **[Exhibit 73]**. EMC claims that there were other monies due them at the time in their responses to interrogatories. This was the first time that EMC was computing and communicating payments and amounts owed by the Pews as well as other SOA customers. EMC claims in deposition testimony that such payment coupons were only "welcome letters."

At the same time, EMC also had knowledge that the Pews and other SOA customers had long running complaints and disputes with SOA about the accounting of their loans and charges and prompt credits to their loan for years.

The Pews assumed, as well as other SOA customers, that EMC had gone in an "investigated their account and fixed all of the problems caused by SOA" when in fact, the opposite was true. EMC, in an effort to further confuse the Pews and other SOA customers, did knowingly, willfully and intentionally misrepresent the figures contained in the payment coupons that they claim was a welcome letter.

The Pew's promissory note, as well as others SOA customers, state that their payments are due on the 10th day of each month and late fees assessed on the 25<sup>th</sup> if a payment is not made. These statements claim payments are owed on the 1<sup>st</sup> and late fees assessed on the 15<sup>th</sup>.

Furthermore, the 9/93 statement is sent out on 9/24/93 twenty-four days later than the claimed due date of 9/1/93 thus making any payment received late and subject to EMC's assessment of a late charge. In fact, in what has and continues to be a pattern of fraud and deceit by EMC and their predecessor, SOA, EMC states that a late fee of \$50.77 is due if payment is not made by 9/16/93 when in fact this date should be the 25<sup>th</sup>. As such, the Pews and other customers were knowingly, willfully and intentionally deceived into believing that their payments would be late and a late fee assessed when this was not the case on this date

Only EMC knows for sure how many customers complied with this request and sent money not owed to EMC before it should have been assessed and allowed EMC to place the money in a suspense account and use of their money to its own direct benefit with no interest to their customers or benefit to them.

While SOA did not send monthly payment coupons as they were obligated to, EMC was diligent in sending the Pews and other customers a regular monthly statement and coupon, at least until EMC foreclosed on a customer's property. EMC knowingly, willfully and intentionally used and still uses its monthly payment and coupon statements to carry out additional deceptive and fraudulent schemes against the Pews and other customers as well.

### EMC Predatory "Suspense" Account Scheme

One of the primary and major deceptive and fraudulent acts that EMC employs is the placement of money sent in by customers and cashed and accepted by EMC into what is called a suspense or unapplied account. This scheme involves accepting and cashing the Pews' and other EMC customer's checks, then placing the money into the EMC's general account for months and in some cases even years, all the while never informing the Pews or other EMC customers where their money went and why it hadn't been credited to their account for payments or reducing their balances. EMC knowingly, willfully and intentionally continues this practice to this date.

A review of EMC's records attached as **Exhibit 74** reflects the following:

In the Pews' case, after receiving the first two deceptive monthly payment statements from EMC on or about the first week in November of 1993, the Pews sent EMC two checks totaling \$2200.00 in payment which were placed into suspense by EMC on 11/19/93 and not credited to any payments, principal or interest or escrow until 1/21/94 almost two months later. During this time, EMC sent the Pews' monthly payment coupons for December of 1993 [**Exhibit 75**] and January of 1994 [**Exhibit 76**] which had not credited or reflected the credit of the Pews' payment of \$2200.00 toward any monthly payment, principal balance or escrow account.

A review of documents in other litigation across America clearly proves that EMC still operates this fraudulent scheme to this date by not reporting to their customers amounts in suspense accounts that they have not credited yet to any of their customer's accounts, their monthly payments for principal and interest, escrow payments, advances or escrow payments. EMC still to this date sends its customers over-demands for payments whose balances do not reflect previous credits from payments that EMC is holding in suspense.

## EMC Fraudulent Scheme Of Late Fee Over-Demands

On or about 11/17/93, EMC caused to be prepared and did sent via the U.S. mail a monthly payment coupon **[Exhibit 75]**. This statement does not reflect at all the \$92.00 credit that the Pews were entitled to by SOA's cancellation if their insurance policy nor the \$2,200.00 payment the Pews made to EMC in November of 1993. In another effort to knowingly deceive, confuse and defraud the Pews, EMC does not spell out the actual amount of its late charge. Instead, it makes it part of the calculation and explanation in saying that if payment is not received after 12/25/93 the payment due would be \$12,853.39. When you subtract the amount EMC claims is due on 12/10/93 \$12,802.62 from the payment of \$12,853.39 claimed due on the 25<sup>th</sup>, you get a difference of \$50.77 which is the late fee that is actually associated with the claimed "Past Due" date on this document which is 1/10/93 when the amount of the regular monthly principal and interest was \$846.10.

A 6% late fee assessment on \$846.10 equals \$50.77. In order to assess a proper and legal late charge, if actually due, EMC needed to use the current payment due date of 12/10/93 and the late fee assessment date of 12/25/93 which they knowingly do not use so as to secure additional income from the Pews and other customers to the direct use, benefit and investment of EMC and its parent company, Bear Stearns.

In this case, the regular principal and interest payment due on 12/10/93 is \$782.64 and the related 6% late charge would be \$46.96. As such, as petty as this scheme may sound, EMC is knowingly trying to demand, extort and collect an extra \$3.81 that is not owed or legally obligated to them. As the head of investigation for the New York Banking regulatory agency informed me, "if you're a bank and going to steal millions or tens of millions, you don't do it all at once, it becomes too noticeable. You do it in tens of thousands and millions of penny, dollar and five dollar transactions that customers and even we can't detect most times."

## EMC Delayed Credit Predatory & Fraud Scheme

EMC in the balances claimed owed, has not made any adjustments for any of the Pew's disputes and also includes hidden property inspections never identified to the Pews. This is in addition to late fees, inspection fees and insurance advances, except for the \$92.00 credit the Pews are owed now for over three months.

