IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Nora Freeman Engstrom**

I, Nora Freeman Engstrom, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am forty-four years of age. I am a Professor of Law and the Deane F. Johnson Faculty Scholar at Stanford Law School where I specialize in legal ethics, tort law, civil procedure, and complex litigation. I am the co-author of a leading professional responsibility casebook, *Legal Ethics* (7th ed. 2016), with Deborah L. Rhode, David Luban, and Scott L. Cummings. In its next addition, I will join, as a co-author, a leading tort law casebook, *Tort Law and Alternatives* (11th ed., forthcoming), with Marc Franklin, Robert Rabin, Michael Green, and Mark Geistfeld. I am an elected member of the American Law Institute and also a Fellow of the American Bar Foundation. I am a member of the Steering Committee of the Stanford Center on the Legal Profession, an Academic Advisor to the NYU Civil Jury Project, and an Academic Fellow of the Pound Civil Justice Institute. I am the Legal Profession Section co-editor of a prominent online academic journal (Jotwell). I am a Reporter for the American Law Institute's Third Restatement of Torts (Concluding Provisions), and from 2016 through 2018, I served as Stanford Law School's Associate Dean for Curriculum.

EXHIBIT 1

2. I have designed, and I regularly teach, a legal ethics course at Stanford Law School that specifically focuses on the structure and organization of plaintiffs' personal injury practice and personal injury lawyers' unique legal and ethical responsibilities. I began teaching this course (entitled Legal Ethics: The Plaintiffs' Lawyer) in 2011, and I am teaching it for the eighth time this spring (the spring of 2019). Hundreds of Stanford Law School students have taken this course, which is, to the best of my knowledge, the only course of its kind in the United States.

3. My scholarly work has appeared, or will soon appear, in a variety of scholarly journals, including the *Yale Law Journal*, the *Stanford Law Review*, the *Michigan Law Review*, the *University of Pennsylvania Law Review*, the *NYU Law Review*, the *Georgetown Law Journal*, and the *Georgetown Journal of Legal Ethics*, among others. My scholarship has been cited hundreds of times. My work has been excerpted in legal ethics textbooks and also cited by trial and appellate courts.

4. I am regularly called upon to provide expert commentary to news outlets. This commentary has appeared in, among others, the *The New York Times*, *The Washington Post*, *USA Today*, *The National Law Journal*, *Forbes*, Reuters, the Associated Press, the BBC, and the *LA Times*. Similarly, top scholarly journals frequently ask me to peer-review other scholars' work. I have been called upon to act as a referee for, among others, the *Yale Law Journal*, the *New England Journal of Medicine*, the *American Journal of Law and Medicine*, the *Stanford Law Review*, the *Journal of Empirical Legal Studies*, the *Law & Society Review*, and the *Journal of Consumer Policy*.

5. Before joining Stanford's faculty in 2009, I was a Research Dean's Scholar at Georgetown University Law Center. Before that, I was a litigator at Wilmer Cutler Pickering Hale and Dorr LLP. From 2003 to 2004, I was a law clerk to Judge Merrick B. Garland of the U.S. Court of Appeals for the District of Columbia Circuit, and from 2002 to 2003, I was a law clerk to Judge Henry H. Kennedy, Jr., of the U.S. District Court for the District of Columbia. Prior to law school, I worked as an Outstanding Scholar at the U.S. Department of Justice, focusing on terrorism and national

security issues. There, I was the recipient of the Attorney General's award for Superior Service. I graduated from Dartmouth College in 1997, *summa cum laude*, and from Stanford Law School in 2002, with Distinction and as a member of Order of the Coif.

6. I am admitted to the Bars of California, the District of Columbia, and Maryland. I have never been disciplined or sanctioned by any regulatory authority or academic institution for my professional or personal conduct.

7. A true and correct copy of my curriculum vitae, setting forth my experience, professional qualifications, educational background, and publication history is attached to this affidavit as Exhibit 1.

8. My academic work has, among other things, analyzed the emergence of law firms I refer to as "settlement mills."[1] Settlement mills are: (1) high-volume personal-injury law practices, that (2) engage in aggressive advertising from which they obtain a high proportion of their clients, (3) epitomize "entrepreneurial legal practices," and (4) take few, if any, cases to trial. In addition to these defining characteristics, settlement mills tend to, but do not always: (5) charge tiered contingency fees; (6) fail to engage in rigorous case screening and thus primarily represent accident victims with low-dollar (often, soft-tissue injury) claims; (7) fail to prioritize meaningful attorney-client interaction; (8) incentivize settlements via mandatory quotas imposed on their employees or by offering negotiators awards or fee-based compensation; (9) resolve cases quickly, usually within two-to-eight months of the accident; and (10) rarely file lawsuits. *See* Nora Freeman Engstrom, *Run-of-the-Mill Justice*, 22 GEO. J. LEGAL ETHICS 1485, 1492 (2009), attached hereto as Exhibit 2.

[1] Owing to my work, the term "settlement mill," is now widely used and commonly understood in the academic community. *See, e.g.*, Christopher J. Robinette, *Two Roads Diverge for Civil Recourse Theory*, 88 IND. L.J. 543, 560–64 (2013); Dana A. Remus & Adam S. Zimmerman, *The Corporate Settlement Mill*, 101 VA. L. REV. 129, 140 (2015); Benjamin H. Barton, *The Lawyer's Monopoly-What Goes and What Stays*, 82 FORDHAM L. REV. 3067, 3078–79 (2014); Donald G. Gifford, *Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous Vehicles, and Accident Compensation*, 11 J. TORT L. 71, 115 (2018); Stewart Macaulay, *New Legal Realism: Unpacking A Proposed Definition*, 6 UC IRVINE L. REV. 149, 160 (2016).

9. Over the course of my research on settlement mills, I have analyzed nearly a dozen high-volume personal-injury law firms, interviewed nearly fifty attorney and non-attorney personnel, and reviewed tens of thousands of pages of documentary evidence (including records from legal malpractice lawsuits and lawyer disciplinary proceedings). I have published four scholarly articles specifically focused on these firms, in the *Georgetown Journal of Legal Ethics*, the *NYU Law Review*, the *American University Journal of Gender, Social Policy and the Law*, and the *Journal of Insurance Fraud of America*, respectively.

10. Based on my review of deposition testimony given in this case by the KNR law firm's managing partner, Rob Nestico, as well as former attorneys who worked for the firm, there is no question that KNR qualifies as a "settlement mill" as I have defined and analyzed that term.

11. KNR is a high-volume personal injury practice. The firm handles thousands of cases each year, Nestico Tr. 134:20–136:4, 137:13–23, and the firm's individual lawyers juggle extraordinary case volumes. Indeed, one former lawyer has explained that, during his time at KNR, his caseload consisted of "around 600" cases. Phillips Tr. 28:9–17. Another guessed that, during his tenure, he juggled "somewhere in the neighborhood of four or 500" cases at any one time, Horton Tr. 210:8–21, and settled "[s]omewhere between 30 and 50 a month," on average, *id.* 225:2–4.

12. KNR engages in aggressive advertising. *See* Petti Tr. 85:24–88:4; *id.* 19:19–25; Phillips Tr. 19:16–25; 112:14–113:13; *accord* Nestico Tr. 234:3–7 (explaining that the firm spends "a lot of money" on its Akron advertising). And, it appears that, while many clients come to the firm from advertising and also from referrals from medical providers (who, themselves, advertise), very few clients come to the firm via traditional sources (attorney referrals or client word-of mouth). *See* Lantz Tr. 19:7–14 (explaining that a high volume of clients came to the firm from Town & Country).

13. KNR epitomizes an "entrepreneurial law practice," as I have described the term. By that I mean, at KNR, the practice of law is approached as a business, rather than a learned profession; efficiency and fee generation trump process and quality; and signing up clients, negotiating with insurance adjusters, and brokering (and closing) deals is prioritized over work that draws on a specialized legal education. Indicative of this entrepreneurial bent, at KNR, most client matters receive only limited investments of attorney time. Lantz Tr. 283:2–284:1 (explaining that, "[t]o meet the quotas . . . you couldn't spend that much time" and estimating that each case received "no more than five hours" of attorney time "and that might be generous"). KNR's "business model," according to one former attorney, is to "turn it over as quick as possible." Petti Tr. 87:2–87:3; *accord* Horton Tr. 205:19–20 (describing KNR as "an efficient business for sure"); Petti Tr. 193:20–22 ("[M]ost of those cases really settle themselves. Again, like I said earlier, there's very little legal stuff going on.").

14. KNR takes comparatively few cases to trial. Petti Tr. 27:4–12 (recalling that, during his time at the firm, none of his cases went to trial); Horton Tr. 222:1–7; (recalling that, of the cases he handled while at the firm, only one ended up going to trial); *accord* Lantz Tr. 279:6–9 ("We were just encouraged—you get more money in pre-litigation or you get more money settling the case than you do going to trial."). In fact, according to one former attorney: "[M]ost of us attorneys had never been to jury trial, at least for a PI case." *Id.* 364:25–365:2.

15. The firm charges clients via a contingency fee. Nestico Tr. 33:25–34:4 (explaining that the firm's billing is "99 percent . . . [i]f not 100 percent" contingency-based). Unlike most other settlement mills I have studied, KNR does not charge a tiered contingency fee (i.e., a contingency fee that escalates if the case proceeds to various stages). However, KNR does something that's functionally identical: It requires clients to "advance litigation expenses" to the tune of $2000 if the client insists on taking her case to trial. Lantz Tr. at 363:16–25. This requirement has the same

effect as the tiered fee, as both mechanisms subtly discourage clients from insisting on their day in court. *Compare* Engstrom, 22 GEO. J. LEGAL ETHICS at 1526 (explaining how "tiered fees can be used to dissuade a client from insisting on her day in court"), *with* Lantz Tr. at 363:16–25 (explaining how, at KNR, she was taught to warn clients that they would have to "advance litigation expenses if we went further," recognizing that this warning would be "persuasive" and "encourage [the client] to settle" because "they came to us because they couldn't afford a lawyer" and so even if "they wanted to go to litigation, they couldn't pay the $2000 litigation expenses"); *id.* 365:18–366:12 (describing the threatened $2000 fee as "our way to get them to take settlements"); *id.* 503:4–23 (further detailing how the obligation to front $2000 in litigation expenses was strategically used to dissuade clients from taking claims to trial).

16. The firm does not engage in rigorous case screening. To the contrary, according to one former attorney, KNR "took everything that we could." Horton Tr. at 220:16–23; *accord* Phillips Tr. 36:4–13 (describing the firm's open-arms policy); *id.* 40:6–19 (describing the firm's ethos as "I want them all"). As is also typical of settlement mills, the firm primarily represents accident victims with low-dollar claims. Petti Tr. 26:2–10 (recalling that the "typical case settled for less in terms of fees than $2000"); Lantz Tr. 279:4–9 ("I mean they were low value cases."). Indeed, the great majority of the firm's cases involve minor soft-tissue injuries, such as sprains, strains, contusions, and whiplash. Phillips Tr. 36:14–37:24; Lantz Tr. 157:6–10; 434:3–8.

17. KNR does not prioritize meaningful attorney-client interaction. As one lawyer put it: "[O]n the volume that we were dealing with, you can't differentiate between cases. You don't see your clients half the time." Lantz Tr. 153:13–16. Further, when there is attorney-client interaction, that interaction tends to be paternalistic, rather than participative. Lawyers at KNR are taught "persuasive tactics" to "encourage[]" clients "to settle." *Id.* 363:16–25. According to one former

lawyer, these persuasive tactics go so far as "shov[ing] the settlements down the client's throat." *Id.* 113:15–21.

18. KNR imposes quotas on its attorneys. These quotas require attorneys to generate a certain sum (typically, $100,000) in fees per month. Phillips Tr. 28:18–29:12. As one lawyer recalled: "The most overriding thing was to generate $100,000 in fees every month. . . . I cannot think of anything else that they ever said other than generate fees. And the goal was $100,000 a month and you've got to meet the goal." Petti Tr. 21:18–25. According to that lawyer, the consequence for failure to generate $100,000 in fees per month was "[a]nything up to and including termination. *Id.* 22:12–15; *accord* Lantz Tr. 55:17–56:3 (stating that attorneys "had to meet the goal each month of $100,000, collecting $100,000 in attorney fees"); *id.* 60:5–9 ("I mean I would be to the point of tears some months because I was so worried I wasn't going to hit the 100 grand goal."); *id.* 37:17–20 ("[W]e had a goal to reach each month in the Columbus office. If we didn't bring in $100,000 each month in attorneys fees, we were on probation and then we would get fired."). The firm also offers negotiators fee-based compensation. Phillips Tr. 33:10–33:18 ("[Y]ou got paid percentages, based on how many fee dollars you came up with. Then, once you hit certain markers in fee dollars during the year, that percentage would go up."); Horton Tr. 203:23–25 (explaining that compensation consisted of a base salary and a bonus that was dependent on fee generation); *accord* Nestico Tr. 61:5–16; 148:8–154:10 (referring to the requirements as "performance goals," while agreeing that employees are financially rewarded for fee generation).

19. Finally, like other settlement mills I have studied, KNR rarely files lawsuits. Research shows that even low-status plaintiffs' attorneys file suit in a significant percentage of claims: approximately 50% of the time. Yet, at KNR, lawsuits were filed far less often—by some accounts, less than 10% of the time. *See* Lantz Tr. 282:20–283:1 (estimating that, of her cases, approximately 5% went into litigation); Petti Tr. 27:4–12 (recalling that, of his cases, "less than five percent" ever even went to

the litigation department); *cf.* Horton Tr. 224:21–225:2 (recalling that perhaps 10% of his cases went into litigation). As one former lawyer bluntly explained, in her experience, KNR attorneys went to great lengths to promote settlement, rather than full-dress litigation:

> Our goal was to settle cases. If you couldn't—no. They wanted—even when the cases got to litigation here, all of them settle, regardless if you had to shove the settlements down the client's throat, you settled the case . . . .

Lantz Tr. 113:15–21; *see also id.* 277:14–278:22 (identifying that the many obstacles that had to be cleared before a lawsuit would be filed, while observing that "it was really hard to get a case into litigation" and that litigation would only be considered "if it's a denial . . . or [the insurers'] offer is really, really low, and it has to be obscenely low").

20. Until I published my first article shining a light on settlement mills in 2009, these firms had not been the subject of any serious study, or even significant commentary. As I explained in my first article entitled *Run-of-the-Mill Justice*:

> Over the past three decades, no development in the legal services industry has been more widely observed and less carefully scrutinized than the emergence of firms I call "settlement mills"—high-volume personal injury law practices that aggressively advertise and mass produce the resolution of claims, typically with little client interaction and without initiating lawsuits, much less taking claims to trial. Settlement mills process tens of thousands of claims each year. Their ads are fixtures on late-night television and big-city billboards. But their operations have been largely ignored by the academic literature, leaving a sizable gap in what is known about the delivery of contemporary legal services in the United States.

Engstrom, 22 GEO. J. LEGAL ETHICS at 1486.

21. Settlement mills did not exist prior to 1977, when the U.S. Supreme Court decided *Bates v. State Bar of Arizona*, a landmark opinion that invalidated state bans on attorney advertising as incompatible with the First Amendment and, in so doing, opened the floodgates to attorney advertising. Much of what makes settlement mills distinctive is traceable to the unique way they obtain clients via aggressive, high-volume advertising and thus, to the *Bates* decision. Advertising is primarily responsible for the fact that settlement mills represent primarily those who have sustained

minor injuries, as well as additional characteristic results of these firms' practices, as described below.

22. Advertising works well for settlement mills precisely because these firms do not make a significant investment into each matter. Given that little time or effort will be expended, *see supra* ¶ 13, settlement mills can afford to represent clients with small or borderline claims that other firms might reject as unprofitable, *see supra* ¶ 16. This, in turn, means that settlement mills' screening processes can be cursory: they need not and typically do not expend significant effort reviewing cases prior to retention. *Id.*

23. Settlement mills afford their aggressive advertising campaigns by maintaining high volumes of clients (volumes which the ads, in turn, supply), *see supra* ¶ 11, and then harnessing the resulting economies of scale by mechanizing case processing and cutting corners wherever feasible, *see supra* ¶ 13.

24. There is also another dynamic at work, traceable to settlement mills' ability to make an end-run around the "reputational imperative." The "reputational imperative" describes the fact that most personal injury lawyers *must* maintain a good reputation among past clients and fellow practitioners in order to obtain referrals and thus generate future business. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1523. Most personal injury lawyers obtain the majority or vast majority of new clients through reputation-based channels (i.e., recommendations from past clients and/or referrals from fellow practitioners). *See* HERBERT M. KRITZER, RISKS, REPUTATIONS, AND REWARDS 221–22 (2004); Stephen Daniels & Joanne Martin, *It Was the Best of Times, It Was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas*, 80 TEX. L. REV. 1781, 1789 (2002). As a consequence, for the vast majority of lawyers, a good reputation is the cornerstone of—and a prerequisite to—financial success. The reputational imperative therefore constrains attorney incentives in individual cases. For reasons discussed below at *infra* ¶ 31, it might be in the contingency fee lawyer's short-

term financial interest to settle cases quickly and cheaply. Due to the reputational imperative, however, many lawyers will maximize profits over the long haul if they take their time, do quality work, and obtain full value for their clients.

25. Aggressive attorney advertising throws a wrench into that delicate system. Aggressive advertising tends to tarnish an attorney's reputation, and it stigmatizes the lawyer within the legal profession. But, at the same time, and critically, aggressive advertising relaxes the reputational imperative. If an attorney obtains the majority or vast majority of his business via paid advertising, rather than by referrals or word-of-mouth, he need not have a sterling reputation among fellow practitioners or past clients. He requires only a big advertising budget and a steady supply of unsophisticated consumers from which to draw. In this way, aggressive advertising reduces the long-term cost of economic self-dealing.

26. Additionally, advertising is intimately bound with the type of clients settlement mills represent. Television advertising for legal services disproportionately attracts clients who are unsophisticated, relatively uneducated, and who come from socioeconomically disadvantaged backgrounds. *See* AM. BAR ASS'N, FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY 28 (1994) (reporting that the poor are significantly more likely to choose a lawyer on the basis of attorney advertising as compared to their wealthier counterparts); Michael G. Parkinson & Sabrina Neeley, *Attorney Advertising: Does It Meet Its Objective?*, 24 SERVICES MARKETING Q. 17, no. 3, 2003, at 17, 24–26 (finding, based on a survey of more than 1500 respondents, that attorney "advertising is most likely to attract lower income and lower education non-Caucasian clients").

27. Not surprisingly, then, settlement mills—firms that obtain clients from aggressive advertising—tend to represent individuals who are poor, relatively uneducated, and/or who belong to historically disadvantaged ethnic and racial minority groups. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1516; *cf.* Lantz Tr. 156:4–6; 157:8–9; (explaining that most KNR clients are "very low

socioeconomic status"); Nestico Tr. 477:11–25 (explaining that "a lot" of KNR's clients come from lower socioeconomic backgrounds); Horton Tr. 432:6–18 ("We had a lot of African-American clients . . . ."); Petti Tr. 172:12–15 (describing the demographics of KNR's clientele as: "Lots of minorities. High percentage of minorities."). Given persistent social hierarchies, these clients are also personally acquainted with few lawyers and know comparatively little about the civil justice system. *Accord* Lantz Tr. 192:13–16 (explaining that the majority of KNR's clients "don't have the network of family lawyers that they would refer to").

28. The widespread acceptance of contingency fees—and particularly tiered contingency fees—has also contributed to settlement mills' rise.

29. The vast majority of personal injury claimants pay their attorneys on a contingent-fee basis. *See* Richard W. Painter, *Litigating on A Contingency: A Monopoly of Champions or A Market for Champerty?*, 71 CHI.-KENT L. REV. 625, 697 n.3 (1995) (collecting sources and putting the figure, for the tort system generally, at 95 percent); Insurance Research Council, *Motivation for Attorney Involvement in Auto Injury Claims* 27 (Nov. 2016) (reporting that, in its 2016 survey, 73% of represented auto accident claimants reported compensating their lawyer on a contingency fee basis).

30. The contingency fee has numerous advantages. First, contingency fees provide a "key to the courthouse" for impecunious clients. Second, because a lawyer is paid only if she succeeds—and because, too, non-meritorious claims often falter—contingency fees (generally) incentive careful case screening, i.e., the scrutiny of claims prior to acceptance. By incentivizing this screening (often undertaken at great expense), contingency fees cut down on fraudulent and frivolous litigation. Third, by delaying attorney payment and expense reimbursement until case resolution, the contingency fee works to expedite litigation. Fourth and finally, by tethering the fortunes of lawyer and client, contingency fees limit principal-agent conflicts. As Judge Frank Easterbrook has explained: "The contingent fee uses private incentives rather than careful monitoring to align the

interests of lawyer and client. The lawyer gains only to the extent his client gains. This interest-alignment device is not perfect . . . . But [an] imperfect-alignment of interests is better than a conflict of interests, which hourly fees may create." *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) (Easterbrook, J.).

31. Yet, the contingency fee also has drawbacks. A significant drawback is that, though the contingency fee aligns the interests of lawyer and client, the alignment is only partial. (This is what Judge Easterbrook is referring to when he says the alignment is "not perfect.") The residual misalignment tempts some lawyers to seek a "quick kill"—to work too little and settle too soon, to the client's significant detriment. Elihu Inselbuch, *Contingent Fees and Tort Reform: A Reassessment and Reality Check*, 64 LAW & CONTEMP. PROBS. 175, 180 (2001); *see also* Nora Freeman Engstrom, *Lawyer Lending: Costs and Consequences*, 63 DEPAUL L. REV. 377, 426–27 (2014) ("[T]he contingency fee tempts some lawyers to skimp on case preparation."); Ted Schneyer, *Legal-Process Constraints on the Regulation of Lawyers' Contingent Fee Contracts*, 47 DEPAUL L. REV. 371, 393 (1998) ("[T]he chief agency problem posed by percentage contingent fees is the danger that lawyers will invest too little time to develop their cases fully enough to maximize their clients' net recovery.").

32. Settlement mills tend to exploit this misalignment of incentives. The problem is as follows: Clients who have agreed to pay a flat contingency fee are indifferent to incremental additional expenditures of attorney time and effort. While clients do bear some additional direct costs as a case progresses (such as court costs, travel costs, expert witness fees, and the like), from the client's perspective, attorney time is costless: The more of it the better. It is in the attorney's short-term economic interest, meanwhile, to secure the maximum fee with the minimum expenditure of time and effort. To accomplish this goal, attorneys have an incentive to invest in a claim only up to the point at which further investment is not profitable for the firm—a level that may be far below the investment needed to produce the optimal award for the client. Particularly when the plaintiff's

injury is modest and the potential upside is limited, rather than squeezing every dollar out of every case, it is in an attorney's short-term financial interest to seek a high volume of cases and quickly process each, expending minimal time and resources on case development. Or, has F.B. MacKinnon wrote in his classic book on the contingent fee: "It is financially more profitable to handle a mass of small claims with a minimum expenditure of time on each than it is to treat each as a unique case and fight for each dollar of the maximum possible recovery for the client." F.B. MACKINNON, CONTINGENT FEES FOR LEGAL SERVICES: PROFESSIONAL ECONOMICS AND RESPONSIBILITIES 198 (1964). This, of course, precisely describes settlement mills' business model. As one Louisiana settlement mill lawyer explained in his firm's policy manual: "Ancient Law of the Ages: The longer we have the case, the more work we do = the less return to the office." Or, as another former settlement mill lawyer put it in an interview: "They had sort of a theory of get whatever you can because there's such a volume . . . even if you're getting $1,000 on 500 cases, that's half a million dollars." By trading in small claims with limited potential recoveries, settlement mills exploit the contingency fee's well-documented structural flaw.

33. Quotas, commonly imposed on settlement mill practitioners, can exacerbate the above dynamic by further encouraging line-level attorneys to settle cases quickly, even when the settlement may not be in the individual client's best interest. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1501 (explaining that quotas and fee-based awards "put the focus on the *number* of files closed or *aggregate* returns, as opposed to obtaining a fair value for each individual client"); *id.* at 1538 (explaining that quotas "put the emphasis on turning claims over, rather than maximizing their value"); *cf.* Lantz Tr. 283:24--284:1 ("To meet the quotas, yeah, you couldn't spend that much time. I would say no more than five hours, and that might be generous."). The temptation to settle can be particularly strong if a line-level attorney, who is subject to a quota or who relies on bonus- or fee-based compensation, loses "credit" for a case whenever she refers that case for further litigation. *Cf.* Horton Tr. 224:9–18

("Q: So if you were a prelitigation attorney and a case went into—went to [the] litigation department, and eventually resolved . . . would you still get credit for those fees[?] A: No.").

34. My research has also revealed that, at settlement mills, no-offer cases are extremely rare. As I have explained in my published work: "Although some clients with dubious claims are 'dumped' by settlement mills after retention, very few cases that proceed to negotiation result in no offer from the insurance company." Engstrom, 22 GEO. J. LEGAL ETHICS at 1517, n.207 (collecting citations); *id.* at 1517 ("[S]ettlement mills almost always obtain *something* for their clients . . . ."). The same was, apparently, true at KNR. As a former lawyer testified:

> Q: Would you agree that most of the cases did resolve in some recovery for the client?
> A: Yep. Yes.
>
> Q: Would you agree that very few cases resulted in no recovery at all?
> A: I would agree.
>
> Q: What percentage would you estimate?
> A: Less than five percent.

Petti Tr. 26: 11–18.

35. The relative paucity of no-offer cases suggests that, unlike conventional personal injury lawyers, who take on significant risk when agreeing to represent a client via a contingency fee, settlement mill representation entails little, if any, risk. *Compare* Nora Freeman Engstrom, *A Dose of Reality for Specialized Courts: Lessons from the VICP*, 163 U. PA. L. REV. 1631, 1646–47 (2015) (explaining that, of medical malpractice claimants who retain conventional counsel, "approximately 40% . . . never recover a penny"—thus suggesting that, when a conventional contingency fee lawyer agrees to take on a new client to pursue that client's medical malpractice claim, the lawyer takes on significant risk), *with* Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805, 828 (2011) (explaining that, at settlement mills, [i]nsurers will offer something (as opposed to an outright denial) for nearly every claim"—thus suggesting that, when a settlement mill lawyer agrees

to take on a new client to pursue that client's auto accident claim, the lawyer takes on little, if any, risk).

36. Another distinguishing characteristic of settlement mills is the unique manner in which their cases are resolved. Instead of an individualized and fact-intensive analysis of each case's strengths and weaknesses alongside a careful study of case law and comparable jury verdicts, my research has shown that settlement mill negotiators and insurance claims adjusters assign values to claims with little regard to individual fault, based on agreed-upon formulas, typically based on lost work, type and length of treatment, property damage, and/or medical bills. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1532–34; *cf.* Lantz Tr. 380:20–22 (explaining that, in her experience at KNR, the "evaluation" of a client's claim for settlement purposes was based on "the insurance company [and] the type of treatment"); Petti Tr. 194:10–15 ("I mean, you see the medical treatment and how long it lasted, what the nature of it is with the nature of the impact[,] and you already have a general range where this case is going to go, unless there's some other compelling reason otherwise."); *id.* 193:20–23 ("[M]ost of those cases really settle themselves. Again, like I said earlier, there's very little legal stuff going on. You know, everybody—it's a template sort of.").

37. To the extent plaintiffs' lawyers key settlements to medical bills or type or length of medical treatment, lawyers (paid via contingency fees) face a financial incentive to ensure that a client's medical bills are large, which often entails ensuring that the client's medical treatment is lengthy and intensive. This, in turn, incentivizes unscrupulous plaintiffs' lawyers to promote "medical buildup," i.e., the practice of seeking extra, unnecessary medical treatment to inflate a plaintiff's claimed economic loss. *See* Nora Freeman Engstrom, *Retaliatory RICO and the Puzzle of Fraudulent Claiming*, 115 MICH. L. REV. 639, 651 (2017).

38. Medical buildup is a serious problem. Indeed, studies consistently indicate that injury exaggeration—and the overtreatment for certain injuries—is the most prevalent form of litigation

abuse. Sharon Tennyson & Pau Salsas-Forn, *Claims Auditing in Automobile Insurance: Fraud Detection and Deterrence Objectives*, 69 J. RISK & INS. 289, 289–90 (2002) (reporting that all relevant studies conclude that "the vast majority of suspicious claims involved potential buildup" rather than the outright manufacture of claims). A potential indicator of these trends is that represented claimants consistently seek more, and more expensive, medical care than unrepresented claimants. *See* Insurance Research Council, *Attorney Involvement in Auto Injury Claims* 3–4, 19–20, 22, 27 (July 2014) (reporting that, as compared to unrepresented claimants, similarly-injured represented claimants accrue higher charges for medical treatments and are "more likely to receive treatment at pain clinics" and from chiropractors); *id.* at 21 (reporting that, of represented bodily injury claimants with neck or back sprains or strains as their most serious injury, 18% reported more than twenty-five visits to a general physical therapist, while 33% reported more than twenty-five visits to a general chiropractor). Additionally, in surveys, a sizable proportion of represented claimants (more than one-quarter) report that their attorneys offer advice regarding which medical care provider to visit. Insurance Research Council, *Motivation for Attorney Involvement in Auto Injury Claims* 24 (Nov. 2016) (reporting that, of represented auto accident claimants, 28% reported that their attorney offered advice on which doctor to utilize).

39. At KNR, there is evidence that lawyers went out of their way to ensure that clients received intensive medical treatment. Further, there is evidence that lawyers went out of their way to ensure that clients received this intensive medical treatment, even when clients didn't need the treatment, ask for the treatment, want the treatment, or even physically benefit from the treatment. The colloquy below, involving former KNR attorney Amanda Lantz, is instructive:

> Q: . . . . My question is did you tell your client to go in there and ask to have their back adjusted if their ankle hurt? Did you tell them that?
> A: It depends on the case.
>
> Q: So you would do that on some cases? You would tell your client to get their back adjusted if they only hurt their ankle?

A: It depends. Yeah. Sometimes, yes and sometimes, no.

Q: . . . . You've done that before?
A: Right.

Lantz Tr. 199:6–18. Other deposition testimony is in accord. *See, e.g.*, Phillips Tr. 70:2–15 ("I had more than one client, . . . in fact, I would easily say dozens, and, in fact, possibly, more, that would say, 'I didn't even want the damn injections. I don't know why I was sent in there. I never asked for them.'"); Lantz Tr. 196:24–197:16 (explaining that she encouraged clients to "'Keep showing up to treatment,'" even though clients "knew that the treatment was a futile effort"); *id.* 247:13–16 (explaining that "there were plenty of conversations that I had with clients that they didn't want to get chiro treatment, but we had to still refer them into Town & Country").

40. Rather than fulfilling clients' demands or hastening clients' physical recovery, there is evidence that lawyers went out of their way to ensure that clients received intensive medical treatment for two troubling, self-serving reasons. Namely, there is evidence that lawyers encouraged clients to seek particular intensive treatments because (i) there was an understanding that intensive medical treatment would boost claims' settlement value (and, by extension, the firm's contingency fee), and, additionally, (ii) KNR wanted (or perhaps needed) to please its referral partners. Former KNR attorney Amanda Lantz explained:

> So the direction that we had at the firm was make sure the client gets to a chiro, period. No matter what, get them into a chiro. . . . So they would tell us––our direction from our supervisors would be, get them into a chiro. Because, one, it helped our referrals back and forth, even if they didn't "need treatment" or think they needed treatment, then it still showed that we were making an effort to meet the referral quota that we had with Town & Country.

Id. 270:7–22; *see also id.* 396:17–22 (explaining that treatment was beneficial because it would "increase the value of the case"); *id.* 197:14–16 ("Remember, we have to tell them, 'It increases your value to keep treating. Keep showing up to treatment.'"); *id.* 27:15–19 ("[T]he direction at the

Columbus firm was if our client wanted an M.D., send them to [Ghoubrial]. Because [Ghoubrial] charges a lot more for his treatment, which means it increase[s] the value of the case.").

41. My final concern vis-à-vis settlement mills is the one that gives me the greatest pause. It is that, with their high volumes, minimal attorney-client interaction, strict quotas, cookie-cutter procedures, and reluctance to file lawsuits and (when warranted) take claims to trial, settlement mills do not offer conventional legal services. Settlement mill clients, however—who are, for the most part, poor, unsophisticated, or otherwise marginalized, *see supra* ¶ 27—sign up for settlement mill services without knowing that a distinct form of legal service is on offer, and worse, in the shadow of ads that actively cultivate a contrary impression. This, in turn, means that while settlement mills have traded traditional tort for a streamlined form of compensation resting on routine and rules-of-thumb, not all settlement mill clients have agreed to—or are even aware of—the exchange.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

[signature] 5/14/19

Signature of Affiant Date

See next page

Sworn to and subscribed before me on _____ at _____, Stanford, California.

_____

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 14th day of May, 2019, by Nora Freeman Engram,
~~proved to me on the basis of satisfactory evidence to be the~~ person(s) who appeared before me.

C. PARIS
COMM. #2274653
Notary Public - California
Santa Clara County
My Comm. Expires Jan. 7, 2023

(Seal) Signature

NORA FREEMAN ENGSTROM

559 Nathan Abbott Way
Stanford, CA 94305
(650) 736-8891
nora.engstrom@law.stanford.edu

LEGAL EXPERIENCE

STANFORD LAW SCHOOL

Professor of Law (with Tenure) and Deane F. Johnson Faculty Scholar, 2014–present
Associate Dean for Curriculum, 2016–2018
Associate Professor, 2012–2014
Assistant Professor, 2009–2012

- *Classes Taught*: Tort Law; Legal Ethics: The Plaintiffs' Lawyer; Beyond the Common Law: Tort Reform and Tort Alternatives; Responsibility for Risk: Perspectives on Liability Insurance; Discussions in Ethical and Professional Values
- Reporter, Third Restatement of Torts (Concluding Provisions)
- Frequent commentator on matters of tort law, legal ethics, and complex litigation, including in: *The New York Times*, *Washington Post*, *Chicago Tribune*, *USA Today*, *Forbes*, *Congressional Quarterly*, *National Law Journal*, *Los Angeles Times*, Associated Press, CNN, BBC, and ABC News

GEORGETOWN UNIVERSITY LAW CENTER

Research Dean's Scholar, 2007–2009

WILMER CUTLER PICKERING HALE & DORR, LLP

Litigation Associate, 2005–2007
Summer Associate, 2001 & 2002

- Represented clients before various appellate and trial courts.

HON. MERRICK B. GARLAND, U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT

Law Clerk, 2003–2004

HON. HENRY H. KENNEDY, JR., U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Law Clerk, 2002–2003

U.S. DEPARTMENT OF JUSTICE, TERRORISM AND VIOLENT CRIME SECTION

Outstanding Scholar, 1997–1999

- Worked on domestic terrorism and national security issues.
- Recipient of the Attorney General's Award for Superior Service, 1998.

