



American Conference Institute's 14th National Forum on

RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT


Expert strategies for in-house and outside counsel on navigating litigation hurdles and preparing for new and emerging government enforcement initiatives


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Federal & State Priorities from:


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State AG Offices for DC, MA & IL...Oregon DOJ
TX Department of Savings and Mortgage Lending

Judicial Perspectives from:

 Hon. Fernando J. Gaitan, Jr.
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 Hon. Robert Collings
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Alameda Co., Sup. Ct. Calif.

April 24 – 25, 2014

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Learn from and meet:

Ken Markison
Mortgage Bankers Association

Kristina M. Larese
PHH Mortgage Corporation

Eric Spett
Ocwen Financial

Stephen Frie
Standard & Poors

Scott Murphy
Wells Fargo

Karen Caldwell
Flagstar Bank

Chuck Cross
CSBS

Sonya Andreassen-Henderson
PNC Bank

Joe Salama
Deutsche Bank AG

Joseph J. Samarias
Ocwen Financial

Steven S. Albert
Allstate

Judith Tribble
Lakeview Loan Servicing

SESSIONS INCLUDE:

- CFPB oversight and broad UDAAP standards being applied
- Front line regulatory and enforcement insights by key governing bodies in the mortgage industry
- The evolving fair lending landscape: responding to game changing 'disparate impact' claims
- Developments in lender-placed insurance claims, loan modification litigation in conjunction with HAMP, and impound accounts litigation
- Other pivotal residential mortgage issues currently in play and coming down the pike from the U.S. Supreme Court, including with regard to class certification
- Mortgage servicing: the continued enforcement and litigation focus on loan servicing, servicer liability under FDCPA and as a debt collector
- Examining key state nuances and developments in hotbed jurisdictions such as California, Florida, New York, Illinois, Texas and Nevada
- Establishing standing and defending against claims relating to MERS, overcoming contested foreclosures and responding to borrower counterclaims and stall tactics
- A due diligence guide to the management of third-party vendors, service providers, and mortgage brokers

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HUD	Lakeview Loan Servicing	Stradley Ronon Stevens & Young LLP	Morrison & Foerster LLP
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New York State Department of Financial Services	Flagstar Bank	Goodwin Procter	Parker Hudson Rainer & Dobbs
Oregon DOJ	Ocwen Financial	Greenberg Traurig, LLP	Frost Brown Todd LLC
TX Department of Savings and Mortgage Lending	Parker Ibrahim & Berg	McGlinchey Stafford PLLC	Troutman Sanders
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Office of the Attorney General for DC	Standard & Poors	Sirote & Permutt, P.C.	Hunt Leibert Jacobson, P.C.
Alabama Securities Commission	Trott & Trott, P.C.	K&L Gates LLP	Stites & Harbison PLLC
Conference of State Bank Supervisors	Burr Forman	Franzen and Salzano	<i>and many others</i>
Mortgage Bankers Association	Dickinson Wright PLLC	Ballard Spahr LLP	
	Lotstein Legal	Locke Lord LLP	
	Severson & Werson	Pilgrim Christakis LLP	

American Conference Institute is pleased to announce its 14th National Forum on Residential Mortgage Litigation & Regulatory Enforcement. This year's Washington DC event, *co-chaired by Andrew Stutzman at Stradley Ronon Stevens & Young and Frank Hirsch at Alston & Bird*, has been revamped to provide attendees with up-to-the-minute insights and strategies that are necessary to defend against these new claims and adapt to the evolving enforcement and regulatory landscape. Our unparalleled faculty of federal and state government officials, judges, expert in-house counsel, and leading outside counsel will provide you with strategic advice, critical insights, and comprehensive updates for:


- **CFPB oversight:** Post-January 10 developments, new and emerging regulatory priorities, lessons learned from recent enforcement actions, broad UDAAP standards being applied by the Bureau and what to expect going forward
- An in-depth focus on UDAAP concerns in the residential mortgage landscape
- **Front line regulatory and enforcement insights by key governing bodies in the mortgage industry:** federal and state agencies and attorneys general speak out on recent key developments and how to prepare for examinations and supervision in a multi-agency environment
- The evolving **fair lending landscape: responding to game changing 'disparate impact' claims**, fair lending violations as a basis for buyback and indemnification, HMDA data nuances, and how to defend against claims of discriminatory lending including mortgage pricing and product selection, redlining, loan amount, REO, disability, reverse discrimination, maternity leave, LGBT, and beyond
- Developments in **lender-placed insurance claims, loan modification litigation in conjunction with HAMP**, and impound accounts litigation
- Other pivotal residential mortgage issues currently in play and coming down the pike from the **U.S. Supreme Court: new and emerging cases and theories; the continuing impact of *Dukes* and progeny on certification and mortgage servicing**; new settlement considerations; and using CAFA and other developments in your favor with regard to "predominance," discovery practices as courts look to the merits, standards for removal (including removal of AG Actions), remand fights, misjoinder and stipulations limiting damages
- Examining key **state nuances and developments in hotbed jurisdictions** such as California, Florida, New York, Illinois, Texas and Nevada
- **Mortgage servicing:** the continued enforcement and litigation focus on loan servicing, servicer liability under FDCPA and as a debt collector, complying with new and emerging regulations, employing best practices, defending against borrower claims, and implementing effective loss mitigation strategies
- Establishing standing and defending against claims relating to MERS, overcoming contested foreclosures and responding to borrower counterclaims and stall tactics
- A due diligence guide to the management of **third-party vendors, service providers, and mortgage brokers**

This event will fill up quickly, so register now by calling 1-888-224-2480, faxing your registration form to 1-877-927-1563, or registering online at www.AmericanConference.com/ResidentialMortgageDC.

WHO YOU WILL MEET:

In-house counsel from:	Private practice attorneys specializing in:
- Mortgage lenders	- Financial services
- Mortgage brokers	- Mortgages
- Banks and thrifts	- Bankruptcy
- Loan servicers	- Securities litigation
- Loan purchasers	- Consumer finance
- Investment banks	- Regulations and compliance
- Hedge funds	
- Private equity	

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- 7:30 Registration and Continental Breakfast
- 8:00 Chairs' Welcoming Remarks
- 8:05 **In-House Insights on How CFPB's New Rules Are Affecting Litigation Management and Relationships with Outside Counsel; Responding to Enhanced Regulation and Enforcement; Compliance Strategies; Selecting and Retaining Law Firms and Distribution of Legal Spend in Today's Environment; and More**

In House Roundtable Part I – 8:05	In House Roundtable Part II – 9:00
<p>Scott Murphy Senior Counsel Consumer Lending and Corporate Regulatory Division Wells Fargo & Co. Law Department</p> <p>Kristina M. Larese Assistant General Counsel PHH Mortgage Corporation</p> <p>Karen Caldwell First Vice President, Associate General Counsel Flagstar Bank</p> <p>Steven S. Albert, MAI, SRA Executive Vice President Allstate Appraisal</p> <p>Eric Spett VP, Assistant General Counsel Ocwen Financial Corporation</p>	<p>Joe Salama Director, Senior Counsel Deutsche Bank AG, New York</p> <p>Joseph J. Samarias Senior Vice President, Deputy General Counsel Ocwen Financial Corporation</p> <p>Alan J. Levith, Esq. Associate General Counsel, National Compliance Counsel LOGS Network - National</p> <p>Sonya Andreassen-Henderson Vice President- Mortgage Fraud Risk, PNC Bank</p> <p>Stephen Frie Director, Standard & Poors</p> <p>Judith Tribble, Esq. Sr. VP, Compliance; Chief Compliance Officer, Lakeview Loan Servicing, LLC</p>
<p>Moderator</p>  <p>John C. Lynch Partner Troutman Sanders LLP</p>	<p>Moderator</p>  <p>James P. Berg Member Parker Ibrahim & Berg LLC</p>