On or about 12/17/93, EMC caused to be prepared and did sent via the U.S. mail a Loan Summary **[Exhibit 77]**. This statement does not reflect at all the \$92.00 credit that the Pews were entitled to by SOA's cancellation if their insurance policy but does reflect the \$2,200.00 payment the Pews made to EMC in November



In another effort to knowingly, willfully and intentionally deceive, confuse and defraud the Pews, EMC does not inform the Pews that their \$2,200.00 is being held in a suspense/unapplied account and not currently being credited toward the payment of any past due balances, monthly payments, escrow balances or escrow payments.

As such, the principal balance of \$108,714.98 has not been adjusted by the payment of the Pew's payment of \$2,200.00 a month earlier. Also, the past due balance of \$12,765.66 does not reflect any credit of the \$2,200.00 payment the Pews made in November to EMC. Furthermore, the escrow balance of \$6,226.90 also has not been credited either with the \$253.88 monthly portion that EMC claimed were owed for monthly escrow payments at that time nor the \$92.00 credit due to the Pews as well as other credits due to former SOA customers.

To briefly illustrate the known fraud, misrepresentations and deception that EMC uses in this document, EMC knowingly, willfully and intentionally does not break down how these so-called past due balances and escrow balances are calculated. For example the escrow balance has not as yet credited two payments of \$253.89 that should have been paid with the Pew's November payment. This totals \$507.78. EMC has not removed the \$1,311.87 force placed insurance policy it ordered because of their previous cancellation of the Pews policy and while EMC has proof and knowledge of the Pews All-State policy, EMC is still continuing to charge the Pew's account for the \$1,311.87 insurance charge.

### EMC Fee Dumping & Escrow Inflation Escrow Scheme

EMC nor SOA ever did inform the Pews that a \$930.00 advance for force placed insurance that the Pews were disputing did in fact get transferred to the Pew's escrow account and there is no notice to the Pew's of such transfer to their escrow account nor the transfer of \$57.00 in wrongfully ordered and charged inspection fees to the Pew's escrow account.

This is a common practice by EMC in that they take charges not lawfully allowed to be placed into escrow accounts and make so-called "misc. escrow adjustments to their customer's accounts without notice or explanation of such adjustments or charges to their escrow accounts.

Evidence gathered also suggests that EMC does far more with escrow adjustments than merely place inspection fees and other advances in. Former EMC customers have complained about EMC placing debts that they had discharged in a U.S. Bankruptcy Court back into their escrow accounts illegally and not informing the customers of how the so-called escrow adjustment was made.

EMC did not inform the Pews of any escrow adjustments and of what such adjustments were for. In fact, EMC has gone to great lengths including knowingly, willfully and intentionally providing false testimony, fraudulent affidavits and expert reports to mask and hide the fraud committed by EMC.

On or about 12/31/93, EMC caused to be prepared and did send via the U.S. mail a Mortgage Interest Statement **[Exhibit 78]**. This statement does not reflect at all the \$92.00 credit that the Pews were entitled to by SOA's cancellation of their insurance policy and does not credit any of the \$2,200.00 payment the Pews made to EMC in November toward interest or principal or tax escrow. As such, EMC by its actions did use the \$2,200.00 payment to their benefit and the benefit of its parent company, Bear Stearns, but prevented the Pews from taking approximately \$2000.00 in tax deductions for the 1993 tax year for interest and taxes.

This document claims \$00.00 paid for taxes, interest and insurance when the Pews knew they paid EMC \$2,200.00 in November. As such, EMC knowingly did confuse, deceive and defraud the Pews further and did cause them damage.

EMC again illustrates the known fraud, misrepresentations and deception that EMC uses in this document. EMC knowingly, willfully and intentionally does not break down how the so-called miscellaneous disbursements of \$496.44 were carried out or how the monthly escrow account is calculated at \$233.88 per month when the Pews were previously informed by SOA in their very last escrow analysis that their monthly escrow payment from 4/10/93 to 3/10/94 was \$348.02 which was over-calculated by \$69.67 for a shortage when there was actually a surplus because of a balance held in unapplied by SOA during SOA's escrow analysis period.

As such, the Pews' new monthly escrow payment for taxes should have been in the vicinity of \$278.35 for taxes only. If SOA had allowed the Pews to secure their own insurance, by providing accurate records and canceling the force placed policy they had on the property, the monthly payment for the Pews' own property insurance would have been in the general vicinity of \$50.00 per month.

The escrow balance on this document is mis-calculated. For example the escrow balance has not as yet credited two payments of \$253.89 that should have been paid with the Pews' November payment. This totals \$507.78. EMC also has not removed the \$1,311.87 force placed insurance policy it ordered because of their previous cancellation of the Pews' policy and while EMC has proof and knowledge of the Pews' All-State policy, EMC is still continuing to charge the Pews' account for the \$1,311.87 insurance charge.

EMC nor SOA ever did inform the Pews that a \$930.00 advance for force placed insurance that they were disputing did in fact get transferred to the Pews' escrow account with EMC and there is no notice to the Pews of such transfer to their escrow account nor the transfer of \$57.00 in wrongfully ordered and charged inspection fees to the Pews' escrow account. EMC knowingly and intentionally concealed, hid, mislabeled, misapplied, added and did not properly credit or account for such transactions in a further attempt to confuse, deceive and defraud the Pews and other EMC customers.

Monthly statements were knowingly, willfully and intentionally prepared, reviewed and sent via the U.S. mail to the Pews and those statements dated from 11/1/93 to 1/21/94 did not credit the \$2,200.00 payment to their principal balance, escrow account or interest until after 1/21/94.