EDUCATION

STANFORD LAW SCHOOL

J.D. with distinction, 2002; Order of the Coif

- *Stanford Law Review*, 2000–2002; Articles Editor, 2001–2002
- Co-President, Stanford Law School Student Body, 2000–2001

EXHIBIT 1

DARTMOUTH COLLEGE

A.B. in Anthropology, *summa cum laude*, 1997; Phi Beta Kappa, National Merit Scholar

CASEBOOKS

LEGAL ETHICS (Foundation Press, 7th ed. 2016), *with* Deborah L. Rhode, David Luban, & Scott L. Cummings

TORT LAW AND ALTERNATIVES: CASES AND MATERIALS (Foundation Press, 11th ed., forthcoming 2021), *with* Marc A. Franklin, Robert L. Rabin, Michael D. Green, and Mark A. Geistfeld

SCHOLARLY PUBLICATIONS

The Lessons of Lone Pine, 129 YALE L.J. __ (forthcoming, 2019)

The Trouble with Trial Time Limits, 160 GEO. L.J. 933 (2018)

When Cars Crash: The Automobile's Tort Law Legacy, 53 WAKE FOREST L. REV. 293 (2018)

- Peer reviewed at Jotwell.com as among "the best new scholarship relevant to the law." Review available at https://torts.jotwell.com/you-cant-spell-america-without-c-a-r/

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- Peer reviewed at Jotwell.com as among "the best new scholarship relevant to the law." Review available at https://health.jotwell.com/unpacking-the-shortcomings-of-the-vaccine-injury-compensation-program/.nora e

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Attorney Advertising and the Contingency Fee Cost Paradox, 65 STAN. L. REV. 633 (2013)

An Alternative Explanation for No-Fault's "Demise," 61 DEPAUL L. REV. 303 (2012)

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- Peer reviewed at Jotwell.com as among "the best new scholarship relevant to the law." Review available at https://torts.jotwell.com/late-night-law-firms/.
- Quoted in *Rish v. Simao*, 368 P.3d 1203 (Nev. 2016)
- Selected for Branstetter New Voices in Civil Justice Workshop, Vanderbilt Law School

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WORKING PAPERS

WHY NO FAULT FAILS (book manuscript)

Competition and Contingency Fees

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OTHER WRITINGS

Stanford Law Professors on the Lawsuit Against Gun Manufacturers in the Wake of the Sandy Hook Massacre, LEGAL AGGREGATE, Mar. 14, 2019 (with David M. Studdert), *available at* https://law.stanford.edu/2019/03/14/stanford-law-professors-on-sandy-hook-victims-relatives-lawsuit-against-gun-manufacturers/

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http://www.nationallawjournal.com/id=1202730681760/OpEd-Heeding-Vaccine-Courts-Failures?slreturn=2015080819475

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"The Receding Tide of Medical Malpractice Litigation: Part 1 – National Trends," JOTWELL REV., Apr. 9, 2014, *available at* http://torts.jotwell.com/the-only-thing-we-have-to-fear-is-fear-itself-how-physicians-exaggerated-conception-of-medical-malpractice-liability-has-become-the-real-problem/

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Bridging the Gap in the Justice Gap Literature, Review of Joanna Shepherd, "*Justice in Crisis: Victim Access to the American Medical Liability System*," JOTWELL REV., May 6, 2013, *available at* http://torts.jotwell.com/bridging-the-gap-in-the-justice-gap-literature/

Damage Caps – and Why Fein *May No Longer Be Good*, Guest Blog for the Torts Prof Blog, Dec. 5, 2012, *available at* http://lawprofessors.typepad.com/tortsprof/2012/12/nora-freeman-engstrom-damage-caps-and-why-fein-may-no-longer-be-good.html

Shining a Light on Shady Personal Injury Claims, 2 J. OF INS. FRAUD OF AM. 13 (2011)

SELECT APPELLATE BRIEFS

Brief of Legal Ethicists as *Amici Curiae* in Support of Respondents, U.S. Supreme Court, *Nat'l Inst. of Family & Life Advocates v. Bacerra*, Case No. 16-1140 (Feb. 2018)

Brief of Professors of Law as *Amici Curiae* in Support of Petitioners, Conn. Sup. Ct., *Soto v. Bushmaster Firearms Int'l, LLC*, Case No. 19832 (Apr. 2017)

Brief for Human Rights Campaign et al., as *Amici Curiae* in Support of Appellants, Conn. Sup. Ct., *Kerrigan v. Comm'r of Public Health*, Case No. 17716 (Jan. 2007)¥

Brief for Equality Maryland, Inc. et al., as *Amici Curiae* in Support of Appellees, Md. Ct. of App., *Conaway v. Polyak*, Case No. 24-C-04-005390 (Oct. 2006) (Counsel of Record)[¥]

Brief for the ACLU et al., as *Amici Curiae* in Support of Petitioners, U.S. Supreme Court, *Lopez v. Gonzales*, Case Nos. 05-547, 05-7664 (June 2006)[¥]

Brief for Professors of Law as *Amici Curiae* in Support of Respondents, U.S. Supreme Court, *Gonzales v. Oregon*, Case No. 04-623 (July 2005)[¥]

SELECT PRESENTATIONS

Commentator, 25th Annual Clifford Symposium, DePaul Law School (Apr. 2019)

"Trial Time Limits: Behind the Scenes and Beyond the Statistics," Civil Jury Project Roundtable, NYU School of Law (Apr. 2019)

"The Lessons of Lone Pine," University of Virginia Faculty Workshop (Mar. 2019)

"The Lessons of Lone Pine," Stanford Law School Faculty Workshop (Mar. 2019)

"The Lessons of Lone Pine," Brooklyn Law School Faculty Workshop (Feb. 2019)

"The Lessons of Lone Pine," Changes in the Nature of Proof: Epidemiology and Mass Torts, MDL at 50, Center on Civil Justice at NYU School of Law (Oct. 2018)

"When Cars Crash: The Automobile's Tort Law Legacy," Wake Forest Law Review Symposium, Wake Forest Law School (Nov. 2017)

"The Diminished Trial," Fordham Law Review Ethics Colloquium, Fordham Law School (Oct. 2017)

"The Trouble with Trial Time Limits," Third Annual Civil Procedure Workshop, University of Arizona, Rogers College of Law (Oct. 2017)

"The Trouble with Trial Time Limits," Stanford Law School Faculty Workshop (Aug. 2017)

"The Trouble with Trial Time Limits," Legal Ethics Schmooze, UCLA School of Law (July 2017)

"Health Courts and the VICP," ABA Section on Dispute Resolution Spring Conference, San Francisco, California (Apr. 2017)

[¥] These four briefs were written while I was an Associate at Wilmer Hale.

"Civil Justice Under Siege: Tort Reform in its Fourth Decade, Gaining Momentum While Changing Course," University of Michigan Law Review Author Workshop (Mar. 2017)

"The First Thing You Do Is Kill All the Lawyers," The Inner Circle of Advocates, San Francisco (Feb. 2017)

"Retaliatory RICO and the Puzzle of Fraudulent Claiming," North American Workshop in Private Law Theory IV, Fordham Law School (Nov. 2016)

"Retaliatory RICO and the Puzzle of Fraudulent Claiming," Loyola L.A. Law School Faculty Workshop (Oct. 2016)

"Veterans' Courts in Context," Veterans Treatment Court Conference, Stanford Law School (May 2016)

"Retaliatory RICO and the Puzzle of Fraudulent Claiming," Workshop on Courts and the Legal Process, Columbia Law School (Mar. 2016)

"Retaliatory RICO and the Puzzle of Fraudulent Claiming," New York Torts Group, NYU Law School (Mar. 2016)

"Retaliatory RICO and the Puzzle of Fraudulent Claiming," Stanford Law School Faculty Workshop (Mar. 2016)

7th Annual Stanford International Junior Faculty Forum, Judge and Commentator, Stanford Law School (Oct. 2015)

"Retaliatory RICO and the Puzzle of Fraudulent Claiming," Legal Ethics Schmooze, Stanford Law School (July 2015)

Participant, Comptroller General Forum on Additive Manufacturing, U.S. Government Accountability Office (GAO), Washington, D.C. (Oct. 2014)

- The Forum culminated in the GAO's publication of REPORT TO THE CHAIRMAN, COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY, HOUSE OF REPRESENTATIVES, HIGHLIGHTS OF A FORUM: 3D PRINTING: OPPORTUNITIES, CHALLENGES, AND POLICY IMPLICATIONS OF ADDITIVE MANUFACTURING, GAO-15-505SP (2015), *available a*t http://www.gao.gov/assets/680/670960.pdf

"The Plaintiffs' Bar: Where It's Been, Where It's Going," The Inner Circle of Advocates, Washington, D.C. (Aug. 2014)

"No-Fault's Failure and the Persistent Durability of Tort," AALS Annual Meeting, Insurance Law and Torts Compensation Systems Joint Program, New York, New York (Jan. 2014)

"Medical Malpractice Litigation: How Does It Work? What Do We Know? How Are Radiologists at Risk?," Stanford Medical School (Nov. 2013)

"Lawyer Lending: Costs and Consequences," Works-in-Progress Roundtable for Third-Party Funding Scholars, Washington & Lee Law School (Nov. 2013)

6th Annual Harvard-Stanford International Junior Faculty Forum, Judge and Commentator, Harvard Law School (Oct. 2013)

"Lawyer Lending: Costs and Consequences," Stanford Law School Faculty Workshop (Aug. 2013)

"Lawyer Lending: Costs and Consequences," Legal Ethics Schmooze, Fordham Law School (June 2013)

"Potential Tort Liability for 3-D Printing," Roundtable on 3-D Printing, Stanford Center for Internet and Society (May 2013)

"Lawyer Lending: Costs and Consequences," 19th Annual Clifford Symposium, DePaul Law School (Apr. 2013)

"Attorney Advertising and the Contingency Fee Cost Paradox," Stanford Law Review Author Series (Feb. 2013)

"Re-Re-Financing Civil Litigation: How Lawyer Lending Might Remake the American Litigation Landscape, Again," UCLA Law Review Symposium (Jan. 2013)

"Attorney Advertising and the Contingency Fee Cost Paradox," Stanford Law School Faculty Workshop (Dec. 2012)

5th Annual Harvard-Stanford International Junior Faculty Forum, Judge and Commentator, Stanford Law School (Nov. 2012)

"Attorney Advertising and the Contingency Fee Cost Paradox," International Legal Ethics Conference, Banff, Alberta (July 2012)

"Run-of-the-Mill Justice," Stanford Center for Ethics in Society, Stanford University (May 2012)

"An Alternative Explanation for No-Fault's 'Demise,'" Berkeley Law School Faculty Workshop (Feb. 2012)

"An Alternative Explanation for No-Fault's 'Demise,'" Stanford Law School Faculty Workshop (Jan. 2012)

4th Annual Harvard-Stanford International Junior Faculty Forum, Judge and Commentator, Harvard Law School (Nov. 2011)

"An Alternative Explanation for No-Fault's 'Demise,'" Faculty Speaker Series, Loyola Chicago Law School (Sept. 2011)

"An Alternative Explanation for No-Fault's 'Demise,'" 17th Annual Clifford Symposium, DePaul Law School (Apr. 2011)

"Sunlight and Settlement Mills," New Voices in Civil Justice Scholarship, Vanderbilt Law School (Apr. 2011)

"Sunlight and Settlement Mills," Bay Area Civil Procedure Forum, Hastings Law School (Mar. 2011)

"Settlement Mills," Lecture in "Cutting-Edge Issues in Professional Responsibility," Berkeley Law School (Mar. 2011)

"Advertising and Access," AALS Annual Meeting, Section on Professional Responsibility, San Francisco (Jan. 2011)

"Run-of-the-Mill Justice," International Legal Ethics Conference (July 2010)

"Run-of-the-Mill Justice," Legal Studies Workshop, Stanford Law School (Jan. 2010)

"Run-of-the-Mill Justice," Junior Faculty Speaker Series, Catholic University's Columbus School of Law (Mar. 2008)

UNIVERSITY SERVICE

LAW SCHOOL COMMITTEES:

Chair, Curriculum Committee, 2016–2018

Chair, Admissions Committee, 2015–2016 (member 2013–2016, 2018–present)

Chair, Clerkship Committee, 2013–2015 (member 2009–2015)

Member, Public Interest Committee, 2009–2012

OTHER:

Stanford University Faculty Fellow, 2011–2013

Stanford University Faculty Affordability Task Force, 2018–present (Chair of Subcommittee on Non-Housing Affordability)

Member, Stanford University Committee on Lecturers, 2017-2018

Stanford University, Voice and Influence Program Participant, 2011–2012

Member, Advisory Board, Stanford Public Interest Law Foundation, 2010–2012

Guest Lecturer (Torts), *Thinking Like a Lawyer*, 2012–2015

Guest Lecturer (Torts), LeadAmerica/Envision, 2013–present

Member, Steering Committee, Stanford Center on the Legal Profession, 2009–present

Faculty Advisor, William A. Ingram Inn of Court, 2009–2013

Stanford University, Diversifying Academia, Recruiting Excellence (DARE) Faculty Resource Advisor, 2012–2013

Faculty Mentor, Stanford Law Association, 2009–2017

Stanford Law School Representative to the AALS House of Delegates, 2011

PROFESSIONAL MEMBERSHIP AND SERVICE

Member, American Law Institute (elected 2016)

Reporter, American Law Institute's Third Restatement of Torts: Concluding Provisions (appointed 2019)

Fellow, American Bar Foundation (selected 2016)

Academic Advisor, NYU Civil Jury Project (selected 2018)

Academic Fellow, Pound Civil Justice Institute (selected 2017)

Executive Committee Member, William A. Ingram Inn of Court, 2012–2013

Selection Committee, Warren E. Burger Prize of the American Inns of Court, 2016–present

Referee: *Yale Law Journal*, *New England Journal of Medicine*, *American Journal of Law and Medicine*, *Stanford Law Review*, *Journal of Empirical Legal Studies*, *Stanford Journal of Complex Litigation*, *Law & Society Review*, *Law & Social Inquiry*, *Journal of Consumer Policy*

Co-Editor (Legal Profession), *Jotwell*, 2016–present

Contributing Editor (Torts), *Jotwell*, 2013–present

Admitted to the Bars of California, District of Columbia, and Maryland

Dated: May 2019

ARTICLE

Run-of-the-Mill Justice

NORA FREEMAN ENGSTROM*

TABLE OF CONTENTS

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* Assistant Professor, Stanford Law School. Research Dean's Scholar, Georgetown University Law Center (2007-2009). This Article is the first in a series I intend to write on settlement mills. My overall project is supported by a research grant from the American Bar Association (hereinafter ABA) Section of Litigation; however, the views expressed here are not intended to represent ABA positions or policies. I am grateful to Barbara A. Babcock, David Freeman Engstrom, Marc Galanter, Jill Horwitz, C. Scott Hemphill, Herbert M. Kritzer, Lisa G. Lerman, Leslie C. Levin, Katherine E. McCarron, John Mikhail, Julian Davis Mortenson, Richard Nagareda, Robert L. Rabin, Milton C. Regan, Carroll Seron, Jerry Van Hoy, and John Fabian Witt for their insightful comments on previous drafts, as well as workshop participants at Catholic University's Columbus School of Law. I am also indebted to the current and former settlement mill employees who cooperated with this study. All errors are mine.

EXHIBIT 2

> [I]t's a cookie-cutter. It's routine. You call and they offer you $500 and you ask for $2,000 a month, and then you go to $1,000. If you get $1,200, you do it, but it's just boom, boom, boom like that.[1]

INTRODUCTION

Over the past three decades, no development in the legal services industry has been more widely observed and less carefully scrutinized than the emergence of firms I call "settlement mills"—high-volume personal injury law practices that aggressively advertise and mass produce the resolution of claims, typically with little client interaction and without initiating lawsuits, much less taking claims to trial.[2] Settlement mills process[3] tens of thousands of claims each year. Their ads are fixtures on late-night television and big-city billboards. But their operations have been largely ignored by the academic literature, leaving a sizable gap in what is known about the delivery of contemporary legal services in the United States.

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1. Tr. of Louisiana Disciplinary Bd. Hr'g, In re Lawrence D. Sledge, No. 00-DB-135 (Feb. 16, 2001), at 335 [hereinafter Sledge Disciplinary Hr'g Tr.] (Test. of Lawrence D. Sledge).

2. Settlement mills have not to date been the subject of serious study, or even significant comment. An April 6, 2009 search of the term "settlement mill" in the Westlaw "JLR" database yielded only one relevant result, Jeffrey W. Stemple, *Assessing the Coverage Carnage: Asbestos Liability and Insurance After Three Decades of Dispute*, 12 CONN. INS. L.J. 349, 422 (2005), which itself used the term only in passing. In comparison, and reflective of the term's currency among practitioners, a Google search of the term called up dozens of hits—primarily personal injury law firms reassuring prospective clients that *their* firm is not a "settlement mill." To the extent the term "settlement mill" has a derogatory connotation, that is not intended. The term "mill" is employed here because of its repeated use by my interviewees. *See, e.g.*, Telephone Interview with K.R. (May 1, 2008); Telephone Interview with S.R. (Mar. 27, 2008); Telephone Interview with K.N. (Nov. 8, 2007); Telephone Interview with A.E. (Aug. 16, 2007). Unless otherwise indicated, all interviews cited in this article are on file with the author.

3. The use of the term "process" is deliberate. *See* HERBERT M. KRITZER, RISKS, REPUTATIONS, AND REWARDS 98 (2004) (distinguishing the "processing" of claims from the "litigation" of cases).

This lack of attention is somewhat surprising, for scholars have long sought to understand how and why cases settle in the civil context. Research to date, however, has focused on a very small subset of disputes. On-the-ground studies of settlement have traditionally focused on the resolution of *filed* cases[4]—even though it is well understood that a very small percentage of injuries or disputes ever culminates in a lawsuit.[5] Likewise, Robert Mnookin, Lewis Kornhauser, George Priest, and Benjamin Klein, among others,[6] have crafted well-developed and widely-accepted theoretical models of civil settlements. But these models assume that bargaining takes place "in the shadow" of trial—and, as we will see, many negotiations do not. The settlement of routine personal injury claims, especially when no lawsuit is initiated and trial is not a realistic alternative, remains poorly understood.

In the same vein, though the plaintiffs' personal injury lawyer plays a pivotal role in the civil justice system, there have been few detailed studies of such lawyers' day-to-day activities.[7] Moreover, the few recent studies that *have* been conducted[8] have generally focused on "conventional" law practices, *i.e.*, the

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4. *See, e.g.*, *infra* notes 195 & 196 and accompanying text. A notable exception is H. LAURENCE ROSS, SETTLED OUT OF COURT: THE SOCIAL PROCESS OF INSURANCE CLAIMS ADJUSTMENTS (1970).

5. KRITZER, *supra* note 3, at 12. *See generally* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980); *see, e.g.*, DEBORAH R. HENSLER ET AL., COMPENSATION FOR ACCIDENTAL INJURIES IN THE UNITED STATES 121-22 (1991); Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525, 527, 536-43 (1981).

6. George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984); Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1978); *see also* Robert Cooter et al., *Bargaining in the Shadow of the Law: A Testable Model of Strategic Behavior*, 11 J. LEGAL STUD. 225 (1982); Steven Shavell, *Suit, Settlement, and Trial: A Theoretical Analysis Under Alternative Methods for the Allocation of Legal Costs*, 11 J. LEGAL STUD. 55 (1982); William M. Landes, *An Economic Analysis of the Courts*, 14 J.L. & ECON. 61, 101-02 (1971); Alan E. Friedman, Note, *An Analysis of Settlement*, 22 STAN. L. REV. 67, 68 (1969).

7. *See* KRITZER, *supra* note 3, at 98 (observing that "little" is known "about how lawyers handle contingency fee cases"); Sara Parikh, *Professionalism and Its Discontents: A Study of Social Networks in the Plaintiff's Personal Injury Bar*, Unpublished Ph.D. Thesis, at 33 (2001) (on file with the author) ("Until very recently, almost no research focused on the plaintiff's personal injury lawyer."); Jerry Van Hoy, *Markets and Contingency: How Client Markets Influence the Work of Plaintiffs' Personal Injury Lawyers*, 6 INT'L J. OF THE LEGAL PROF. Vol. 3, at 347 (1999) ("To date there has been little inquiry into the practices of plaintiffs' personal injury attorneys."); Marc Galanter, *Anyone Can Fall Down a Manhole: The Contingency Fee and Its Discontents*, 47 DEPAUL L. REV. 457, 473 (1998) (observing that plaintiffs' lawyering is a topic that has suffered from little investment in research). To the extent scholars have examined the day-to-day practices of personal injury lawyers, those studies are now decades old. *See, e.g.*, DOUGLAS E. ROSENTHAL, LAWYER AND CLIENT: WHO'S IN CHARGE (1974); JOEL F. HANDLER, THE LAWYER AND HIS COMMUNITY (1967); JEROME E. CARLIN, LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO 87-91 (1962). Given that attorney advertising has fundamentally reoriented the work of personal injury lawyers, these studies, which predate *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), shed little light on contemporary practice.

8. *See* Parikh, *supra* note 7; HERBERT M. KRITZER, LET'S MAKE A DEAL: UNDERSTANDING THE NEGOTIATION PROCESS IN ORDINARY LITIGATION (1991) [hereinafter KRITZER, DEAL]; HERBERT M. KRITZER, THE JUSTICE BROKER: LAWYERS AND ORDINARY LITIGATION (1990) [hereinafter KRITZER, BROKER].

subset of personal injury lawyers who litigate cases and appear in court.[9] Comparatively little is known about the cadre of attorneys who make a living settling large numbers of claims almost entirely outside of the court system.

This Article begins the process of filling these gaps. Drawing on extensive documentary evidence and fifty in-depth, semi-structured interviews with forty-nine past and current settlement mill attorneys and non-attorney employees,[10] I introduce what I contend is a relatively new,[11] largely overlooked, and surprisingly prevalent form of law firm organization. This law firm form deviates substantially from the conventional model. As compared to their conventional counterparts, settlement mill attorneys have more clients, advertise more aggressively, sign a higher percentage of callers to contract, delegate more duties to non-lawyers, file fewer lawsuits, and take far fewer cases to trial. They also settle claims differently—in a manner that implicates and challenges prevailing theories of settlement as well as our basic notions of compensation through tort.

Part I begins by offering ten characteristics which enable us to define certain personal injury firms as "settlement mills" as opposed to more conventional law practices. The question of whether a firm is or is not a settlement mill is not dichotomous. Personal injury firms exist on a continuum, and many firms will exhibit certain settlement mill characteristics. Nevertheless, the ten factors help to chart where on the "conventional firm—settlement mill" continuum a particular firm lies.[12]

Part I then introduces eight settlement mills from seven states.[13] Three of the

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9. Exceptions include: KRITZER, *supra* note 3; Stephen Daniels & Joanne Martin, *The Strange Success of Tort Reform*, 53 EMORY L.J. 1225 (2004) [hereinafter Daniels & Martin, *Strange Success*]; Stephen Daniels & Joanne Martin, *It Was the Best of Times, It Was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas*, 80 TEX. L. REV. 1781 (2002) [hereinafter Daniels & Martin, *Best*]; Stephen Daniels & Joanne Martin, *"It's Darwinism—Survival of the Fittest:" How Markets and Reputations Shape the Ways in Which Plaintiffs' Lawyers Obtain Clients*, 21 LAW & POL'Y 377 (1999) [hereinafter Daniels & Martin, *Darwinism*]; Van Hoy, *supra* note 7.

10. The interviews averaged approximately fifty minutes in length, and approximately half were tape recorded and transcribed. Of the fifty telephone interviews I have conducted, thirty-two were with employees or former employees of the eight firms profiled herein. I have so far compiled preliminary information on three additional settlement mills (in California, Alabama, and Texas). The insights of the additional sources have informed this Article and will be discussed in greater detail in future work.

11. In asserting that settlement mills are "relatively new" (*i.e.*, that they have sprung up within the past three decades), I do not contend that they are unrelated to previously-studied types of law practice. Settlement mills are related to, and arguably descendants of, both franchise law firms, s*ee infra* note 19 and old-style ambulance chasers, *see infra* note 234.

12. As noted, all firms exist on a continuum. Settlement mills are no exception. Indeed, even firms fairly called settlement mills vary a great deal from one another. Some profiled firms exhibit both more settlement mill traits—and also more exaggerated versions of those traits—than others.

13. Data on three of the eight firms (Sledge, Zang & Whitmer, and Guirard) come primarily from state bar disciplinary records. One (Azar) is based on the summary judgment exhibits of a case recently settled in Colorado federal district court. The final four (Dupayne, Garnett, Jones, and Jeffers) are based on semi-structured telephone interviews with current and past law firm attorneys and non-attorney employees, supplemented and corroborated in some respects with information from public sources. Because detailed information on the latter four firms (Dupayne, Garnett, Jones, and Jeffers) are not matters of public record and

firms are discussed in case studies; five others are introduced briefly in Part I.A. Together, these eight firms account (or in their prime, accounted)[14] for the settlement of more than 7,000 claims in the United States each year. To put that number in perspective, those eight firms alone disposed of more than triple the number of claims resolved annually by juries in all of the nation's federal district courts.[15]

Of course, if the firms studied in Part I simply represent a smattering of aberrational law practices, the settlement mill phenomenon would be scarcely more than a curiosity. Part II confronts this prevalence question and considers why, if settlement mills indeed represent a major player in the legal services marketplace, they have so far largely escaped academic notice. I explore the practical, demographic, and legal mechanisms which have shielded settlement mills from scrutiny and then consider initial evidence that settlement mills represent a significant proportion of personal injury claimants in the United States.

Part III explores three conditions that have led to the evolution of such firms: the advent of aggressive attorney advertising; the widespread acceptance of the contingency fee, and in particular the tiered contingency fee (*i.e.*, a contingency fee that escalates if the case proceeds to various stages); and the increasingly inhospitable legal and political environment for the conventional litigation of low-dollar torts. Because these conditions have fostered the development of settlement mills, it follows that, if there is no change to these conditions (by, for example, limiting attorney advertising or the charging of tiered fees), and the environment for the litigation of low-dollar torts continues to deteriorate, settlement mills will predictably multiply.

Part IV analyzes how settlement mills resolve claims in practice and to what effect. This Part demonstrates that settlement mills operate in a manner that bears little resemblance to—and thus implicitly challenges—conventional notions of bargaining. At their core, conventional accounts, as developed by Mnookin-Kornhauser, Priest-Klein, and others, posit that cases settle because settlement is preferable to trial.[16] When cases settle, the settlement value reached "in the

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the firms continue to operate, these firms' names are pseudonyms. Initials are also used in lieu of names in order to preserve the confidentiality of my sources. Sources' real initials are used only with permission. Since the information on these four firms comes primarily from individual recollections, the descriptions below should be viewed with appropriate skepticism, as they may be outdated, colored by incomplete recall, or tainted by any number of additional biases. In addition, different sources sometimes painted markedly different portraits of law firm operations. In a few instances, I made credibility determinations (while noting the disagreement); more often, I simply pointed out the contested nature of the assertion. A final note is that the data presented herein comes from a limited number of sources and firms, which means that its generalizability is, by definition, uncertain.

14. As will be explained below, certain firms are no longer in existence or are no longer operating in the manner described.

15. Annual Report of the Director James C. Duff, 2006 Judicial Business of the United States Courts, at 29, *available at* http://www.uscourts.gov/judbus2006/completejudicialbusiness.pdf (reporting that 2,097 civil jury trials were completed in 2006).

16. *See supra* note 6.

shadow of the law" approximates the parties' overlapping estimate of the expected trial outcome discounted for risk and foreseeable transaction costs.[17] Critically, these models take for granted that, in reaching settlements, both parties at the negotiating table will be armed with particular information—a forecast of how the claim would fare at trial—and a particular and potent weapon—the ability to head to trial, should negotiations break down. Settlement mill bargains are remarkable because they are typically struck by a negotiator without (1) first-hand information about verdicts obtained in comparable cases, (2) detailed information about the intricacies of the particular claim, and (3) the proven willingness and ability to take the claim to court.

Part IV shows that when the conventional models' prerequisites are not satisfied, the bargain reached bears little resemblance to any hypothetical trial outcome. Rather than the trial-centered portrait painted by conventional theorists, it is *past settlements* that provide the touchstone of appropriate claim value. Negotiated by repeat players, claims are settled for formulaic going rates tied to the gravity of the injury the claimant has sustained. As such, instead of resembling the conventional model, settlement mill bargains more closely resemble two other areas of law from opposite sides of the spectrum where the chance of trial is also absent or much reduced: workers' compensation and, in Janet Cooper Alexander's conceptualization, high-stakes securities class actions.

Part IV goes on to probe the distributional consequences of going rates, asking who wins and loses when settlement values are lumped together, largely decoupled from the substantive merit of the underlying claim. This question, of course, deserves rigorous quantitative study.[18] Preliminary qualitative evidence, however, suggests that both those with unmeritorious claims as well as those with meritorious but very small claims, fare reasonably well. On the other hand, those with particularly meritorious claims (those injured by a reckless defendant, for example) and those with meritorious claims who are seriously injured likely fare relatively poorly.

Finally, Part V confronts a puzzle: If settlement mills do not hold the proverbial stick (fear of trial) to nudge the opposing party toward settlement, why do defendants (through their insurers) settle with settlement mills at all? Why don't

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17. Mnookin-Kornhauser also emphasize the parties' individual preferences. Mnookin & Kornhauser, *supra* note 6, at 966-68. Of course, the above description collapses two separate bargaining models, oversimplifying each. For greater parsing, *see* Samuel Issacharoff & John Fabian Witt, *The Inevitability of Aggregate Settlement: An Institutional Account of American Tort Law*, 57 VAND. L. REV. 1571, 1600-02 (2004); Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STAN. L. REV. 497, 501-04 (1991). This general model has indisputably taken hold. *See, e.g.*, Evans v. Jeff D., 475 U.S. 717, 734 (1986) ("Most defendants are unlikely to settle unless the cost of the predicted judgment, discounted by its probability, plus the transaction costs of further litigation, are greater than the cost of the settlement package.").

18. The question also has profound normative implications beyond the scope of this Article. In a future publication, provisionally entitled "Settlement Mills Under the Microscope: A Normative and Prescriptive Analysis" (working paper), I will evaluate settlement mills' social utility and also propose a policy solution that seeks to curb settlement mills' worst abuses.

insurers essentially call settlement mills' bluff, refusing to offer any acceptable award, especially in marginal cases? The answer to this question reveals that insurance companies might be *choosing* to cooperate with settlement mills, in part because settlement mills appear willing to settle the largest claims—which present the highest chance of a catastrophic verdict—at an attractive discount. In addition, settlement mills and insurance companies share two sets of overlapping interests: speed and certainty. Insurers, it appears, cooperate with settlement mills, in even marginal cases, because *cooperation is profitable*.

This Article examines the law in action—the unorthodox and little-understood claims resolution practices employed in a largely invisible but increasingly important segment of the legal services industry. What I find challenges our basic understanding of bargaining behavior and has broad implications for our understanding of the tort system's delivery of compensation to accident victims in the United States.

I. CHARACTERISTICS OF SETTLEMENT MILLS

Ten characteristics help to distinguish settlement mills from more conventional personal injury law firms.[19] Four of these factors are necessary (meaning a law firm that does not exhibit each characteristic cannot be considered a settlement mill), and six represent traits that are probative. Settlement mills necessarily (1) are high-volume personal injury practices that (2) engage in aggressive advertising from which they obtain a high proportion of their clients, (3) epitomize "entrepreneurial legal practices,"[20] and (4) take few—if any—cases to trial. In addition, settlement mills generally (5) charge tiered contingency fees; (6) do not

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19. Even many "conventional" law firms will likely exhibit several of these traits. Many of the characteristics are also shared by franchise law firms, which arguably helped to set the stage for settlement mills' formation. Like settlement mills, franchise law firms (which did some personal injury work in addition to handling matters such as wills, uncontested divorces, name changes, real estate closings, and bankruptcies) operated in high volumes, advertised on television, delegated important duties to para-professionals, streamlined legal tasks, limited meaningful attorney-client interaction, tied compensation to profit generation, and served a client base that has been historically under-served by the legal profession. *See generally* JERRY VAN HOY, FRANCHISE LAW FIRMS AND THE TRANSFORMATION OF PERSONAL LEGAL SERVICES (1997), *and particularly* 136. Underscoring the connection between settlement mills and franchise law firms, Lawrence D. Sledge, an attorney profiled in Part I.B.1., actually visited Jacoby & Myers, perhaps the most famous franchise law firm, as he prepared to launch his own advertising campaign in the late 1970s. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007). He made the trip, he said, because "I wanted to see how they did it and see what was coming. I wanted to see the future." Sledge Disciplinary Hr'g Tr., *supra* note 1, at 412 (Test. of Lawrence D. Sledge). There are also parallels between settlement mills and mass tort personal injury law firms, as those firms are described by Deborah R. Hensler and Mark A. Peterson. Like settlement mills, mass tort law firms interact frequently with the same pool of defendants, juggle a high volume of claims, and assert claims involving a fairly common set of injuries "incurred in the same or similar circumstances." Deborah R. Hensler & Mark A. Peterson, *Understanding Mass Personal Injury Litigation: A Socio-Legal Analysis*, 59 BROOKLYN L. REV. 961, 966 (1993)

20. *See* CARROLL SERON, THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS 107-09, 141, 147 (1996) (describing "entrepreneurial legal practices").

engage in rigorous case screening and thus primarily represent victims with low-dollar claims; (7) do not prioritize meaningful attorney-client interaction; (8) incentivize settlements via mandatory quotas or by offering negotiators awards or fee-based compensation; (9) resolve cases quickly, usually within two-to-eight months of the accident; and (10) rarely file lawsuits. Each of these factors is considered below.

A. THE TEN CHARACTERISTICS

First, settlement mills are high-volume personal injury law practices. While plaintiffs' personal injury lawyers are known to have sizable caseloads as compared to others within the profession,[21] the number of claims per attorney at settlement mills is extreme. Studies suggest that conventional personal injury attorneys have somewhere around seventy open files at any one time[22] and serve on the order of 110 clients per year.[23] Settlement mill attorneys (or non-attorney negotiators) often triple that—juggling 200 to 300 open files on any given day and serving 300 to 400 clients annually. Indeed, one Georgia settlement mill attorney reports that she personally settled approximately 600 to 700 claims in a thirteen-month span,[24] while an Arizona attorney "process[ed]" 500 to 600 cases per year, "far more," he recognized, "than a conventional attorney could handle."[25]

Second, settlement mills aggressively advertise, and the majority of their clients come from those advertising efforts. This reliance on advertising is, as discussed in Part III, at the heart of the settlement mill business model. It is also distinctive. Despite the seeming ubiquity of attorney ads, relatively few personal injury lawyers advertise on television,[26] and even heavy advertisers still typically

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21. *See* JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 435-36 & Tbl. B.1 (1982).

22. Stephen Daniels & Joanne Martin, *Plaintiffs' Lawyers, Specialization, and Medical Malpractice*, 59 VAND. L. REV. 1051, 1062-63 (2006) [hereinafter Daniels & Martin, *Malpractice*] (reporting on data from a 2000 survey of Texas plaintiffs' lawyers); *see also* Daniels & Martin, *Best*, *supra* note 9, at 1789, Tbl. 4 (reporting that lower-echelon attorneys in Texas had a median of forty-five cases at any one time, while higher-echelon attorneys had significantly fewer).

23. Sara Parikh, *How the Spider Catches the Fly: Referral Networks in the Plaintiffs' Personal Injury Bar*, 51 N.Y.L. SCH. L. REV. 243, 247 (2006) (citing JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005) (unpublished data)) (reporting that Chicago plaintiffs' personal injury lawyers surveyed in 1995 served an average of 142 clients per year); Parikh, *supra* note 7, at 73 (reporting that low-end personal injury practitioners in Chicago served an average of seventy-nine clients per year).

24. Sworn Statement of S.S. at 6 (Aug. 19, 1998). Near the end of her employment, S.S. sought the advice of counsel because she feared that her employer was engaged in certain unethical conduct. The attorney she consulted had S.S. make a sworn statement concerning her employer's operations. S.S. has consented to the statement's use and quotation herein. Telephone Interview with S.S. (July 16, 2007).

25. Bruce Tomaso, *Ads for Attorneys: A Question of Ethics: 'Old School' Lawyers Rally to Battle 'Misleading' Valley Sales Pitches*, THE ARIZONA REP., June 12, 1983, at A12.

26. A recent study found that, even among those Texas lawyers with the highest volume of relatively low-dollar claims (BB1 lawyers), only 13% advertised on television. Daniels & Martin, *Best*, *supra* note 9, at 1788-89 & n.19.

obtain most of their clients from traditional sources: practitioner referrals and client word-of-mouth.[27] In comparison, all settlement mills considered here air television ads and all obtain the majority of new clients from advertising efforts. Likewise, in contrast with the still-prevailing norm of obtaining a sizable percentage of one's business from one's fellow practitioners,[28] for settlement mills, obtaining a client via an attorney referral is said to be somewhere between rare and unheard of.[29]

Third, settlement mills epitomize "entrepreneurial legal practices" in Carroll Seron's conceptualization of the term.[30] At settlement mills, it is assumed that claims will be straightforward. Standardized and routinized procedures are then designed and employed in keeping with that assumption. Efficiency trumps process and quality. Important tasks (such as client screening and, sometimes, actual settlement negotiations) are delegated to non-lawyers.[31] Factual investigations are short-circuited or skipped altogether.[32] And negotiating with insurance adjusters and brokering deals is prioritized over work that draws on a specialized legal education.[33]

It is not unusual for conventional personal injury attorneys to spend comparatively little time engaged in legal research, investigating claims, and preparing pleadings.[34] Nor is it unusual for conventional attorneys to delegate tasks

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27. *See id.*; *see also* KRITZER, *supra* note 3, at 47-49, 55; HEINZ & LAUMANN, *supra* note 21, at 436 Tbl. B.1; Herbert M. Kritzer, *Seven Dogged Myths Concerning Contingency Fees*, 80 WASH. U. L. Q. 738, 751-53 (2002); Parikh, *supra* note 7, at 88; Daniels & Martin, *Darwinism*, *supra* note 9, at 383; Herbert M. Kritzer & Jayanth K. Krishnan, *Lawyers Seeking Clients, Clients Seeking Lawyers: Sources of Contingency Fee Cases and their Implications for Case Handling*, 21 LAW & POL'Y 347, 350-52 & Tbls. 1 & 3 (1999). In line with the above scholars' findings, a 1988 survey of auto accident victims found that, of those who retained counsel, a meager 5.8% of clients selected their attorneys on the basis of Yellow Pages, radio, television, or newspaper advertising. ELIZABETH SPRINKEL, ATTORNEY INVOLVEMENT IN AUTO INJURY CLAIMS 25, Tbl. 33 (1988).

28. Daniels & Martin, *Strange Success, supra* note 9, at 1237, 1245 n.44 (reporting on a survey of Texas plaintiffs' lawyers that found, for all respondents, "referrals from lawyers are the most important source of business").

29. *See, e.g.*, Telephone Interview with J.K. (May 15, 2008) (stating that the firm received no cases from lawyer referrals); Telephone Interview with V.O. (Nov. 1, 2007) (estimating that 5% of the firm's cases came from attorney referrals); Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007) (recalling that, as soon as he started advertising, he stopped being referred cases from fellow attorneys).

30. *See supra* note 20.

31. As is clear below, this delegation often shades into the unauthorized practice of law, prohibited by Model Rule of Professional Conduct 5.5(a). Of the settlement mill attorneys considered herein who have been subject to state bar disciplinary proceedings, all but Stephen Zang and Peter Whitmer were charged with assisting non-attorneys in the unauthorized practice of law.