- How companies have enhanced their compliance efforts in light of the newly implemented CFPB Rules
- CFPB post implementation logistical and operational issues
- The fallout from of the AG settlement: what impact did it have?
 - Enforcement issues
 - Continued compliance
- How are lenders and servicers adapting to the increased regulatory and enforcement landscape? What changes have they made? Who are they looking to for guidance?
- How is the industry dealing with fighting wars on two fronts- the federal side and the state side?
- What does corporate counsel find to be the most challenging aspects of revamping compliance procedures and policies in the wake of Dodd-Frank?
- Managing and responding to enforcement actions
- Adapting litigation strategies and settlement calculations in an era of legal uncertainty and increased regulation
- Identifying and minimizing exposure to risk
- Aftermath of 'robo-signing' and foreclosure documentation error litigation: looking back, practices to avoid this unnecessary litigation

- Foreclosure mediation
 - Best practices for maximizing the effectiveness of these programs
- Lessons learned from past litigation
 - Minimizing your exposure to future litigation and better managing future litigation
- Advising outside counsel on how to better support in-house counsel
- Top 5 issues that in-house counsel want their outside counsel to be thinking about
- How corporate counsel are responding to internal budgetary pressures
- In-house solutions for stretched legal departments
- Working with outside counsel: In-house pet peeves and concerns

9:55 Morning Coffee Break Sponsored by:

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10:10 **CFPB Oversight of the Residential Mortgage Industry: Post-January 10 Developments, New and Emerging Regulatory Priorities, Lessons Learned from Recent Enforcement Actions, Broad UDAAP Standards Being Applied by the Bureau and What to Expect Going Forward**



Ken Markison
VP and Regulatory Counsel
Mortgage Bankers Association



Christy A. Ames
Member
Stites & Harbison, PLLC



Nanci L. Weissgold
Partner
K&L Gates LLP



Donald C. Lampe
Partner
Morrison & Foerster LLP



Michael S. Waldron
Partner
Ballard Spahr LLP

- The CFPB's regulatory and supervisory agenda: what went into effect January 2014
 - Loan Officer Rule; Servicing rule; Ability to repay; QM/ATR Final Rule; HOEPA Rule
- Proposals on servicing
 - CFPB enforcement initiatives against non-bank affiliated mortgage default servicers
 - CFPB and similar foreclosure look-backs
- CFPB's use of social media
- CFPB examinations and enforcement actions: how to best prepare; status and review of actual enforcement cases
- The amalgamation of RESPA/TILA
- Practical effects of the CFPB's initiatives
- QWR's under the Dodd-Frank Act
 - Changes to the QWR provisions and the CFPB's mortgage loan complaint process
- Evaluating preemption in the wake of Dodd-Frank
- CFPB's Amicus Program: analysis of cases filed so far
- CFPB Enforcement Actions: lessons learned
 - UDAAP enforcement; debt collection; criminal referral
- Future CFPB implications: what's next?
 - Changes to January rules?; anti-steering rule

11:25 **A Focus on UDAAP and Residential Mortgages: Counseling Your Clients on the Areas With the Greatest Potential for Unfair or Deceptive Acts or Practices**

Yaa Apori
Attorney, Division of Financial Services
Federal Trade Commission



Eric Jon Taylor
Partner
Parker Hudson Rainer & Dobbs LLP



Lucy R. Dollens
Member
Frost Brown Todd LLC

- Why UDAAP violations should be of paramount concern to lenders and servicers
- Which areas put lenders and servicers at greatest risk for unfair or deceptive acts or practices?
- Ensuring compliance with UDAAP laws in light of enhanced enforcement initiatives
- How to avoid UDAAP
- Which UDAAPs are being targeted most heavily by the CFPB?
 - Assessing the definition of abusive practices
 - Potential pitfalls for lenders and servicers
 - Susceptibility to the abusive "A"

12:15 **Networking Luncheon for Speakers & Delegates**

1:10 **Front Line Regulatory and Enforcement Insights by Key Governing Bodies in the Mortgage Industry: Federal and State Agencies and Attorneys General Speak Out on Recent Key Developments and How to Prepare for Examinations and Supervision in a Multi-Agency Environment**

PANEL 1 (1:10-2:35):

Richard K. Hayes
Deputy Chief, Civil Division
Office of the United States Attorney, E.D.N.Y.