All of the monthly statements were knowingly, willfully and intentionally prepared, reviewed and sent via the U.S. mail to the Pews and those statements dated from 9/1/93 to 6/29/94 did not credit the \$92.00 to the Pew's principal balance or escrow account as had been owed to the Pews since 9/1/93.

This is important due to the fact that the Pews were disputing the Pew's taxes, insurance, escrow, late charges and any and all fees or charges placed on the account except for the monthly P&I charges and the rightful amounts due for taxes and the Pew's own insurance. EMC was fully aware of these disputes.

In March of 1990, I on behalf of the Pews, after a phone call with an SOA representative at a branch office, did fax a request from New York City to the SOA office at Prestonwood requesting the establishment of an escrow account. The SOA employee who I spoke with informed him that she would forward the fax to SOA's loan service center to insure that they received it since previous notes, faxes and correspondence sent by the Pews to the California and Texas offices of SOA were ignored and not responded to by SOA.

SOA employees and EMC in their phone calls and correspondence to the Pews represented that the Pews escrow account was established in 1990 to pay their taxes and insurance **[Exhibit 11]**. However, only after three years after the inception of the Pew's litigation did they learn that SOA never escrowed any money for insurance payments and in fact had knowingly misrepresented this fact to them and failed to and refused to provide documents pursuant to the Pew's many requests, demands, disputes and complaints.

### EMC Predatory & Fraudulent Escrow Miscalculations

A careful reconstruction of the Pew's account from SOA and EMC documents clearly demonstrates that both SOA and EMC did knowingly, willfully and intentionally cause miscalculations to the Pew's account and escrow account by a variety of fraudulent schemes. Each did not properly apply credits on a timely basis so as to provide proper notification and balances when properly due. Both held funds in suspense and did not credit them when due so as to fraudulently cause higher escrow calculations and demands for payments to the Pews and other SOA and EMC customers.

There was never any notification by SOA or EMC that SOA were transferring any escrow balances to EMC, let alone a balance of \$1,471.28 as is now claimed by SOA and EMC. To the contrary, the purchase and sales agreement executed between SOA and EMC indicates that any "positive" balances and money would be transferred to EMC by SOA but that EMC had no obligation to repay and would not repay any negative escrow balances that existed in SOA customers whose accounts they were purchasing.

In fact, EMC later commits another fraudulent act when in testimony and in documents it makes references to amounts repaid to SOA for taxes on the Pew's escrow account when in fact, the amounts claimed repaid and the checks claimed to be issued from EMC to SOA were actually checks from EMC to EMC itself and were only paper and journal entries and an intentional misrepresentation to the Pews.

### EMC Fraudulent Affidavits & Perjured Testimony

EMC also knowingly, willfully and intentionally created a manually prepared spreadsheet labeled as Exhibit B attached to EMC's Responses to the Pew's interrogatories and titled "EMC Loan History" **[Exhibit 79]**. EMC lists under the column for tax advances the figure of (\$496.44) and (\$970.00) and calls the (\$970.00) an advance by SOA and the (\$496.44) a "repayment" to SOA. If indeed, there was any escrow transferred from the Pew's account, it would have to be the supposed \$484.28 that was the escrow credit on 9/1/93 on SOA's Year-To-Date Escrow Statement **[Exhibit 80]**.

The \$970.00 EMC reflects as a tax advance is now known to be actually a \$930.00 advance for forced placed insurance ordered by SOA and cancelled as of 9/1/93 in which the Pews were then owed an immediate credit to their account of \$92.00. Yet, this amount is not immediately credited at all.

SOA and EMC have gone to great lengths to conceal the existence of various fees and transactions and hide, omit, redact or misclassify them and even bury them in the Pew's escrow account and call them "Taxes" when in fact, they were not owed, ever owed and had no rightful place on the Pew's account.

David Smith, in his affidavit states that he has accounted for each transaction on the Pew's account and EMC states that their spreadsheet and records provided with their motion for summary judgement does the same. In fact, at the behest of EMC and their counsel, David Smith knowingly, willfully and intentionally omits and conceals the existence of these charges and transactions then conspires with Ike Guest, the independent auditor, to further hide and conceal the existence of various transactions.

According to EMC, EMC Mortgage Corporation is a 100% wholly owned subsidiary of the Bear Stearns Companies, a major Wall Street Investment Bank. EMC's primarily business is the servicing of mortgage loans for clients of Bear Stearns and various investors.

EMC and their parent and affiliate companies purchases loans that are later sold, assigned, transferred or made into mortgage backed securities and derivative products that are bought and sold by Bear Stearns and various other EMC sister and Bear Stearns subsidiary companies.

Bear Stearns sells such mortgage backed and collateralized securities to various institutional investors. The investors are provided securities issued by Bear Stearns and the various mortgages, promissory notes and deeds of trusts bought and sold by EMC and Bear Stearns directly are put up as collateral and held in a vault by a trustee bank to secure the transaction on behalf of the institutional investors.

To date, the original of the Pew's promissory note and deed of trust executed by the Pews and Savings of America along with all proper assignments, alonges, and chain of title have not been produced to the Pews, as well as other EMC and SOA customers by EMC and Washington Mutual. Our investigation has uncovered a real question as to whether EMC or Washington Mutual are "true" owners of the notes or are engaged in a fraudulent conspiracy to hide, conceal and protect the real and true owners of the notes.

Many of the supposed "lost" notes and documents, and deeds of trusts are not owned or held by EMC or Bear Stearns but are held by a trustee for investors who have been sold mortgage backed securities in various mortgage pools.