32. *See, e.g., infra* notes 296-97 and accompanying text.

33. In this regard, settlement mills are situated on the far end of Herbert Kritzer's continuum between "legal professionals" and "legal brokers." *See generally* KRITZER, BROKER, *supra* note 8. Kritzer was not the first to observe that many lawyers engage in "brokering." H. Laurence Ross observed long ago that "[n]egligence work may be easily regarded as brokerage, rather than the profession of law." ROSS, *supra* note 4, at 77. This reality is not lost on settlement mill attorneys. *See* Telephone Interview with D.W. (May 8, 2008) ("Lawyers over there on the pre-litigation side are just brokers. That's all you are.").

34. *See* KRITZER, *supra* note 3, at 99, 136; David M. Trubek et al., *The Costs of Ordinary Litigation*, 31 UCLA L. REV. 72, 91 & Tbl. 3 (1983).

to underlings and keep a watchful eye on the bottom line.[35] What sets settlement mills apart is the extreme emphasis they place on efficiency, the extent to which procedures are mechanized, and the lopsided balance struck between the conceptualization of the practice of law as a business versus a profession.

As for the business/profession dichotomy, the founder of one settlement mill profiled herein is on record declaring that he "always . . . approached this as a business first and a law firm second."[36] And, as for the balance struck between traditional legal work versus brokering, one former settlement mill attorney from the Jones firm of Texas recalled, "We did *nothing* legal,"[37] while another stated: "They do not want you to practice conventional law."[38]

At a Louisiana firm, meanwhile, delegation was taken to such lengths that it was a "regular practice" for clients to have "their cases settled without any attorney involvement whatsoever."[39] In fact, even the initial client interview was mechanized: clients were shown a video of their attorney explaining the case settlement process, rather than having a real-live attorney provide that information.[40] At two additional law firms, group settlement meetings with claims

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35. *See* VAN HOY, *supra* note 19, at 14.

36. Brett Barrouquere, *Attorneys Hit Local Airwaves—Many Say Business Savvy As Important As Legal Skills*, ADVOC. (BATON ROUGE), Nov. 30, 2003.

37. Telephone Interview with C.P. (May 20, 2008).

38. Telephone Interview with D.W. (May 8, 2008). Based on interviews with nine former attorney and non-attorney employees who worked at the firm between 1996 and 2007, I conclude that, during those years, the Jones firm of Texas resembled a settlement mill in important respects. The firm, first, had a high volume of personal injury claims. Some attorneys reported settling as many as 300 cases per year, and the firm reportedly settled 720-900 claims annually. One attorney lamented: "[T]he volume is so big you lose count." *Id*. Second, the firm engaged in aggressive television and print advertising and obtained the majority of clients (estimates ranged from 65-100%) from advertising efforts. Third, as noted above, the firm did not emphasize traditional legal work. There was also great mechanization, and claims were frequently settled by non-attorney claims handlers. Fourth, as noted in the text *infra*, the firm rarely tried cases or initiated referrals. Fifth, according to most sources, the firm charged a tiered fee: 40% in the absence of suit and 45% if the claim required litigation. *But see* Telephone Interview with D.W. (May 8, 2008) (recalling a non-tiered fee of 40%). As to the sixth factor, attorneys sometimes screened cases (typically valued around $6,000) themselves, but there was substantial disagreement as to what percentage of prospective clients were accepted: One source reported that the firm accepted nearly 90% of potential clients, while another put that number as low as 15%. Seventh, there was little meaningful attorney-client interaction. Somewhere between 20% and 90% of clients never met face-to-face with an attorney, and clients were not typically informed of the sum demanded of the insurer on their behalf. Eighth, the firm incentivized settlements by offering negotiators (attorneys and non-attorneys alike) fee-based compensation. Ninth, the firm resolved cases quickly. The typical soft tissue injury case (which made up the bulk of the firm's caseload), was generally resolved within six months. Finally, the firm rarely filed lawsuits, as noted in the text *infra*. *See generally* Telephone Interview with B.B. (May 28, 2008); Telephone Interview with D.D. (May 20, 2008); Telephone Interview with C.P. (May 20, 2008); Telephone Interview with J.K. (May 15, 2008); Telephone Interview with A.Z. (May 14, 2008); Telephone Interview with J.D. (May 13, 2008); Telephone Interview with B.D. (May 12, 2008); Telephone Interview with B.M. (May 8, 2008); Telephone Interview with D.W. (May 8, 2008).

39. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 67-68 (Test. of Wendy LeBleau); *see id.* at 425 (Test. of Lawrence D. Sledge).

40. *Id*. at 336-38, 395 (Test. of Lawrence D. Sledge); *id.* at 105-06 (Test. of Lillian Lalumandier); Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007).

adjusters were conducted, and numerous clients' claims were resolved at one sitting.[41]

Fourth, settlement mills very rarely take cases to trial themselves, and they also only rarely refer cases to higher-echelon law firms for litigation. These attributes distinguish settlement mills both from conventional firms and from "referral mills," which evaluate claims and then do little but farm out those claims to an appropriate specialist, in return for a portion of the eventual recovery.[42]

True, even when handled by conventional counsel, trials are anomalous. According to a 1988 study, only 2.8% of represented auto accident victims have their claims tried to a verdict.[43] But settlement mills fall short of even this fairly low benchmark. Two of the eight firms considered herein (Zang & Whitmer of Arizona and Jasper Dupayne of Georgia) never completed a trial in-house during the period under discussion.[44] At Garnett & Associates of

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41. Pl.'s Resp. to Def.'s Mot. For Partial Summ. J., Pappas v. Frank Azar & Associates, P.C., 06-cv-01024 (D. Colo. Apr. 16, 2007) [hereinafter Pl.'s Azar Resp.], at Ex. 8 (Dep. of Amy Gainnie, at 34); Telephone Interview of D.W. (May 8, 2008); *see also* Telephone Interview with C.P. (May 20, 2008); Telephone Interview with D.D. (May 20, 2008). For a critical discussion of this practice, *see* ROSENTHAL, *supra* note 7, at 103.

42. *See* John Fabian Witt, *Bureaucratic Legalism, American Style: Private Bureaucratic Legalism and the Governance of the Tort System*, 56 DEPAUL L. REV. 261, 286-87 (2007) (discussing referral mills); Hensler & Peterson, *supra* note 19, at 1026 ("Many law firms that advertise serve only as referring lawyers who sign up and then refer claims to experienced law firms that specialize in representing mass tort claimants . . . ."). Model Rule of Professional Conduct 1.5(e) condones attorney referral fees, with some restrictions. Much has been said about the plaintiff bar's increasingly rationalized referral networks, *see, e.g.*, Parikh, *supra* note 23, at 243; Daniels & Martin, *Best*, *supra* note 9; Robert H. Mnookin, *Negotiation, Settlement and the Contingent Fee*, 47 DEPAUL L. REV. 363, 368 (1998); Stephen J. Spurr, *Referral Practices Among Lawyers: A Theoretical and Empirical Analysis*, 13 LAW & SOC. INQUIRY 87, 108 (1988).

43. SPRINKEL, *supra* note 27, at 26, Tbl. 35. An additional 1.7% of represented claimants went to trial but settled before a verdict was rendered. *Id*. Because settlement mill sources were typically asked how often trials were "conducted," rather than how often cases were tried to judgment, the proper benchmark to use when judging whether settlement mills deviate from the norm might be closer to 4.5% (2.8% plus 1.7%). That number might exaggerate the frequency of trials, however. As noted, it comes from a 1988 study, and trial rates have declined substantially over the past two decades. *See, e.g.*, Patricia Lee Refo, Symposium, *The Vanishing Trial*, 30 ABA SEC. LIT. 1 (Winter 2004). On the other hand, a more recent (1999-2000) study by Stephen Daniels and Joanne Martin offers another (and higher) comparator. In Daniels and Martin's survey of Texas plaintiffs' lawyers, the lawyers with the highest claim volume of relatively low-dollar claims (the BB1s) reported that a full 6.7% of their claims were "Disposed by Verdict/Trial." Daniels & Martin, *Best*, *supra* note 9, at 1789, Tbl. 4. Meanwhile, a Georgia study found that, from 1994-1997, "[j]ury trials disposed of 5.2% of the automobile accident cases filed in superior court and 4.3% of the state court automobile accident cases." Thomas A. Eaton et al., *Another Brick in the Wall: An Empirical Look at Georgia Tort Litigation in the 1990s*, 34 GA. L. REV. 1049, 1077 (2000). Since plaintiffs' lawyers typically file lawsuits to resolve between 30% and 50% of auto accident claims, *see infra* note 77, the Georgia study brings us full circle to an estimate approaching 2.8%. *See also* Bernard Black et al., *Defense Costs and Insider Reserves in Med Mal and Other Personal Injury Cases: Evidence from Texas*, 1988-2004, 10 AM. L. & ECON. REV. 185, 202 (2008) (reporting that 2.7% of auto accident claims in Texas with payment equal to or greater than $10,000 involved a "full trial").

44. In re Zang, 741 P.2d 267, 275 (Ariz. 1987). For a discussion of the Dupayne firm, *see* Part I.B.2. Based on evidence adduced at Zang and Whitmer's disciplinary proceeding, it appears that Zang & Whitmer largely fits the settlement mill mold. First, the firm was a "high-volume" personal injury practice. Commission Report, Zang v. Members of the State Bar of Arizona (Jan. 21, 1986), at 10 [hereinafter Zang Commission Report]. Zang personally processed 500-600 cases per year. Tomaso, *supra* note 25, at A12. Second, the firm advertised

Florida, meanwhile, on the order of 0.5% of claims were tried.[45] At Frank Azar & Associates, described in the press as "Denver's best-known personal injury law

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aggressively. Zang Commission Report, *supra*, at 19. Third, the firm "utilize[ed] many computer-generated forms and operat[ed] with a staff of paralegals." Br. for Respondents Before the Disciplinary Commission of the Supreme Court of Arizona, Zang v. Members of the State Bar of Arizona, at 2 (Jul. 10, 1986). Indeed, it was alleged (but not proved) that paralegals negotiated settlements. Tomaso, *supra* note 25, at 12A. Fourth, as noted above, during the relevant period, no trials were completed in-house. Fifth, the firm charged a tiered contingency fee: 33% up to 40% if suit was filed and the ultimate recovery did not exceed $10,000. Tr. of Arizona Disciplinary Bd. Hr'g of Stephen Zang and Peter Whitmer, SB-86-0014-D (Mar. 23, 1984), at 230-33 (Test. of Stephen Zang) [hereinafter Zang Disciplinary Hr'g Tr.]. Sixth, the firm's portfolio was comprised of "small-dollar" cases, typically involving soft tissue injuries sustained in automobile accidents. *Id*. at 129, Mar. 21, 1984 (Test. of Peter Whitmer); Zang Commission Report, *supra*, at 9-10. As to the seventh and eighth factors, there is some deviation. Attorneys did have face-to-face meetings with clients, including at the initial screening interview, Zang Disciplinary Hr'g Tr., *supra*, at 46, 107, Mar. 22, 1984 (Test. of Stephen Zang), and there is no evidence that the firm employed incentives or quotas. Ninth, the firm resolved most cases quickly, often within six months of the firm's retention. *Id*. at 119, Mar. 21, 1984 (Test. of Peter Whitmer); *id.* at 117 ("generally they're in and out relatively fast"). As for the tenth factor, as noted in the text *infra*, Zang & Whitmer initiated lawsuits only about 5% of the time. *In re Zang*, 741 P.2d at 276.

45. Telephone Interview with D.R. (Apr. 3, 2008) (recalling that the firm tried ten or fifteen cases each year, out of approximately 3,000 claims); *see also* Telephone Interview with R.J. (Apr. 8, 2008) ("I could probably count on one hand the number of trials that took place while I was there."); Telephone Interview with K.E. (Apr. 3, 2008) ("Several thousand cases went through the office per year. And then one or two trials."). Based on interviews with six former attorneys, two current attorneys, and the firm's founder, I conclude that, from 1986 through 1992, Garnett & Associates resembled a settlement mill in important respects. (The firm still operates in Florida, but my sources worked at the firm primarily from 1986 through 1992. I do not suggest that the Garnett firm still operates in the manner described. In fact, it is my understanding that the firm's operations have substantially changed in recent years.) First, the firm had a high volume. The firm settled several thousand cases per year, and each attorney handled 150-420 cases at any one time. Typical of settlement mills, the majority of the firm's cases involved soft tissue injuries sustained in auto accidents. Second, the firm advertised on television, with an annual advertising budget of approximately $2.5 million. The majority of clients (estimates ranged from 70% to 99%) came from these advertising efforts. Third, the firm epitomized an entrepreneurial legal practice. Processes were routinized; important tasks such as client screening were delegated to non-lawyers; and one former attorney likened the job to pushing "widgets through the assembly line." Telephone Interview with R.J. (Apr. 8, 2008). Fourth, as noted in the text, trials were extremely rare. Fifth, the firm charged a tiered contingency fee: 33% up to 40% if suit was filed. Sixth, non-attorney investigators typically screened clients, and the majority of callers were accepted although some were then "kicked or terminated" after retention. Seventh, as noted in the text, *infra*, according to most sources, most clients did not ever meet with an attorney, although clients were typically informed of the sum demanded of the insurance company on their behalf. *But see* Telephone Interview with H.G. (Apr. 29, 2008). Eighth, the firm incentivized settlements by offering negotiators fee-based compensation. Attorneys had a relatively small base salary and then earned 5% of the first $300,000 in fees generated annually and 10% thereafter. Some attorneys also reported quotas, requiring them either to settle ten cases a month or generate $300,000 in fees per year. As to the ninth factor, cases were reportedly resolved within six-to-twelve months. Settlements were slowed somewhat by Florida's "permanency" requirement for the award of non-economic damages. Despite that constraint, according to one attorney: "We cranked 'em out pretty damn quick." Telephone Interview with D.R. (Apr. 3, 2008). Finally, as to the tenth and final factor, most attorneys agreed that lawsuits were filed in fewer than 10% of cases. *But see* Telephone Interview with R.J. (Apr. 8, 2008) (noting there was significant variation by lawyer, and some lawyers filed suit quite frequently); Telephone Interview with T.T. (July 14, 2008) (estimating that lawsuits were filed to resolve 10% to 30% of claims). *See generally* Telephone Interview with D.X. (July 18, 2008); Telephone Interview with T.T. (July 14, 2008); Telephone Interview with H.G. (Apr. 29, 2008); Telephone Interview with R.J. (Apr. 8, 2008); Telephone Interview with G.V. (Apr. 7, 2008); Telephone Interview with H.L. (Apr. 7, 2008); Telephone Interview with D.R. (Apr. 3, 2008); Telephone Interview with K.E. (Apr. 3, 2008); Telephone Interview with C.R. (Apr. 1, 2008).

practice,"[46] it appears that trials were conducted to resolve only about 0.3% of claims.[47] At Jones & Associates of Texas, most lawyers agreed that the in-house trial rate was less than 0.2%.[48]

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46. John Accola, *Frank Azar Keeps Profile High With TV Commercials*, ROCKY MTN. NEWS, Jan. 4, 2003, at 4C.

47. *Compare* Pl.'s Azar Resp., *supra* note 41, at Ex. 13, *with* Jane M. Von Bergen, *Lawyer Who's Taken on World's Largest Retailer*, PHILADELPHIA INQUIRER, Oct. 15, 2006, at E1. Press reports and evidence adduced in a malpractice action in Colorado federal district court suggest that, at least prior to 2006, Frank Azar & Associates fulfilled most settlement mill factors. First, the firm operated in extremely high volumes, handling about 3,000 claims a year. Bergen, *supra*, at E1. Second, the firm engaged in aggressive "in your face" television advertising. On some ads, Azar referred to himself as the "Strong Arm" and boasted "I can get you more money!" John Accola, *A Twist For 'Strong Arm': Suit Reinstated*, ROCKY MOUNTAIN NEWS, Jan. 10, 2006, at 1B. Like other settlement mills, the firm only "[v]ery, very rarely" got referrals from other law firms or lawyers, Def. Frank Azar & Associates, P.C.'s Motion for Partial Summ. J., 06-cv-01024 (D. Colo. Feb. 5, 2007) [hereinafter Def's. Azar Motion], at Ex. A (Dep. of Frank Azar, at 117), although Azar contended that the firm did get substantial business from client word-of-mouth, Accola, *supra* note 46, at 4C. Third, in typical cases, Azar had a routinized claim settlement process characterized by a number of discrete steps or "phases." Def.'s Azar Motion, *supra*, at Ex. C (Dep. of Darwin Burke, at 53-54). And, though attorneys negotiated with claims adjusters, there was significant delegation. Non-attorneys, referred to as "demand coordinators," for example, compiled draft demands. *Id*. at 54. Fourth, as explained above, very few cases were tried.

As to the non-necessary factors, the firm charged clients a tiered contingency fee—from 35% up to 40% "if it becomes necessary to file suit or demand arbitration to cover damages." Pl.'s Motion for Partial Summ. J. as to Liability for Breach of Fiduciary Duty, Pappas v. Frank Azar & Associates, 06-cv-01024 (D. Colo. Mar. 30, 2007) [hereinafter Pl.'s. Azar Motion], at Ex. A (fee agreement). Sixth, the bulk of the firm's caseload consisted of auto accident cases, Bergen, *supra* at E1, which "often" settled for as little as $2,000, Stuart Steers, *The Wal-Mart Crusade: Denver's Best Known Ambulance Chaser Rolls Over Rollback Smiley*, WESTWORD, Dec. 12, 2002, *available at* http://www.westword.com/2002-12-12/news/the-wal-mart-crusade/ (last visited Aug. 5, 2009). Attorneys did screen clients over the telephone, however, asking about the type and factual circumstances of the accident. Def.'s Azar Motion, *supra*, at Ex. C (Dep. of Darwin Burke, at 37, 47-48). Azar & Associates appears to differ from typical settlement mills on the seventh factor: attorney-client interaction. Though investigators would sometimes "sign [clients] up," after a client retained the firm, she usually met with her attorney. *Id*. at 37; Pl.'s Azar Resp., *supra* note 41, at Ex. 8 (Dep. of Amy Gaiennie, at 19). One attorney, for instance, testified that she always met with clients before transmitting the settlement demand package. *Id*. at Ex. 5 (Dep. of Rosalia Fazzone, at 33). Eighth, fee-based compensation incentivized settlements, as discussed in the text, *infra*. Inadequate information is available on the ninth factor, the average length of time between accident and payment, although some firm commercials promised that the firm will "obtain as much as we can, as fast as we can." Crowe v. Tull, 126 P.3d 196, 200 (Colo. 2006). As to the tenth factor, as explained in the text, at least during 2002-03, lawsuits were filed to resolve only about 8% of claims. A final distinctive characteristic is that Azar & Associates has been front-and-center in a number of successful big-ticket class actions, most notably representing current and former Wal-Mart employees asserting labor and contract law claims against the discount retailer, suggesting that the law firm has the expertise and resources to try cases when so inclined. *Denver Firms Involved in Wal-Mart Case*, DENVER BUS. J. Oct. 5, 2007, *available at* http://denver.bizjournals.com/denver/stories/2007/10/01/daily55.html (last visited Aug. 12, 2009); Bergen, *supra*, at E1; Accola, *supra* note 46, at 4C.

48. *See* Telephone Interview with D.D. (May 20, 2008) (recalling that, in his near-decade with the firm, one out of roughly 900 claims went to trial each year); Telephone Interview with C.P. (May 20, 2008) (asserting that the firm has conducted one trial in the past seventeen years); Telephone Interview with D.W. (May 8, 2008) ("The law firm never tried a case while I was there. They haven't tried one since."); Telephone Interview with A.Z. (May 14, 2008) ("In the three years I was there, I never saw a trial. They would settle."); Telephone Interview with J.K. (May 15, 2008) (recalling no trials during his three years of employment); *cf*. Telephone Interview with J.D. (May 13, 2008) (recalling "some" trials during her three years of employment). *But see* Telephone Interview with B.B. (May 28, 2008) (stating that he personally conducted ten trials per year).

Referrals of mature cases are similarly infrequent.[49] Again, consider Arizona's Zang & Whitmer. From that firm's 1979 formation until disciplinary hearings in 1983,[50] Zang & Whitmer settled approximately 1,500 personal injury claims without *ever* completing a trial, while referring only 1.3% of claims to outside counsel.[51] Likewise, at the Dupayne firm of Georgia, which reportedly completed no trials, a former attorney reports that only around 1% of claims were referred out.[52] As that attorney explained, her job was neither to litigate nor to refer but rather to "get [claims] to close, if at all possible, unless the offer was just ridiculous."[53]

Fifth, settlement mills typically charge tiered (*i.e.*, graduated), rather than fixed, contingency fees for their services, increasing the fee if a lawsuit is initiated. While tiered fees are charged by only the minority of plaintiffs' lawyers nationwide,[54] such fees are charged by *all* of the settlement mills considered herein. Settlement mills' advertising and fee-charging practices are explored in greater detail in Part III, which considers the factors that have contributed to the evolution of such firms.

Sixth, settlement mills do not function as traditional gatekeepers.[55] Unlike

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49. One reason referrals are infrequent is that many settlement mill claims are too small to be accepted by high-echelon counsel. *See infra* note 238 and accompanying text. Next, even assuming the claim would be accepted, referrals are not necessarily profitable for settlement mills given than the referral firm keeps a significant portion of the eventual fee: 100% of one-third of a small settlement is often greater than 50% (or less) of one-third of a larger settlement or judgment. *See, e.g.*, Telephone Interview with R.J. (Apr. 4, 2008) (stating that the Garnett firm rarely, if ever, referred personal injury cases to other lawyers because "[t]hat's an opportunity for a fee to go out the door. You're trying to get fees to come in, not go out."); Telephone Interview with G.V. (Apr. 7, 2008) (stating that the Garnett firm did not generally refer personal injury cases to other lawyers because a referral would entail "giving [away] at least 25% of the fee, if not half"). Moreover, even if a referral would be profitable from the firm's perspective, quotas or incentives might spark an intra-firm principal-agent problem by motivating line-level negotiators to keep files in-house. *See* Telephone Interview with D.D. (May 20, 2008) (Q: "If a case that had been initially assigned to you was referred to another law firm, did you forego a fee on that case?" A: "Our firm didn't forego a fee, but I would forego part of my bonus." Q: "How do you think that affected attorney or claims manager behavior?" A: "In really one of the ugliest ways, people would settle a case for less than the value or be inclined to rather than refer it somewhere else. . . ."). Finally, it is theoretically possible (albeit purely speculative) that settlement mills *intentionally* keep some significant claims in-house, for reasons discussed in Part V. For a discussion of why higher-echelon firms might obtain higher awards, see *infra* Part IV.C.2.

50. At the conclusion of this disciplinary proceeding, Stephen Zang and Peter Whitmer were adjudged, *inter alia*, to have erroneously advertised the firm's willingness and ability to try personal injury cases. Whitmer was suspended for thirty days; Zang was suspended for one year. In re Zang, 741 P.2d 267, 288 (Ariz. 1987).

51. *Id*. at 277. Of those sixteen claims referred out, nine (or 0.6%) were actually tried. *Id*.

52. Telephone Interview with S.S. (May 30, 2007).

53. Sworn Statement of S.S. at 38 (Aug. 19, 1998).

54. KRITZER, *supra* note 3, at 39 & Tbl. 2.4 (estimating that 31% of Wisconsin contingency-fee practitioners use variable fee schedules); HENSLER ET AL., *supra* note 5, at 135-36 (putting the number at 23%). It also appears that, as compared to conventional counsel, settlement mills trigger the escalator earlier in the litigation process. That is, settlement mills trigger the escalator when a lawsuit is filed, while conventional counsel appear to trigger the escalator only if the case involves substantial trial preparation. *See* KRITZER, *supra* note 3, at 40.

55. *See generally* Herbert M. Kritzer, *Contingency Fee Lawyers As Gatekeepers in the Civil Justice System*, 81 JUDICATURE 22 (July-Aug. 1997).

conventional attorneys, they take most would-be litigants their ads attract. There is usually substantial risk associated with accepting a contingency fee case, and so conventional law firms take screening seriously. They expend significant resources vetting clients and, almost universally, decline far more cases than they accept.[56] For example, in a 1995-96 survey of Wisconsin contingent fee lawyers, Herbert Kritzer found that respondents accepted approximately 28% of the potential clients who contacted their offices,[57] and lawyers with the highest call volume from potential clients (1,000 or more calls per year) accepted an even lower percentage—a meager 10% to 15%.[58] Kritzer also found that conventional attorneys generally screen cases themselves; in his Wisconsin study, only 8% of contingent fee lawyers reported that a non-lawyer typically handled the initial telephone contact from a potential client.[59]

At settlement mills, in contrast, non-attorneys usually screen clients with a heavy thumb on the scale in favor of acceptance.[60] Indeed, at the Dupayne firm of Georgia, an attorney reports that the "overwhelming" number of prospective clients were accepted.[61] At Garnett of Florida, meanwhile, a former attorney said the "*modus operandi* was to sign everything up."[62] Because they are not

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56. For a discussion of attorney screening, *see* KRITZER, *supra* note 3, at 67, 71-76; Mary Nell Trautner, *How Social Hierarchies Within the Personal Injury Bar Affect Case Screening Decisions*, 51 N.Y.L. SCH. L. REV. 215 (2007); Daniels & Martin, *Malpractice*, *supra* note 22, at 1064-66; Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System—And Why Not?*, 140 U. PA. L. REV. 1147, 1190-96 (1992); Mark Crane, *Lawyer's Don't Take Every Case*, NAT'L L. J., at 1 (Jan. 25, 1988).

57. *See* Herbert M. Kritzer, *Holding Back the Floodtide: The Role of Contingent Fee Lawyers*, 70 WIS. LAW. 10, 13 (Mar. 1997).

58. *Id.* at 13. *See also* KRITZER, *supra* note 3, at 72 (lawyers with more than twenty contacts from potential clients per week agree to represent only 8% of those clients). Kritzer's results roughly comport with others' findings. In Daniels and Martin's Texas study, the BB1 attorneys signed a mean of 35.1% of callers to contract, while high-end "heavy hitters" accepted only 17.9%. Daniels & Martin, *Best*, *supra* note 9, at 1789, Tbl. 4. Likewise, in Parikh's study of Chicago plaintiffs' lawyers, the mean acceptance rate for low-end practitioners was 49%. Parikh, *supra* note 7, at 78, Tbl. V. Finally, in its 1995 study of lawyer advertising, the ABA found: "Lawyers who advertise on television . . . reported accepting between two and 15 percent of the potential clients who contacted them." ABA COMMISSION ON ADVERTISING, LAWYER ADVERTISING AT THE CROSSROADS 128 (1995).

59. *See* Kritzer, *supra* note 57, at 13. In another 26% of offices, either a lawyer or non-lawyer handled the initial screening depending upon availability. *Id.*

60. One might attempt to explain this high rate of acceptance by noting that settlement mills primarily represent auto accident claimants and theorizing that rules governing auto accident liability are so well understood by the general public that counsel is called only if third-party liability is or can be established—in essence, settlement mills need not screen auto cases because auto claimants effectively screen themselves. Such a theory is belied by data, however. A study by RAND researchers found that "the overwhelming tendency of Americans involved in motor vehicle accidents is to blame someone else, no matter what the particular circumstances were." Indeed, "even among driver-respondents who hit another vehicle only 16 percent name themselves as the cause." HENSLER ET AL., *supra* note 5, at 23; *accord* Daniels & Martin, *Strange Success*, *supra* note 9, at 1259 (reporting that plaintiffs' lawyers in Texas that specialize in automobile actions sign only 33.4% of callers to contract).

61. Telephone Interview with S.S. (July 16, 2007).

62. Telephone Interview with D.R. (Apr. 3, 2008); *see also* Telephone Interview with R.J. (Apr. 8, 2008) ("Did they turn away any cases? Not many."); Telephone Interview with G.V. (Apr. 7, 2008) (Q: "What

especially selective in the cases they accept, settlement mills' portfolios consist primarily of routine personal injury claims—specifically, automobile accident claims with relatively minor soft tissue injuries.[63]

A seventh characteristic of settlement mills is that attorney-client interaction is minimal and, when it does occur, tends to be paternalistic rather than participative. Except for agreeing to accept the ultimate offer, clients play little role in the dispute resolution process.[64] This lack of meaningful personal interaction is unusual. In his study of Wisconsin contingent fee lawyers, for example, Kritzer found that face-to-face meetings were relatively rare, but they did bookend a typical case: clients met with their lawyers when the retainer was signed at the beginning of the representation and when the settlement check was delivered at the end.[65]

Settlement mills typically cut this interaction in half or eliminate it entirely. Clients usually meet with attorneys when the settlement check is disbursed—or not at all. As one attorney from the South Carolina firm Jeffers & Associates explained: "Very often, the first time I saw the client was when they came in to sign their settlement check."[66] At Garnett, meanwhile, attorneys recalled that the

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percentage of callers seeking legal representation were accepted as clients?" A: "Pretty much everyone."); Telephone Interview with C.R. (Apr. 1, 2008) (estimating that 90% of callers were initially accepted as clients); *but cf*. Telephone Interview with H.G. (Apr. 29, 2008) (suggesting that the firm turned away a non-trivial number of prospective clients).

63. Common soft tissue injuries are sprains, strains, contusions, whiplash, and herniated discs. Soft tissue injuries do not show up on x-rays and so can be difficult to verify.

64. For an extended discussion of the "participatory model" of legal practice, *see* ROSENTHAL, *supra* note 7. At settlement mills, some clients become mere spectators, creating parallels to clients' marginalized role (and the ramifications thereof) in the class action context. *See generally* John C. Coffee, Jr., *Understanding The Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669 (1986).

65. KRITZER, *supra* note 3, at 113; *cf*. ROBERT HUNTING & GLORIA NEUWIRTH, WHO SUES IN NEW YORK CITY? A STUDY OF AUTOMOBILE ACCIDENT CLAIMS 107 (1962) ("In most cases, there was little or no contact between the client and his attorney except at the time of hiring (which was in some cases accomplished by a telephone call) and at the time of final settlement.").

66. Telephone Interview with K.N. (Nov. 8, 2007); *see also* Telephone Interview with L.T. (Mar. 6, 2008) ("The majority of clients, we don't meet until they come in and sign the release and get their check."); Telephone Interview with J.B. (Nov. 12, 2007). According to three current and three former law firm attorneys, as of 2007, Jeffers & Associates of South Carolina fulfilled most of the ten factors enumerated above. First, the firm was a high-volume operation, settling on the order of 1,400 claims annually. Attorneys juggled approximately 100 to 400 cases at any one time and settled 120 to 500 cases per year. Second, the firm engaged in aggressive television advertising, spending more than $1 million on ads annually. The majority of clients (estimates ranged from 60% to 90%) came from these advertising efforts, while very few came from practitioner referrals. Third, the "entrepreneurial model" was epitomized. Important tasks were delegated to paraprofessionals, and, although serious cases might require substantial inputs, run-of-the mill cases received only three-to-five hours of attorney time. Fourth, a conservative estimate is that the firm had a trial rate approximating 1.8%. Fifth, the firm charged a tiered contingency fee, one-third up to 40% if a lawsuit was filed, although in practice, lawyers sometimes declined to trigger the escalator if the case was resolved with little effort. Sixth, non-attorneys typically conducted screening interviews, although a lawyer reviewed each file prior to the case's acceptance. There was disagreement as to what percentage of callers seeking legal representation were accepted as clients. Estimates ranged from 30% to 85%. All agreed, however, that the majority of clients

majority of clients *never* met a lawyer face-to-face.[67] Further evidence of clients' paternalistic treatment is that, at many settlement mills, clients are not routinely informed of the sum demanded of the insurance company on their behalf. This information is not shared, attorneys report, because of a fear the knowledge will create lofty and unrealistic expectations.[68]

Eighth, settlement mills incentivize settlements via mandatory quotas or by offering their negotiators awards or fee-based compensation. These requirements and rewards put the focus on the *number* of files closed or *aggregate* returns, as opposed to obtaining a fair value for each individual client. At Azar & Associates of Colorado, for example, there is evidence that attorneys were expected to generate $30,000 to $40,000 in fees per month.[69] The attorney who generated the most fees was recognized with a monthly "shark" award.[70] And attorneys were compensated via straight commissions, rather than salaries.[71] Likewise, at the Jones firm of Texas, where all negotiators (attorneys and non-attorneys alike)[72] were paid bonuses based on the fees they generated, a former attorney recalled: "There was a constant pressure for more numbers, rather than the quality of the work."[73]

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had been in car accidents and had sustained soft tissue injuries. Seventh, as noted in the text, in typical cases, face-to-face attorney-client interaction was exceptional, and five of the six attorneys interviewed did not routinely notify clients of the sum demanded of the insurance company on the client's behalf. Eighth, until recently, compensation was based on the fees each attorney generated, and one former attorney recalled a quota, requiring her to generate $40,000 in fees per month. *See* Telephone Interview with K.N. (Nov. 8, 2007) ("It was actually called a quota . . . I was supposed to generate $40,000 in fees per month."). Ninth, typical claims were resolved quickly, usually within three-to-eight months of the accident, although claims could take substantially longer to resolve. Finally, lawsuits were rarely filed—in approximately 10% to 15% of cases. *See generally* Telephone Interview with T.F. (Mar. 6, 2008); Telephone Interview with L.T. (Mar. 6, 2008); Telephone Interview with J.B. (Nov. 12, 2007); Telephone Interview with K.N. (Nov. 8, 2007); Telephone Interview of J.P. (Nov. 1, 2007); Telephone Interview of V.O. (Nov. 1, 2007).

67. *See* Telephone Interview with R.J. (Apr. 8, 2008) (estimating that 80% or 90% of clients never met with a lawyer face-to-face); Telephone Interview with G.V. (Apr. 7, 2008) ("[T]here was probably at least half of clients, if not more, that I never actually set eyes on."); Telephone Interview with H.L. (Apr. 7, 2008) ("Very rarely did we ever meet our clients."); Telephone Interview with K.E. (Apr. 3, 2008) (estimating that one-half to two-thirds of clients never saw a lawyer face-to-face); Telephone Interview with D.R. (Apr. 3, 2008) ("Most of the time you never even met 'em."). *But see* Telephone Interview with H.G. (Apr. 29, 2008) (stating that, at some point, the negotiating attorney had typically met with the client); Telephone Interview with C.R. (Apr. 1, 2008) (stating that he met with clients but does not believe that all followed this approach).

68. *See, e.g.*, Telephone Interview with L.T. (Mar. 6, 2008); Telephone Interview with K.N. (Nov. 8, 2007). This reticence raises issues under Model Rules of Professional Conduct 1.2(a) and 1.4. Of course, lawyers of all stripes have to contend with clients' unrealistic expectations. There is evidence, however, that rather than simply withholding information, conventional lawyers make an effort to educate clients as to what result reasonably can be attained. *See* KRITZER, *supra* note 3, at 170-72.

69. Pl.'s Azar Resp., *supra* note 41, at Ex. 9 (Dep. of Timmerman, at 37). *But see* Def's. Azar Motion, *supra*, at Ex. A (Dep. of Frank Azar, at 138) (denying this); *id*. at Ex. C (Dep. of Darwin Burke, at 33) (same).

70. *Id*. at Ex. A (Dep. of Frank Azar, at 80); *id*. at Ex. B (Dep. of Benjamin Johnson, at 20-21).

71. *See, e.g.*, *id.* at Ex. A (Dep. of Frank Azar, at 74-75).

72. *See* Telephone Interview with D.D. (May 20, 2008). Sharing fees with non-lawyers is proscribed. *See* MODEL RULES OF PROF'L CONDUCT R. 5.4(a) [hereinafter MODEL RULES].

73. Telephone Interview with B.M. (May 8, 2008).

The ninth and related factor is the speed at which settlement mills close files. As a rule, claims are resolved much faster in the absence of suit.[74] But settlement mills resolve claims quickly even accounting for the fact lawsuits are seldom initiated. Studies suggest that, even if no lawsuit is filed, around one year elapses between the accident and the settlement if a claimant is represented by counsel.[75] At settlement mills, in comparison, cases are sometimes resolved in as little as two months and usually within eight.[76]

The above discussion hints at the tenth and final characteristic: Settlement mills rarely file lawsuits. This fact further distinguishes settlement mills from their conventional counterparts. Studies indicate that even low-status plaintiffs' attorneys file suit in a significant percentage of cases—approximately 50% of the time.[77] At settlement mills, in contrast, lawsuits are the strong exception. Jeffers & Associates of South Carolina instituted suit to resolve only about 10% to 15% of its claims.[78] Azar & Associates of Colorado filed suit even less frequently. Between July 2002 and May 2003, the firm opened a total of 1,574 new files and filed suit or commenced arbitration in 127 instances, or a meager 8% of the time.[79] The now-defunct Arizona personal injury firm of Zang & Whitmer

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74. *See, e.g.*, ROSS, *supra* note 4, at 229, Tbl. 5.15; Marc A. Franklin et al., *Accidents, Money, and the Law: A Study of the Economics of Personal Injury Litigation*, 61 COLUM. L. REV. 1, 31 (1961); Maurice Rosenberg & Michael I. Sovern, *Delay and the Dynamics of Personal Injury Litigation*, 59 COLUM. L. REV. 1115, 1128 n.47 (1959).