Christopher Tuite
Assistant U.S. Attorney
U.S. Attorney's Office, Middle District of Florida

David Walk
Assistant U.S. Attorney
U.S. Attorney's Office, District of New Jersey

Bryan Greene
General Deputy Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

Christa Lynn Greco
Directorate of Intelligence
Federal Bureau of Investigation

Chuck Cross
Senior Vice President, Consumer Protection
& Non-Depository Supervision Section
Conference of State Bank Supervisors

Moderator:



Robert T. Mowrey
Partner
Locke Lord LLP

PANEL 2 (2:35-4:05):

Simon Whang
Assistant Attorney General
Oregon Department of Justice, Financial Fraud/Consumer Protection Section

Christopher K. Barry-Smith
Deputy Attorney General
Massachusetts Office of the Attorney General

Andrew Dougherty
Assistant Attorney General
Consumer Fraud Bureau
Office of the Illinois Attorney General

Bennett Rushkoff
Chief, Public Advocacy Section
Office of the Attorney General for the District of Columbia

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending

Daniel Burstein
Executive Deputy Superintendent for the
Real Estate Finance Division
New York State Department of Financial Services

Moderator:



Joseph Borg
Director
Alabama Securities Commission

- The aftermath of the AG settlement
- Overlap and differences with CFPB initiatives relating to mortgage servicing standards
- Impact of the CFPB on state enforcement initiatives: arrangement with state regulators
- Mortgage origination standards
- CFPB examinations
- Status of the Independent Foreclosure Review: lessons learned
- Increasing focus on fair lending concerns
 - HUD disparate impact rule
- Assessing the multi-state mortgage examination process
- Cooperating with investigations
- Reaching consent settlements with regulators
- Implementing lessons learned from past enforcement actions
- Litigation and supervisory activity stemming from President Obama's Federal Mortgage Task Force
- FTC's enforcement of consumer protection laws
 - Jurisdiction over most non-bank entities including processors

4:05 Afternoon Break

4:10 **The Evolving Fair Lending Landscape: Responding to Game Changing 'Disparate Impact' Claims; Fair Lending Violations as Basis for Buyback and Indemnification; HMDA Data Nuances; and How to Defend Against Claims of Discriminatory Lending Including Mortgage Pricing and Product Selection, Redlining, Loan Amount, REO, Disability, Reverse Discrimination, Maternity Leave, LGBT, and Beyond**



Jay Fastow
Partner
Dickstein Shapiro LLP



Darren M. Welch
Counsel
Skadden, Arps, Slate, Meagher & Flom LLP



Ari M. Charlip
Member
Dickinson Wright PLLC

- Recent cases and enforcement actions
 - U.S. Supreme Court progress on *Mount Holly* case

- Disparate impact claims where lenders choose only QM safe harbor or QRM loans because of liability and financing imperatives
- How state and federal agencies are approaching fair lending issues
 - HUD rule
 - Recent and pending cases before the DOJ
 - *Burbank* Case
- Assessing the status of 'disparate impact' in lending litigation and enforcement
- Fair Lending violations becoming a more widespread basis for buyback and indemnification claims – breach of representations and warranties
- HMDA data serving as basis for claims
- New and emerging allegations of discriminatory practices relating to upkeep of bank-owned houses in minority neighborhoods
- Assessing the evolving definition of and uncertainty relating to fair lending
- Impact of the CFPB on fair lending litigation
 - CFPB initiatives and enforcement efforts relating to discriminatory lending and disparate impact
- Defending against the latest claims alleging fair lending violations
 - Early interviews and information gathering
 - Data analysis
- Possible emerging trends in fair lending claims
 - LGBT discrimination
- Impact of recent regulatory and litigation developments on the defense of predatory lending claims
- Public relations/advertising/marketing concerns
- Settlement considerations and strategies

5:05 **Developments in Lender-Placed Insurance Claims, Loan Modification Litigation in Conjunction With the Home Affordable Modification Program (HAMP), and Impound Accounts Litigation**