The Pew's note was among over 8000 loans that were claimed to be sold to EMC by SOA. However our investigation has concluded that the transaction between SOA and EMC was a fraudulent transaction perpetuated by SOA, EMC and Bear Stearns to defraud the U.S. Government, the RTC, stockholders, investors and the mortgage holders. Since the transaction date of July of 1993, SOA and it's successor in interest by merger, Washington Mutual, have made many exchanges of money, consideration, notes, and deeds of trusts with each other and EMC has availed itself of various "recourse" provisions with SOA and Washington Mutual.

To further illustrate the fraudulent nature of this transaction, the assignments executed by EMC, SOA and California Loan Partners shows the sale and assignment of loans from SOA to California Loan Partners was done "without recourse" and then the sale and assignment from California Loan Partners to EMC was done "with recourse" provisions. Yet the actual promissory note executed by the Pews with SOA and recorded in Collin, County, Texas **[Exhibit 28]** is stamped with an assignment that shows the loan was sold without recourse from California Loan Partners to EMC when in fact it was sold with recourse.

It is criminal, let alone a civil offense, when an individual that wields an inordinate amount of power and control over another person threatens to physically harm that person unless the targeted person pays the individual threatening him blackmail, money or other consideration to save himself from harm. Both SOA and EMC have direct knowledge and information that bad credit or the ruining of one's credit worthiness can directly cause an individual consequential financial, physical, emotional and mental harm, damage and ruin. Both SOA and EMC have repeatedly used this power to extort money from the Pews and other customers of each company.

Furthermore, EMC and SOA have gone to great lengths to conceal their transactions and frauds including:

- (a) in production substituting false documents in place of the actual documents;
- (b) prepared, sponsored and given false testimony and affidavits;
- (c) committed perjury and lied under oath;
- (d) created false documents;
- (e) conspired with experts and legal counsel to conceal frauds and crimes;
- (f) intentionally destroyed evidence;
- (g) concealed the existence of the payment of attorney fees for the defense of their co-defendants from the Court and the Pews;
- (h) tampered with witnesses;
- (i) altered documents;
- (j) and a variety of other illegal, unscrupulous and unethical behavior in an effort to obstruct justice and a fair trial for the Pews.

As an example, EMC's supplemental response to the Pews interrogatory No. 7 states "Per the data provided by Savings of America, as of August 31, 1993, the total amount owing to EMC by the Pews on the loan was \$115,963.66. This amount consists of the following elements: principal \$108,714.98; accrued interest \$5,488.51; advances for taxes and insurance \$1,471.38; late charges \$328.89."

Both SOA and EMC have referred to their internal documents and account histories produced in various interrogatory responses as their answers to questions in depositions about amount due and breakouts of fees, expenses and amounts claimed owed and due to both SOA and EMC at various times. However, the various documents produced by SOA and EMC contradict and conflict with each other and can not be relied upon. Furthermore, it is clear that SOA, EMC and their experts and counsel are knowingly, willfully and intentionally engaged in a concentrated conspiracy, fraud and effort to hide and cover-up the illegal, deceptive and fraudulent actions and representations of SOA, EMC, Bear Stearns and Washington Mutual.

As evidence, the interrogatory response listed above states that "advances for taxes and insurance \$1,471.38" were due from the Pews as of August 31, 1993. In fact, the figure SOA and EMC claim before is actually \$1,471.28 not \$1,471.38. However, this is not a difference of just \$00.10, but most importantly is how EMC has misrepresented this amount and it's detail during the course of the Pew's litigation.

EMC previously provided a sworn affidavit and statement attached to their first answers to interrogatories when they attached an exhibit via a spreadsheet as the answers to how much was charged to the Pew's account and how such amounts were credited.

In the document titled "EMC Loan History" EMC testified that (\$970.00) was advanced and placed into the Pew's escrow account as a Tax Advance when in fact this entire amount was the result of adding \$930.00 in an insurance advance by SOA and the remaining \$40.00 as part of \$57.00 that was illegally charged for property inspection fees to the Pew's loan and hidden by both SOA and EMC. EMC not only attempts to hide such inspection fees by illegally placing such fees into the Pew's escrow account, but it also tries to confuse the Pews and their experts by knowingly, willfully and intentionally disguising the existence of such transactions.

EMC breaks up the \$1,471.28 that they claimed SOA transferred to them by calling the \$970.00 a tax advance and then detailing another tax advance of \$496.44 and an unapplied balance adjustment of \$4.84. When these figures are added together, you get the \$1,471.28 that EMC claims was transferred by SOA to the Pew's escrow account.

However, testimony by SOA's Lionel Antunes and an examination of SOA's master transaction register shows that this amount consists of \$484.28 as a balance on tax escrow; \$930.00 for an insurance advance; and \$57.00 in inspection fees. EMC fraudulently hides this figure from the Pews and the court and has knowingly, willfully and intentionally provided a false and perjured document, testimony and affidavit to the court.

### **EMC Illegal & Abusive Collection & Foreclosure Acts**

Regardless, as EMC allegedly assumed the loan for SOA, it assumed certain assets as well as any liabilities to the Pew's and others accounts. EMC informed the Pews as well as other customers, that they had to pay EMC everything they owed to them, but take any problems or disputes they had with SOA to SOA since EMC could not and would not fix them. This brings into question whether EMC ever actually took possession or ownership of the Pew's note.

Thousands, if not tens of thousands of SOA customers had complaints and disputes while at SOA including the majority of the customers that were assigned and/or sold to EMC. EMC by and through its parent company, Bear Stearns, also knew from their own due diligence of the servicing, payment, escrow, accounting, reporting, tax, and insurance problems SOA had in its servicing operation.

While EMC assumed all these problems, they protected themselves because of special indemnification and recourse clauses in their agreement with SOA. As such, EMC made little if any reasonable effort to review, let alone investigate the SOA customer's complaints.