75. *See, e.g.*, ROSS, *supra* note 4, at 229 (claims settled in an average of 360 days when a claimant was represented by an attorney but suit was not filed).

76. Part of the explanation for this quick closure is exogenous to settlement mills' claim settlement behavior. It is that settlement mills typically represent clients with minor injuries, and, as a rule, the more serious the injury, the longer the claim takes to resolve. *See, e.g.*, *id*. at 226, Tbl. 5.11; Rosenberg & Sovern, *supra* note 74, at 1122-23. In addition, settlement mill negotiators and claims adjusters interact with one another frequently, *see infra* note 286, and frequent interaction is correlated with faster claims resolution, *see generally* Jason Scott Johnston & Joel Waldfogel, *Does Repeat Play Elicit Cooperation? Evidence From Federal Civil Litigation*, 31 J. LEGAL STUD. 39 (2002).

77. Daniels & Martin, *Best*, *supra* note 9, at 1789, Tbl. 4 (BB1 attorneys settled prior to filing suit 51.2% of the time); Parikh, *supra* note 7, at 85, Tbl. VI (low-end attorneys settled without suit 52% of the time); *see also* Franklin et al., *supra* note 74, at 10 (about 50% of New York accident victims who retained counsel initiated suit). One might surmise that settlement mills' low rate of filing is attributable to the fact that settlement mills overwhelmingly represent auto accident victims, and auto accident victims settle pre-suit at abnormally high rates. That explanation is imperfect, however. The BB1 attorneys studied by Daniels and Martin also predominantly represented auto accident victims, Daniels & Martin, *Best*, *supra* note 9, at 1790, and as noted, BB1 attorneys filed lawsuits prior to settling nearly half of the time, *id*. at 1789, Tbl. 4. Likewise, a number of studies have also found that represented auto accident victims still file suit at least one-third of the time. *See* SPRINKEL, *supra* note 27, at 26, Tbl. 35; DEPARTMENT OF TRANSPORTATION, AUTOMOBILE PERSONAL INJURY CLAIMS, Vol. 1, 121 (1970); ALFRED F. CONARD ET AL., AUTOMOBILE ACCIDENT COSTS AND PAYMENTS: STUDIES IN THE ECONOMICS OF INJURY REPARATION 154 (1964).

78. *See* Telephone Interview with J.B. (Nov. 12, 2007) (firm filed suit about 10% of the time); Telephone Interview with K.N. (Nov. 8, 2007) (firm filed suit to resolve 10% to 15% of claims); Telephone Interview with V.O. (Nov. 1, 2007) (firm filed suit 10% of the time or less); Telephone Interview with L.T. (Mar. 6, 2008) (firm filed suit to resolve about 10% to 15% of claims); *but cf*. Telephone Interview with J.P. (Nov. 1, 2007) (firm filed suit to resolve at least 10% of claims).

79. *Compare* Pl.'s. Azar Resp., *supra* note 41, at Ex. 6 (letter from Thomas B. Quinn to Patric J. LeHouillier dated Mar. 16, 2007), *with id.* Ex. 14 (chart showing when suit was filed or arbitration commenced). Of course,

provides another data point. In a four-year period, the firm settled roughly 1,500 personal injury claims, with a lawsuit filing rate of only 5%.[80] And at the Jones firm of Texas, where there was reportedly "pressure" to "conclude [claims] without the necessity of a lawsuit,"[81] some former attorneys recalled initiating lawsuits less frequently still.[82]

B. THREE CASE STUDIES

We now consider the operations of three settlement mills in some detail. One of these firms is currently in existence; two operated in the recent past.

1. THE LOUISIANA LAW FIRM OF LAWRENCE D. SLEDGE

Lawrence D. Sledge was a solo practitioner in Louisiana. Until he was disbarred in 2003,[83] Sledge had, for fifteen years, run a high-volume personal injury practice.[84] During those years, Sledge and his non-attorney office staff juggled approximately 300 open files at any one time,[85] the vast majority of which were settled within three-to-six months.[86] Most of these files involved minor automobile accidents, predominantly "itty bitty"[87] rear-enders.[88]

Sledge advertised widely and had been advertising in one form or another

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some of the files that were opened in 2002-03 could have resulted in a lawsuit instituted after June 2003. Conversely, some of the lawsuits filed in the June 2002-03 window likely reflect files opened prior to June 2002.

80. In re Zang, 741 P.2d 267, 277 (Ariz. 1987) ("[N]inety-five percent of respondents' cases were not filed.").

81. Telephone Interview with D.W. (May 8, 2008).

82. *See* Telephone Interview with C.P. (May 20, 2008) (lawsuits were filed to resolve "less than 1%" of claims); Telephone Interview with D.D. (May 20, 2008) (lawsuits were filed less than 3% of the time); Telephone Interview with J.K. (May 15, 2008) (lawsuits were filed in "maybe 1%" of claims). *But see* Telephone Interview with D.W. (May 8, 2008) (estimating that lawsuits were filed 20% of the time); Telephone Interview with B.B. (May 28, 2008) (estimating that lawsuits were filed about 8% of the time). In rare instances, when a case could not settle, rather than filing a lawsuit in-house, claims were referred to outside counsel. *See, e.g.*, Telephone Interview with D.D. (May 20, 2008) ("less than 5%" of claims were referred to other law firms); Telephone Interview with D.W. (May 8, 2008) ("maybe 2% of cases" were referred to outside counsel); Telephone Interview with J.K. (same). *But see* Telephone Interview with C.P. (May 20, 2008) (15% to 20% of claims would be referred to outside counsel).

83. In re Sledge, 859 So.2d 671, 686-87 (La. 2003). The Louisiana Supreme Court disbarred Sledge after concluding that he solicited prospective clients, in violation of Louisiana Rule of Professional Conduct 7.2(a) and (d); failed to act with reasonable diligence, in violation of Rule 1.3; failed to supervise non-lawyer assistants, in violation of Rule 5.3; and facilitated the unauthorized practice of law, in violation of Rule 5.5(b).

84. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 16 (Test. of Wendy LeBleau); *id.* at 311 (Test. of Lawrence D. Sledge). While Sledge operated a personal injury practice for only fifteen years, he had been practicing law since 1960. *Id.*

85. *Id.* at 76 (Test. of Lillian Lalumandier) ("We had approximately 300 files in the office."); *id.* at 114 ("[W]e signed up the average of five files a week.").

86. Offer of Proof, transmitted by letter from Leslie J. Schiff, attorney for Lawrence D. Sledge, to Donna L. Roberts, Board Administrator, Louisiana Attorney Disciplinary Board (Apr. 16, 2001), at LDS-0058 [hereinafter Sledge Supp. Submission].

87. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 369 (Test. of Lawrence D. Sledge).

88. Telephone Interview with Lillian Lalumandier (Aug. 13, 2007).

since 1979.[89] According to the firm's office manager, the bulk of the firm's clients came from these advertising efforts.[90] Sledge's ads reflected his colorful personality, and in his firm's heyday, in a play off his surname, Sledge was known throughout Louisiana as "the hammer."[91]

When a potential client called the Sledge firm ("invariably" after seeing his advertisement in the Yellow Pages[92]), the prospective client came to the office where he was typically screened by a paralegal.[93] In deciding whether to accept the representation, paralegals were trained to look for the "three legs of the stool": an at-fault defendant, an injury, and insurance.[94]

Once a case was accepted, the client executed the firm's contract for legal services, which specified that the fee would be contingent and tiered: one-third of the total recovery in the absence of suit, 40% if a suit was filed, and 50% of the settlement, verdict, or judgment in the event of an appeal.[95] At the same time, the claim was also broadly characterized as a litigation or non-litigation matter, which meant that it could be settled without a lawsuit. Matters were heavily skewed in the latter direction: Only about 10% of claims resulted in lawsuits being filed.[96] Even when suit was initiated, settlements were usually obtained without further court proceedings.[97]

As to the few real "litigation matters" the firm pursued, while Sledge did attend

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89. At various times, Sledge advertised on television, in the Yellow Pages, and on billboards. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 413 (Test. of Lawrence D. Sledge).

90. Telephone Interview with Lillian Lalumandier (Aug. 13, 2007). Sledge's recollection differs. He recalls that two-thirds of clients came from referrals and one-third from advertising. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007). That recollection, however, is in some tension with Sledge's sworn testimony that he "built a practice from [advertising]." Sledge Disciplinary Hr'g Tr., *supra* note 1, at 413 (Test. of Lawrence D. Sledge). Sledge undoubtedly did obtain a sizable number of clients from client referrals; he expressed his gratitude to those who sent him business by providing modest cash payments or sending a ham at Christmas. *In re Sledge*, 859 So.2d at 673-74.

91. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007); *see also* Mark Ballard, *Coming to Terms with the $20,000 Ad: A Realization About Lawyer Advertising*, NAT'L L. J., Oct. 7, 2002, at A1 (describing Sledge's advertisement).

92. Telephone Interview with Lillian Lalumandier (Aug. 13, 2007).

93. Early on, Sledge conducted the initial screening interview himself. In time, the task was delegated to the office staff. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007).

94. Sledge Supp. Submission, *supra* note 86, at LDS-0007-0009 (office protocol). *See also* Sledge Disciplinary Hr'g Tr., *supra* note 1, at 337 (Test. of Lawrence D. Sledge).

95. Sledge Supp. Submission, *supra* note 86, at LDS-0152 (contract for legal services).

96. According to Sledge's long-time bookkeeper, 90% of files were "non-litigation files." Sledge Disciplinary Hr'g Tr., *supra* note 1, at 145 (Test. of Jennifer Cangelosi). Sledge's office manager likewise testified that between 1995 and 1998, "very few" cases resulted in lawsuits being filed. *Id*. at 121 (Test. of Lillian Lalumandier). Sledge, however, testified that the office had approximately 150 nonlitigation files and 100 litigation files at any one time. *Id.* at 348-49 (Test. of Lawrence D. Sledge). *But see* Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007) (stating that the firm had thirty to forty court files at any given time).

97. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 130 (Test. of Lillian Lalumandier). Sledge's office manager explained: "Most of the time the litigation files—most of the time they didn't go to litigation." *Id*. Instead, even after suit was filed, as long as the insurer was not denying liability, the file would return to the non-litigation side of the firm and negotiations with the adjuster would continue unabated.

depositions and make rare court appearances, petitions and other pleadings were usually drafted by various non-attorney employees utilizing general pleading forms.[98] Sledge did occasionally take cases to trial, however. The firm tried (and lost) four cases in 1993.[99] Perhaps chastened, the firm tried no more than ten cases from 1995 to 1998, more often referring the rare non-settlers to other personal injury attorneys.[100]

"Non-litigation" matters, meanwhile, were the office's "bread and butter."[101] These matters ordinarily went to Sledge's legal assistant, who would oversee the clients' medical treatment, verify insurance, correspond with insurance adjusters, and prepare demand letters and packages using a damage formula of $2,000 for each month of active medical treatment plus medical bills, drug bills, and lost income during the period of medically-verified disability.[102] Following her preparation of a demand package, the matter would be transferred to Sledge's office manager, who would negotiate and settle the matter directly with the insurance adjuster.[103] Sledge was not involved in this effort,[104] because, he explained, these claims were "cookie-cutter," "programmed,"[105] "on automatic," and "so very cut and dry."[106]

Unlike some other settlement mill negotiators, Sledge's office manager did not settle cases pursuant to a quota, but Sledge did stay apprised of her numbers nonetheless. She explained: "[M]y whole future employment depended upon my ability to settle these files . . . . That's the statistic that he'd look at: the number of files I settled and how much money I brought in."[107]

Though Sledge was the firm's only attorney, he rarely met with clients to discuss substantive matters. Often, the only time the client actually "saw" her attorney was via videotape during the initial intake interview.[108] When feasible,

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98. *In re Sledge*, 859 So.2d at 674; *see also* Sledge Disciplinary Hr'g Tr., *supra* note 1, at 74-78, 119 (Test. of Lillian Lalumandier).

99. *Id*. at 76, 95, 98-99, 120. The firm did not eschew litigation for lack of trial experience. Sledge was an experienced trial lawyer. In the course of his long legal career, he estimates that he had eighty-seven jury trials and more than 200 bench trials. In his recollection, at least, he won "probably 90% of them." The firm's move from litigation to standardized settlements coincided with its use of advertising. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007).

100. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 120 (Test. of Lillian Lalumandier) ("In 1995, '96, '97 and '98 . . . we settled a very large percentage of our files. We didn't go to trial on any."); *id*. at 205-07 (Test. of Randall Shipp) (stating that, beginning in the mid 1990's, Sledge started to refer out complicated cases). *But see In re Sledge*, 859 So.2d at 679 (suggesting that Sledge conducted ten trials between 1995 and 1998).

101. Sledge Disciplinary Hr'g Tr., *supra* note 1, at133 (Test. of Lillian Lalumandier).

102. *In re Sledge*, 859 So.2d at 671, n.6; *see also* Sledge Disciplinary Hearing Tr., *supra* note 1, at 69-70 (testimony of Wendy LeBleau).

103. *Id*. at 114 (Test. of Lillian Lalumandier).

104. *Id*. at 79, 95.

105. *Id.* at 335 (Test. of Lawrence D. Sledge).

106. *Id.* at 427.

107. *Id*. at 132 (Test. of Lillian Lalumandier); *see also id*. at 363 (Test. of Lawrence D. Sledge) ("That's her statistic.").

108. *In re Sledge*, 859 So.2d at 674 n.7.

however, Sledge did make an effort to introduce himself to clients—and "do my thing"[109]—at the conclusion of the representation when a settlement check was disbursed. Sledge explained: "I would shake their hand and they'd tell me what a great job I did. I know [my legal assistant] and them had done that, but you know, they thought I was doing it, you know, and they thanked me so much for doing a great job, and that's the way we did it."[110]

2. THE GEORGIA LAW FIRM OF JASPER DUPAYNE

A second exemplar is the Jasper Dupayne Law Firm of Georgia. During the years under consideration,[111] the Dupayne firm was a high-volume personal injury practice. Indeed, its case volume was, to quote a former Dupayne attorney, "astronomical."[112] That attorney reports that she had 300 to 400 open files on her desk at any one time,[113] and "I was supposed to settle at least 100 a month."[114] A non-attorney employee who worked at the Dupayne firm a few years earlier also negotiated settlements. She recalls that she and another non-attorney were given a quota of negotiating a combined $100,000 in settlements per week.[115]

The Dupayne firm advertised aggressively and got the vast majority (estimates ranged from 80% to 98%) of its clients from its extensive advertising efforts.[116] The firm started advertising in 1996 and in the late 1990s, the firm's annual advertising budget was estimated to exceed $1 million.[117] As is true for other settlement mills, most of the firm's clientele had been in automobile accidents and had sustained minor soft tissue injuries.[118]

When a prospective client first called the office (usually after seeing an advertisement on television), a non-attorney conducted the initial intake interview via telephone, which principally involved determining whether either the prospective client *or* the putative defendant had insurance and whether the

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109. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 369 (Test. of Lawrence D. Sledge).

110. *Id.* at 365.

111. The information below comes primarily from a sworn statement executed by a former attorney and interviews with that attorney, another attorney, and three non-attorney employees who worked at the Dupayne firm for a combined twenty-one years. The interview subjects on whom I most heavily rely worked at the firm between 1994 and 1999. Accordingly, although the firm still exists, no claim is made as to the firm's recent or current operations.

112. Sworn Statement of S.S. at 31 (Aug. 19, 1998). Another employee input new cases into the firm's electronic case tracking system. She recalls inputting four or five new cases each hour, eight hours per day. This translates, conservatively, into 160 new cases per week or 640 new cases per month. Telephone Interview of J.G. (Aug. 27, 2007).

113. Sworn Statement of S.S. at 23-24 (Aug. 19, 1998).

114. *Id*. at 41.

115. Telephone Interview with A.E. (Aug. 16, 2007); *see also* Telephone Interview with J.G. (Aug. 27, 2007) (confirming that two non-attorneys negotiated settlements pursuant to a weekly quota).

116. Telephone Interview with A.E. (Aug. 16, 2007); Telephone Interview with S.S. (July 16, 2007).

117. Telephone Interview with A.E. (Aug. 16, 2007); Telephone Interview with S.S. (July 16, 2007).

118. Telephone Interview with S.L. (Apr. 7, 2008); Telephone Interview with A.E. (Aug. 16, 2007).

putative client had sought prompt medical care for her injuries. If these criteria were met, the Dupayne firm would reportedly agree to the representation. Thus, the screening process only weeded out a small minority of claims.[119] Once it was determined that the caller would be represented, the client either came into the office to sign the retention agreements or, if the client lived far away, a courier would take the agreements to the client's home or business.[120] Dupayne reportedly met with a new client during the intake process only if the client had what appeared to be a "high dollar" case.[121]

Like other settlement mills, the firm reportedly charged a tiered contingency fee—but Dupayne's had an unusual twist. The standard agreement set the fee at 40% of the gross recovery attained. The office's practice, however, was to add a handwritten note stating that the fee would be "reduced" to 33% if a settlement could be negotiated without suit being filed.[122] The notation was added in handwriting, one former employee surmised, to give clients the impression that they were getting a discount.[123]

According to former employees, once the retention agreement was executed, the vast majority of claims were processed in the following manner.[124] After a client completed his medical treatment and his medical bills had been assembled, a non-lawyer employee of the firm would send a time-limited demand to an insurance company using a formula of 5.2-times medical bills for soft tissue injuries and insurance policy limits for DUIs.[125] Clients were not usually consulted concerning the demand. Indeed, at some point the firm reportedly stopped cc'ing clients on the demand letter sent to insurance adjusters because of client complaints that the demands were too low.[126] This demand would be drafted prior to a detailed investigation of the client's claim. According to a

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119. As a former employee recalled: "[H]e would take about all cases." Telephone Interview with A.E. (Aug. 16, 2007); *see* Telephone Interview with S.L. (Apr. 7, 2008) (estimating that 75% of callers seeking legal representation were accepted as clients); Telephone Interview with J.G. (Aug. 27, 2007) (recalling that, if a prospective client had waited too long before seeing a doctor, the caller would be rejected, but that was "pretty much it"); Telephone Interview with S.S. (July 16, 2007) (recalling that a client would be accepted as long as there was some insurance coverage).

120. *See* Sworn Statement of S.S. at 44-46, 71-74 (Aug. 19, 1998); *see also* Telephone Interview with S.L. (Apr. 7, 2008) (estimating that 50% to 60% of clients were signed up by couriers).

121. Telephone Interview with A.E. (Aug. 16, 2007); Telephone Interview with J.G. (Aug. 27, 2007).

122. Telephone Interview with A.E. (Aug. 16, 2007).

123. Telephone Interview with J.G. (Aug. 27, 2007). To the extent clients were misled as to whether they were getting a "discount," the firm's practice arguably ran afoul of Model Rules of Professional Conduct 1.4, 7.1, and 8.4(e).

124. Dupayne had personal responsibility over the small proportion of higher-value claims involving broken bones, permanent scarring, or the like. Because Dupayne handled these claims himself, the former employees with whom I spoke lacked first-hand information as to how such claims were processed. They might have been handled quite differently than the description above.

125. Telephone Interview with A.E. (Aug. 16, 2007); Sworn Statement of S.S. at 17, 19, 35 (Aug. 19, 1998).

126. Sworn Statement of S.S. at 18-19, 22-23 (Aug. 19, 1998). As noted, this failure to notify clients of the sum demanded raises ethical issues. *See supra* note 68.

former attorney: "[T]here was never any investigation done of the claim . . . . The only investigation that was ever done was whether or not someone had insurance."[127] When I asked two other former Dupayne employees how much investigation was conducted, each responded with the same one-word answer: "None."[128]

After receiving this demand, the insurance adjuster would provide a counter-offer and negotiation with the insurance adjuster would ensue. According to a former employee, the goal of this negotiation was to settle for three or four times the amount of the medical bills.[129] These discussions were not protracted, taking around ten minutes,[130] and legal issues such as comparative negligence were seldom discussed.[131]

After this negotiation, the client would be notified of the insurance company's offer and would be given the opportunity to accept or reject the negotiated sum. Clients were encouraged to take settlement offers. In fact, "a good offer," an attorney reports, "would be one that met the client's idea of a good offer or whatever we could talk them into."[132] The entire process, from the time the client completed medical treatment to the time he or she was handed a settlement check, took between one and four months,[133] and the average gross recovery was somewhere between $3,500 and $5,000.[134]

As is typical of settlement mills, during the course of a representation, attorney-client interaction was minimal. "It's very possible that they could go all the way through to settlement having had only one phone call with an attorney."[135] Indeed, by one estimate, fewer than 10% of clients ever met with a lawyer face-to-face.[136]

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127. Sworn Statement of S.S. at 59 (Aug. 19, 1998)

128. Telephone Interview with A.E. (Aug. 16, 2007); Telephone Interview with J.G. (Aug. 27, 2007).

129. Telephone Interview with A.E. (Aug. 16, 2007).

130. Telephone Interview with S.S. (May 30, 2007).

131. Telephone Interview with A.E. (Aug. 16, 2007).

132. Sworn Statement of S.S. at 38 (Aug. 19, 1998); *see also* Telephone Interview with J.G. (Aug. 27, 2007).

133. Telephone Interview with S.S. (May 30, 2007) (cases were resolved within four months "at the most"); *see also* Telephone Interview with J.G. (Aug. 27, 2007) (the process was usually a few months long); Telephone Interview with A.E. (Aug. 16, 2007) (settlements were usually negotiated within thirty days after the conclusion of medical treatment).

134. *Compare* Sworn Statement of S.S. at 31 (Aug. 19, 1998) (estimating the average gross recovery to be $3,500), *with* Telephone Interview with A.E. (Aug. 16, 2007) (estimating the average gross recovery to be $5,000). This estimate does not include the small number of higher-value claims Dupayne handled personally. *See supra* note 124.

135. Sworn Statement of S.S. at 141-42 (Aug. 19, 1998). This observation is bolstered by an April 6, 2009, Westlaw search of Georgia state and federal court opinions. Dupayne's name appears only twice, in two opinions involving the same bankruptcy case from 2000. (Case citation not printed to preserve confidentiality.) The court opinion indicates that Dupayne represented a client, now a debtor in bankruptcy, in a personal injury action. Because of his debtor status, that client filed a motion with the bankruptcy court to approve his tort settlement. In its opinion, the court noted that the client's retention had taken place outside the presence of a lawyer, at the client's job site. After the retention, the client had no contact with any lawyer at the firm. He also did not know whether suit had been filed on his behalf.

136. Sworn Statement of S.S. at 93 (Aug. 19, 1998); *see also* Telephone Interview with J.G. (Aug. 27, 2007) (stating that, other than handing out settlement checks, Dupayne had personal interaction with soft tissue clients only "once in a blue moon"). *But see* Telephone Interview with A.E. (Aug. 16, 2007) (Dupayne "usually" met with clients at the beginning and end of the representation).

In the late 1990s, the Dupayne firm *very* rarely filed lawsuits and did not take a single case to trial.[137] A former attorney recalls: "I never touched a case that was filed in court. *Ever*."[138] Another former employee opined that "[Dupayne] has some morbid fear of litigating."[139] Instead, in the rare instance that a claim would not settle, the client would either be dropped outright or, if the client had sustained significant injuries, he would be referred to a network of more sophisticated trial attorneys, in return for a portion of the ultimate fee.[140] These referrals reportedly took place less than 1% of the time.[141]

3. THE LOUISIANA LAW FIRM OF E. ERIC GUIRARD & ASSOCIATES

A third firm with settlement mill features is the "hugely successful advertising law firm"[142] of E. Eric Guirard & Associates. This Louisiana law firm, in business until May of 2009, differs from the two firms profiled above because, in many respects (at least in 2000), it housed a settlement mill inside a conventional high-volume personal injury law practice. As explained below, during the time at issue, the firm did try cases. After a case was screened, if the claim was slated for litigation, it went to a team of lawyers who, by all accounts, litigated the case.[143] If, however, a file was deemed a "non-litigation" file, it initially went to a wing of the firm with distinct settlement mill features.

The Guirard firm was founded on July 4, 1994. Until very recently, it employed fifty-seven individuals, including sixteen attorneys,[144] and was one of the most recognized plaintiffs' firms in the Southeast.[145] The firm had two offices in Louisiana, with a flagship office in Baton Rouge. That Baton Rouge office was itself a sparkling 10,000-square-foot building constructed in the Italian Renais-

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137. Sworn Statement of S.S. at 28 (Aug. 19, 1998); *see* Telephone Interview with A.E. (Aug. 16, 2007); Telephone Interview with J.G. (Aug. 27, 2007).

138. Telephone Interview with S.S. (May 30, 2007).

139. Telephone Interview with J.G. (Aug. 27, 2007).

140. *Id.*; Telephone Interview with A.E. (Aug. 16, 2007).

141. Telephone Interview with S.S. (May 30, 2007).

142. Tr. of Louisiana Disciplinary Bd. Hr'g, In re E. Eric Guirard & Thomas R. Pittenger, No. 04-DB-005 (Sept. 23, 2004), at 145 [hereinafter Guirard Disciplinary Hr'g Tr.] (Test. of Eric Guirard).

143. The law firm litigated a non-trivial number of cases, as confirmed by an August 2, 2009 search in Westlaw's "ALLCASES" database. That search brought up seventeen opinions in which an attorney from Guirard & Associates served as counsel. *See also* Guirard Disciplinary Hr'g Ex. ODC-22 (Dep. of Steven Debosier, at 4) (testifying that, as an attorney at the firm, he goes to court and tries cases).

144. E. Eric Guirard Firm Profile—Our Staff, http://www.eguarantee.com/staff.php (last visited Aug. 13, 2008); Firm Profile—Our attorneys http://www.eguarantee.com/attorneys.php (last visited Aug. 13, 2008); Firm Profile—Our Partners http://www.eguarantee.com/partners.php (last visited Aug. 13, 2008).

Eds. Note: After Eric Guirard's disbarment in May 2009 (see infra *note 152) and shortly before this article went to press, the name of Guirard's former firm was changed to "Dudley DeBosier Injury Lawyers" and their website was relocated to http://www.dudleydebosier.com/.*

145. Mark Ballard, *The Ad-Made Man and the Old-Line Firm: Changes in Law Practice are Played out in Baton Rouge*, NAT'L L. J., Sept. 30, 2002, at A1.

sance style, covering an entire city block.[146]

The Guirard firm advertised throughout the state of Louisiana, spending more than $1 million on advertising each year.[147] According to Guirard, a self-proclaimed "e-trepreneur,"[148] "[a]dvertising works"; it gets the necessary volume of clients (some 30,000 during the firm's fifteen-year existence) in the door.[149] The firm's ads usually featured the firm's slogan: "Get The 'E' Guarantee," a motto repeated in the firm's merchandise, including T-shirts and sports equipment, for sale through its website.[150] The firm, it is reported, even had its own brand of bottled water.[151]

In 2004, the firm's founding partners, E. Eric Guirard and Tommy Pittenger, were subject to a bar disciplinary proceeding, which culminated in their 2009 disbarment by the Louisiana Supreme Court.[152] In charging Guirard and Pittenger with wrongdoing, bar counsel focused on the firm's operations in 2000.[153] The description below is thus a snapshot of the firm as it then existed, as reflected by the disciplinary hearing record.[154]

When a prospective personal injury client called E. Eric Guirard & Associates, the client was screened in two parts. First, a non-attorney "case manager" would question the caller about the facts of the accident.[155] If the brief conversation

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146. Timothy Boone, *Entrepreneur: E. Eric Guirard*, GREATER BATON ROUGE BUS. REP. 54, May 22, 2007, *available at* http://findarticles.com/p/articles/mi_qa5281/is_200705/ai_n21245138/ (last visited Aug. 6, 2009).

147. Joe Mandak, *Money for You: Lawyer Ads Most Prevalent on "Local TV*," PITTSBURGH POST-GAZETTE, June 29, 2004, at C-9.

148. Boone, *supra* note 146.

149. *Id*.; *see also* Guirard Disciplinary Hr'g Tr., *supra* note 142, at 84, Sept. 23, 2004 (Test. of Eric Guirard); Penny Font, *Disbarred But Not Disbranded*, BusinessReport.com (May 18, 2009), *available at* http://www.businessreport.com/news/2009/may/18/disbarred-not-disbranded-lgl1/?print (last visited Aug. 12, 2009) (reporting that, during the firm's existence, it served 30,000 clients).

150. *See* http://www.eguarantee.com/e-store.php (last visited Apr. 6, 2009).

Eds. Note: The "e-store" link was removed after Guirard was disbarred.

151. Boone, *supra* note 146.

152. *See* Ruling of Hearing Committee # 15, Louisiana Attorney Disciplinary Board, In re E. Eric Guirard & Thomas Pittenger, Docket # 04-DB-005, Feb. 19, 2008 [hereinafter Guirard I]. Guirard and Pittenger were charged with, *inter alia*, sharing fees with non-lawyers, in violation of Louisiana Rule of Professional Conduct 5.4 and assisting in the unauthorized practice of law, in violation of Rule 5.5. *Id.* at 3-4. The Hearing Committee issued a ruling on February 19, 2008, finding violations and determining that suspensions of one year and one day were appropriate. *Id.* at 15. On November 6, 2008, the Louisiana Disciplinary Board accepted the Hearing Committee's conclusions (with modifications), found that Guirard and Pittenger additionally violated Rule 7.2 (concerning solicitation), and recommended that both be permanently disbarred from the practice of law. Louisiana Disciplinary Board Recommendation to the Louisiana Supreme Court, In re E. Eric Guirard & Thomas Pittenger, Docket # 04-DB-005, Nov. 6, 2008. On May 5, 2009, the Louisiana Supreme Court disbarred both Guirard and Pittenger. In re Guirard (*Guirard II*), No. 2008-B-2621, 2009 WL 1384981 (La. May 5, 2009).

153. Guirard I, *supra* note 152, at 1.

154. The firm utilized some version of the case manager system from 1997 through 2004. *Guirard II*, 2009 WL 1384981, at *6.

155. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 98-100, 142-44, Sept. 23, 2004 (Test. of Eric Guirard). If the case was complex, case managers were "under strict instructions to always put the phone call on hold and go find a lawyer and ask more questions." *Id*. at 99; *see also* Guirard Disciplinary Hr'g Ex. ODC 4, at 000029-30 (Manual). This particular version of the Case Manager Manual was in effect in 2000 but was

revealed that another individual was at fault and there was "probable insurance coverage" of any type,[156] the client would be asked to execute various retention agreements, a task that could be accomplished at the firm or at the client's home, in the presence of a non-attorney investigator.[157] Investigators were paid based on whether they succeeded in getting clients signed up: $25 for unsuccessful house calls; $50 if they secured the client's signature.[158] Bonuses were also available: an extra $15 if the investigator signed up other accident victims living in the same house; $50 if the investigator completed additional out-of-home sign-ups.[159]

At the time of retention, clients would execute the firm's fee agreement, which—typical of settlement mills—was tiered, specifying that the fee would be 36% if the claim was settled without suit and 40% if suit was filed.[160] In keeping with the "E Guarantee," however, the firm reduced its legal fees when necessary to ensure that its take never exceeded the client's recovery, after the client paid his out-of-pocket expenses.[161]

While this initial screen did weed out some clients, it did not weed out many of those complaining of injuries sustained in auto accidents. In 2000, for example, the firm fielded a total of 4,836 calls from potential clients and signed 2,294 callers to contract, meaning there was an acceptance rate of 47%.[162] The acceptance rate for clients who had been injured in auto accidents, however, was much higher. Of 2,204 such callers, the firm signed 2,107, or 95%.[163]

After these retention agreements were executed, the case file underwent a second review, this time by an attorney.[164] During this review, the attorney decided whether or not the firm would retain the file. If the attorney decided to let the claim go, it would either be referred to another firm or dropped altogether, in which case the client would be sent a "dump letter" ending the nascent attorney-client relationship.[165]

After the second screen, there were two other choices: whether to track the

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subsequently revised. At the disciplinary hearing, Guirard disputed that the Manual accurately portrayed the office's operations or procedures, insisting that it "wasn't meant to be followed." Guirard Disciplinary Hr'g Tr., *supra* note 142, at 158-62, 192, Sept. 23, 2004 (Test. of Eric Guirard); *cf. id.* at 337-38 (Test. of Thomas Pittenger). In addition to having case managers answer calls from prospective clients, according to a news account, the firm also had a backup intake system, located in Nashville, Tennessee, to insure that no calls from prospective clients would be missed. Ballard, *supra* note 145, at A1.

156. Guirard Disciplinary Hr'g Ex. ODC 4, at 000030 (Manual).

157. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 99-100, Sept. 23, 2004 (Test. of Eric Guirard).

158. *Id.* at 101-02.

159. *Id.* at 102-04.

160. Guirard Disciplinary Board Hr'g Ex. ODC 3 (Contract of Employment).

161. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 110, Sept. 23, 2004 (Test. of Eric Guirard); Guirard Disciplinary Hr'g Ex. ODC-22 (Dep. of Steven Debosier, at 45).

162. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 113-14, Sept. 23, 2004 (Test. of Eric Guirard).

163. *Id*. at 138-39.

164. *Id*. at 114.

165. Guirard Disciplinary Hr'g Ex. R-4 (Dep. of Verna Schwartz, at 51).

claim as a litigation matter to be handled by an attorney,[166] or—particularly if the claim involved a soft tissue injury sustained in an automobile accident[167]—as a non-litigation matter. If a case was deemed a non-litigation matter (as approximately three-quarters of claims were), it was directed to one of several non-attorney case managers for "an early settlement."[168] Each case manager juggled 100 to 175 files at any one time[169] and settled roughly 250 claims per year.[170]

Once a case manager received a claim, she was, to quote the firm's Case Manager Manual, "assigned the case, the client and all assignable tasks."[171] This delegation, which was "vastly different from the traditional method,"[172] took place because efficiencies that can be achieved by paralegal assistance "are not fully realized when Paralegals are used in the 'traditional' sense."[173] Case managers gathered medical records and lost wage data, oversaw the client's medical treatment, communicated with the client, prepared a settlement demand package for an attorney's review and signature,[174] and then turned to their most critical task: negotiation with insurance claims adjusters. Before the negotiation, an attorney would review the client's file and determine the claim's high and low settlement value.[175] After those numbers were recorded, the case manager had the firm's authorization to settle for any amount within that range.[176] If an offer within the parameters materialized, the manager presented the settlement offer to

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166. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 91, 275-76, Sept. 23, 2004 (Test. of Eric Guirard).

167. *Id.* at 127.

168. Guirard Disciplinary Hr'g Ex. ODC-22 (Dep. of Steven Debosier, at 38). In year 2000, the firm sent 429 files to attorneys and 1,865 files directly to case managers. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 116, 130, Sept. 23, 2004 (Test. of Eric Guirard).

169. *Id*. at 91, 122-24.

170. *Id.* at 328-29 (Test. of Thomas Pittenger). In 2000, 1,865 files were sent to case managers, and 963 claims were settled by case managers. *Compare id*. at 116 (Test. of Eric Guirard), *with* Stipulations of Fact at ¶¶ 8-12, In re E. Eric Guirard & Thomas R. Pittenger, No. 04-DB-005 (undated). There is little evidence of what happened to the remaining claims, although it is clear that some claims sent to case managers in 2000 were settled in 2001; some were dropped by the firm; some were referred to other law firms; and in some instances, clients fired the Guirard firm and sought alternate representation. *See* Guirard Disciplinary Hr'g Tr., *supra* note 142, at 53-54, 118, 131-32 Sept. 23, 2004 (Test. of Eric Guirard) (offering possibilities); *id*. at 117 (explaining that some cases would be dropped by the firm even after being assigned to a case manager). Some claims, of course, were also transferred to the firm's litigation department for litigation. *Id*. As to whether an appreciable number of claims that started in the hands of case managers were transferred to attorneys and litigated, it is theoretically possible, although doubtful. Critically, the Hearing Committee found that the financial incentives imposed on case managers (described *infra*) created an "overwhelming motive to settle a claim at any price before the claims manager loses control over the file." Guirard I, *supra* note 152, at 10; *see also* Guirard Disciplinary Hr'g Ex. R-5 (Dep. of Adrean Joseph, at 27, 29) (testifying that, in her years as an insurance adjuster negotiating with the Guirard firm, she cannot recall any claim that she could not settle with a case manager); Guirard Disciplinary Hr'g Ex. ODC 4, at 000049 (Manual) (stating that a case manager could not transfer a file to the litigation department without obtaining personal approval from Guirard or Pittenger).

171. Guirard Disciplinary Hr'g Ex. ODC 4, at 000025 (Manual).

172. *Id*.

173. *Id*. at 000023.

174. *Id*. at 000041, 000044.

175. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 109, 202, 299, Sept. 23, 2004 (Test. of Eric Guirard).