Peter S. Wahby
Shareholder
Greenberg Traurig, LLP



Frank A. Hirsch, Jr.
Partner
Alston & Bird LLP



Debra Lee Hovatter
Member; Co-Chair, Consumer Finance Group
Spilman, Thomas and Battle, PLLC

Lender Based or Forced Place Insurance

- Allegations that Banks engaged in deceptive practices
 - In violation of TILA, the RICO Act and other consumer protection laws
 - Possible collusion among lenders and insurance companies
- Results of States' investigations: NY and CA
 - NYSDFS regulations of forced place insurance
- How lenders can defend against operational and reputational risks in their force placed practices

Home Affordable Modification Program (HAMP)

- Complying with and abiding by the requirements for a permanent modification
 - 30 day trial period
- Borrower's claims



- Effective defenses
- HAMP related False Claims Act litigation increase in last year
- Mortgage fraud considerations in relation to HAMP

Impound Account

- Recent litigation

6:00 Conference Adjourns

Cocktail Reception hosted by:

DAY TWO: FRIDAY, APRIL 25, 2014

7:30 Continental Breakfast

8:00 **Other Pivotal Residential Mortgage Issues Currently in Play and Coming Down the Pike from the U.S. Supreme Court: New and Emerging Cases and Theories; The Continuing Impact of *Dukes* and Progeny on Certification and Mortgage Servicing; New Settlement Considerations; and Using CAFA and Other Developments in Your Favor with Regard to “Predominance,” Discovery Practices as Courts Look to the Merits, Standards for Removal (including Removal of AG Actions), Remand Fights, Misjoinder, and Stipulations Limiting Damages**



Thomas M. Hefferon
Partner
Goodwin Procter LLP



Benjamin G. Diehl
Special Counsel
Stroock & Stroock & Lavan LLP



Thomas N. Abbott
Attorney
Severson & Werson



James S. Wertheim
Member
McGlinchey Stafford PLLC

- Class action trends involving residential mortgage litigation
 - What some recent cases may tell us about what's next
- Recent Supreme Court term end: trickle down effect of decisions on residential mortgage class action litigation
- Removability of AG actions under CAFA
- New CAFA removal and misjoinder issues
- Recap of relevant cases
 - *Knowles* case: first decision on CAFA
 - *Hood v. AU Optronics*: the question of removability
- New and emerging claim approaches
 - Defending against the influx of cases being brought by plaintiffs' attorneys and state AGs
 - Where plaintiffs are filing and why
 - Using this information to structure your case
- The continuing impact of *Wal-Mart* on certification
- How are the federal (and state) courts applying the decision?
- Defeating plaintiffs' arguments that *Wal-Mart* should not apply to a particular case
- *Comcast* and post-*Wal-Mart* issues

- The treatment of *AT&T Mobility v. Concepcion* by lower court and emerging legal issues
- Settlement considerations
 - Making the decision to settle, and ensuring effective client communication throughout the settlement process
 - Evaluating tradeoffs in scope of class and release; creating a comprehensive settlement order

9:05 Morning Coffee Break

9:10 **Views from the Bench: Judicial Perspectives on the Latest Plaintiff Theories, Emerging Defense Strategies, Loan Modification Litigation, Foreclosure Documentation Errors, Bankruptcy Litigation, Class Certification, Case Management, E-Discovery, and More**

Judges Panel 1 9:10 – 10:40	Judges Panel 2 10:40 – 12:10
Hon. Fernando J. Gaitan, Jr. U.S. Dist. Ct., W.D. Mo.	Hon. Warren Eginton U.S. Dist. Ct., D. Conn.
Hon. Harold Baer U.S. Dist. Ct., S.D.N.Y.	Hon. George C. Steeh U.S. Dist. Ct., E.D. Mich.
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Hon. Robert Collings U.S. Dist. Ct., D. Mass.	Hon. Robert B. Freedman Alameda Co., Sup. Ct. Calif.