To the contrary, EMC would aggressively institute collection and foreclosure actions against all customers strictly from what information was contained on a data tape [allegedly lost and destroyed] not even bothering to go into reconciling a customer's account, examining their escrow and unapplied accounts or examining the individual terms of each promissory note and deed of trust where they were different.

To heighten the problem, many of the individuals at EMC that are loan collectors, foreclosure specialists, loss mitigation specialist, researchers and customer service personnel as well as other functions not listed, aren't even EMC's employees. They are contract labor hired by such companies as Empower Corporation who have brief or little training. Furthermore, those who are assigned to collect for loans are compensated on a combined hourly, salary and commission basis based on how much money they can bring in and how quickly they could bring it in. Such collectors would skirt the lines of the law and proper ethics and use whatever tactics they could to intimidate, scare or embarrass customers to pay what EMC claimed the customer owed. Some of these techniques are discussed in EMC's own manuals.

When disputes arose, such collectors would make agreements they were not empowered to make to induce the customer to remit payment to EMC. Also, promises and assurance of certain actions would be given by the EMC's collection representative that EMC would later fail and refuse to abide by.

One key instruction made by EMC employees to EMC customers, including one made by EMC's Bob Graff to me was "don't send any money in now until we get this matter fully researched and reviewed and find out what's owed." Even against this statement, the Pews tendered EMC a check for what they believed was roughly owed for principal and interest payments for the time EMC held the loan so as to demonstrate good faith and reduce whatever obligation they might have incurred.

Furthermore, they did not want late fees being charged to their account in the mean time or EMC's going ahead with foreclosure while investigating their complaints, disputes and claims.



## EMC Fraudulent Accounting

The Pews followed up their phone call complaints to EMC along with written letters of dispute and complaints to EMC on 2/28/94 **[Exhibit 81]** and 3/11/94 **[Exhibit 82]**. I also had a meeting in June of 1994 with EMC to voice their complaints, disputes and questions.

In the first response letter dated 4/29/94 from EMC to the Pews **[Exhibit 83]**. EMC misrepresented the escrow balance of The Pew's account as -\$1499.80 which was the Pew's escrow balance as of 1/31/92 and the beginning of January 1993. However, this representation did not include four [4] escrow payments of \$253.88 totaling \$1,015.52 made by the Pews in late January of 1993 that was not credited by SOA to the Pews escrow account until 3/1/93.

In EMC's first response letter of 4/29/94 EMC states in the first sentence of the first paragraph "Below we have outlined the following escrow transaction that occurred from your previous servicer, Home Savings of America, along with EMC Mortgage Corp."

In the second sentence of this paragraph EMC states " *In review of the previous servicers history, the escrow account at date of transfer* shows that it should have posted -\$1471.28."

As is now known through evidence and testimony, the -\$1,471.28 is the amount that EMC actually did post to the Pew's escrow account. However, \$930.00 of this amount was never placed in the Pew's escrow account with SOA and was actually an insurance advance that SOA previously represented to the Pews was being paid out of "escrow" but upon evidence and testimony of EMC and SOA was never in an escrow account with SOA.

Furthermore, \$57.00 of the -\$1,471.28 that was never even a tax or insurance transaction. The \$57.00 was attributable to property inspection fees wrongfully charged to the Pew's account at SOA and now again, after SOA concealed this transaction, was now buried in the Pew's escrow account. Again, this figure of \$57.00 was never in the Pew's escrow account with SOA.

As such, a total of \$987.00 of the \$1,471.28 was never in The Pew's escrow account with SOA. This again is a misrepresentation to the Pews and EMC never explained how this amount was arrived at in either of their response letters to the Pews or in their meeting with me.

Secondarily, as evidenced by the actual document, EMC didn't even include 1¢ of any actual credit or debit transaction to the Pew's escrow account with SOA. They also fail to address the dispute over the wrongfully forced place insurance policy in the amount of \$1,311.87 when the Pews and All-State Insurance had notified EMC that the Pews had paid for and had insurance on their property.

This letter does not include tens of thousands of dollars in individual debit and credit transactions on the Pews loan and escrow account with SOA that the Pews had been disputing with SOA for over three years then.

Such transactions are reflected on the attached SOA escrow transaction statements **[Exhibit 84]** and a spreadsheet detailing all escrow activity on the Pew's account. Yet, the escrow statements do not provide all of the tax and insurance transactions that occurred on the Pew's account.

All of these the tax and insurance transactions are listed in the attached spreadsheet as **Exhibit 85** that are taken from SOA's master transaction register.

What is now known from the evidence provided to the Pews, is that EMC was not in possession of the Pew's entire loan and escrow transaction history for the previous servicer, SOA, at the time this letter was drafted and based on EMC's own testimony, was not even possessed by EMC on the date that the Pews filed suit in November of 1994.

In fact, according to testimony by EMC attached as **Exhibit 86** in another deposition, EMC collects money from customers when in fact in many, many cases, they are not even in possession of loan histories and documents to answer any complaints or make any adjustments due to a client's valid dispute. EMC just accepts "as is" the figures and balances that previous servicers provide and does little if anything to validate and verify that such balances and payments are indeed correct, just, legally obligated and due.

Some call EMC a mortgage "toxic waste dump" where any mortgage company or broker with problem loans, fraudulent loans, no documents, bad servicing records and the like can dump off their junk to EMC and EMC will pay them and collect on such loans.

In fact, what was used by EMC in responding to the Pews disputes and complaints were the fraudulent and redacted SOA loan histories that were previously sent the Pews that did not contain tens of thousands of dollars in transactions. This is evidenced not only by EMC's testimony, but by their responses to the Pews; the figures provided in EMC's letters; the SOA loan histories sent to the Pews attached with their 4/29/94 letter and Exhibit A sent by David Smith to the court appointed auditor.