176. *Id.* at 365-67 (Test. of Thomas Pittenger); *id*. at 201-02 (Test. of Eric Guirard).

the client for the client's approval.[177] The Case Manager Manual explained: "The goal of the case manager at this time is to get the client to follow our advice."[178] After obtaining the client's assent, the case manager would again contact the insurance adjuster and try to increase the offer. If those efforts failed, then the case would be settled for the offer previously obtained.[179] The average turnaround, according to Guirard, was around six months.[180]

Like other settlement mills, the firm used a number of carrots and sticks to encourage case managers to settle claims. One case manager was compensated pursuant to a quota, with an 8% commission paid only after $10,000 in legal fees had been collected from the cases she settled.[181] Other case managers, meanwhile, received 15% to 17% of the attorney fee generated by the settlements they negotiated.[182] If the claim had to be transferred to the litigation department because it could not be settled without the initiation of suit, however, the case manager would typically forego her fee.[183] Other incentives were also used. Each month, the firm gave out a lion ("king of the jungle") and monkey ("monkey on their back") award to the negotiator who generated the most and least fees for the firm during the period.[184] The firm also held office-wide contests, setting firm-wide fee goals, which, if met, would be rewarded with group trips to exotic locales.[185]

The Guirard firm prided itself on frequent client-case manager contact,[186] but like other settlement mills, much of this contact was paternalistic. For example, clients were notified when the firm issued a demand but were not routinely notified of the demand amount since it would create "some false expectations."[187] Likewise, the Case Manager Manual advised that clients should be encouraged to take a negotiated settlement offer because: "We know the value of the case, and the client does not."[188] As at other mills, the firm's founders, Guirard or Pittenger, did try to be on hand when clients came in to sign the release

177. *Id.* at 207.

178. Guirard Disciplinary Hr'g Ex. ODC 4, at 000046 (Manual).

179. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 210-12, Sept. 23, 2004 (Test. of Eric Guirard).

180. *Id.* at 117, 119, 302; *see also* Guirard Disciplinary Hr'g Ex. R-5 (Dep. of Adrean Joseph, at 38) ("Once the initial offer is made . . . it's usually a quick turnaround.").

181. Guirard Disciplinary Hr'g, Stipulations of Fact ¶ 12.

182. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 216-217, 222-23 (Test. of Eric Guirard). The practice was discontinued sometime before January 31, 2001. Guirard Disciplinary Hr'g, Stipulations of Fact ¶ 3.

183. *Guirard II*, 2009 WL 1384981, at *7; *see also* Guirard Disciplinary Hr'g Tr., *supra* note 142, at 221-22, Sept. 23, 2004 (Test. of Eric Guirard). Occasionally, even after transfer, a discretionary bonus would be approved and paid. *Id.* at 127-28.

184. *Id*. at 224-25.

185. *Id.* at 227-28.

186. Guirard Disciplinary Hr'g Ex. ODC 4, at 000027-28 (Manual) (requiring that case managers contact each client every fourteen days and promptly return client phone calls).

187. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 202-03 (Test. of Eric Guirard).

188. *Id.* at 207; Guirard Disciplinary Hr'g Ex. ODC 4, at 000046 (Manual)

and take their settlement check,[189] but at this late stage in the process, the time for meaningful attorney-client discussion had largely passed; the meeting was largely self-promotional. As Guirard explained: "We want people, when they leave here, to talk good about us."[190]

II. THE PREVALENCE OF SETTLEMENT MILL REPRESENTATION

Are the eight firms considered above outliers or rather exemplars of a distinct and pervasive form of personal injury practice? This is not a simple question to answer. Evidence on settlement mills is extremely difficult to unearth, for reasons discussed below. As a consequence, there is no easy way to chart how many settlement mills are in existence, to gauge whether they are increasing in number, or to estimate the percentage of personal injury clients they represent. Given this scarcity of hard data, it is theoretically possible that the firms introduced in Part I are so anomalous as to be almost irrelevant—the work of a few lawyers operating far outside the legal mainstream who were sometimes disciplined and, in two cases, disbarred, for their behavior. But the anecdotal and empirical evidence discussed below suggests otherwise, and as we will see in Part III, conditions are ripe for settlement mills' continued growth.

A. THE INVISIBILITY PROBLEM: "IT'S ALL OUT OF THE LIGHT OF DAY"[191]

It is not easy to obtain data on civil settlements, even of filed cases.[192] Obtaining data on the settlement of unfiled claims—and on the settlement mills that profit therefrom—is much harder. For a host of reasons, settlement mills operate in a sphere almost completely shielded from scrutiny.

For starters, claims handled by settlement mills are typically modest—usually soft tissue injuries sustained in car accidents with damages under $8,000. They are therefore unlikely to attract the attention of the press. Furthermore, because settlement mills only rarely file lawsuits, few, if any, public documents reflect their work. The fact that they do not routinely litigate also means that settlement mill attorneys will seldom come to the attention of judges, who might otherwise

189. Guirard Disciplinary Hr'g Tr., *supra* note 142, at 248 (Test. of Eric Guirard); *id*. at 82, May 9, 2007 (Test. of Dane Ciolino).

190. Boone, *supra* note 146.

191. Telephone Interview with E.G. (Apr. 22, 2008) ("Let me tell you, so much goes on in a law firm that settles cases, and it's all out of the light of day. If you don't have a moral center, and you're willing to slide and slip around, you can do all sorts of things because you're never going to be caught.").

192. *See* JOHN FABIAN WITT, PATRIOTS AND COSMOPOLITANS: HIDDEN HISTORIES OF AMERICAN LAW 277 (2007) (discussing the American tort settlement system's invisibility); Issacharoff & Witt, *supra* note 17, at 1596 (observing that the "occasional glimpse into the real world of mature tort settlement practices" is "extremely valuable" because the phenomenon is so often shielded from view); Saks, *supra* note 56, at 1212-13 (describing the difficulty of getting reliable information about the workings of the private settlement system).

monitor the competence of attorneys who practice within their jurisdiction.[193]

Settlement mills will also slip through almost any research screen that uses as its initial data source lawsuits filed in a given jurisdiction. For example, in her recent study of Chicago personal injury lawyers, Sara Parikh identified interview subjects based on a "random sample of case filings in the Cook County Circuit Court."[194] Similarly, Herbert M. Kritzer's monographs, *Let's Make a Deal: Understanding the Negotiation Process in Ordinary Litigation*, and *The Justice Broker: Lawyers and Ordinary Litigation* shed great light on the day-to-day practices of plaintiffs' attorneys, but they too are based only on interviews with "lawyers involved in . . . federal and state court cases."[195] All three important studies thus exclude or under-represent plaintiffs' attorneys who regularly settle cases before filing lawsuits.[196]

Compounding this invisibility, attorneys who work for settlement mills (or have worked for such firms in the past) are sometimes reluctant to discuss their practices. This reticence might stem from a worry that particular conduct violated professional standards, or it might come from a proprietary concern that rival law firms or insurance companies could profit from inside information about the firm's compensation scheme or negotiating strategies. Indeed, perhaps due to competitive concerns, Azar & Associates of Colorado reportedly required its associates to sign a confidentiality agreement barring the discussion of certain firm practices as a condition of employment.[197]

Meanwhile, fellow attorneys who are, in certain circumstances, obliged to bring observed ethical lapses to light,[198] are poorly positioned to observe settlement mill practice. Plaintiffs' lawyers rarely refer cases to settlement mills.[199] Hence, unlike those to whom they do refer cases in return for a portion of the ultimate recovery, fellow plaintiffs' attorneys lack a financial incentive to monitor settlement mill activity. On the defense side, because insurance companies usually assign legal professionals to a claim only in the event of suit, and settlement mills rarely file suit, settlement mill negotiators typically interact

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193. *Cf.* David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 807-08, 835-36 (1992) (discussing the significant role judges typically play in "uncovering and sanctioning lawyer misconduct").

194. Parikh, *supra* note 7, at 48.

195. KRITZER, DEAL, *supra* note 8, at 4, 14; *see* KRITZER, BROKER, *supra* note 8, at 20-24.

196. Parikh recognized but downplayed the importance of that omission, saying that "many respondents discussed recent changes in insurance company strategies which have made it increasingly difficult to settle without having to file suit." Parikh, *supra* note 7, at 49 n.2. In support of that contention, Parikh cited a magazine article concerning Allstate. *Id.* at 86. While it is true that Allstate did enact changes in the mid-1990s making it more difficult to settle without suit, Allstate is distinctive, *see infra* note 350. My research shows that, at the time of Parikh's study (December 1998 through February 2000), numerous settlement mills flourished. Likewise, Parikh's own interviews with personal injury attorneys suggested the existence of settlement mill attorneys in Chicago. *See infra* note 230.

197. Pl.'s Azar Resp., *supra* note 41, at Ex. 9 (Dep. of Timmerman, at 32).

198. *See* MODEL RULES R. 8.3(a).

199. *See supra* note 29 and accompanying text.

with insurance claims adjusters rather than defense counsel.[200] Unlike lawyers, adjusters are not subject to rules of professional responsibility and are not duty-bound to blow the whistle on perceived unethical conduct.

Next, clients, especially clients who seek the services of such firms, seldom make their experiences known by filing grievances or malpractice lawsuits.[201] This is true partly because legal services are "credence goods": a service provided by an expert who strongly influences the buyer's need for that service.[202] Consumers of credence goods cannot easily gauge the quantity of the service they should purchase or judge its quality. Individual clients are therefore unlikely to detect if they have received less-than-stellar counsel.[203]

This general inability to assess the quality of legal services is then exacerbated by two factors unique to settlement mills. First, clients served by settlement mills are comparatively uneducated and underprivileged and disproportionately belong to historically disadvantaged ethnic and racial minority groups.[204] As a result, settlement mill clients are unlikely to be personally acquainted with lawyers with whom they can consult[205] or have a sophisticated sense of what the lawyer-client

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200. *See, e.g.*, Telephone Interview with S.S. (May 30, 2007) (explaining that all of her negotiations were with adjusters).

201. For example, no client of the Sledge law firm *ever* filed a grievance or complaint. Initial Br. of Resp., Lawrence D. Sledge, Docket No. 00-DB-135, at 11 (June 12, 2002); *see also* Statement of Eric Guirard and Thomas Pittenger Regarding the Disciplinary Inquiry in Which They are Named As Respondents, 11-11-08, *available at* http://media.businessreport.com/media/ads/STATEMENT.pdf (last visited Mar. 31, 2009) (stating that the then-pending disciplinary action was "marked by no client complaints").

202. Witt, *supra* note 42, at 278-79; Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953, 968-69 (1999).

203. *See* Mark Spiegel, *Lawyering and Client Decisionmaking: Informed Consent and the Legal Profession*, 128 U. PA. L. REV. 41, 90-91 (1979); *see also* HUNTING & NEUWIRTH, *supra* note 65, at 107-08; Wilkins, *supra* note 193, at 829-31.

204. *See, e.g.*, Telephone Interview with C.P. (May 20, 2008) (stating of her clients "they were all poor; they were all uneducated"); Telephone Interview with A.E. (Aug. 16, 2007) (describing her typical client as poor and African-American). One insurance company investigator with whom I spoke noted that settlement mill clients do not typically complain about the services they receive because they are "non-sophisticated, non-English speaking, or non-injured." Telephone Interview with insurance investigator (June 14, 2007). The third descriptor ("non-injured") references the fact that personal injury firms exist upon a continuum, from the upstanding to the lawless. Some settlement mills at the far end of this spectrum go so far as to exaggerate injuries, send clients to sham doctors and chiropractors in order to manufacture or inflate medical bills, or even stage accidents. While the darkest underbelly of the personal injury system is worthy of academic consideration, and while it is also possible that one or more of the firms studied herein has grossly exaggerated injuries, this Article attempts to focus on the legal representation afforded legitimate accident victims. For accounts of decidedly corrupt personal injury practices, *see* KEN DORNSTEIN, ACCIDENTALLY, ON PURPOSE: THE MAKING OF A PERSONAL INJURY UNDERWORLD IN AMERICA (1998); JEFFREY O'CONNELL & C. BRIAN KELLY, THE BLAME GAME: INJURIES, INSURANCE, AND INJUSTICE 57-61 (1987); JEFFREY O'CONNELL, THE LAWSUIT LOTTERY: ONLY THE LAWYERS WIN 10-19 (1979); *cf.* Gary T. Schwartz, *Waste, Fraud, and Abuse in Workers' Compensation: The Recent California Experience*, 52 MD. L. REV. 983, 988-91 (1993) (discussing workers' compensation mills that manufacture and/or exaggerate claims).

205. As E. Eric Guirard once explained: "[T]here are no lawyers in [my clients'] personal social circles." Ballard, *supra* note 145, at A1; *see also* Jerome E. Carlin & Jan Howard, *Legal Representation & Class Justice*, 12 UCLA L. REV. 381, 427 (1964).

relationship is "supposed" to entail.[206] Second, settlement mills almost always obtain *something* for their clients,[207] and, as compared to those who walk away empty-handed, clients who receive some money in settlement are relatively unlikely to harbor ill will toward their attorney or recognize that they failed to obtain top-dollar.

Finally, even if a judge, fellow attorney, or dissatisfied client does file a grievance with a state bar, only rarely will that grievance become a matter of public record. Complaints leveled against attorneys are usually shrouded in secrecy. In most states, a grievance is sealed unless bar counsel concludes that the complaint is supported by probable cause and chooses to file formal charges[208]—an unusual event.[209] Adding to the secrecy, all but a few states impose private discipline, and in many states, it predominates.[210] When private (as opposed to public) discipline is ultimately imposed, the proceeding which precipitated that discipline—including the testimony concerning an attorney's law practice, which is most valuable to researchers—is sometimes deemed confidential and thus off limits.[211] A final wrinkle is that, even when proceedings are formally public, only a few states' disciplinary board opinions are available in a searchable format.[212] When disciplinary opinions are not searchable, locating particular lawyers who have engaged in a particular conduct takes on a distinct needle-in-a-haystack feel.

B. JUST HOW PREVALENT IS SETTLEMENT MILL REPRESENTATION?

The above analysis explains how it would be theoretically possible for settlement mills to represent a significant number of claimants throughout the United States but largely escape notice. Yet the question remains: Are the firms profiled above mere deviants? The evidence, while preliminary, suggests not.

The first category of evidence pointing to the prevalence of settlement mills

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206. *See* Telephone Interview with S.S. (May 30, 2007) ("People didn't know what a real law firm was.").

207. Although some clients with dubious claims are "dumped" by settlement mills after retention, very few cases that proceed to negotiation result in no offer from the insurance company. *See, e.g.*, Telephone Interview with C.R. (Apr. 1, 2008) (recalling that less than 1% of his cases generated no offer); Telephone Interview with J.P. (Nov. 1, 2007) (same); Telephone Interview with L.T. (Mar. 6, 2008) (same); Pl.'s Azar Resp., *supra* note 41, at Ex. 5 (Dep. of Rosalia Fazzone, at 25, 30) (recalling that, during her six-month tenure at Azar & Associates, she never had a no-offer case). *But see* Sworn Statement of S.S. at 123-24, 37 (Aug. 19, 1998); Telephone Interview with T.F. (Mar. 6, 2008) (estimating that, of his claims—all valued in excess of $25,000—perhaps 20% generated no offer).

208. Complaints are matters of public record in only Florida, New Hampshire, Oregon, and West Virginia. Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1, 19 & n.122 (2007).

209. Only about 3% of grievances result in formal charges. *See* ABA CENTER FOR PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE, SURVEY ON LAWYER DISCIPLINE SYSTEMS, Chart I (2003).

210. *See, e.g.*, *id.* at Chart II.

211. Levin, *supra* note 208, at 19-21 & nn.123-127.

212. As of August 2008, only the bar disciplinary opinions of Colorado, Illinois, Massachusetts, and Virginia were available on Westlaw. Additional states make lawyers' public disciplinary opinions available online, but this information is often incomplete and difficult to search.

comes from insurance adjusters—settlement mills' negotiating partners.[213] In the Guirard disciplinary proceeding, Guirard's counsel sought to show that the firm's practice of having non-attorney case managers negotiate settlements was unremarkable. Toward that end, five Louisiana-based insurance adjusters were subpoenaed and asked to estimate, in their experience, what percentage of personal injury law firms employ non-lawyers to negotiate claims. That question is important because it partly cuts through the ten-factor framework set forth above. While a firm can be a settlement mill and exclusively employ *attorney* negotiators (*see, e.g.,* the Jeffers, Zang, Garnett, and Azar firms), the opposite (i.e., employing non-lawyers to negotiate claims while not being a settlement mill) is likely rare. Delegating personal injury settlement negotiations to non-lawyers is not sufficient to deem a firm a settlement mill, but it is suggestive—in part because it is likely to be correlated with other important factors, such as high claim volumes, modest damages, and an entrepreneurial bent.

The five Louisiana insurance adjusters agreed with Guirard's defense counsel that, in employing non-attorney negotiators, the Guirard firm was hardly alone. The adjusters identified a total of ten Louisiana law firms (not counting the law firms of Sledge or Guirard) that delegate the settlement of claims to para-professionals.[214] One adjuster even testified that, in her years in the "rep unit" (the unit that handles the claims of represented claimants), the *majority* of her negotiations were with non-lawyer personnel.[215]

Settlement mill employees themselves, immersed in the world of low-dollar torts, also indicate that the firms profiled herein are far from exceptional and that their unique style of representation is increasingly on-offer. One former Garnett & Associates attorney, for example, suggested that there has been tremendous consolidation of claims into settlement mills' hands. He explained: "I think the analogy would be to Wal-Mart. Twenty to thirty years ago, you could go to any town and there were little mom and pop retailers. Same has happened with personal injury. If you go to any city, there will be three or four firms getting 90% of the cases."[216] That attorney, who now operates an advertising firm in Nevada, also reviewed an early draft of his Article. He then wrote to me that, in his experience, the characteristics set forth in Part I would generally apply to any

213. *See supra* note 200 and accompanying text.

214. Guirard Disciplinary Hr'g Ex. R-5 (Dep. of Adrean Joseph, at 42-43); *id*. Ex. R-6 (Dep. of Michelle Keys, at 62-66); *id*. Ex. R-7 (Dep. of Alva Duronslet, at 49-51); *id*. Ex. R-8 (Dep. of Corey Whitworth, at 28-30); *id*. Ex. R-9 (Dep. of Charles LaFleur, at 33-39).

215. *Id.* Ex. R-6 (Dep. of Michelle Keys, at 67); *accord* Font, *supra* note 149 (quoting Louisiana Chief Disciplinary Counsel Charles Plattsmier as stating: "Unfortunately, the practices that we discovered and investigated and prosecuted in the case of Mr. Guirard and Mr. Pittenger appear in other matters under investigation . . . I don't want to leave you with the suggestion that we are satisfied this was the only instance where this sort of behavior occurred . . . .").

216. Telephone Interview with D.R. (Apr. 3, 2008).

firm that spends over $500,000 per year on television advertising.[217]

Sledge had a similar view. He said that the system he pioneered has been replicated by plaintiffs' lawyers throughout the state of Louisiana.[218] Another attorney, who worked at Garnett and still practices personal injury law in Florida, likewise cautioned:

> I don't want to convey that this is just [Garnett & Associates]. The [Garnett] method is widely adopted by many of the firms here in town, usually the biggest advertisers. It's the same kind of *modus operandi*. They don't talk to their clients. They don't meet their clients . . . . People have no idea how PI has changed in the last twenty, twenty-five years.[219]

A final settlement mill employee from Texas explained: "Most of these prestigious trial lawyer firms now that used to handle all these great multi-million dollar cases are emulating [Jones] and going on his basic model . . . . I'm beginning to hear more and more about it, about people going into this high volume-type thing."[220]

The next category of evidence is empirical. Two sets of automobile accident statistics point to the prevalence of settlement mills. First, from 1977 to 1997, lawyer participation in the settlement of third-party auto accident personal injury claims increased substantially.[221] Yet, during those two decades, the chance that any particular claim would produce a lawsuit decreased dramatically; the number of third-party claims that culminated in filed lawsuits was 154% greater in 1977 than in 1997.[222] During another time slice, from 1992 to 2001, the National Center for State Courts reports that automobile tort filings declined 14% in the seventeen states (representing 53% of the U.S. population) for which data were available.[223] This decline occurred during years in which the number of

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217. E-mail Message from D.R. to author (Apr. 4, 2008) ("[Y]our draft is very accurate in describing this phenomenon of settlement mill[s]. Another area to investigate is the amount of money spent on tv advertising by law firms in major media markets . . . . If you look at the top 50 media markets in the country and then break down the number of firms in those markets spending a half million or more per year on TV, you will have found your settlement mills.").

218. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007).

219. Telephone Interview with C.R. (Apr. 1, 2008); *see also* Telephone Interview with T.T. (July 14, 2008) (stating that the majority of Garnett's competitors in Florida have adopted the "case manager model" where non-attorneys negotiate settlements).

220. Telephone Interview with B.D. (May 12, 2008).

221. Mark J. Browne & Joan T. Schmit, *Patterns in Personal Automobile Third-Party Bodily Injury Litigation: 1977-1997*, at 16 (Sept. 7, 2004) (unpublished manuscript), *available at* http://ssrn.com/abstract=588481 (last visited Mar. 18, 2009); *cf.* INSURANCE RESEARCH COUNCIL, INJURIES IN AUTO ACCIDENTS: AN ANALYSIS OF AUTO INSURANCE CLAIMS 7, Fig. 1-5 (June 1999) [hereinafter IRC, ANALYSIS] (estimating that attorney representation increased for bodily injury claims from 47% in 1977 to 52% in 1997).

222. Browne & Schmit, *supra* note 221, at 16; *see also* Witt, *supra* note 42, at 270-71 (discussing this study in a similar context).

223. National Center for State Courts, *Tort and Contract Caseloads in State Courts*, at 26 (2002). This period saw an increase in the number of lawsuits involving contract claims, indicating that there was not a reduction of

traffic accidents with injuries marginally increased (from 1.99 million to 2 million), as did the number of traffic accidents overall (from 6 million to 6.32 million).[224]

There likely are a number of explanations for these counter-intuitive trends. One plausible explanation, however, is that more claims are being handled by firms which resolve car accident claims without ever filing a lawsuit.[225] Or, as RAND opined when trying to make sense of the fact that, between 1975 and 1985, "[i]n every category, auto cases are a declining percentage of case filings:" "[I]t appears they are being settled elsewhere, in forums that produce stable, predictable outcomes."[226] Consistent with that, of course, is resolution by settlement mills.

The final bit of evidence suggesting that settlement mills exist far beyond the eight firms discussed above is that, in recent years, other researchers have published descriptions of firms with distinct settlement mill features.[227] In Herbert Kritzer's interviews with Wisconsin attorneys, for example, one attorney noted: "There are what we call the factory attorneys. Those are the people who are taking claims no matter what they are, and they are going to turn them over quickly . . . ."[228] Another observed: "There are some [firms] that are volume dealers, and all they are looking for is the quick, easy-buck settlement. They generally get the lower run-of-the-mill types of claims that don't have a great deal of value, and they don't do a lot of work in preparing their cases."[229]

Likewise, Sara Parikh quotes a "low-end" Chicago personal injury practitioner as stating:

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overall litigiousness. National Center for State Courts, *Tort Filings in General Jurisdiction Courts in 16 States*, at 23 (2003).

224. National Center for Statistics & Analysis, 2005 Traffic Safety Facts, Vehicle Traffic Crashes by Crash Severity FARS/GES 1988-2005, at 1.

225. The statistics are in some measure consistent with greater representation by repeat player plaintiffs' attorneys generally (not necessarily settlement mills), since it is well understood that repeat play fosters cooperation. Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509 (1994); Cooter et al., *supra* note 6, at 241. Still, conventional lawyers often file lawsuits on the path to settlement, *see supra* note 77 and accompanying text, and we are seeing far fewer court filings—not just fewer trials. The explanation is not that more accident victims are failing to seek compensation for their injuries altogether ("lumping it"). When adjusted for the auto accident rate, those involved in car crashes were about 32% more likely to file a bodily injury ("BI") claim in 1992 than they were in 1987. INSURANCE RESEARCH COUNCIL, AUTO INJURIES: CLAIMING BEHAVIOR AND ITS IMPACT ON INSURANCE COSTS 1 (Sept. 1994) [hereinafter IRC, CLAIMING BEHAVIOR]; *see also* INSURANCE RESEARCH COUNCIL, TRENDS IN AUTO INJURY CLAIMS, 2002 4 (Oct. 2002) ("[A]uto injury claimants in 1995 were 65 percent more likely to file BI claims as a result of their auto accident than claimants in 1980.").

226. DEBORAH R. HENSLER ET AL., TRENDS IN TORT LITIGATION 8-9, 32 (1987).

227. Granted, it is unclear to what extent the firms referenced would fit the settlement mill paradigm set forth herein.

228. KRITZER, *supra* note 3, at 243.

229. *Id.* at 244. Another Wisconsin lawyer discussed his own law practice, which, he said, involved a "fairly sophisticated assembly line." *Id.*

> There are a lot of attorneys who don't go into the courtroom. If you watch a lot of the advertising on television, quite a few of them do not . . . . These particular attorneys I get cases from will attempt to settle them if they have an adequate case. They have the secretarial and paralegal staff more than they have attorneys. That's where the bulk of their work is done, getting together medical bills, getting together the pictures if necessary . . . submitting them and hoping to work out a deal . . . .[230]

In the same vein, while studying attorneys in Indiana, Jerry Van Hoy recorded an interview with a lawyer who described a "mass advertising, mass production personal injury practice" bearing a close resemblance to the law practices profiled above.[231]

III. THE EVOLUTION OF SETTLEMENT MILLS

This Part explores three of the conditions that have contributed to settlement mills' rise.[232] My aim in this Part is two-fold. First, understanding the origins of these firms helps to complete the picture drawn above and leads to a more sophisticated understanding of settlement mill business practices and financial incentives. Second, this analysis suggests that settlement mills will continue to flourish, absent a change in the underlying conditions that have led to their rise.

A. ADVERTISING

The first and most important factor contributing to the evolution of settlement mills is the advent of attorney advertising. In 1977, in *Bates v. State Bar of Arizona*,[233] the Supreme Court held that attorney advertising is entitled to protection under the First Amendment and indirectly facilitated the rise of

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230. Parikh, *supra* note 23, at 264-65 (quoting low-end attorney #9).

231. Van Hoy, *supra* note 7, at 358-59; *see also id.* at 360, 362. For others' recognition of settlement mill practices, *see* Daniels & Martin, *Darwinism, supra* note 9, at 386 (noting the existence of heavy-advertising "high-volume/low-case-value practices ('mills')"); Stephen D. Sugarman, *A Century of Change in Personal Injury Law*, 88 CAL. L. REV. 2403, 2410 (2000) ("[S]ome lawyers continue to make their living by running 'mills' that process vast numbers of small (mostly auto accident or slip and fall) cases by negotiating settlements with insurance company adjusters.").

232. These three factors are not exhaustive. Other phenomena have also contributed to settlement mills' development, including: (1) explosive growth in the number of law school graduates (and especially an increase in the number of graduates from non-elite law schools), which has made competition for clients more fierce; (2) the increased stratification of the legal profession; and (3) the development of computer technology, which has facilitated delegation to para-professionals and made it easier to serve an ever-greater number of clients. *See* HEINZ ET AL., *supra* note 23, at 317-19 (discussing stratification), 325 (discussing the profession's growth); VAN HOY, *supra* note 19, at 5 (discussing stratification), 20-21 (discussing computer technology). In addition, although legal historians might be hard-pressed to identify a golden age of attorney professionalism in the United States, many agree that all segments of the profession have become more rationalized and market-oriented in the past three decades. *See, e.g.*, MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 2-3 (1991).

233. 433 U.S. 350 (1977).

highly-rationalized, small-case, high-volume personal injury practices.[234] Much of what makes settlement mills distinctive is traceable to the unique way they obtain clients and thus, to the *Bates* decision.

Advertising is first responsible for the fact that settlement mills represent primarily those who have sustained minor injuries—and for the cascade of effects that follow. It is relatively well known that, as Sledge advised his staff: "*Advertising gets small cases only*"[235]—or at least principally.[236] This fact explains why so many conventional personal injury attorneys who specialize in big claims eschew aggressive advertising[237] and also why, for settlement mills, advertising works so well.

Advertising works well for settlement mills *precisely because* these firms do not make a significant investment into each matter. Given that little time or effort will be expended, settlement mills can afford to represent clients with small or borderline claims that other firms might reject as unprofitable.[238] This, in turn, means that settlement mills' screening processes can be cursory: they need not and typically do not expend significant effort reviewing cases prior to reten-

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234. "*Bates* made it possible for the more business-minded, more aggressive, more competitive-minded lawyers to change the profession into a business." Ballard, *supra* note 145, at A1 (quotation omitted). Before *Bates*, there were certainly plaintiffs' attorneys who operated in high volumes and settled small claims in a mechanized fashion. *See* WITT, *supra* note 192, at 267-71. Indeed, settlement mills are arguably descendents of mid-century ambulance chasers, which, in their day, were quite prevalent—by one estimate, representing up to half of the accident victims in Chicago. Comments, *Settlement of Personal Injury Cases in the Chicago Area*, 47 NW. U. L. REV. 895, 895-99 (1953). Like settlement mills, ambulance chasers of old, some of which "organized the business on a vast scale," Morris v. Pennsylvania R.R. Co., 134 N.E. 2d 21, 25 (Ill. App. 1st Dist. 1956), handled primarily small claims, performed work that required little technical knowledge or skill, focused on negotiation with claims adjusters, and rarely (if ever) tried cases, *see* CARLIN, *supra* note 7, at 87-91; Comments, *supra* at 904. An important distinction between settlement mills and old-style chasers is that settlement mills (which rely largely on legal advertisements to obtain new clients) do not *necessarily* violate rules of professional responsibility and so need not operate under cover. In addition, the literature suggests that ambulance chasers were chiefly (and perhaps exclusively) confined to metropolitan areas; settlement mills, in contrast, have a broad geographic reach. *Cf.* HANDLER, *supra* note 7, at 16.

235. Sledge Supp. Submission, *supra* note 86, at LDS-0123 (emphasis in original).

236. *See* KRITZER, *supra* note 3, at 55.

237. *See id.* at 47-58; Daniels & Martin, *Best*, *supra* note 9, at 1793-95.

238. While settlement mills primarily represent claimants who have been in auto accidents and sustained soft tissue injuries, the majority of plaintiffs' lawyers (59.2%) reject such cases outright. *See* Daniels & Martin, *Strange Success*, *supra* note 9, at 1256 & Tbl. 8. Indeed, one hears a refrain from settlement mill attorneys that settlement mills routinely accept cases other firms reject as unprofitable. For instance, Peter Whitmer of Zang & Whitmer explained:

> [W]e frequently have clients come in who have been turned down by other attorneys because their case is too small; they can't find an attorney easily to take their case. It may only be worth a few thousand dollars, but we can still afford to take the case and, because of automation, generally make a profit on it.

Zang Disciplinary Hr'g Tr., *supra* note 44, at 112, Mar. 21, 1984 (Test. of Peter Whitmer); *see also* Telephone Interview with Lillian Lalumandier (Aug. 13, 2007) (stating that a significant proportion of Sledge's clients could not have gotten representation at other law firms); Telephone Interview with L.T. (Mar. 6, 2008) ("[A] lot of attorneys won't handle the cases that we're willing to handle . . . ."); Telephone Interview with D.R. (Mar. 4, 2008) ("[T]hese firms will accept cases that other folks might not handle.").

tion.[239] Settlement mills put a premium on claim quantity rather than quality, and advertising delivers that quantity of claims.[240]

There is another dynamic at work: expense. Aggressive advertising delivers loads of clients but at great cost. Settlement mills afford six- and seven-figure ad campaigns by maintaining high volumes (volumes which ads, in turn, supply) and then harnessing the resulting economies of scale by mechanizing case processing and cutting corners wherever feasible.[241]

A third interplay is that advertising harms an attorney's reputation and stigmatizes a lawyer within the legal profession,[242] while simultaneously relaxing the "reputational imperative" (*i.e.*, the need to maintain a good reputation among past clients and fellow practitioners in order to obtain referrals and thus generate future business) and reducing the long-term cost of economic self-dealing. For most lawyers, a good reputation is the cornerstone of financial success.[243] The reputational imperative thus serves to constrain attorney incentives in individual cases. For reasons discussed below, it might be in the contingency fee lawyer's short-term financial interest to settle cases quickly and cheaply. Due to the reputational imperative, however, many lawyers will maximize profits over the long haul if they take their time, do quality work, and obtain full value for their clients.[244]

Quite critically, advertising *relaxes* the reputational imperative. If an attorney obtains the vast majority of his business by paid advertising rather than referrals or word-of-mouth, he need not have a sterling reputation among fellow practitioners or past clients. He requires only a big advertising budget and a steady supply of unsophisticated consumers from which to draw.[245]

This principle also explains how settlement mills get away with having so little face-to-face attorney-client interaction.[246] Conventional legal practice places a

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239. *See supra* notes 60-62, 93-94, 119 & 155-157 and accompanying text.

240. *See* Telephone Interview with G.V. (Apr. 7, 2008) ("They had sort of a theory of get whatever you can because there's such a volume . . . even if you're getting $1,000 on 500 cases, that's half a million dollars.").

241. An attorney at the Garnett firm explained: "When I came into practice [in the late 1970s], I didn't know of any firm that utilized case managers. As advertising costs got higher, it made more sense to use a case manager rather than an attorney. Take the money you save from utilizing case managers and plow it into advertising." Telephone Interview with T.T. (July 14, 2008); *see* Jerry Van Hoy, *The Practice Dynamics of Solo and Small Firm Lawyers*, 31 LAW & SOC'Y REV. 377, 385 (1997) (recognizing that advertising "may necessitate . . . organizational changes").

242. *See* Daniels & Martin, *Darwinism*, *supra* note 9, at 389 ("Aggressive advertisers are often called 'scum,' 'bottom feeders,' 'incompetents,' or worse."); *see also* Telephone Interview with R.J. (Apr. 8, 2008) ("Other lawyers kind of looked at you like you were a McLawyer."); Telephone Interview with K.N. (Nov. 8, 2007) ("There's a real hostility.").

243. *See* KRITZER, *supra* note 3, at 222-23; *see also* SERON, *supra* note 20, at 48-65; Witt, *supra* note 42, at 274; Parikh, *supra* note 7, at 41.

244. *See* KRITZER, *supra* note 3, at 221-22, 233-34; *see also* Witt, *supra* note 42, at 275; Spurr, *supra* note 42, at 88.

245. *See* VAN HOY, *supra* note 19, at 21 (discussing a similar dynamic at franchise law firms).

246. *See supra* notes 66-67 and accompanying text.

high value on cultivating relationships on the theory that, even if the individual client is a "one-shotter" who will never again require a personal injury attorney's services (as most, but certainly not all, personal injury plaintiffs are[247]), a client who feels an affinity with her attorney will likely recommend that attorney to friends and relatives down the road.[248] Settlement mill attorneys can afford to spend comparatively little time cultivating such relationships, presumably because they recognize that they need not rely on repeat clients or word-of-mouth in order to obtain a steady stream of new business.

Finally, advertising is intimately bound with the type of clients settlement mills represent. Television advertising for legal services disproportionately attracts the unsophisticated and the uneducated.[249] On top of this general reality, some settlement mills specifically target their commercials to appeal to particular—often vulnerable—groups. Guirard, for example, crafted his ads to appeal to "working class" clients;[250] Jeffers & Associates' ads reportedly targeted the "lowest common denominator,"[251] and, according to a past employee, Dupayne geared his ads to resonate with Georgia's historically disadvantaged African-American community.[252] Among other attributes, such clients are more likely to lack comprehensive health and disability insurance and are less likely to benefit from generous paid sick leave policies, putting a premium on the speedy and certain resolution of claims.

B. CONTINGENCY FEES

The widespread acceptance of contingency fees—and particularly tiered fees—has also contributed to settlement mills' rise. Contingency fees, which are far-and-away the most prevalent attorney compensation arrangement for tort plaintiffs,[253] have long been a feature of the American legal landscape.[254] By allowing clients to shift some litigation risk to the lawyer and also borrow the

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247. While one-shotters predominate, repeat personal injury clients are surprisingly common. SPRINKEL, *supra* note 27, at 25, Tbl. 33 (28% of personal injury clients spoke to or selected an attorney because they had interacted with the attorney or law firm previously); JAMES A. SWEET, UNIVERSITY OF WISCONSIN SURVEY CENTER, REPORT ON SURVEY OF ACCIDENT VICTIMS 18 (Apr. 16, 1997) (on file with the author) (27.6% of Wisconsin residents injured in motor vehicle accidents chose a lawyer they had previously used).

248. *See* VAN HOY, *supra* note 19, at 83.

249. *See* ABA COMMISSION ON ADVERTISING, *supra* note 58, at 97.

250. Barrouquere, *supra* note 36.

251. Telephone Interview with K.N. (Nov. 8, 2007); *see also* Telephone Interview with L.T. (Mar. 6, 2008) ("They are geared to the lower socio-economic class."); Telephone Interview with J.B. (Nov. 12, 2007) (stating that ads targeted "[b]lue collar folks").

252. Telephone Interview with A.E. (Aug. 16, 2007).

253. Approximately 96% of individual personal injury plaintiffs pay their lawyers on a contingent-fee basis. Samuel R. Gross & Kent D. Syverud, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1, 15 (1996).