Panel 1 Moderator:



Andrew K. Stutzman
Stradley Ronon
Stevens & Young, LLP

Panel 2 Moderator:



Katrina Christakis
Pilgrim
Christakis LLP

12:10 **Examining Key State Nuances and Developments in Hotbed Jurisdictions Such as California, Florida, New York, Illinois, Texas and Nevada**



Scott M. Pearson
Partner
Seyfarth Shaw LLP



Peter J. Van Zandt
Shareholder
LeClairRyan



Kerry P. McInerney
Shareholder
Sirote & Permutt, P.C.

- Which states are driving the litigation nationwide?
 - CA, FL, NY, IL, TX, NV
- Actions taken by these states
- How these states implicate other states' litigation
- What to be on the lookout for
- Lessons to be learned

1:10 Networking Luncheon for Speakers & Delegates

2:10 **Mortgage Servicing: The Continued Enforcement and Litigation Focus on Loan Servicing, Servicer Liability Under FDCPA and as a Debt Collector, Complying with New and Emerging Regulations, Employing Best Practices, Defending Against Borrower Claims, and Implementing Effective Loss Mitigation Strategies**



E. Scott Palmer
Managing Partner
Palmer, Lombardi & Donohue LLP



William P. Heller
Chair, National Consumer Finance Litigation & Compliance Practice Group
Akerman LLP

Geoffrey Milne
Partner
Hunt Leibert Jacobson, P.C.

- Assessing the impact of the AG settlement and the CFPB on servicing standards
 - Enforcement issues
 - Ensuring compliance
- Effects of Basel III on loan servicing
 - Servicers vs. large banks and the subprime market
- Defending against claims relating to loan servicing
 - Debt collection practices claims
 - Credit reporting claims
 - Escrow issues
 - RESPA issues
 - Fair lending issues
- Class action issues arising from loan servicing
- Servicer liability under the FDCPA
- When is a mortgage servicer considered a debt collector
- Servicer liability for lack of disclosure
 - Viability of good faith defense
 - Sufficient evidence to show adequate disclosure
 - Conducting due diligence of servicing compliance
- Loss mitigation programs
- Loan modifications
 - Borrower claims
 - Effective defenses

3:20 **Establishing Standing and Defending Against Claims Relating to MERS, Overcoming Contested Foreclosures, and Responding to Borrower Counterclaims and Stall Tactics**

Jeffrey D. Weisserman
General Counsel
Trott & Trott, P.C.



Donn A. Randall
Partner
Bulkeley, Richardson and Gelinas, LLP



John R. Chiles
Partner
Burr & Forman LLP

- Conditions precedent to foreclosure
- Assessing borrower attacks on standing
 - New and emerging claims
 - How to combat and defeat standing attacks
- Update on MERS litigation

- Borrower claims
- *Qui tam* cases
- County recorder/AG litigation
- MERS interest as mortgagee or beneficiary
- Transfer of notes via endorsement and delivery rather than assignment
- Assignment of mortgages
- Handling borrower counterclaims in contested foreclosures
- Overcoming commonly raised defenses including TILA, SCRA, fraud, and rescission claims
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
- Loss mitigation
- Litigation challenges relating to mortgage origination
- Loan modifications and foreclosure
 - Defending against counterclaims arising from loan modifications and HAMP
- Responding to challenges to foreclosures in non-judicial foreclosure states

4:15 **A Due Diligence Guide to the Management of Third-Party Vendors, Service Providers, and Mortgage Brokers**



Loretta Salzano
Founding Partner
Franzén and Salzano, P.C.

A. Michelle Canter
Partner
LotsteinLegal PLLC

- Recent increased scrutiny by the government agencies and regulators
 - Expected increased oversight
- CFPB activity in the area and power to supervise “related persons” and “material service providers”
 - CFPB now holding banks responsible for lending done out of the third party relationship
- OCC activity in the area
- Having an effective process in place to manage the risk of outsourcing
- Third-party vendor products and fees
- Liability for the actions of mortgage brokers
- Contracting with ethical third parties
- The potential increase to the cost of servicing over time vs. the risk of exposure to litigation and damage to reputation

5:00 **Conference Ends**

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