However, the SOA loan histories provided to the Pews by SOA **[Exhibit 87]** when their loan was with SOA and by EMC a year later are fraught with fraud, alterations, omissions, redaction, whited out and type over figures and manipulated balances and figures as previously described in this pleading.

Yet another fact is that the SOA loan histories provided to the Pews by both SOA and EMC did not contain tens of thousands of dollars in payments, credit and debit transactions. This was especially true in relationship to the escrow, tax and insurance disputes, complaints and questions that the Pews had for years now.

As such, years after the original fraud was perpetuated against the Pews by SOA in providing fraudulent documents, EMC now and still attempts to cover-up, conceal and extend the fraud perpetrated by SOA by sending the Pews the same documents.

The SOA loan histories sent to the Pews by both SOA and EMC for 1991 knowingly, willfully and intentionally omitted all SOA loan transaction from 10/23/91 to 12/31/91. This was an especially crucial time since this time frame corresponded with the Pews disputes about amounts owed SOA, tax, insurance and payments on their account. Both SOA and EMC concealed these transaction for years to a date after statute of limitations could expire so as not to provide the Pews with evidence of their fraud.

EMC, their parent company Bear Stearns and SOA and their successor in interest, Washington Mutual, had and have full and complete knowledge of this fraud. In order to attempt to avoid liability and exposure each has knowingly, willfully and intentionally spent over \$1 million to conceal these fraudulent actions over a basically \$100,000 mortgage note.

What these companies are trying to conceal is the very fraudulent nature of their transaction and the knowledge of all of SOA's and EMC's fraudulent actions. SOA and EMC and their parent companies created a slight-of-hand transaction to defraud not only SOA's and EMC's customers, but officials of the federal government, government agencies, the RTC, investors and stockholders.

SOA transferred certain assets to EMC and its parent, Bear Stearns, to be sold as mortgage backed securities, obligations and securities. EMC fraudulently recorded mortgages, deeds of trusts and promissory notes with various local governments for the loans it claimed to have purchased as loans that were sold to EMC "without recourse."

In actuality, such loans were sold with recourse according to testimony by EMC and the sales and transfer of servicing agreement between SOA and EMC. What SOA did was transfer losses that it should have written down immediately which would have technically placed SOA in such financial distress that it would be insolvent and subject to liquidation or takeover by the RTC.

Instead, to save the S & L, SOA made a deal with its investment advisor, Bear Stearns, to have a unit of Bear Stearns, EMC, assume such obligations and claim that such a deal was made without recourse when in fact the transaction was with recourse. What Bear Stearns and SOA attempted to do was defer losses for SOA and keep them from writing down loans they should have written down at the time which would have made SOA insolvent, and extended the losses and wrote them down using a shell company called California Loan Partners, in which SOA's parent was the General Partner, to cover and pay losses to Bear Stearns and EMC over a period of years in the recourse provisions. This would allow SOA to defer its losses and not write them down as they should have at the time of SOA and EMC's agreement.

As further evidence of EMC's fraud, the second response letter of EMC to the Pews **[Exhibit 88]** again did not include tens of thousands of dollars in credit and debit transactions relating to escrow, taxes and insurance payments and transactions.

On 5/27/94, over three year's after the Pews disputes, complaints and questions to SOA regarding insurance, tax and escrow transactions and after three months after the Pews disputes, complaints and questions to EMC, EMC did again knowingly, willfully and intentionally mislead, deceive and defraud the Pews by providing a response to their disputes and validation of the Pew's debt that did not include approximately \$5,414.20 in tax transactions as well as not 1¢ of tens of thousands of dollars in escrow payments or credits for transactions concerning taxes and insurance on the Pew's account with SOA.

In addition, EMC only addressed one insurance issue and policy of several insurance policies payment and credit issues that the Pews had provided in their disputes, complaints and questions to EMC regarding payment and crediting of any tax, insurance and escrow transactions with SOA. It also did not again address the forced placed policy in the amount of \$1,311.87 in October of 1993 taken out by EMC. Furthermore, EMC created a "new" escrow account which included shortages and amounts for escrow transactions that were not even owed or obligated to be paid for by the Pews.

The Pews alleged escrow payment grew from \$253.88 to 754.52 when on 2/28/94 EMC sent the Pews an escrow analysis **[Exhibit 89]** for their account. It is inconceivable, let alone reality, that if the Pews escrow balance was only \$484.28 with SOA as of 9/1/93 that their escrow payment could have grown so high in less than one year. As of 1/31/93, The Pew's actual escrow balance with SOA was \$484.28 except for the fact that SOA did not properly and on time credit the Pew's escrow account on a timely basis.

Furthermore, a \$92.00 credit due the Pews in September or October of 1993 still was not credited as of this date. Also, EMC now knew that the Pews had paid for insurance on their property through this date and they had still refused to acknowledge, address or credit the Pew's account with EMC with any portion of the \$1,311.87 that EMC charged the Pew's escrow account for unnecessary forced placed insurance.

EMC in each and every affidavit they prepared to be filed with the Dallas District Court knowingly, willfully an intentionally misrepresented the status, character and amount of the Pew's debt and obligation with EMC. Furthermore, EMC and their counsel have conspired with their experts, employees, SOA, and the court appointed auditor to conceal their known fraudulent actions, transactions and representations to the Pews.

EMC's own expert, David Smith, has participated in this fraud and has knowingly, willfully and intentionally prepared false and fraudulent reports to the Dallas District Count and the Pews. This fraud continues to this day and is under continual investigation by the Pews.