254. *See* Peter Karsten, *Enabling the Poor to Have Their Day in Court: The Sanctioning of Contingency Fee Contracts, a History to 1940*, 47 DEPAUL L. REV. 231, 231-32 (1998).

lawyer's services in advance of a favorable settlement or judgment, contingency fees give individuals meaningful access to the rights and remedies the law provides. Contingency fees also have an advantage over other legal payment schemes because, unlike a flat or hourly fee, contingency agreements align the client and attorney's financial interests. The alignment is imperfect, however, and thus generates significant agency costs. Settlement mills exploit this misalignment and also turn a solution some have offered to remedy it on its head.

The problem is as follows. Clients who have agreed to pay a flat (non-tiered) contingency fee are indifferent to incremental additional expenditures of attorney time and effort. While clients do bear some additional direct costs as a case progresses (such as court costs, travel costs, expert witness fees, and the like),[255] from the client's perspective, attorney time is costless: The more of it the better. It is in the attorney's short-term economic interest, meanwhile, to secure the maximum fee with the minimum expenditure of time and effort. To accomplish this goal, attorneys have an incentive to invest in a claim only up to the point at which further investment is not profitable for the firm—a level that may be far below the investment needed to produce the optimal award for the client. Particularly when the plaintiff's injury is modest and the potential upside is limited, rather than squeezing every dollar out of every case, it is in an attorney's short-term financial interest to seek a high volume of cases and quickly process each, expending minimal time and resources on case development.[256] This, of course, precisely describes settlement mills' business model.

By trading in small claims with limited potential recoveries, settlement mills exploit the contingency fee's well-documented structural flaw. The underlying theory is best summed up in Sledge's policy manual: "The quicker we can get a

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255. These costs usually account for 10% or less of the plaintiff's total legal expenses—or around 3% of the ultimate recovery. JAMES S. KAKALIK & NICHOLAS M. PACE, COSTS AND COMPENSATION PAID IN TORT LITIGATION 39 (1986). Under a typical contingent-fee contract, the lawyer advances these out-of-pocket costs, which the client agrees to reimburse at the case's conclusion, regardless of its outcome. In practice, out-of-pocket costs are customarily paid from the recovery or not at all; if a client loses, she need not reimburse her attorney for out-of-pocket expenses. Samuel R. Gross, *We Could Pass A Law . . . . What Might Happen if Contingent Legal Fees Were Banned*, 47 DEPAUL L. REV. 321, 321-22 (1998).

256. For discussion of this inherent financial conflict, *see* KRITZER, BROKER *supra* note 8, at 138, 157; CORYDON T. JOHNS, AN INTRODUCTION TO LIABILITY CLAIMS ADJUSTING 375-76 (1982); ROSENTHAL, *supra* note 7, at 98-99; F. B. MACKINNON, CONTINGENT FEES FOR LEGAL SERVICES 198 (1964); Jonathan T. Molot, *How U.S. Procedure Skews Tort Law Incentives*, 73 IND. L.J. 59, 88-92 (1997); Galanter, *supra* note 7, at 471; Geoffrey P. Miller, *Some Agency Problems in Settlement*, 16 J. LEGAL STUD. 189 (1987); David Rosenberg, *The Causal Connection In Mass Exposure Cases: A 'Public Law' Vision of the Tort System*, 97 HARV. L. REV. 849, 890 (1984); Murray L. Schwartz & Daniel J.B. Mitchell, *An Economic Analysis of the Contingent Fee in Personal Injury Litigation*, 22 STAN. L. REV. 1125 (1970). Many contingency-fee attorneys will be able to resist the temptation to rush through a representation because of the reputational imperative, described *supra* at Part III.A., the recognition that sometimes huge inputs will spell huge outputs (as the lawyers who brought the asbestos and tobacco cases well learned), the personal satisfaction that comes from a job well done, and formal ethical obligations. As to the latter point, an attorney may breach her professional obligations if she allows her own financial interest to interfere unduly with the advice she offers her clients. *See* MODEL RULES R. 1.7 cmt. 10 ("The lawyer's own interests should not be permitted to have an adverse effect on representation of a client.").

settlement for a client, the happier he will be . . . and the less time spent on the case the more profit for the office. We have to balance a happy client/well client with our need to move the case to maximize our return."[257] While Herbert Kritzer's research reveals that even the highest volume contingency fee lawyers spend an average of twenty-five hours per case,[258] at the Sledge firm—guided by the admonition to "[m]ake sure that we economize on money in developing cases"[259]—claims usually settled after only four-to-six hours of *employee* (not necessarily attorney) effort.[260] Nor is this unique to Sledge. An attorney from Jeffers & Associates said though some cases required substantial inputs, "regular run-of-the-mill cases" required only two-to-three hours of attorney time.[261] An attorney from the Garnett firm likewise recalled that the "usual case" required "[n]ot more than eight hours" of attorney effort.[262] And two attorneys at the Jones firm recalled that typical soft tissue injury cases settled after four hours of attorney time "max."[263]

Some have theorized that tiered fees might counteract this structural misalignment. More money for more effort, the thinking goes, will deter attorneys from settling cases hastily for less than top-dollar.[264] Tiered fees, however, are another area where litigation theory and litigation reality collide. Rather than spurring additional attorney effort, tiered fees can be used to dissuade a client from insisting on her day in court.

Nationally, only a minority of contingent-fee contracts charge tiered fees,[265] while such fees are utilized by *all* of the settlement mills introduced above. This is no coincidence. Despite their tremendous promise, in the hands of settlement mill practitioners, tiered fees are a "good leverage tool"[266] used to obtain client

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257. Sledge Supp. Submission, *supra* note 86, at LDS-0042 (staff memo).

258. Herbert M. Kritzer, *Investing In Cases: Can You Profit From Contingency Fee Work?*, 70 WIS. L. REV. 10, 44 (Aug. 1997).

259. Sledge Supp. Submission, *supra* note 86, at LDS-0042 (staff memo).

260. *Id.*

261. Telephone Interview with J.P. (Nov. 1, 2007). Another Jeffers attorney estimated that typical claims were resolved after "anywhere from twenty minutes to three hours," Telephone Interview with K.N. (Nov. 8, 2007), while a third said he typically spent four-to-five hours per claim, Telephone Interview with J.B. (Nov. 12, 2007).

262. Telephone Interview with K.E. (Apr. 3, 2008); *see* Telephone Interview with R.J. (Apr. 8, 2008) (stating that he spent "a couple, few hours" per settlement).

263. Telephone Interview with J.K. (May 15, 2008); *see* Telephone Interview with C.P. (May 20, 2008) ("[T]wo hours would cover everything.").

264. *See, e.g.*, Witt, *supra* note 42, at 273 ("Upwardly sliding fee scales are relatively imprecise ways of aligning interests with respect to the duration of litigation, but they are better than straight contingencies."); Molot, *supra* note 256, at 92 ("[S]liding scale fee arrangements help alleviate conflicts of interest between attorney and client."); Geoffrey P. Miller, *supra* note 256, at 201-02 (a tiered fee "partially mitigates the attorney-client conflicts").

265. *See supra* note 54 and accompanying text.

266. Telephone Interview with C.S. (Aug. 22, 2007) (stating that tiered contingency fees are a "good leverage tool" when attempting to obtain a client's consent to a particular settlement).

consent to the quick pre-complaint settlement of claims.[267] As Stephen Zang, a founder of Zang & Whitmer, explained: "[I]if the client insists on suit where we have recommended settlement, we then invoke that clause as an added incentive . . . . It's there as a deterrent to convince people with very small suits not suited for trial to settle it."[268] Though tiered fees theoretically align the interests of attorney and client, when the claims are small and the margins (from the fee that would be earned, for instance, 33% versus 40%) are inconsequential from the attorney's perspective,[269] tiered fees can actually vest the attorney with additional power to persuade reluctant clients to accept an already negotiated sum.[270]

C. RECOURSE TO THE CIVIL COURT SYSTEM HAS BECOME LESS ATTRACTIVE

The third condition to create a fertile environment for settlement mills is the inhospitable environment for civil litigation in general and low-dollar torts in particular—and, just as important—the perception that litigation is slow, expensive, uncertain, and getting worse all the time. As litigation is and is perceived to be a less attractive alternative, lawyers and would-be litigants[271] are increasingly rational in opting for an alternate approach.

High litigation costs—which present the biggest barrier in the smallest cases—are the first factor militating in favor of settlement mills. The average gross recovery in the Dupayne firm hovered between $3,500 and $5,000.[272] At Azar & Associates, cases "often" settled for as little as $2,000.[273] And at Jones, "pre-lit" cases typically settled for about $6,000.[274] Now, consider an estimate by RAND researchers that, in 1985, tort defendants paid an average of $4,900 to defend each auto tort lawsuit.[275] Adjusted for inflation, that $4,900 is roughly

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267. *See, e.g.*, Telephone Interview with K.N. (Nov. 8, 2007) (stating that tiered fees were given as a reason for a client to accept an already negotiated settlement offer). It must be noted that some former settlement mill attorneys deny using the tiered fee to discourage litigation. *See, e.g.*, Telephone Interview with J.P. (Nov. 1, 2007).

268. Zang Disciplinary Hr'g Tr., *supra* note 44, at 232-33, Mar. 23, 1984 (Test. of Stephen Zang).

269. Telephone Interview with Lawrence D. Sledge (Aug. 21, 2007) (stating that the potential financial gain generated from the escalated fee was, from his perspective, *de minimis*).

270. Tiered fees, of course, are not attorneys' only leverage—or even necessarily the most powerful one. The risk of losing at trial, delays and entanglements that attend litigation, expert witness fees, and court costs also loom large.

271. The rationality of "would-be litigants" should not be exaggerated. Many settlement mill clients, it is fair to assume, neither recognize that their lawyer supplies a unique brand of legal services, nor intentionally select the settlement mill over conventional counsel. Indeed, it is unlikely that a client who retains an attorney who refers to himself as the "Strong Arm" (as does Azar), *supra* note 47, or "the Hammer" (as did Sledge), *supra* note 91, has deliberately chosen a less-adversarial mode of dispute resolution. *Accord supra* note 206.

272. *See supra* note 134 and accompanying text.

273. *See supra* note 47.

274. *See supra* note 38.

275. KAKALIK & PACE, *supra* note 255, at 51. This figure relies on University of Wisconsin survey data adjusted for inflation from 1978 dollars. *Id.*

$8,193—a sum that exceeds settlement mills' average gross recovery.[276] When foreseeable transaction costs will swamp any realistic judgment, the preferred strategy, on behalf of both plaintiffs and defendants, is to settle rather than litigate clients' disputes.[277] As a former attorney at the Garnett firm put it: "[L]et's face it, I don't care if you're working for the greatest law firm in the world or for legal aid, the smaller cases are better off settled."[278]

The slow pace of litigation further weighs in favor of settlement. Though it varies by jurisdiction, torts take an average of 25.6 months to litigate.[279] A two-year delay (from the filing of the complaint) versus a wait of only two-to-eight months (from the time of the accident) makes settlements appear all the more attractive.[280]

Finally, the grim outlook for those plaintiffs who make it to trial further counsels in favor of settlement. Roughly 48% of plaintiffs who withstand lengthy delays, survive dispositive motions, shoulder the burdens of discovery, and actually succeed in getting their day in court lose outright.[281] Moreover, in recent years, plaintiffs' fortunes have only declined. The reasons for this decline are debatable,[282] but the trend is unmistakable. The Bureau of Justice Statistics recently compared trial success rates from 1992 and 2001. While the rate of

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276. *See* http://www.measuringworth.com/calculators/uscompare/result.php (online tool that can convert 1985 dollars to 2006 dollars) (last visited Aug. 6, 2009). That RAND finding is consistent with an assessment by Trubek and his co-authors that, "for cases involving recoveries of under $10,000 the total legal fees paid by both sides will equal or even exceed the net amounts recovered by the plaintiff." Trubek et al., *supra* note 34, at 120.

277. *See generally* Trubek et al., *supra* note 34, at 120. This analysis suggests that bigger cases are more apt to go to trial, and indeed, evidence supports that supposition. *See, e.g.*, Rosenberg & Sovern, *supra* note 74, at 1133-36, 1152.

278. Telephone Interview with D.R. (Apr. 3, 2008); *see also* Telephone Interview with Lillian Lalumandier (Aug. 13, 2007) ("Why in the world would a case go to trial if someone was injured for three months? That, to me, would be a travesty.").

279. *See* Bureau of Justice Statistics, *Civil Trial Cases and Verdicts in Large Counties, 2001*, at 8 (Apr. 2004) (average tort case processing time from complaint to verdict or judgment was 25.6 months). This roughly two-year period has remained relatively stable over the past few decades, *see* Kevin M. Clermont & Theodore Eisenberg, *Litigation Realities*, 88 CORNELL L. REV. 119, 129-30 & Fig. 2 (2002), although waits vary by jurisdiction, and there are pockets of extreme delay, *see* Michael Heise, *Justice Delayed? An Empirical Analysis of Civil Case Disposition Time*, 50 CASE W. RES. L. REV. 813, 836-38 (1999); John Burritt McArthur, *The Strange Case of American Civil Procedure and the Missing Uniform Discovery Time Limits*, 24 HOFSTRA L. REV. 865, 869 (1996).

280. George Priest has offered a congestion equilibrium hypothesis, arguing that court congestion relief efforts have not shortened delays because court congestion and lawsuit volume are linked: The shorter the delay between filing and adjudication, the higher the incentive to litigate, and vice versa. *See* George L. Priest, *Private Litigants and the Court Congestion Problem*, 69 B.U. L. REV. 527 (1989). Delays thus encourage settlement. This insight sheds light on why long delays favor settlement mills.

281. Bureau of Justice Statistics, *Tort Trials and Verdicts in Large Counties, 2001* (Nov. 2004).

282. Potential culprits include structural changes enacted pursuant to state court "tort reform" efforts, *see* Lester Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 WASH. U. L. Q. 653, 726 (2003), tort reform-related public relations campaigns' influence on juror decision-making, *see* Daniels & Martin, *Strange Success, supra* note 9, at 1242-44, and (somewhat ironically) the negative impact of in-your-face television ads aired by aggressive advertisers, including settlement mills, *accord* Stephanie M. Myers et al., *A Survey of Jurors' Attitudes Toward Attorney Advertising*, INTER ALIA,

plaintiff victories remained relatively constant over that period,[283] victorious plaintiffs in 2001 were awarded far less. When adjusted for inflation, between 1992 and 2001, the median jury trial tort award decreased a dramatic 56.3%, from $64,000 to $28,000, while awards for automobile accidents—settlement mills' stock-in-trade—fell a full 56.8%, from $37,000 in 1992 to $16,000 in 2001.[284]

These statistics would matter little if their underlying message were not reflected in attorney's perception of the civil justice system. But in a recent survey conducted by Stephen Daniels and Joanne Martin, 87.8% of Texas personal injury attorneys said that from 1995 to 1999 the cost of bringing the typical case to conclusion had increased; 60.2% said the time it took to bring the typical case to conclusion had increased; and 90.5% agreed that juries were awarding less in cases with comparable injuries.[285] As litigation becomes and is perceived to be more expensive, more time consuming, and less lucrative, the settlement mill model, which features speedy, inexpensive, and relatively certain settlements, looks comparatively more attractive.

IV. BARGAINING IN THE FAINT SHADOW OF THE LAW

The foregoing Parts have demonstrated that settlement mills exist, suggested they exist in significant number, and considered the factors contributing to their evolution. We now turn to the question of how settlement mills actually resolve claims and to what effect. In Part IV we see that settlement mill bargaining behavior challenges conventional models, yet settlement mill cases still settle, and their cases still settle rationally. With similarities both to the workers' compensation scheme and, in Janet Alexander's conceptualization, securities class actions, settlement mill claims are valued not based on an individualized assessment of how the claim would fare at *trial,* but instead based on formulaic going rates worked out by repeat players[286] over the course of recurring *negotiations*. In the dim shadow of the law in which settlement mills operate, where small claim size and agency costs combine to virtually rule out recourse to

July 1991, at 14 (reporting results of a Nevada survey which found "jurors favored the defendant in a large majority of the trials in which the plaintiff's attorney was a television advertiser").

283. For a theory of why plaintiff victories have consistently hovered around 50%, *see* Priest & Klein, *supra* note 6.

284. Bureau of Justice Statistics, *supra* note 279, at 9.

285. Daniels & Martin, *Strange Success, supra* note 9, at 1244, 1249; *see id*. at 1243 ("The whole process of resolving claims has become, plaintiffs' lawyers say, more risky, more time consuming, and more expensive."); *see also* Daniels & Martin, *Best*, *supra* note 9, at 1806-08 (stating that BB1 attorneys have the darkest outlook and believe that the cost of the typical case has increased, as has the time it takes to bring a typical case to resolution).

286. Settlement mill negotiators frequently negotiate with the same pool of insurance adjusters. *See, e.g*., Telephone Interview with D.W. (May 8, 2008); Telephone Interview with H.L. (Apr. 7, 2008); Telephone Interview with J.B. (Nov. 12, 2007); Telephone Interview with V.O. (Nov. 1, 2007). This repeated interaction represents a change from the time of Ross's study. *Compare* ROSS, *supra* note 4, at 150.

litigation, past settlements eclipse hypothetical trial verdicts as the touchstone of appropriate claim value.

Going rates worked out by insurance adjusters and settlement mill negotiators largely disassociate a claim's substantive merit from its worth and cluster claim values within established parameters. This decoupling and clustering has significant distributional consequences. Part IV's final subpart begins the important task of analyzing who wins and who loses under settlement mills' going rate scheme.

A. SETTLEMENT MILLS CHALLENGE CONVENTIONAL NOTIONS OF BARGAINING

At their most basic, prevailing theories of settlement, as developed by Mnookin-Kornhauser and Priest-Klein, among others, hold that cases settle because settlement is preferable to trial. Moreover, *when* cases settle, the settlement value reached "in the shadow of the law" approximates the parties' overlapping estimate of the expected outcome at trial, discounted for risks and foreseeable transaction costs.[287] Settlements, the models posit, thus internalize and mirror hypothetical trial outcomes.[288] These theories, however, rest on a few core assumptions: namely, that each party at the negotiating table will be able to forecast likely trial outcomes, which in turn requires that each party has (1) an understanding of the verdicts obtained in comparable cases and (2) a developed enough understanding of the strengths and weaknesses of the *particular* claim to situate it within the constellation of comparable claims resolved at trial. The models additionally and crucially assume (3) that each party will be willing and able to proceed to trial, if settlement negotiations stall or fail.[289] Settlement mills challenge each of these assumptions.

First, dominant theories assume that a negotiated settlement is determined, at least in part, by the parties' predictions of how the claim would fare at trial. To predict how the claim would fare, the parties need information about comparable trial verdicts. On this point, however, settlement mill negotiators often lack necessary knowledge. A law firm that never or very rarely takes a case to trial will

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287. *See supra* note 17 and accompanying text.

288. *See* William J. Stuntz, *Plea Bargaining and Criminal Law's Disappearing Shadow*, 117 HARV. L. REV. 2548, 2548 (2004).

289. Additional assumptions are that the parties are rational actors, that their goal is to maximize wealth, and that they are equally able to bear risk. Some are starting to question these assumptions, asking how structural influences, such as attorney competence, workloads, and resources, as well as cognitive variables, such as anchoring and framing effects, biases, and risk tolerance, skew bargained-for outcomes. *See, e.g.*, Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463 (2004) (in the criminal context); Stuntz, *supra* note 288 (same); Chris Guthrie & Jeffrey J. Rachlinski, *Insurers, Illusions of Judgment & Litigation*, 59 VAND. L. REV. 2017 (2006) (in the civil context); Molot, *supra* note 256, at 70-74 (same). This Article aims to advance this literature by showing how both claim size and attorney behavior influence civil settlement negotiations.

have a far more difficult time assessing the probability of a particular verdict.[290] As one settlement mill attorney recalled: "A lot of times my biggest problem with it is I had no idea what the cases were really worth because I had no court experience at all and he [Dupayne] didn't either, so I didn't know how, you know, where to get the information from."[291] Although resources are available to guide negotiators in their appraisal of particular claims, at least some settlement mill negotiators (and especially non-attorney negotiators) do not routinely consult such material.[292] One settlement mill attorney explained that, although she sometimes glanced at the county bar circular which compiled various jury awards, "[t]here wasn't a whole lot of researching going on."[293] Another non-attorney negotiator who settled thousands of claims laughed when I asked her if she had ever consulted such reports.[294]

Second, in order to bargain effectively in the shadow of the law, parties must know enough about the strengths and weaknesses of the *particular* claim in order to discount a potential verdict for a probable verdict.[295] In litigated cases, this fine-tuning is often accomplished by motions testing a claim's legal adequacy, followed by broad pretrial discovery wherein interrogatories, the exchange of documents, requests for admission, and depositions all frame and narrow the issues, refine the parties' estimates, and bring the case's strengths and weaknesses into sharp relief. But settlement mills rarely file lawsuits and almost never engage in formal discovery. Rarely do they even informally investigate a client's

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290. There is, not surprisingly, evidence of substantial disagreement of claim values, even among experienced practitioners. *See, e.g.*, GERALD R. WILLIAMS, LEGAL NEGOTIATION AND SETTLEMENT (1983); ROSENTHAL, *supra* note 7, at 202-05. One reason attorneys have trouble valuing tort cases *ex ante* is that pain and suffering damages are often awarded, and these damages are highly idiosyncratic, subjective, and variable. For a discussion of the difficulty of assessing pain and suffering damages, see, e.g., Mark Geistfeld, *Placing A Price on Pain and Suffering: A Method For Helping Juries Determine Tort Damages For Nonmonetary Injuries*, 83 CAL. L. REV. 773 (1995). For further discussion of the challenges in determining a case's "accurate" settlement value, see Issacharoff & Witt, *supra* note 17, at 1602; Saks, *supra* note 56, at 1221-24. Nevertheless, it seems clear that lawyers immersed in trial work will be better able to predict adjudicated outcomes, as compared to strangers to the courthouse. *See* Bibas, *supra* note 289, at 2481-83 (discussing the importance of institutional knowledge of adjudicated outcomes for effective plea bargaining in the criminal law context); Kevin C. McMunigal, *The Costs of Settlement: The Impact of Scarcity of Adjudication on Litigating Lawyers*, 37 UCLA L. REV. 833, 857-58 (1990) (noting that a lawyer lacking trial experience will have a difficult time "assessing the prospects at trial in terms of both liability and damages").

291. Sworn statement of S.S. at 39 (Aug. 19, 1998).

292. Academic literature likely overestimates negotiators' reliance on these materials. *Compare* Daniels & Martin, *Best*, *supra* note 9, at 1806 ("All the participants in the civil litigation process—plaintiffs' lawyers, defense lawyers, and insurance companies—look to jury verdicts to set the going rates used to value the vast majority of matters that do not go all the way to a trial."), *with* Telephone Interview with C.P. (May 20, 2008) (recalling that when he was employed at the Jones law firm, he settled cases without consulting jury verdict reports); Telephone Interview with J.K. (May 15, 2008) (stating that the majority of negotiators in his office did not consult such materials).

293. Telephone Interview of K.N. (Nov. 8, 2007).

294. Telephone Interview with A.E. (Aug. 16, 2007).

295. *See* Bibas, *supra* note 289, at 2492.

claim.[296] As an attorney who settled hundreds of cases while working at the Dupayne law firm explained, "there was never any investigation done of the claim . . . . The only investigation that was ever done was whether or not someone had insurance."[297] And: "Most of the cases I handled, I didn't even know the facts of the case."[298] Lacking an understanding of the claim's unique attributes, settlement mill negotiators can only make a rough guess of where a particular claim might fit within the range of potential trial verdicts.

Third and most importantly, the prevalent models take for granted that both parties will be equipped to proceed to trial should settlement negotiations stall or fail. The threat of trial, and its attendant risks and costs, provides the proverbial stick to keep both parties moving toward a negotiated result. But settlement mill negotiators are virtually unarmed. Whether due to agency costs (*i.e.*, an inability or unwillingness on the part of settlement mills to try the case or forgo part of their fee by referring it to a firm that will) or outsized litigation costs in relation to the limited ultimate recovery, settlement mills almost "inevitably settle before going to trial."[299] The parties consequently bargain in only the dimmest shadow of the law.

B. GOING RATES

If settlement mill negotiations do not resemble the prevailing models of bargaining, then how are claims valued? The answer lies in "going rates."[300] Settlement mill negotiators and the cadre of insurance adjusters with whom they bargain come to a common understanding of certain injuries' proper value. As a non-attorney who negotiated more than 500 settlements on behalf of the Sledge firm, explained:

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296. Sources indicate that there was no investigation of typical claims at the Dupayne firm. *See supra* notes 127-128 and accompanying text. At Jeffers, an attorney recalled that witness interviews were "in no way standard procedure." Telephone Interview with K.N. (Nov. 8, 2007). *But see* Telephone Interview with L.T. (Mar. 6, 2008) (stating that witnesses were interviewed "maybe 40 to 50% of the time"). At the Guirard firm, according to the Case Manager Manual, formal witness statements were only obtained for non-litigation files if "Eric or Tommy decides that such statements are necessary" after reviewing a memo outlining why they were needed. Guirard Disciplinary Hr'g Ex. ODC 4, at 000037 (Manual). At the Jones firm, meanwhile, most agreed that additional investigation was the exception. *See* Telephone Interview with C.P. (May 20, 2008) (accident scene photos were "[n]ever" taken and witnesses were "never" interviewed); Telephone Interview with D.D. (May 20, 2008) (accident scene photos were "*rarely*" taken, while witnesses were "[a]lmost never" interviewed). *But see* Telephone Interview with B.B. (May 28, 2008) (stating that the firm conducted additional investigation at least half of the time).

297. Sworn Statement of S.S. at 59 (Aug. 19, 1998).

298. *Id*. at 41.

299. Sledge Supp. Submission, *supra* note 86, at LDS-0015 (office protocol).

300. Others have commented upon going rates. *See, e.g.*, ROSS, *supra* note 4, at 86, 107-08; KRITZER, DEAL, *supra* note 8, at 39, 71, 128-29; ROSENTHAL, *supra* note 7, at 36 (referring to "going rates" as "going values"); Daniels & Martin, *Strange Success*, *supra* note 9, at 1228-29, 1249-50; Daniels & Martin, *Best*, *supra* note 9, at 1796, 1804.

> [E]ver[y] case has a potential value. These little soft tissue injury cases, two- or three-month duration cases, there isn't a senior adjuster in town that doesn't have a very set number . . . . you know going in and they know going in about the value of this case.[301]

At the Sledge firm, "[adjusters] would pay medical bills, drug bills, lost income (if the doctor said you couldn't work), and a thousand dollars a month."[302] At the Dupayne firm, claims typically settled for three-to-four times medical bills.[303] At Jeffers, one attorney used a settlement metric of two-to-three times medical bills.[304] And at Jones, one attorney recalled that, in most instances, he would ask for "three times the meds and hope to get two."[305]

Of course, going rates reflect well-established legal rules and entitlements and bear *some* relation to past trial verdicts. What is distinctive is that the relationship between going rates and trial verdicts is muted,[306] and going rates are relatively unaffected by the many merit- and non-merit-based factors that would serve to increase or decrease a claim's value in a court of law. In some ways, this comes as no surprise. A victim's unique personal attributes are less likely to affect settlement values when the negotiator (or the attorney fixing the settlement parameters) has never seen or spoken to the client. It is hard for witness credibility to play a prominent role when witnesses are seldom interviewed. And it would be unusual for the negotiation to focus on fine-grained legal considerations, since settlement mill negotiators are frequently non-lawyers.[307] A former Garnett

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301. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 128 (Test. of Lillian Lalumandier); *see also id*. at 423 (Test. of Lawrence D. Sledge) ("[Y]ou know, somebody who gets whiplash, they're all the same, almost the same. I mean, if somebody has a two-month whiplash or a three-month whiplash and they get well, it has a certain value.").

302. *Id*. at 313.

303. Telephone Interview with A.E. (Aug. 16, 2007).

304. Telephone Interview with K.N. (Nov. 8, 2007). A different and more trial-centered portrait was painted by other lawyers from the Jeffers firm. *See, e.g.*, Telephone Interview with L.T. (Mar. 6, 2008); Telephone Interview with T.F. (Mar. 6, 2008).

305. Telephone Interview with C.P. (May 20, 2008). Another recalled asking for six times the medical bills and settling for three. Telephone Interview with D.W. (May 8, 2008). *But see* Telephone Interview with J.K. (May 15, 2008) ("There wasn't a formula involved.").

306. Sledge's explanation of how his firm's going rate was established is instructive. During his disciplinary hearing, he testified that, though the parameter could be traced to the damages once affirmed by the Fourth Circuit, it had been in place and relatively unchanged for two decades. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 430 (Test. of Lawrence D. Sledge). I likewise asked an attorney at the Jeffers firm how she knew to settle cases for two or three times medical bills. She replied: "I was just told three times meds is what you were supposed to get." Telephone Interview with K.N. (Nov. 8, 2007).

307. *See* Telephone Interview with A.E. (Aug. 16, 2007) (confirming that issues such as comparative fault did not arise); Sledge Disciplinary Hr'g Tr., *supra* note 1, at 123 (Test. of Lillian Lalumandier) (Q: "In your negotiation with the adjusters, did you have occasion to argue the law . . . ?" A: "We argued quantum." Q: "I assume you got involved in arguments frequently about comparative fault percentages?" A: "No."). In many cases, legal liability is obvious, and so it is hardly surprising it isn't discussed. A Department of Transportation study suggests, however, that traffic citations are issued following only the minority of accidents where compensation is later sought, leaving a sizable percentage of claims where fault might theoretically be

attorney perhaps said it best: "Adjusters don't know the people. We don't know them. So this kind of neck sprain would tend to go for $5,000, $7,500, like that. Generic kinds of injuries, generic kinds of price."[308] In practice, rather than resembling the dominant model of settlement, as Samuel Issacharoff and John Witt have observed, the system more closely resembles a private, under-the-table, ultra-flexible workers' compensation scheme.[309] Indeed, the system is, in the words of Sledge, "a grid."[310] Instead of an individualized and fact-intensive analysis of each case's strengths and weaknesses alongside a careful study of case law and comparable jury verdicts, settlement mill negotiators and insurance claims adjusters assign values to claims with little regard to fault[311] based on agreed-upon formulas, keyed off lost work, type and length of treatment, property damage, and/or medical bills, which in turn relate to the severity of the injury. And, like the grand bargain which undergirds the workers' compensation scheme, as we will see below, participants in the settlement mill system appear to trade the possibility of a significant verdict in favor of greater assurance of *some* recovery.[312]

There is also a striking similarity to the very high-stakes world of securities class actions as those actions are conceptualized by Janet Cooper Alexander in her influential 1991 study.[313] In that study, Alexander found that securities class actions' unique attributes combine to create a situation where trials are not viewed "as a practically available alternative."[314] Like the small personal injury claims processed by settlement mills, securities class actions almost invariably

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contested. DEPARTMENT OF TRANSPORTATION, *supra* note 77, at 37. And indeed, the founder of the Garnett firm stated that, at least at his firm, "most cases" were contested. Telephone Interview with H.G. (Apr. 29, 2008).

308. Telephone Interview with K.E. (Apr. 3, 2008).

309. Issacharoff & Witt, *supra* note 17, at 1595, 1616-1617; *see also* Witt, *supra* note 42, at 270. One irony, not lost on Issacharoff and Witt, is that a compensation system for automobile accidents, explicitly modeled on workers' compensation, was long ago proposed, debated, and rejected. *See Compensation for Automobile Accidents: A Symposium*, 32 COLUM. L. REV. 785, 786 (1932).

310. Telephone Interview of Lawrence D. Sledge (Aug. 21, 2007).

311. *See supra* note 207 (concerning the rarity of no-offer cases); *supra* note 307 (concerning the fact comparative fault was seldom discussed); *infra* note 322 (concerning the effect of a defendant's "egregious" conduct); *infra* note 324 and accompanying text (concerning the settlement of non-meritorious claims).

312. *See generally* Price V. Fishback & Shawn Everett Kantor, *The Adoption of Workers' Compensation in the United States 1900-1930*, 41 J.L. & ECON. 305 (1998); *see also* Issacharoff & Witt, *supra* note 17, at 1586-87.

313. Alexander, *supra* note 17. Alexander's methodology and conclusions have been widely questioned and criticized. *See, e.g.*, James D. Cox, *Making Securities Fraud Class Actions Virtuous*, 39 ARIZ. L. REV. 497, 512 (1997); Leonard B. Simon & William S. Dato, *Legislating on a False Foundation: The Erroneous Academic Underpinnings of the Private Securities Litigation Reform Act of 1995*, 33 SAN DIEGO L. REV. 959 (1996); Elliott J. Weiss & John S. Beckerman, *Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions*, 104 YALE L.J. 2053, 2084 (1995).

314. Alexander, *supra* note 17, at 529-558. Just a few of these attributes include: the potential liability of extremely risk-averse individual defendants empowered to make decisions on behalf of the company defendant; staggering potential damages sufficient to swamp insurance coverage; and the defense attorney's reputational interest in avoiding a devastating verdict.

settle. Alexander went on to explore how the virtual certainty of settlement impacts securities class actions' settlement value. She found that, stripped of a realistic threat of trial, a case's settlement value becomes less bound to a hypothetical trial outcome.[315] So untethered, securities class actions settle for a "going rate" divorced from the claim's underlying merit—specifically, one quarter of the potential damages specified in the plaintiffs' complaint.[316] Alexander concluded: "When the parties are virtually certain that the case will not be adjudicated on the merits whether at trial or by motion, the link between the settlement outcome and a hypothetical trial outcome may be weakened or broken."[317] So too here.

C. THE DISTRIBUTIONAL CONSEQUENCES OF GOING RATES

The going rate scheme largely disassociates the substantive merits of the claim from the claim's settlement value and clusters claim values within established parameters. This decoupling and clustering means two things: First, in practice, the much-criticized all-or-nothing fault system gives way to a scheme of near universal (albeit sometimes partial) compensation. Second, some claims are settled for more than they are objectively worth and some are settled for less. There are, it seems, predictable winners and losers, as set forth on the grid below.[318]

TABLE I: HOW SETTLEMENT MILL CLAIMANTS FARE COMPARED TO OTHER SIMILARLY SITUATED CLAIMANTS

	Particularly Meritorious	**Meritorious**	**Unmeritorious**
Large Claim	Loser	Likely Loser	Likely Winner
Small Claim	Likely Loser	Likely Winner	Winner

Those with particularly meritorious claims (where the defendant's liability is pronounced) likely get less than they would if not for settlement mills, while those with unmeritorious claims likely get more. For the meritorious claims (the claims in the middle), conclusions become more complex and less sure. For meritorious/large claims, settlement mill bargains must be judged against results obtained by conventional counsel. Conventional attorneys supply the proper comparator because those with large claims have the *option* of conventional representation. These claimants likely fare poorly. The last class of claimants

315. *Id*. at 500-01.

316. *Id*. at 516-19.

317. *Id.* at 500-01.

318. The foregoing analysis looks only at clients' monetary recovery and does not attempt to quantify other costs or benefits. It should also be emphasized that rigorous quantitative studies are needed to test the preliminary, impressionistic conclusions set forth herein.

includes those with meritorious yet small claims, meaning minor injuries. Here, the proper baseline is not to conventional counsel, since many small claims are weeded out as unprofitable during conventional attorneys' initial case screening.[319] The relevant question is whether a settlement mill client fares better than she would fare were she to negotiate *pro se* with the insurance adjuster, after deducting attorneys' fees and costs. Using this baseline, clients with small claims (who comprise the bulk of settlement mills' caseload) appear to come out ahead.[320] The foregoing analysis is unpacked below.

1. PARTICULARLY MERITORIOUS AND UNMERITORIOUS CLAIMS

We consider those on the left and right of the grid first. Those with particularly meritorious claims (and especially those with large/particularly meritorious claims, who could definitely obtain representation by conventional counsel) fare comparatively poorly, and those with non-meritorious claims (and especially those with small/non-meritorious claims, who would be least likely to obtain representation by conventional counsel) fare well because, in the settlement mill scheme, those two classes of clients are not fully distinguished.[321] At settlement mills, the specific facts underlying each claim—the facts that would make a claim appear especially strong or weak—are seldom discovered, or even if facially discovered, are never fully appreciated or exploited.[322] Legally strong and weak claims are lumped together. For dubious claims that would face obstacles under the substantive law, the lack of careful investigation likely redounds to the plaintiff's advantage. Not so for particularly deserving plaintiffs,

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319. *See supra* notes 56-59 & 238 and accompanying text.

320. As a former settlement mill attorney explained:

> [I]f you have small injuries that are not very permanent [and] that are well documented, he settles quick, he settles fast, and gets you full value. If you have very, very serious injuries that require long-term treatment, then you get the short end of the stick.

Telephone Interview with K.R. (May 1, 2008); *see also* Telephone Interview with D.R. (Mar. 4, 2008) (stating that when big cases are handled by settlement mills: "[C]orners are cut. You don't get full value." But "[r]un-of-the-mill cases are just as well served, maybe better."). It is not just when represented by settlement mills that the seriously injured fare poorly and trivially injured fare well. Empirical studies have *consistently* found that the least hurt tend to get the most (in relation to their expenses), while the most hurt get the least. *See, e.g.*, DEPARTMENT OF TRANSPORTATION, *supra* note 77, at 59-61; Clarence Morris & James C.N. Paul, *The Financial Impact of Automobile Accidents*, 110 U. PA. L. REV. 913 (1962) (Pennsylvania study); CONARD ET AL., *supra* note 77, at 179, 197, 251 (Michigan study).

321. We cannot be certain as to how particularly meritorious/small claims or unmeritorious/large claims fare because these claimants' relative success is tied to whether conventional counsel could be retained—an open question. Conventional counsel might—but would not necessarily—represent each category of claimant. *Accord* ROSS, *supra* note 4, at 196 (finding that "unfavorable liability exerts but a small influence on the proportion of cases represented"). Further complicating the analysis, it is possible, as explained *infra* at notes 323-324, that settlement mills actually fare *better* than their conventional counterparts when representing those with unmeritorious claims.

322. *See* Telephone Interview with D.H. (Aug. 20, 2007) (a defendant's egregious conduct might "slightly" affect a claim's settlement value).

where a thorough investigation might turn up evidence of the defendant's egregious conduct, which might expose the defendant to punitive damages, thus theoretically increasing the plaintiffs' potential recovery.

Often, of course, the questionable nature of the claim will be obvious—at least to the insurance adjuster. Yet, even then (or perhaps, especially then), those represented by settlement mills are advantaged. Settlement mill clients with non-meritorious claims fare well because, even if an insurance adjuster recognizes that a particular claim lacks merit, if he is negotiating with a plaintiffs' attorney (or non-attorney) with whom he *frequently bargains*, he nevertheless has an incentive to tender an acceptable offer, both in order to close the claim expeditiously and to engender good will to pave the way for future bargaining.[323] The former incentive (often referred to as tendering a "nuisance value settlement") exists regardless of whether the client is represented or by whom, but the latter incentive is only present if the claimant is represented by an attorney whom the adjuster knows he will encounter again. Settlement mills' high claim volume, meanwhile, practically guarantees future interaction.[324]

2. MERITORIOUS/LARGE CLAIMS

We now turn to the meritorious claims at the center of the grid, specifically meritorious/large claims. This category encompasses relatively few claimants, since settlement mills primarily represent those with minor injuries. Some severely injured clients are represented by settlement mills, however,[325] and they

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323. *See supra* note 225 (concerning repeat-play dynamics); *supra* note 286 (concerning insurance adjusters and settlement mill negotiators' repeated interaction); *see also* ROSS, *supra* note 4, at 19 ("The attorney . . . since he might have repeated dealings with the same adjuster . . . may be in a position to demand consideration over and above what the claim might merit on the basis of formal law."); Franklin et al., *supra* note 74, at 14 & n.70 ("Attorneys who do any significant amount of plaintiffs' personal injury work become acquainted with the representatives and attorneys who handle the other side of these cases. In order to maintain a good working relationship, defendants may make small payments in some weak cases to give the plaintiff's attorney a fee."); Telephone Interview with K.E. (Apr. 3, 2008) (observing that "there are some real benefits of the wholesale business," partly because of the repeat "relationships with the insurance claims adjusters").

324. According to Sledge's claims negotiator, adjusters would indeed settle claims even if there was "a real legal dispute" over the claim's validity, saying: "Well, look, just to make this thing go away, I'm still willing to give you $5,000, $6,000." Sledge Disciplinary Hr'g Tr., *supra* note 1, at 128 (Test. of Lillian Lalumandier). A negotiator from a California firm, meanwhile, offered a revealing anecdote. He recalled getting a file from a colleague where the statute of limitations had already lapsed. He explained: "I knew the adjuster very, very well. Had dealt with him on several other cases. I asked him to do me—it wasn't my case—to do me a big favor: Let's settle this as three days earlier before the statute ran, and he did." Telephone Interview with S.R. (Mar. 27, 2008).

325. Sledge's office manager, for example, settled "several" cases for more than $100,000. Sledge Disciplinary Hr'g Tr., *supra* note 1, at 121 (Test. of Lillian Lalumandier). Similarly, a non-attorney at the Dupayne firm recalled settling a claim for $75,000. Telephone Interview with A.E. (Aug. 16, 2007). A former attorney at the Garnett firm, meanwhile, recalled settling a claim for $1 million. *See* Telephone Interview with C.R. (Apr. 1, 2008).

are likely represented by settlement mills to their detriment.[326] The reason is simple: Clients who are badly injured have options. They *can* obtain the services of a conventional personal injury attorney. And, four of the traits that distinguish settlement mills from conventional law firms artificially depress claim value.

First, settlement mills settle cases quickly. Although speed has important salutary benefits, fast settlements likely depress the value of claims, since it is fairly well understood "that the longer the client holds out, the larger the settlement he will be able to bargain out of the insurer."[327] Second, settlement mills rarely file lawsuits, and the act of not filing is correlated with lower settlements.[328] Third, settlement mills commonly impose quotas or incentives on negotiators, which put the emphasis on turning claims over, rather than maximizing their value. And finally, attorney reputation for going to trial affects bargaining.[329] Because settlement mills have a reputation for avoiding trial, they have less leverage in their dealings with insurers and are less likely to obtain top-dollar.[330]

Anecdotal evidence indeed suggests that settlement mills get less than their conventional counterparts. First, a defense attorney who went up against Zang & Whitmer testified that, in his experience, the firm "left a lot of money on the table."[331] Second and more powerfully, the point is supported by former settlement mill attorneys themselves. One attorney stated: "I am personally aware of cases I think [were] settled for $10,000, $15,000, $20,000 less" because insurance adjusters knew the attorney handling the case "wasn't going to actually

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326. As noted previously, some firms at least sometimes segregate serious claims from non-serious claims during intake, sending larger claims to a special unit for processing. This sorting might ameliorate some of the problems described herein.

327. ROSENTHAL, *supra* note 7, at 36; *see also* DEPARTMENT OF TRANSPORTATION, *supra* note 77, at 88 (noting that data suggests "the earlier one settles, the smaller will be his recovery in relationship to economic loss"); Kenneth J. Reichstein, *Ambulance Chasing: A Case Study of Deviation and Control Within the Legal Profession*, 13 SOC. PROBS. 3, 9 (1965) ("Generally, the amount of compensation insurance companies are willing to pay increases as the date of trial approaches."); John R. Foutty, *The Evaluation and Settlement of Personal Injury Claims*, INS. L. J., No. 492, at 7 (1964) ("[T]he value of a personal injury claim often increases in proportion to the time elapsed since the date of the injury.").

328. *See* CONARD ET AL., *supra* note 77, at 157, 270 & Fig. 4-5; Rosenberg & Sovern, *supra* note 74, at 1128-29; Franklin et al., *supra* note 74, at 17 & n.86. Note, the relationship is merely correlative; no causal relationship has been proved.

329. Insurance adjusters are attuned to the past litigation behavior of attorneys with whom they repeatedly negotiate. According to Allstate Insurance Company's former regional casualty manager, for example, during her employment, Allstate kept a log of plaintiffs' attorneys, delineating which ones were aggressive and which ones were likely to cave. Brandon Ortiz, *Former Casualty Manager Testifies Against Allstate*, Oct. 5, 2007, LEXINGTON HERALD LEADER A1 (quoting Test. of Debbie Niemer).

330. *See* KRITZER, BROKER, *supra* note 8, at 173; Catherine T. Harris et al., *Who Are Those Guys? An Empirical Examination of Medical Malpractice Plaintiffs' Attorneys*, 58 SMU L. REV. 225, 246-47 (2005) (suggesting, with some empirical support, that insurers' settlement decisions are influenced by an attorney's reputation for taking cases to trial); Marc Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339, 1389 (1994) ("Power to achieve an attractive settlement may be dependent on having adjudication as a viable alternative.").

331. Zang Disciplinary Hr'g Tr., *supra* note 44, at 59, Apr. 2, 1986 (Test. of Harold Swenson).

try the case and tee it up."[332] Another confessed that he and his colleagues sometimes yielded to the financial incentives to get cases settled quickly, rather than at full value.[333] And a third attributed his short tenure at a settlement mill to the following fact: "I had a hard time turning everyone around really quick and taking very little money."[334]

Still more powerful evidence comes from those attorneys who are able to make an express comparison between settlement mills and conventional law firms. Of those former settlement mill attorneys able to make a comparison, a majority (ten out of fifteen) reported that the offers they received for comparable cases improved upon departing the settlement mill and joining a more conventional law firm.[335] When asked to explain this disparity, attorneys offered rationales echoing those advanced above. One attorney said he thought he got better settlements upon leaving the Jones firm because, at his subsequent employer, financial incentives no longer rewarded the quick turnover of claims. At Jones, he said, it was too tempting to "[g]et the first offer from the insurance company and move on."[336] Another attorney, meanwhile, attributed the more generous offers he received to the fact that, freed from the settlement mill, insurers knew he would actually litigate the case.[337]

3. MERITORIOUS/SMALL CLAIMS

The final category of claimants—those with a legal entitlement to compensation but only minor (typically, soft tissue) injuries—is the largest, in terms of raw numbers. These claimants, initial evidence suggests, might do quite well. As noted, to gauge how this class fares, we must compare settlement mill settlements to sums obtained by clients proceeding *pro se*, since, for this universe of clients, the choice is often not between a settlement mill and a conventional attorney but rather between a settlement mill and no lawyer at all. The question thus becomes: Do clients net more when represented by settlement mills or by working it out with the insurance company on their own?

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332. Telephone Interview with C.R. (Apr. 1, 2008).

333. Telephone Interview with G.V. (Apr. 7, 2008).

334. Telephone Interview with C.P. (May 20, 2008).

335. An additional attorney reported that his wife was a personal injury lawyer while he was at the Jones firm, and during the same period of time, from the same pool of insurance adjusters, she was "getting much better offers . . . [f]or similar cases." *Id.*

336. Telephone Interview of J.K. (May 15, 2008). *Accord* Telephone Interview with G.V. (Apr. 7, 2008) ("[I]t was very very difficult as a young attorney to want to take a case all the way through a jury trial if you were going to be out of the office five, six, and seven days, plus the preparation—preparing—spending weeks preparing for a jury trial, if your compensation was coming from getting cases settled on a percentage basis. That probably did not serve clients well."); *Guirard II*, 2009 WL 1384981, at *11 ("Respondents . . . motivated the nonlawyers to settle the clients' claims as quickly as possible in order to collect a paycheck.").

337. Telephone Interview with D.W. (May 8, 2008); *see also* Telephone Interview with C.P. (May 20, 2008) (stating that his wife, who was a personal injury lawyer at a conventional law firm, got better offers than he did while he worked at the Jones firm because "they knew she would litigate").

Two studies conducted by the Insurance Research Council ("IRC") offer guidance. These studies, based primarily on the review of 147,127 private passenger auto injury insurance claims from years 1992 and 1997,[338] compared the recoveries of represented bodily injury ("BI") claimants incurring minor injuries to their unrepresented counterparts. Findings for three typical settlement mill injuries (neck sprains and strains, back sprains and strains, and minor lacerations) are presented below.

TABLE II: HOW COMPENSATED BI CLAIMANTS WITH MINOR INJURIES FARED WITH AND WITHOUT REPRESENTATION, 1992 AND 1997

Most Serious Injury Claimed	Mean Claimed Economic Loss	Mean Gross BI Payment	Mean Net Payment After Deducting Attorneys' Fee and Claimed Expenses
Neck Sprain/Strain			
1992			
Attorney	$4,098	$7,918	$1,207
No Attorney	$1,237	$2,480	$1,243
1997			
Attorney	$4,299	$6,927	$411
No Attorney	$1,260	$2,307	$1,047
Back Sprain/Strain			
1992			
Attorney	$5,208	$9,342	$1,051
No Attorney	$1,541	$3,074	$1,533
1997			
Attorney	$5,160	$8,118	$360
No Attorney	$1,626	$2,888	$1,262
Minor Lacerations			
1992			
Attorney	$2,021	$4,771	$1,175
No Attorney	$688	$1,166	$478
1997			
Attorney	$2,698	$5,172	$819
No Attorney	$793	$1,531	$738

Sources: IRC, AUTO INJURIES: CLAIMING BEHAVIOR AND ITS IMPACT ON INSURANCE COSTS 61, Fig. 6-6 (Sept. 1994) (1992 data); IRC, INJURIES IN AUTO ACCIDENTS: AN ANALYSIS OF AUTO INSURANCE CLAIMS 7, Fig. 1-5 (June 1999) (1997 data).

Note: Attorneys' fees are estimated to consume 33% of the gross recovery in 1992 and 32% in 1997.

338. *See* IRC, CLAIMING BEHAVIOR, *supra* note 225, at 9, and IRC, ANALYSIS, *supra* note 221, at 2.

IRC's evidence permits two clear conclusions. First, represented claimants report much higher economic losses (out-of-pocket expenses), as compared to those who are unrepresented[339] in part because represented claimants seek medical care at substantially higher rates.[340] Next, represented clients do get significantly more money on average than those who negotiate without the assistance of counsel, although—as the insurance industry is quick to point out—attorneys' fees and higher out-of-pocket expenses consume a sizable portion (and for some, *more* than the entirety) of these gains.[341]

Beyond this point, however, conclusions become less sure. One important wrinkle is that IRC's database includes only claims closed *with payment*.[342] One could reasonably hypothesize that individuals seeking compensation are far more likely to be denied altogether when proceeding *pro se* as compared to when they are represented—and indeed, settlement mills' reported infrequency of no-offer cases would tend to support that hypothesis,[343] as do past studies.[344]

A second important wrinkle is that it might be that *real* out-of-pocket expenses are roughly equivalent for represented and unrepresented claimants. This would be true if: (1) the economic loss differential is covered in large measure by a claimant's sick leave or first-party health or disability insurance;[345] (2) the observed economic loss differential is the result of represented claimants' more comprehensive claiming, on the theory that represented claimants are better equipped to identify, document, and seek payment for the full range of

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339. For all types of injuries combined, the IRC has found that "attorney-represented claimants reported economic losses (mainly medical expenses) more than 3.6 times higher than the economic losses reported by non-represented claimants ($6,391 vs. $1,755)." IRC, CLAIMING BEHAVIOR, *supra* note 225, at 58-59.

340. *See id*. at 65-67. In some cases, this medical treatment no-doubt facilitates more complete and rapid recoveries. In other cases, however, additional medical care is sought for a more troubling purpose. That is, clients have a financial incentive to "build up" medical bills because, as explained *supra* at Part IV.B., these bills are often multiplied to generate a final award. Adding to the incentive, a number of states have adopted dollar-threshold no-fault systems pursuant to which a claimant can seek general damages only if her medical costs exceed a particular sum. For a discussion of medical "build up," see Lester Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 WASH. U. L. Q. 653, 673 (2003); Jeffrey O'Connell, *Blending Reform of Tort Liability and Health Insurance: A Necessary Mix*, 79 CORNELL L. REV. 1303, 1307-08 (1994).

341. Across all injury categories, represented clients in 1992 collected an average of $11,939 for their BI claims, as compared to $3,262 collected by non-represented claimants. IRC, CLAIMING BEHAVIOR, *supra* note 225, at 59, Fig. 6-5; *see also* IRC, ANALYSIS, *supra* note 221, at 78 (reporting similar figures).

342. E-mail Message from David Corum, Vice President, Insurance Research Council, to the author (Apr. 1, 2009).

343. *See supra* note 207 (concerning the infrequency of no-offer cases); *see also* Telephone Interview with Lillian Lalumandier (Aug. 13, 2007) ("Nine out of ten people who walked into Mr. Sledge's office had first tried to work it out with the insurance company, and it didn't work. They were denied.").

344. *See, e.g*., Morris & Paul, *supra* note 320, at 924 ("[R]etention of a lawyer greatly increases the prospect . . . of an award . . . ."); Franklin et al., *supra* note 74, at 13 ("In those cases in which the claimant is represented by an attorney the frequency of recovery is 90 per cent, while in those cases in which the claimant acts for himself the rate of recovery is only 65 per cent.").

345. Medical insurers often, but not always, recoup expenses from tort awards, while those supplying sick leave or disability insurance rarely do, permitting double recoveries. *See* Sugarman, *supra* note 231, at 2423.

compensable expenses;[346] or (3) represented claimants' reported medical bills are not *really* paid to medical providers in full but are rather reduced after the insurer's reimbursement.[347] If real out-of-pocket expenses are comparable, then the only significant cost represented claimants bear, as opposed to non-represented claimants, is attorneys' fees. Assuming those fees consume one-third of the claimant's recovery, then represented claimants in all categories may net more than their unrepresented compatriots, while also (theoretically) benefiting from greater medical intervention, offering the distinct possibility that settlement mill clients with minor but meritorious claims fare better than they would proceeding *pro se*.[348]

V. WHY DO INSURERS COME TO THE TABLE AT ALL?

We finally confront a puzzle that looms over the settlement mill scheme: Given that the threat of trial generally prods the parties toward settlement, why do insurance companies bargain with settlement mills at all? Why shouldn't insurance companies simply call their bluff, refusing to offer anything (or only the most nominal of sums) when settlement mills come calling?[349]

The first explanation for why insurers tender settlement offers to settlement mills is that insurance companies are constrained in numerous ways—unrelated to the

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346. Others have remarked on attorneys' ability to assist clients in this regard. *See, e.g.*, ROSS, *supra* note 4, at 117; Kritzer, *supra* note 27, at 778. It does not appear that the economic loss differential is attributable to the fact that only the most severely injured within each injury category seek legal representation. IRC studies confront, analyze, and largely dismiss this possibility. *See* IRC, CLAIMING BEHAVIOR, *supra* note 225, at 62-63, 65; IRC, ANALYSIS, *supra* note 221, at 91 & Figs. 7-14, 7-15, 7-16 & 7-17.

347. Settlement mill sources indicate that clients' medical bills *are* routinely reduced, in part because settlement mills, which routinely refer clients to specific medical providers, have great leverage over those providers when it comes time to pay the tab. One settlement mill attorney reported that, in his experience at the Jones firm, doctors or chiropractors would agree to reduce their bills a full "90% of the time." Telephone Interview with D.W. (May 8, 2008); *see also, e.g.*, Telephone Interview with J.K. (May 15, 2008) (estimating that medical providers' bills were reduced 70% to 80% of the time). Likewise, at the Garnett firm, chiropractors and doctors were "frequently" asked to reduce their bills, Telephone Interview with H.G. (Apr. 29, 2008), and at the Guirard firm, the Case Manager Manual advised case managers to "[a]sk doctors to reduce their bills in appropriate cases," Guirard Disciplinary Hr'g Ex. ODC 4, at 000046 (Manual).

348. One may also question whether the advantage exists for settlement mill clients specifically—since some claimants in the above survey were no-doubt represented by conventional attorneys who might achieve better results than settlement mill negotiators, for reasons explained in Part IV.C.2.

349. At least one insurance company—Allstate—appears to be doing just that. According to a number of sources, as compared to other prominent insurers, Allstate is far more likely to offer only a trivial sum, thus forcing small claims into litigation. *See, e.g.*, Telephone Interview with C.R. (Apr. 1, 2008); Telephone Interview with L.T. (Mar. 6, 2008); Telephone Interview with J.B. (Nov. 12, 2007); Telephone Interview with K.N. (Nov. 8, 2007); Sledge Disciplinary Hr'g Tr., *supra* note 1, at 129-30 (Test. of Lillian Lalumandier); *id*. at 327, 398 (Test. of Lawrence D. Sledge). According to published reports, Allstate's hardball strategy is the result of a mid-1990s McKinsey & Co.-directed overhaul of soft tissue claims compensation. *See* Michael Maiello, *So Sue Us*, FORBES, Feb. 7, 2000, at 60; *see also* Brandon Ortiz, *Former Casualty Manager Testifies Against Allstate*, Oct. 5, 2007, LEXINGTON HERALD LEADER, A1; Brandon Ortiz, *Local Claim Could Lead to $800 Million Class Action*, July 9, 2006, LEXINGTON HERALD LEADER, A1.

instant threat of litigation. Insurers owe their insureds certain express and implied contractual obligations, have a reputational and public relations interest in quickly and fairly compensating accident victims,[350] are licensed and regulated by state insurance commissions, and are subject to specific state statutory provisions,[351] including, sometimes, state Consumer Protection Acts.[352] An additional factor militating strongly in favor of settlement is that, in a majority of states, insurers have a common law duty to settle, which can make an insurer liable for a judgment exceeding the insured's policy limits if a reasonable insurer would have settled the claim within those limits.[353] Refusing to bargain with accident victims in good faith and settle when appropriate can therefore entail substantial risk.[354]

There is, however, another and less obvious explanation for insurer's consistent cooperation: Insurers *like* settlement mills. A 1950s-era law review article, based on interviews with claim department heads of four insurance companies, hints at this phenomenon:

> [I]nsurers . . . admit to some private advantages when a chaser handles a case. He is generally an easier man to deal with than a general practitioner. Insurers and chasers deal with each other frequently in settlement negotiations. There is an awareness of each party that both are aiming at settlement, and that a figure can usually be agreed upon. The general practitioner, aggrandizing the interests of his client at every turn, cannot be so easily disposed of, especially with the more prevalent threat of a lawsuit in the offing.[355]

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350. ROSS, *supra* note 4, at 52 ("insurance is public relations conscious"); Comments, *supra* note 234, at 899 n.27 ("Most insurance companies consider it good public relations to settle small claims speedily.").

351. At least forty-eight states have Unfair Claims Settlement Practices Acts. Most states' statutes copy the model statute, which makes the following an unfair claims practice:

> (D) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
>
> (E) Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them . . . .

See JOHN N. ELLISON ET AL., BAD FAITH AND PUNITIVE DAMAGES: THE POLICYHOLDER'S GUIDE TO BAD FAITH INSURANCE COVERAGE LITIGATION-UNDERSTANDING THE AVAILABLE RECOVERY TOOLS (2005); Francis J. Mootz, III, *Holding Liability Insurers Accountable for Bad Faith Litigation Tactics With the Tort Abuse of Process*, 9 CONN. INS. L. J. 467, 480-82 (2002).

352. *See, e.g.*, Stevens v. Motorists Mut. Ins. Co., 759 S.W.2d 819 (Ky. 1988) (permitting such an action); United Techs. Corp. v. Am. Home Assurance Co., 118 F. Supp. 2d 174, 176 (D. Conn. 2000) (same). *But see, e.g.*, Wilder v. Aetna Life & Cas. Ins. Co., 433 A.2d 309, 310 (Vt. 1981) (disallowing such an action).

353. *See, e.g.*, State Fire & Cas. Co. v. Haley, 916 A.2d 952, 956 (Me. 2007); Johnson v. Tennessee Farmers Mut. Ins. Co., 205 S.W. 3d 365, 370-71 (Tenn. 2006); *see also* Kent D. Syverud, *The Duty to Settle*, 76 VA. L. REV. 1113, 1116-21 (1990).

354. This is a lesson that Allstate might now be learning. As noted at *supra* note 349, starting in the mid 1990s, Allstate started taking a hard line on the settlement of soft tissue injury claims. This stance has resulted in numerous court proceedings, alleging *inter alia*, violations of state Unfair Claims Practices Acts. *See, e.g.*, Brandon Ortiz, *Fayette Case Puts Allstate Tactics to Test $1.42 Billion Suit Targets Claims-Handling Procedures*, LEXINGTON HERALD LEADER, Sept. 30, 2007, A1.

355. Comments, *supra* note 234, at 905 & n.51.

Similarly, an insurance adjuster has been quoted as saying: "From an insurance company standpoint, it is advantageous to have [Garnett] as the opponent."[356] An attorney who worked for Dupayne, meanwhile, describes the firm/insurer relationship as follows: "The insurance companies would send cases to the firm."[357]

Insurers benefit from the presence of settlement mills partly because serious claims, which present the highest chance of a catastrophic verdict,[358] are apt to be resolved at a discount, as explained in Part IV.C.2. It is, after all, profitable for an insurer to overpay on a lot of debatable $2,000 claims if, every once in a while, it will only have to pay $50,000 to discharge what could be—in the hands of a conventional attorney—a $500,000 or $1 million judgment.[359]

Insurers also like settlement mills because the interests of settlement mills and insurers overlap along two dimensions: speed and certainty.[360] As to speed, settlement mills, insurance adjusters, and, to a lesser extent, insurance companies desire a prompt resolution of the claim. Settlement mills chiefly value speed for the reason explained in Sledge's office materials: "The longer we have the case, the more work we do = the less return to the office."[361] Settlement mills instill this interest in their line-level negotiators through quotas and other incentives (office-wide trips or the lion or shark award, for example), which reward the efficient turnover of claims or (like the Guirard firm's monkey award), punish their slow resolution. Insurance adjusters' interest in quick claim resolution is no less immediate. In his classic 1968 study of insurance company claims resolution behavior, H. Laurence Ross found that the "principal pressure" on line-level adjusters is to close files expeditiously.[362] Adjusters are more concerned with the speed of claim closure than the sum expended, Ross found, because the rate at which an adjuster closes files can be objectively measured. By contrast, whether the adjuster overpaid can only be subjectively judged by looking at the facts of the claim "presented in the file over which the claims man has control."[363] To a lesser extent, speed also benefits the insurance company by freeing insurance

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356. Florida newspaper article (citation omitted to preserve confidentiality).

357. Telephone Interview with S.S. (May 30, 2007); *see also* Guirard Disciplinary Hr'g Ex. R-9 (Sworn Statement Charles LaFleur, at 19, 21) (agreeing that, in his experience as a claims adjuster, non-litigation claims at the Guirard firm were "[g]enerally settled within a range that's acceptable pretty easily").

358. "Catastrophic" verdicts are admittedly rare, and it is rarer still that an insurer would be liable for the whole of a catastrophic verdict, given that most Americans have only limited automobile insurance coverage.

359. This analysis implicitly suggests that compensation on the most serious and meritorious claims is being swapped for compensation on the smallest and least meritorious claims. I have uncovered little evidence of explicit horse trading. *But see* Telephone Interview with D.W. (May 8, 2008) (recalling that negotiators would sometimes agree to take less on one claim in return for more on another claim "[n]o question about it"). Even if the trading is not explicit, however, it may still exert an influence over bargaining.

360. This thesis echoes one of Ross's conclusions. He found: "As with all negotiation patterns, the interaction between the attorney and the adjuster has a large component of common interest. Both parties desire a quick disposal of the claim, and both wish to avoid the costs of litigation." ROSS, *supra* note 4, at 86.

361. Sledge Supp. Submission, *supra* note 86, at LDS-0042 (staff memo).

362. ROSS, *supra* note 4, at 19, 60, 127.

363. *Id*. at 60; *see id*. at 127.

reserves and releasing the insurer from slow-to-develop injuries, the gravity of which is not fully recognized until long after the accident.[364]

Settlement mills and insurers also value certainty—that the claim will be resolved for a predictable sum and without formal litigation. Settlement mills' entire business model hinges on predictability. If every claim's worth were variable and a sizable portion of claims required litigation or were lost at trial (thus producing no fee), settlement mills could not delegate as many tasks to non-lawyers, profitably accept low-dollar claims, maintain high case volumes, or ensure enough surplus in their budgets to finance seven-figure ad campaigns. Certainty is also prized by adjusters who "hope[] to settle every claim"[365] and insurance companies, which know that if a claim is in the hands of a settlement mill, they will be spared exposure to the litigation lottery[366] and—oftentimes more importantly—no court costs or attorneys fees will accrue.[367]

Thus, though settlement mills lack the proverbial stick of trial, they do have appetizing carrots: Pay up, and you will likely pay less on the largest and theoretically costliest claims, close files without delay, settle for predictable sums, and save on attorney's fees and costs. Though some settlement mills cannot credibly threaten to take a claim to court, they do have another threat to levy: If you refuse to tender a reasonable offer, a conventional attorney might take the case.[368] In the aggregate, insurers' willingness to do business with settlement mills quietly, repetitively, and in a mutually beneficial way, allows these firms to flourish. When settlement mills succeed, they can increase their advertising budgets, hire more staff, and open branch offices, thus increasing their market share.

CONCLUSION

Lawyer advertising is settlement mills' lifeblood. Thus, it is no exaggeration to say that settlement mills owe their existence to the United States Supreme Court's ruling in *Bates v. State Bar of Arizona*[369] just over thirty years ago. In that opinion, the Court wrote: "The only services that lend themselves to advertising

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364. *See* Morris & Paul, *supra* note 320, at 928-29; *see also* ROSENTHAL, *supra* note 7, at 79 (noting that, especially when claims are small, quick settlements often inure to the insurer's advantage); ROSS, *supra* note 4, at 60 (quoting an insurance supervisor as saying: "The sooner we dispose of the file, the better off we are"). On the other hand, delayed payments allow insurers to earn interest on the sum.

365. JOHNS, *supra* note 256, at 5.

366. As compared to plaintiffs, insurers are relatively indifferent to the uncertainty of litigation. For an explanation of why this is so *see* ROSS, *supra* note 4, at 214; Marc Galanter, *Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

367. These costs are significant and, as explained previously, often exceed clients' gross recoveries. *See supra* Part III.C.

368. Insurers' motivation, one attorney believed, was "[g]ive a little bit or else another lawyer might take the case." Telephone Interview of S.S. (May 5, 2007).

369. 33 U.S. 350 (1977).

are the routine ones: the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, [and] the change of name . . . ."[370] With that observation, the Supreme Court reassured itself and the legal community that advertising would not be employed by those engaged in the traditional, individualized, adversarial practice of law.

In a way, the Court was right. What the Court and influential commentators wholly underestimated, however, was the force of advertising's gravitational pull.[371] Because advertising is indeed ill-suited to "individualized"[372] law practice, some entrepreneurial personal injury lawyers, rather than foregoing advertising's benefit, have turned what was once a prototypical individualized service into a routine or "standardizable"[373] one, characterized by high volumes and cookie-cutter assembly-line procedures.[374] Put simply: Because advertising provides little benefit to conventional personal injury practices, some personal injury practices have become unconventional. Tracing their lineage back to the landmark *Bates* decision, settlement mills stand as a monument to the law of unintended consequences.

It is peculiar that settlement mills—some of which, by virtue of their relentless advertising, are household names—have for so long flown under the academic radar. Yet, many factors—practical, demographic, psychological, and legal—have shielded settlement mills from careful scrutiny, allowing them to flourish and process each year tens of thousands of personal injury claims. Researchers have from time to time noted the existence of a cadre of high-volume, low-value, business-oriented contingent fee lawyers that advertise aggressively and eschew litigation.[375] But this Article represents the first careful study of settlement mills—a distinct segment of the legal services industry responsible for the delivery of legal services to a significant, albeit disadvantaged, portion of the population.

Drawing on voluminous documents extracted from federal court and state bar disciplinary files, as well as dozens of interviews with current and past settlement

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370. 33 U.S. at 372.

371. Not long after the Court's ruling, Geoffrey Hazard published an influential and reassuring defense of attorney advertising. Geoffrey C. Hazard, Jr. et al., *Why Lawyers Should be Allowed to Advertise: A Market Analysis of Legal Services*, 58 N.Y.U. L. REV. 1084 (1983). Hazard and his co-authors predicted that lawyer advertising would be used only by attorneys providing "standardizable" services," those "matters such as uncontested divorces, simple wills, and routine collection litigation, each of which is best delivered through a routinized system of production." *Id*. at 1101. "Individualized" legal services (such as "a trial involving a serious tort or crime") were ill-suited to advertising, the authors opined, and consequently would be relatively unaffected. *Id*. at 1107, 1113.

372. *Id*. at 1090, 1101-09 (contrasting "standardizable" and "individualized" practices).

373. *Id*.

374. *Compare id*. at 1102 ("[Standardizable law practices] assume a high volume of client matters and focus their labor on systematizing their response to similar legal issues."), *with* Telephone Interview with R.J. (Apr. 8, 2008) ("I might as well have been working on an assembly line."), *and* Sledge Disciplinary Hr'g Tr., *supra* note 1, at 365 (Test. of Lawrence D. Sledge) ("I put them on the conveyor belt . . . .").

375. *See supra* notes 227-231 and accompanying text.

mill employees, we have seen that settlement mills have proliferated across the United States. Although rigorous empirical studies are needed to gauge the precise impact settlement mills are having on the American judicial system, RAND's assessment of why, from 1975 to 1985, there was a significant decline in automobile-related case filings[376] bears repeating. "[I]t appears," RAND found, "they are being settled elsewhere, in forums that produce stable, predictable outcomes."[377] The evidence adduced here suggests that the "forums" are America's settlement mills.

Settlement mills differ from conventional personal injury law firms in many obvious respects: They have higher claim volumes, advertise more aggressively, tout a different fee structure, settle claims more quickly and with less effort, file fewer lawsuits, and delegate more duties to para-professionals. We have seen, in fact, that they even settle claims in a different way, implicitly challenging conventional accounts of claims resolution behavior. Rather than negotiating in the shadow of trial, as prevailing accounts of bargaining behavior presume, settlement mills bargain in the shadow of *past settlements*. A current South Carolina settlement mill attorney perhaps said it best. When I asked him: "How are cases valued for settlement?" He answered: "What I've settled 'em for before."[378] Shorn of a realistic likelihood of litigation, settlement mill claims are simply and systematically settled for formulaic going rates worked out over time by repeat players (the settlement mill negotiator and insurance claims adjuster), relatively independent of the merit-based assessments and individualized considerations that would loom large if the case were headed to trial. Much like workers' compensation tables, these going rates are predictable, generally applicable, and tied less to fault than to the gravity of the injury the claimant has sustained.

In the world of settlement mill dispute resolution, the much-maligned adversarial all-or-nothing fault system yields to an almost cooperative scheme of near-universal (though sometimes partial) compensation. In this system, going rates are clustered within established parameters. Some claims are consequently settled for more than they are objectively worth and some for less. For many clients, and particularly those with minor injuries or a dubious legal entitlement to relief, this new system seems to function well. Settlement mills eliminate potentially time-consuming and frustrating legal entanglements, while providing in return prompt, relatively certain, and comparatively generous payouts. Unfortunately, as we have seen, those who have meritorious claims and have been seriously injured are least apt to benefit from this unique brand of legal service, raising profound ethical and public policy issues deserving detailed scrutiny by academics, bar organizations, and the judiciary.

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376. HENSLER ET AL., *supra* note 226, at 8-9.

377. *Id.* at 32.

378. Telephone Interview with J.B. (Nov. 12, 2007).

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MR. PATTAKOS: And I only have two copies of this. I don't plan to ask many questions, I just wanted to mark it for the record.

MR. KADIR: Is Exhibit 2 the subpoena records?

MR. PATTAKOS: Yeah. Those were e-mailed to James Popson at some point shortly after we received them.

By MR. PATTAKOS:

Q. I'm sorry, did you confirm that those are the documents that you produced pursuant to the subpoena?

A. They look like them. I didn't look through every page, but every page I looked at is familiar.

Q. Okay. So you state in your affidavit that you became employed with KNR in March of 2012. There's no reason to doubt that, correct?

A. Correct.

Q. Okay. It also says that when you left Slater & Zurz to join KNR that you took approximately 200 cases with you?

A. Yes.

Q. Is that accurate, was it 200 or could it have been more than that?

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A. It could have been more.

Q. You say approximately, it wasn't 500?

A. I don't think -- no, no, I don't think so. I think -- I didn't take all of my cases with me. I referred some to other lawyers.

Q. And these were cases that you had taken in while you were at Slater & Zurz, correct?

A. Correct.

Q. Did Slater & Zurz ever threaten to sue for taking those cases with you?

A. No, we had an amicable parting.

Q. And they understood that you would take those cases with you?

A. Yes.

Q. Okay. And were those -- I'm sorry, those were cases that you had brought into the firm yourself?

A. Right.

Q. Through your own relationships?

A. Yes.

Q. Okay. Did Slater & Zurz make you sign a confidentiality agreement while you worked there?

A. No.

Q. What was your understanding of the chain of command at KNR?

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MR. MANNION: Objection.

A. That Nestico's in charge.

Q. You understood that Nestico didn't answer to anyone else at the firm, correct?

MR. MANNION: Objection.

A. Correct.

Q. And who else did you consider your superiors at the firm?

A. Redick, John Reagan, and while he was there, Gary Kisling.

Q. What about Brandy?

A. I would say they put her in a position where she almost was, but given that she's not a lawyer, I'm not listening to her on matters of, you know, legal advice.

And then I also realized that, you know, she's sending all these e-mails over telling people what to do, but all the partners -- or at least Nestico and Redick were on those e-mails as well as part of the pre-lit group so they were seeing everything she was sending.

MR. MANNION: Objection.

Q. Why do you say that?

A. Because I figured they were consenting to whatever it is she sent because they were getting

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copies of it --

MR. MANNION: Objection.

A. -- there was a pre-lit group for purposes of sending out interoffice e-mails and I'm sure there was a litigation group and a paralegal group and all that kind of stuff. So instead of adding each of the individual names who receive the e-mail, they would just send it to the pre-lit group and everybody that was part of the pre-lit group would get the same e-mail.

Q. So you understood that when Brandy was sending instructions to the attorneys that she was communicating those instructions on Mr. Nestico's behalf, correct?

MR. MANNION: Objection.

A. That was my understanding, yes. And they certainly couldn't have done it, in my opinion, any other way given that she's telling people how to practice law.

Q. So did you -- strike that.

When you began working at the firm and you brought your hundreds of cases with you, did you take on any other cases that weren't a part of those cases that you had brought over with you?