The Pews have been forced by the actions of EMC and SOA to expend over \$250,000 and 8000 hours of time in fighting the illegal and abusive actions of both. EMC's failure to admit even one mistake, when it has full and complete knowledge of their wrongful and illegal actions and then conspire and attempt to conceal such acts is nothing less than incredulous. What's more revealing of EMC's aggressive nature and behavior however, was the illegal foreclosure of the Pew's property.

The Pews agreed to pay EMC in full, even over \$60,000 in disputed charges to their account for title and possession to the property so that the Pews could sell the property.

EMC intentionally and without right to do so, did demand the payment of all of its attorney fees from the inception of the Pews lawsuit until sale of their property. For an original \$109,100 note and less than \$105,000 principal balance which was in dispute, EMC and its attorneys have attempted to extort over \$750,000 in attorney fees from the Pews that they are not legally obligated for.

They even tortuously interfered with the Pew's law firm and Bear Stearns created a conflict by retaining the Pew's firm and interfering with their representation of the Pews. A "visiting" and "retired" judge was placed on the case when 3 weeks before the original trial the judge who had been sitting on the case for 5 years unexpectedly and without explanation recused himself.

The new judge, on information and belief, as well as local Dallas court officials has been influenced by cash payments to various judges and court officials in Texas by EMC's law firm, Fulbright & Jaworski. Rulings by the judge have been made without proper notices of hearings to the Pews and without hearings at all taken place.

#### EMC, Bear Stearns, SOA & Washington Mutual Conspiracy

In essence, EMC, Bear Stearns and Washington Mutual have bought and paid for "Texas Frontier Justice" to conceal and cover-up the illegal, unethical and even criminal acts of their companies and the attorneys hired to represent them.

EMC claims that the Pews are not only responsible for the payment of their defense, but the defense of their co-defendant, SOA even though SOA made no claim for damages or attorney fees. EMC, also, with the full knowledge of their attorneys and corporate counsel and that of Bear Stearns and its executives, did try to extort the payment of attorney fees for their co-defendants and fraudulently concealing and hiding such arrangements from not only the Pews but the Dallas District Court.

EMC claim the Pews are responsible for the payment of their defense is not only frivolous in light of their knowledge of this own wrongful acts, but in direct contradiction to the terms of the Pew's agreements with SOA which it claims to assume. The Pews promissory note does not contain a provision to pay attorney fees upon litigation as does other notes **[Exhibit 90]** that SOA allegedly sold and assigned to EMC. However, even if the Pew's claims in their litigation were frivolous and unmerited, EMC would only be entitled to recover for its own attorney fees, not the fees of its co-defendant SOA which must sue to recover its fees.

However, its co-defendant, SOA, never sued to recover or claimed any of its attorney fees. In fact, to the contrary, it represented to not only to the Pews and their counsel, but to Judge Hall of the Dallas, District Court in open court, that SOA was not asking for any recovery of its attorney fees.

Yet, EMC, it's counsel and the counsel for SOA all knew that EMC was not only seeking the recovery of their own attorney fees, but were intentionally hiding and misrepresenting the recovery of their co-defendants SOA attorney fees from the Pews in demands EMC issued to the Pews

A such, all demands, filings with the court and documents sent to the Pews that include even one penny in the attorney fees or costs for SOA are fraudulent, misleading and mischaracterize the status of the Pews obligation and debt.

The Pews can never in any situation be held to be responsible for the previous owner of their note's legal expense because the current holder has an indemnification agreement with the previous owner of the Pews note. SOA would have to sue on its own to recover any attorney fees that it may be entitled to. To prove this fraud, all one has to do is ask itself how would EMC prove up the attorney fees it was seeking recovery for before the Dallas District Court. Who would have testified and what physical bills would have been actually produced?

### **Harm & Damages To Pews & Other SOA/EMC Customers**

The actions of the EMC, SOA, Washington Mutual, Bear Stearns, Ike Guest, David Smith and their attorneys have made the Pews spend six years investigating and documenting the illegal abuses, practices and schemes described herein and caused millions of dollars in monetary damages and losses as well as great emotional, psychological and physical health.

Both SOA and EMC did knowingly, willfully and intentionally make negative credit reports regarding the Pews to credit reporting agencies in an effort to damage the Pews and their related business interests. By EMC's own admission, such negative reports began on at least November 21, 1993 and have been done continuously by EMC. EMC's reports regarding the Pews were improper, inaccurate and done solely to abuse, damage and harass the Pews and extort payment of the inflated amounts claimed by EMC not obligated to be paid by the Pews.

In fact, EMC used the negative credit reporting in attempts to extort and coerce payments from the Pews by stating that the negative credit reporting would cease if the Pews paid the amounts claimed by EMC, including disputed amounts.

On January 4, 2000, EMC wrongfully foreclosed on the Pews property, ostensibly purchasing the property that was valued at over \$160,000.00 for \$130,000.00. Prior to the wrongful foreclosure, EMC did not send proper notices required by Texas law, and further EMC made improper demands for payment. EMC's demands, contrary to Texas law, included demands for over \$750,000.00 in attorneys' fees for not only EMC's but EMC's predecessor, SOA. The Pews were never provided an opportunity to pay the proper amounts due or owed according to Texas or Federal law. Likewise, EMC did not provide the Pews with reinstatement and payoff figures as required by the terms of the note and by Texas law until a date after the actual illegal foreclosure by EMC.

The Pews' equity in their house was stolen and misappropriated by EMC, and the Pews' property was sold for an amount less than fair market value.

The Pews have been severely damaged by the actions of SOA and EMC. Despite the fact that the Pews have made payments required by the loan, SOA and EMC have misapplied the funds and/or held the funds in a suspense account refusing to apply the funds, with the intent of keeping the Pews in arrears, charging additional late charges and, ultimately, attempting to foreclose on their property.

### **Additional Fraud & Cover-Up By SOA & EMC**

This report can not justly detail a nearly 12 year scandal which involves not only the Pews, but tens of thousands of customers of EMC, SOA and other mortgage companies including Fleet Financial, Washington Mutual, United Servicing and others.

The evidence uncorked shows that the abuses are not in the tens of millions of dollars, but in the high hundreds of millions and potentially billions when all factors are taken into consideration. In short, this report skims on what is perhaps the largest financial scandal ever discovered and reported.

The origination of this scandal began in the savings and loan liquidation crisis of the late 80s and early 90s. Bear Stearns, as a financial advisor to SOA's parent company, helped create an alleged "whole sale" of SOA loan portfolio assets to EMC.

At the time, SOA needed to "park off its books" non-performing loans that they needed to write down. If this write down had been taken when required, SOA would have been technically insolvent according to existing standards at the time and would have needed to be liquidated or sold. They could not use a goodwill write down at the time.

In an effort to avoid such an action, H.F. Ahmanson, with the help, support and counsel of Bear Stearns, created a limited partnership called California Loan Partners. SOA sold an approximate \$2.4 billion loan portfolio of approximately 8000 loans to California Loan Partners "without recourse."

On the same date, California Loan Partners allegedly "sold" the same portfolio to EMC. However, the sale to EMC was sold "with recourse" which technically was not a whole loan sale. SOA, EMC and Bear Stearns then went to great lengths to hide the "true nature" of this transaction and the fact that this was not a "true sale" but an elaborate and creative "financing scheme" that still exists to this day.

Side deals and agreements were created whereby SOA and later Washington Mutual have compensated EMC and Bear for shortfalls, expenses related to litigation, liabilities and other obligations.

Bear Stearns and EMC sister and affiliated companies then sold mortgage backed securities and collateral obligations to various institutional investors in pools consisting of the SOA loans.

SOA and EMC even went to the extent of having promissory notes, deeds of trusts and mortgages stamped with sale endorsements that claims a sale from California Loan Partners to EMC “without recourse.” Some of these documents were recorded and others not.

In fact, EMC, SOA and Washington Mutual claim that “hundreds” [and perhaps “thousand’s] of these notes were lost or destroyed without any explanation [see EMC and Washington Mutual affidavits in various courts attached as **[Exhibit 91]**].

In reality, it would be impossible for such a large amount of “negotiable” instruments of such enormous value, exceeding tens of millions of dollars, to be lost or destroyed without an explanation or investigation into such a loss.

This investigation has discovered that such notes were not lost or destroyed. In reality, many of these notes and mortgages were bartered, assigned, sold and traded like cheap baseball cards from one investor, trustee or bank to another. In many cases, the actual assignments were only “book-entry” computer transactions or were accomplished by various “alonges” executed by EMC that were never recorded.

The motives, purposes and reasons behind EMC’s and Washington Mutual’s refusal to produce the actual mortgages and promissory notes include:

- (a) The notes and mortgages are not under the direct control and custody of EMC or Washington Mutual;
- (b) The notes and mortgages show a different chain of title and ownership in due course than what has been reported to the courts, the borrowers and/or recorded in county land records;
- (c) The notes and mortgages have been assigned to others in various pools of mortgage related securitizations and as such are held in the control and custody of various trustees and document custodians in their vaults;
- (d) EMC and Washington Mutual, while the servicer of the note or mortgage, are not the actual owners of the note or mortgage upon which they attempt to foreclose upon in their own name, rather than the name of the trustee or actual investor in the note or mortgage.

The original loan taken out by the Pews was for an original loan balance of \$109,100.00 with the original lender, Savings of America. The Pews signed a “blank” mortgage application [a key factor in predatory lending] forwarded to them by SOA. SOA employees then made several material misrepresentations in the application, contrary to the information provided to them, and conducted fraud in the loan origination process.



Furthermore, SOA and its employees made a number of additional verbal and written misrepresentations to the Pews in the loan process. One example of such fraud was the Federal Reserve's Regulation Z "Disclosure Statement" attached as **Exhibit 92**. The statement that the Pews were sent, that is acknowledged by their signatures, indicates the amount to be financed to be \$105,683.09.

Yet, later, an SOA employee submitted another disclosure document unsigned by the Pews and never sent or forwarded to the Pews that was contained in their loan file. This disclosure document is referenced by **Exhibit 93**.

The promissory note executed by the Pews **[Exhibit 2]** however called for a principal balance loan in the amount of \$109,100.00 which was not previously disclosed to the Pews. The note also contained a provision for negative amortization, another common technique used today by predatory lenders than Congress is looking to abolish in new legislation before Congress.

During the approximately four years that Savings of America owned and serviced the Pew's loan, they misrepresented the Pew's payments, balances and amounts owed by varying degrees as much as \$20,000 in one particular instance. At one point, when the Pews had insurance on their property SOA had placed not one but three additional insurance policies on their loan and informed the Pews that such policies in amounts as high as \$1008.00, were charged to their loan.

SOA also failed to pay the Pew's own insurance from escrow and instead placed their own policies using an insurance agency that SOA's parent company owned. As such, SOA's parent company's subsidiary earned commissions ranging from 20 to 30% on such policies.

However, to date, in over 10 years of requests and litigation, SOA has not provided even one cancelled check for the over \$5000.00 in insurance they claimed to have charged and credited the Pew's account.

The predatory lending and servicing practices of EMC and SOA go back many years before the known existence of what is now commonly referred to as predatory lending. This writer first discovered such abuses over ten years ago.

However, due to the fraudulent and predatory actions of EMC, Bear Stearns, Washington Mutual and SOA, it has taken 10 years, over 8000 hours and the expenditure of over \$250,000.00 to fully document and prove the allegations made in this report.