A. To begin with, I think there were just a small

EXHIBIT 2

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handful.
Q. Okay. Do you have any recollection of where those came from or why those were given to you?
A. Yes, I do. I came to learn that when a new lawyer started, the old lawyers basically would give up a certain number of their cases which, obviously, were the worst cases that they had, the ones that they were never going to make any money on and those would get dumped on the new guy.
Q. Okay.
A. So I didn't get many of those because I had plenty to work on of my own, but I did get some.
Q. A handful you said?
A. Yes.
Q. Is that about ten?
A. That's fair.
Q. What did you understand about what the firm expected from you in terms of your performance?
A. The most overriding thing was to generate $100,000 of fees every month.
Q. "The most overriding thing," how do you mean?
A. I cannot think of anything else that they ever said other than generate fees. And the goal was 100,000 a month and you've got to meet the goal.

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Q. That's $100,000 a month that goes to the firm?
A. In fees, yes.
Q. Okay. So you would have to resolve cases at a number much larger than that to bring in $100,000 in fees, correct?
A. Certainly.
Q. So when you're talking about $100,000 a month, that is from the firm's contingency percentage that it would collect in resolving the cases, correct?
A. Right.
Q. What were the consequences if you didn't meet these goals?
MR. MANNION: Objection.
A. Anything up to and including termination.
Q. How was that communicated to you?
A. Very directly.
Q. By whom?
A. Nestico.
Q. Was this when you started working there?
A. No. It was more kinder and gentler when I first started, but shortly thereafter.
Q. Okay.
A. I started I think right about the same time as another guy did -- and I can't remember his name

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off the top of my head, but he got fired in like three months. I don't think he ever hit the hundred and he was gone in three months.
And at one point Nestico called us in, yelled at both of us at the same time, because neither of us had hit it, and then he told the other guy to leave and then I stayed in there and he's like, I just had to do that, you know, I had to bring you in, too, for effect, but really wasn't directed at you.
Because at that point they hadn't probably solidified the relationships with the people that I introduced them to in Columbus so they didn't want -- they couldn't fire me yet.
MR. MANNION: Objection. State of mind. Speculation.
Q. Who are the people that you introduced them to in Columbus?
A. The Columbus Injury & Rehab had a few clinics down there and those individual doctors. And then Town & Country, Dr. Kahn and her husband, I can't remember his name.
Q. So you had relationships with them --
A. I did.
Q. -- by which they would refer cases to you,

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correct?
A. That's correct.
Q. Who are the doctors at Columbus Rehab & Injury?
A. Just a second. I think when I started there they had three clinics at Columbus Injury. And the treating doctors would have been Dr. Sherman Pleasant, Dr. Merle Slavin, and in their north clinic I can't remember who it was. They had a couple different people through there, but there was a third doctor who was in there -- there was a couple of them at various times. I don't remember who was in there.
Q. Do you know if that's a Plambeck-owned clinic?
A. It is not.
Q. What was KNR's policy or practice as to the cases the firm would take in?
MR. MANNION: Objection.
Timeframe.
Q. While you were there.
A. Any kind of injury case. Anything. Bring it in, sort it out later.
Q. Any case?
A. Any kind of injury case. I don't recall -- ever recall any parameters saying no. Basically get it in, if we can't do it, we'll find somebody who

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can.
Q. Did you ever witness an occasion where the firm turned a case down for lack of capacity to handle it?
A. No.
Q. So it's fair to say that if a client came to KNR claiming any type of injury and the crash report shows that someone is liable, the firm will take the case no matter how small?
MR. MANNION: Objection as to what others there do.
A. I certainly never saw anything different than what you describe.
Q. Okay. Would you say most of the cases settle for less than $10,000?
A. That was my experience.
Q. Rob Horton testified that the average fee was around $2,000. Does that sound right to you?
MR. MANNION: Objection. Timeframe.
A. I would say my experience is that was high.
Q. That was high --
A. Yeah.
Q. -- 2,000 would be high?
A. Right.

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Q. You would need in an average --
A. I'm bad at statistics and the lingo, but I would say the mean, is that right? The most common settlement would be lower than that, but you'd have a few that were higher that would bring the average up, but your typical case, if you just grabbed us a settlement out of the back, I would say the typical case settled for less in terms of fees than $2,000. You'd be more likely to grab a case with a lower fee.
Q. Would you agree that most of the cases did resolve in some recovery for the client?
A. Yep. Yes.
Q. Would you agree that very few cases resulted in no recovery at all?
A. I would agree.
Q. What percentage would you estimate?
A. Less than five percent.
Q. While you were at the firm did it have -- did it run its litigation department in -- strike that.
While you were at the firm, was there a -- were there attorneys that worked in the pre-litigation department and then attorneys that worked in the litigation department?
A. Yes.

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Q. And you were in the pre-litigation department, correct?
A. Yes, that's right.
Q. What was your experience in terms of how many -- what percentage of your cases ended up going into the litigation department?
A. Small.
Q. How small?
A. Probably, again, less than five percent.
Q. What was your experience in terms of how many of your cases went to trial?
A. None.
Q. What do you recall about how the intake -- the pre-litigation attorneys operated on taking cases into the firm?
A. You sat there with wearing headphones, the phone rang at some kind of a different ring and the first person that answered the phone when it rang like that would get the case if the person signed up.
THE REPORTER: If the person what?
THE WITNESS: If the person signed up.
Q. How many calls were you handling every day?
A. The intake calls or total?

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Q. Intake.
A. Not many. I personally -- I knew I wasn't going to stay there long, so I didn't have much personal interest in getting a bunch of clients, so I was not jumping on the phone. I was just trying to take care of my clients, the existing clients, rather than generate new ones. So I took as many as I conveniently could.
THE REPORTER: Let's go off for a second.
THE VIDEOGRAPHER: Off the record.
- - - -
(Off the record.)
- - - -
THE VIDEOGRAPHER: On the record.
- - - -
(Thereupon, Gary Petti Plaintiff's Exhibit 3 was marked for purposes of identification.)
- - - -
Q. Handing you a document that's been marked as Exhibit 3. You produced this document, correct?
A. I did.
Q. And what does this document reflect?
A. The amount of intakes done during the month of November by the pre-litigation attorneys.

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THE WITNESS: I'm no expert on the ethical stuff, of what the specific rules, I'm just talking about conduct.

MR. MANNION: Okay. I appreciate that.

BY MR. PATTAKOS:

Q. So let's talk about the firm's relationships with health care providers. Let's just -- I guess, I'll start by asking you how were you instructed to handle referrals to health care providers while you were at KNR?

A. Preference to people who referred them clients. They maintained a list of people who were acceptable and get them to an acceptable medical provider and with preference to people who referred cases and in some instances without any other regard than returning an exchange of -- you know, the e-mail that I'm thinking of is Akron Square is 30 now, next case -- next Akron case got to go to Floros.

Q. I'll show you that e-mail and we can talk about it. Let's take a look at Exhibit 6.

- - - -

(Thereupon, Gary Petti Plaintiff's Exhibit 6 was marked for purposes of identification.)

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- - - -

Q. You would have received this e-mail while you were at the firm, correct?

A. Yes.

Q. And it's Brandy mailing all pre-lit attorneys, please make sure you refer intakes there. And the subject line is Shaker Square. I just noticed that we sent two cases to A Plus Accident & Injury Center when these cases could have gone to Shaker who sends us way more cases. I sent this e-mail three times now. Please note this so next time you're on a Cleveland intake, you remember this.

What's your understanding of Brandy's instruction here?

A. Return -- my understanding is --

MR. MANNION: Move to -- excuse me. Objection as to state of mind. Go ahead.

A. The way I understood this e-mail was Shaker Square is better for KNR so make sure you send them cases at every opportunity.

Q. Why was Shaker --

MR. MANNION: Objection. Move to strike.

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Q. Why was Shaker better for KNR?

A. Because they send more cases over to KNR so they generate more fees. You know, you can turn one referral to Shaker Square into five referrals from them --

MR. MANNION: Objection.

A. -- for example.

THE REPORTER: For what?

THE WITNESS: To five referrals back from them.

MR. MANNION: He said example after --

THE WITNESS: Yeah, for example.

BY MR. PATTAKOS:

Q. And that's why she writes, these cases could have gone to Shaker who sends us way more cases, correct?

MR. MANNION: Objection as to --

A. Yes, that's the way I understood that e-mail.

Q. I don't think there's any other way to understand that e-mail, do you?

MR. MANNION: Objection.

A. I do not.

- - - -

(Thereupon, Gary Petti Plaintiff's Exhibit 7

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was marked for purposes of identification.)

- - - -

Q. Did you receive this e-mail?

A. I did.

Q. You sent me this e-mail, correct?

A. I believe so.

Q. And why did you send me this e-mail?

A. Because this to me is a blatant, very clear example of quid pro quo.

MR. MANNION: Objection. Move to strike.

Q. And how so?

A. Nestico makes it very clear that Akron Square has sent over 30 cases, they haven't sent them any, so KNR hasn't sent any back so KNR owes Akron Square.

MR. MANNION: Objection. Move to strike.

MR. KEDIR: Objection.

Q. So when he says 30 to zero, what is your understanding of precisely what he means by that?

MR. MANNION: Objection.

A. That Akron Square during that -- during that month or over the whatever span that Akron Square had sent 30 cases over without receiving any back

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MR. MANNION: Okay.
MR. PATTAKOS: -- he first testified to -- about cases that came in where the person was calling from the chiropractor's office --
MR. MANNION: Gotcha. Right. Gotcha.
BY MR. PATTAKOS:
Q. So what about the cases -- other cases?
A. Directed to a chiropractor that KNR liked.
Q. That was on the list?
A. Yes, or that you were directed to.
Q. By the e-mail?
A. Yes. Or direct face to face.
Q. Was there a particular timeline that the treatment was suppose to follow?
A. Generally speaking, sure. Approximately 20 treatments over the course of about five weeks.
MR. MANNION: Now, wait a minute. Objection. When you say suppose to, did you mean KNR from the chiro? I was confused.
MR. PATTAKOS: Did I mean what and what?
MR. MANNION: When you said there

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was a number of treatments or timeframe they were suppose to treat --
MR. PATTAKOS: A course.
MR. MANNION: -- or course. Did you mean from the chiro or did you mean that KNR said that?
MR. PATTAKOS: Well, I mean that the KNR attorneys were suppose to instruct the client to follow.
A. Oh, no. No. The clients -- we didn't tell the client how many treatments to go to or anything like that. Just go, do whatever your doctor tells you to do. Don't miss appointments. Keep going until he says you're done or she says you're done, whatever the case may be.
Q. And it typically ended up to be about 20 treatments over the course of how long did you say?
A. About five weeks. Four to six weeks.
Q. And why did it end up at this number?
MR. MANNION: Objection.
A. I'm not sure. Hypothetically speaking, I would say because the chiropractors, I learned by experience, that's the sweet spot.
Q. The sweet spot in terms of what?

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A. Return on investment. That they get a greater percentage of their bills if they get the people, you know, to get the bill to a certain level and then discharge them either as healed or maximum medical improvement.
MR. MANNION: Objection. Move to strike.
Q. If they treat too much then they won't -- they're likely to not get compensated for it?
MR. MANNION: Objection.
A. That's absolutely correct.
MR. KEDIR: Objection.
A. And if they treat too little, they don't get enough money.
THE REPORTER: What's that?
THE WITNESS: If they treat too little they don't get enough money in terms of the fee.
MR. MANNION: Move to strike. Fee, you mean chiro bill?
THE WITNESS: Good question.
MR. MANNION: I'm just asking --
THE WITNESS: Yeah, that they're -- there's more blood in the turnip.
- - - -

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(Thereupon, Gary Petti Plaintiff's Exhibit 9 was marked for purposes of identification.)
- - - -
Q. Let's take a look at Exhibit 9. This is an e-mail from Brandy to Horton where she's talking about a referral that she made to the firm. She said since she is a nurse, she may not want chiro. Feel her out for that before you refer. She may want family doc and PT.
MR. MANNION: Objection.
Q. Did you ever --
MR. MANNION: I'm going to again object. After he was terminated. Go ahead.
Q. Did you ever have this experience where the firm's advice as to medical treatment depends on the level or type of education a person has?
MR. MANNION: Objection.
A. I did not have that experience, but we got them to a chiropractor regardless of the circumstance.
Q. Do you remember anything about Red Bag referrals?
A. I remember being confused by them.
Q. Why is that?
MR. MANNION: Objection.
A. I didn't understand -- of course wasn't privy to

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the marketing strategies or anything like that so I just got the directive whenever it's a Red Bag referral, you have to refer to somebody else -- or somebody in particular.

Q. And you never came to understand why that was the case?

A. Right.

- - - -

(Thereupon, Gary Petti Plaintiff's Exhibits 10, 11 were marked for purposes of identification.)

- - - -

Q. Exhibit 10 and we'll look at Exhibit 11 as well.

MR. MANNION: Just whenever you're ready for a break. I need a restroom break in a little bit, but it doesn't --

MR. PATTAKOS: Okay.

MR. MANNION: -- I don't have to go this second. Well, I do have to go.

Q. Here's Exhibit 10 and 11. Are these the types of instructions that you would receive about Red Bag referrals?

A. Yes.

Q. And Exhibit 10 also reflects -- well, she says please print this out and refer to it when doing

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intakes. What did you understand that to mean you were suppose to do?

MR. MANNION: Objection.

A. Comply with this directive. Send to the people based on their location to the specific chiropractor.

Q. Okay.

MR. PATTAKOS: Just one more quick question --

MR. MANNION: Sure.

MR. PATTAKOS: -- quick line of questioning and then we can take a break.

Q. Did you understand that the chiropractors work with telemarketers?

A. Yes, absolutely.

Q. What was your understanding of that process?

A. The chiropractors got a -- their telemarketers get a list of accident victims of drivers, passengers, passengers even in the at-fault car and as soon as they're available, they start calling and encouraging people to come in for free visits. You know, various times they offer free gas cards. Different incentives to get them to come in.

MR. KEDIR: Objection.

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Q. What happens from there?

MR. MANNION: Objection. Form.

A. When they come to the chiropractic office, he sells them on their need for further treatment then they make referral to a friendly lawyer.

MR. MANNION: Objection.

MR. KEDIR: Objection.

Q. The chiropractor makes the referral --

A. Yes.

Q. -- to a friendly lawyer?

MR. MANNION: Objection. Move to strike.

Q. Did you understand that this happened with KNR?

A. Yeah.

Q. And which chiropractors?

A. All of their preferred ones. Akron Square, West Tusc, Town & Country, Vernon Place, Werkmore, certainly all the Plambeck Group --

MR. KEDIR: Objection.

A. -- Toledo Spine.

MR. KEDIR: Move to strike.

Q. Thera Reid and Naomi Wright are plaintiffs in this case -- well, Naomi was a plaintiff -- they have testified that they were contacted by a chiropractor's office who sent a car to pick them

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up and then provided them with a KNR fee agreement and put them on the phone with a KNR attorney. Is that consistent with your experience?

MR. MANNION: I'm going to object. What do you mean Naomi Wright testified? You wouldn't give us her deposition.

MR. PATTAKOS: She made allegations.

MR. MANNION: Well, that's a little different.

MR. PATTAKOS: Well, we can get an affidavit from her.

MR. MANNION: That's not the point.

MR. PATTAKOS: I also told you you could take her deposition.

MR. MANNION: Well, but you just told the witness that she testified.

MR. PATTAKOS: I'm sorry.

MR. MANNION: She did not testify.

MR. PATTAKOS: Okay.

BY MR. PATTAKOS:

Q. She's told me and alleged in her Complaint and Thera Reid has testified that this is what

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happened. Is that consistent with your experience?

MR. KEDIR: Objection.

MR. MANNION: Objection to form.

A. Yeah, I don't know anything about those people specifically, but that process is exactly my experience.

Q. Did you understand that it was routine for these preferred chiropractors to keep KNR fee agreements at their offices?

A. Yes.

MR. MANNION: Objection.

MR. KEDIR: Objection.

Q. And that it was routine for KNR investigators to go meet the KNR clients at the chiropractors' offices?

A. From time to time. I think my recollection is that most often if they sign up at the chiropractor's office, the investigator never went. And that the investigators were utilized more so to sign people up who were not at the chiropractor's office.

Q. But you didn't have a lot of experience with this because most of the cases that you handled were cases that you had brought over from Slater &

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Zurz, correct?

A. That's right, yes.

Q. And that you didn't do a very high number of intakes because you didn't want to, correct?

A. That's right.

Q. Okay. And that e-mail that we looked at earlier, I forget the exhibit number, it may be three or four, where it shows you handled 36 intakes for a month whereas Josh handled a hundred and some --

A. Uh-huh.

Q. -- was that typical -- was that a typical month for you, about 36?

A. It was pretty typical.

MR. PATTAKOS: Okay. We can take a break.

THE VIDEOGRAPHER: Off the record.

- - - -

(Thereupon, a recess was had.)

- - - -

THE VIDEOGRAPHER: On the record.

BY MR. PATTAKOS:

Q. So when you provided documents to Mr. Horton about this case before you ever talked to me, those documents pertain to the narrative reports, correct?

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A. Most of them.

Q. And why were you concerned about the narrative reports?

A. I believe strongly the narrative reports are a kickback and are bad for the practice of law in general and plaintiffs lawyers in particular.

MR. MANNION: Objection.

MR. KEDIR: Objection.

MR. MANNION: Move to strike.

Q. And why is it that you believe that?

A. That they're a kickback?

Q. Yes.

A. There's --

MR. MANNION: Objection.

A. -- no other reason for them.

MR. POPSON: There's what?

A. There's no other reason for them that -- you know, in Akron we, of course, did business with chiropractors and that sort of thing for years without anyone ever paying a narrative report fee on every single case or virtually every single case to one particular chiropractor. There's no justification for it.

And then as I understand it, the volume of cases, once KNR started paying for narrative

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report fees went to them -- in terms of an overwhelmingly majority of cases went to them.

MR. KEDIR: Objection.

Q. What do you mean by that?

MR. MANNION: Objection. Move to strike.

Q. You mean that KNR started taking in a higher volume of cases once it started to pay the narrative reports?

A. Yes.

Q. How do you know that?

A. Well, it was -- and it's an observation from my time at Slater & Zurz, but also Brandy told me that.

Q. When did Brandy tell you that? What do you recall about that?

A. I had a conversation with her where she was reviewing the history of the firm and how it developed and she told me that business really took off once Rob invented the narrative report thing.

MR. MANNION: Objection.

MR. KEDIR: Objection.

A. And that's a quote.

THE WITNESS: So you can giggle,

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but you weren't there --
MR. MANNION: I'm sorry --
THE WITNESS: -- I was.
MR. MANNION: -- well, have you read John Lynett's affidavit?
THE WITNESS: No. I don't care what John had to say.
MR. MANNION: Okay.
THE WITNESS: I worked with John.
MR. MANNION: I just think it's funny that you say that Nestico invented a narrative report.
THE WITNESS: Well, that's what Brandy told me --
MR. MANNION: Okay.
THE WITNESS: -- and that's what I testified to.
BY MR. PATTAKOS:
Q. Well, John Lynett probably would get reports from chiropractors from time to time, correct?
A. As far as I'm aware, yeah. John was above me in the food chain, so exactly what he did, I don't know. I didn't review his stuff.
Q. It wasn't necessarily uncommon or unusual for a law firm to obtain an opinion from a

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chiropractor, correct?
A. Correct. I've done it.
Q. And what was different about the narrative reports at KNR that caused you to be concerned about them?
A. Well, they do it every single time immediately as soon as the case comes in. As I understand it, they send the check directly to the chiropractor, his or herself, at their home and the reports themselves, if you compare them -- and you guys have seen real reports -- they don't look anything like what they produce. They're a couple sentences all of which can be gleaned easily from the medical records. And it's clear it's just -- they want the claim settled as fast as possible.
Q. Well, a lot of the --
MR. MANNION: Objection.
MR. KEDIR: Objection.
MR. MANNION: Move to strike.
Guys, guys, please, give a little pause between question and answer. We are allowed to object.
Q. Some of the narrative reports that we've seen from Floros are basically one page with a few

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paragraphs. Does that sound like what you're describing?
A. Yeah, I've seen them worse. I think that actually is an evolution. The early ones I saw were basically yes or no. That the firm would submit questions that were capable of being answered yes or no.
MR. KEDIR: Objection.
A. Do you believe that the injuries caused by this accident -- or the injuries that you treated for were caused by this accident? Yes. And then a few other questions.
Q. Let's take a look -- let's take a look at a couple of the narrative reports for the named plaintiffs in this case. We can mark these as 12 and 13.

- - - -

(Thereupon, Gary Petti Plaintiff's Exhibits 12, 13 were marked for purposes of identification.)

- - - -

MR. POPSON: These are Exhibits 13 or 14.
MR. PATTAKOS: 12 and 13.
MR. POPSON: 12 and 13.

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MR. PATTAKOS: And the highlighting is of no significance.
MR. MANNION: No, wait. Which one is 12?
MR. PATTAKOS: Norris is 12 and Reid is 13.
MR. MANNION: Got it.
MR. PATTAKOS: I apologize for the highlighting on these. You'll just see that the client's name is highlighted and then there's one sentence that was highlighted on Monique Norris' report that I just couldn't get deleted off of there, but that was something I added to the document after it had been produced for another purpose. It has no significance here.
MR. MANNION: I'll just object to the -- since this postdated his departure, but...
MR. PATTAKOS: That's fine. And -- I mean, I'm going to --
MR. MANNION: Ask him the question.
MR. PATTAKOS: -- I'm going to ask

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All this stuff is in the medical records.

Now, the insurance company of course sees millions of soft-tissue cases. They're not being educated by this paragraph. They're not. I mean, they've been sent this paragraph thousands of times a year by KNR. How is it meaningful to them in any specific case?

Q. And the opinion that the doctor gives -- the chiropractor gives at the bottom of the page, did you ever have the experience of Floros or any of the chiro -- any of the KNR's preferred chiropractors coming back with an opinion on one of these reports that the injuries were not caused by the car accident at issue?

MR. MANNION: Objection.

MR. KEDIR: Objection.

A. Never.

Q. I'm sorry?

A. Never.

Q. Did you ever become aware of any attorney at the law firm while you were there getting a narrative report from Dr. Floros or any of the other firm's chiropractors where the chiropractor did not find causation?

A. Never.

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- - - -

(Thereupon, Gary Petti Plaintiff's Exhibit 14 was marked for purposes of identification.)

- - - -

Q. What do you recognize this document as?

A. It is a document that indicates that only Dr. Floros gets the narrative report fee.

Q. Well, this is redacted --

MR. KEDIR: Objection.

Q. -- so I believe there were other -- there were other chiropractors listed here.

A. Okay.

Q. Would you receive e-mails like this while you worked at KNR?

A. Yeah, I'd see them.

Q. Where it would say these are the narrative fees that we're paying and then it would list a number of chiropractors?

A. I'd see them. Just like this one, this didn't come to me, this went to all the paralegals and Nestico and Redick because those are the people who sent out the checks.

My experience was lawyers had nothing to do with whether or not there was a narrative report fee and that the paralegals sent the checks out.

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So this didn't go to me, it didn't go to any of the lawyers other than Nestico and Redick.

MR. MANNION: I'm going to object because I think this predated his employment.

Q. Did the lawyers have any discretion as to whether the narrative report was ordered?

MR. MANNION: Objection.

A. My experience, absolutely not. I was told directly by Megan Jennings that, no, the lawyers didn't have that discretion, and she was my paralegal.

Q. Let's take a look at Exhibit 15.

- - - -

(Thereupon, Gary Petti Plaintiff's Exhibit 15 was marked for purposes of identification.)

- - - -

Q. Does this document look familiar?

A. It was after I was fired I think.

Q. Does this look similar to e-mails that you would have received?

A. Yeah --

MR. MANNION: Objection.

A. -- yes.

Q. Did you ever ask why certain narrative reports --

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certain chiropractors were paid for narrative reports and others weren't?

A. I absolutely do not.

Q. And why didn't you ask?

A. Because they're a kickback and I knew that.

MR. MANNION: Objection. Move to strike.

MR. KEDIR: Objection.

Q. But you refused to do it -- you refused to order these reports on your cases, correct?

A. Yeah, I did not know that they were going out automatically. So I did get an Akron Square intake, and when I did that intake, I never ordered a narrative report. And I figured I protected myself from this scheme by not ordering the narrative report. I thought at some point it would come up, that, you know, they'd address it with me, why didn't you order a narrative report or you have to, but then when my paralegal put all the stuff together, all the medical records, bills, and in this case a report, it was in there and I went to her directly, I said, what's this doing here, I didn't order it, and she said, we do it all the time.

MR. MANNION: Objection. Move to

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A. Yes.
Q. And this was after Megan had told you that it wasn't your choice to order the narrative report?
A. This was the very next intake I did from Akron Square --
Q. Okay.
A. -- so since she told me previously that these go out automatically -- and it already was done in this case -- so as soon as I sign this up, whoever those people were, it doesn't say on here, so it was that immediate. I just got off the phone, it was Akron Square, I sent her this e-mail saying, remember we talked about this the other day, I do not want narrative reports, and that's what I'm saying.
Q. The first case where this got your attention and you saw that this was an automatic procedure, do you recall what the settlement amount was on that case, roughly?
A. I was fired before that case settled, I believe. Because I got fired like less than two weeks after this, after I sent this e-mail. And the other one would have been days before then.
Q. And you write here in this Exhibit 17 that, "I've asked a number of adjusters about the importance

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of those reports and the most common response is nearly uncontrolled laughter."
A. Uh-huh.
Q. Is that true?
A. It's hyperbole. I mean, I exaggerated it, but it was clear in the people who -- and the adjusters that I had conversations with that they didn't give it any credence whatsoever. Floros is a disliked guy among insurance adjusters.
MR. MANNION: Move to strike.
MR. KEDIR: Objection.
A. Because of the volume. You know, and, you know, I don't love insurance companies, but, you know, they look at it, everybody that makes a claim against them is a bad guy. And since Floros had tons of patients and they saw tons of his medical records and they were handing out tons of money to him, in terms of medical fees, he was not a well-liked guy. And I got comments all the time about the connection between Floros and KNR.
Q. From adjusters?
A. Yes.
Q. Did you discuss those comments with your colleagues or management at the firm?
A. Nope.

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Q. And why didn't you?
A. Because that was their business model. I mean, high volume, turn it over as quick as possible. And then actually Rob even told me that before I started. He told me that Slater paid me too much and that if he didn't pay me so much money, then he would be able to invest more money in marketing and advertising, get more people, send them back to the chiropractor, and then get more in return from the chiropractor.
MR. MANNION: Objection. Move to strike.
Q. More cases --
A. More cases referred to him, yes. And that was before I ever started. Because we were talking about -- we were discussing my compensation at KNR, what it would be. And I got -- actually I made more money at Slater & Zurz. And he said -- you know, he couldn't pay me that much because he needed to keep a bigger portion of it so that could be reinvested back into marketing for the firm.
Q. To bring more clients in?
A. Yes. And then refer to the chiropractors and keep feeding the cycle like that.

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Q. So it would have been pointless for you to say you were concerned about this as --
A. Right, that was my understanding, this is how things work.
Q. Okay. Did you ever talk about it with your colleagues?
A. Yeah, sure. The guy who got fired right away -- I didn't expect to love it at KNR. All I wanted to get out of it was 18 months, but I was surprised at the whole experience. And he came from -- gosh, I don't remember the name -- he came from a defense firm. And I remember saying, you know, some things to him, but I didn't trust a lot of people there, so it was people, I don't know who it was, relayed to me that there was sort of a culture of snooping and telling on people. So I mostly kept my objections and things to myself. I just wanted to do my 18 months and go.
Q. So you were fired two weeks after sending this e-mail?
A. Roughly. Early December.
Q. Okay.
A. It was a Friday I know that. So it could have been the first Friday. And, in fact, I could

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delaying the inevitable which is filing suit on all of these claims.

And then Mr. Nestico says, "I agree we need to file all these Allstate files. Please send John and I a list of your Allstate Plambeck cases."

A. Uh-huh.

Q. Did you ever become aware of the fraud suits that were brought against Plambeck?

A. Yes, I was very aware.

Q. How do you become very aware of them?

A. It was at Slater & Zurz they did business with Plambeck. I was familiar with Plambeck. I don't know how it happened, but I had lunch with him once.

Q. Kent Plambeck?

A. Uh-huh. Down in Canton. So it was a topic of gossip and conversation.

Q. What do you remember about it?

A. That they were going to get hit and they were up to no good and Allstate was on them.

MR. KEDIR: Objection.

Q. Up to no good in what way?

A. I was not specifically familiar. I would not -- I'm not familiar with how Plambeck itself works

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so I suppose I interpreted through my own lens, which is just a real aggressive telemarketing, getting people to treat a whole bunch, the treatment not being justified based on the facts and the reported injuries.

MR. KEDIR: Objection. Move to strike.

Q. I believe that there was something at least in one of these lawsuits about x-rays.

A. Uh-huh.

Q. Do you remember that?

A. Yes, I do remember that. Overcharging.

MR. KEDIR: Objection. Move to strike.

A. But this -- Allstate -- Grange basically did the same thing. Grange assigned an investigator to all of the KNR Akron Square cases and they all went to their special investigation unit. What was that guy's name? Gray? Used to come in, Matt Gray from Grange. He used to get assigned every single one of those. They automatically went to the special investigations through I think it was Grange.

Q. And this is while you were there?

MR. MANNION: Objection.

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A. Yes, that was while I was there.

Q. And that includes Floros, correct?

A. Yes, it does.

MR. KEDIR: Objection.

Q. Because Floros is -- Akron Square is a Plambeck clinic, correct?

A. Correct.

Q. So you knew that the insurance companies would, so to speak, tighten the screws on any Plambeck case even while you were at the firm, correct?

MR. MANNION: Objection --

A. Absolutely.

MR. MANNION: -- to the characterization.

A. Absolutely.

MR. KEDIR: Objection.

A. And that somewhat relates to the conversation I mentioned earlier -- not somewhat relates, we touched on that in the conversation I mentioned earlier with Rob and I before I started. That even though those cases got increased scrutiny, the volume made up for it.

MR. KEDIR: Objection.

Q. So this is why the firm didn't just stop referring its clients to Plambeck chiropractors

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and instead decided to just file suit on all these cases?

MR. MANNION: Objection.

A. I would say yes.

MR. MANNION: Move to strike. Speculation.

Q. And you were never instructed to advise your clients that the insurance companies were treating the chiropractors from these specific clinics in this way, correct?

MR. MANNION: I'm going to object. This is from May of 2013.

A. That's correct. The same kind of thing was going on though, I mean, just being honest. Like I mentioned earlier, people didn't like Floros, the insurance adjusters didn't like Floros. They didn't like the connection between Floros and KNR. That's why there was a Matt Gray from Grange who would look at every single one of them --

MR. MANNION: Objection as to the why.

A. -- that's why Allstate, you know, gives $1,500 offers and rejects all the bills because they know that they can make Floros look bad at

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trial --
MR. MANNION: Objection.
Speculation.
A. -- by bringing up all of the different shenanigans that were uncovered in the class action -- or not the class action but the federal case.
MR. MANNION: Objection.
MR. KEDIR: Objection. Move to strike.
A. I mean, that's the kind of thing that happened to me -- or happened to people I know.
Q. At trial?
A. In litigation.
Q. In litigation?
A. Uh-huh. Because litigation becomes less about what happened to the client, more about who Dr. Floros is, who Plambeck is, how the lawyer -- how they got to see Dr. Floros. It becomes all about the perceived manufactured claim.
MR. KEDIR: Objection.
Q. Okay. Strike that.
You've mentioned Town & Country and Dr. Kahn?
A. Yes.
Q. Kelly Phillips said that easily 80 percent of his

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cases in the Columbus office went to Dr. Kahn, maybe 90 percent?
MR. MANNION: Objection.
Q. Does that sound right to you?
MR. MANNION: Objection --
Q. You wouldn't know --
MR. MANNION: -- as to Mr. Phillips.
Q. -- you wouldn't know because you weren't there at the time, correct?
A. Right.
Q. So KNR's relationship with Town & Country was something that you introduced them to, correct?
A. That's correct.
Q. Okay. And you were gone so fast that you wouldn't have seen what happened with that?
A. They got a lot. Because my compensation structure while I was there I got paid a bonus on cases that Town & Country referred and we settled, so --
Q. So you had a special deal?
A. Yes.
Q. What was your deal?
A. I don't remember. I don't remember the numbers, but I got more, obviously, for the cases that I

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brought with me and then my referral sources, wherever they were, mostly in Columbus. If they referred something to KNR and we settled it, then I got some of that as well whether I was the lawyer who settled it or not.
Q. Whether you were the lawyer who handled the case or not, correct?
A. Correct.
Q. Do you remember how much you made in your -- let's see, you were there from May -- or, I'm sorry, March to December, mid December. Do you remember about how much you made in nine months there?
A. No.
Q. Kelly Phillips testified at his deposition a week ago that the firm would not cut Town & Country's bills nearly as much as they should have, that Nestico himself would oversee the negotiations with the medical providers -- well, first let me back up.
MR. MANNION: Move to strike.
Q. Was that your experience as well that Nestico would approve every settlement memorandum and handle it, at least the great bulk of the negotiations with the providers about the bills?

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MR. MANNION: Objection as to anything outside this case.
A. Yes. When I had a settlement, it was not final until Nestico did the approval of the cut on the medical bills -- on the chiropractic in particular.
So I would get an offer from the insurance company, get authority from the client to accept a certain net amount, was the way I did it, net amount in their pocket. And in order to make that work, I would have to adjust the medical bills, reduce doctor whomever, and then I'd write it all up saying, okay, you know, this makes the math work if Dr. Kahn, for example, cuts her bill from 5,500 to four, then the math works, the client gets what they're expecting, we get whatever in a fee, and then you take that file all written up and set it in Nestico's office. And then at some point later, you get it back with an "okay" I think he wrote on it.
Q. Or?
A. Or no. You know, you've got to get more, we've got to take less or cut somebody else. Further instruction. Most of mine were always okay though, as I recall.

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Q. Kelly Phillips testified that Town & Country was often paid a high percentage of their bills, upwards of 70 percent from KNR client settlements when under industry standard practices these chiropractors would not have been paid more than 50 percent for the same treatment?
MR. MANNION: Objection.
A. I didn't handle many Town & Country cases. Again, cynically speaking, I think that was probably deliberate on my part so that my relationship with Dr. Kahn and her group would go away. Because Rob and KNR didn't know that I had no desire to be a personal lawyer anymore. So I think once I brought that work to them, they wanted -- you know, they envisioned a day when Gary Petti wasn't going to be working there anymore and they wanted to make sure they had those relationships solidified. And the fastest way to do that, the most reliable way to do that, would be to cut me out of the equation.
MR. MANNION: Objection speculation.
THE WITNESS: It is speculation.
Q. That's the reasonable inference, in my opinion?
MR. MANNION: Objection.

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A. I agree though. I mean that's what happened --
MR. MANNION: Objection.
A. -- I mean, nobody ever told me that, but...
Q. Did you -- was this testimony about the compensation for Town & Country consistent with your experience with Akron Square or the other high referring chiros?
MR. MANNION: Objection.
A. I don't know what you mean by "compensation."
Q. Well, in terms of what they were -- in terms of what the reductions of what they would accept?
A. I think there was definitely a desire to minimize the reductions for the high referring chiropractors, yes.
MR. MANNION: Objection. Speculation.
Q. And it was your experience that what's happened?
A. Yes.
MR. MANNION: Objection. Speculation.
Q. You're familiar with Dr. Ghoubrial?
A. Yes, I am.
Q. And how are you familiar with him?
A. I'd see him around more than anything. I had a couple conversations with him, I'm sure. I know

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I went to lunch with him once or twice, maybe more.
Q. While you were at KNR?
A. No, not at KNR.
Q. While you were at Slater & Zurz?
A. Yeah.
Q. You would see him around?
A. Uh-huh. Yes.
Q. Where would you see him?
A. He occasionally would visit Slater & Zurz and KNR.
Q. How often did you see him at KNR's office?
A. Fairly often. I'd say something like once a week.
Q. What did you see him doing there?
MR. RYAN: Objection.
MR. KEDIR: Objection.
A. Nothing. Walking back and forth to Nestico's office, goofing around with the staff.
Q. So you would have lunch at -- with Dr. Ghoubrial when you were at Slater & Zurz?
A. Yeah.
MR. KEDIR: Objection.
Q. Why was that?
MR. RUBIN: Objection.

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A. It was just an introductory I think. We were -- my understanding is they wanted to have him in a capacity review chiropractic bills and therefore be in a position to testify in the event that the cases went to trial.
MR. RUBIN: Objection.
A. He'd review and approve the treatment and say, okay, yeah, you know, I believe, based on my training, experience as an MD, as opposed to a DC, that all the treatment is reasonable and necessary and caused by the accident --
MR. KEDIR: Objection.
MR. RUBIN: Objection. Move to strike. Nonresponsive. Speculation.
A. -- and therefore if it went to trial -- well, they did in certain instances have him testify in cases where he really didn't do any treatment, just reviewed the bill.
Q. So he wouldn't treat the Slater & Zurz' clients?
A. He may have. I had little to do with that. Like I said, it was a different business model at Slater & Zurz. I sort of did my own thing and handled the cases the way I saw fit, other people did what they saw fit.
Q. So other people might have worked with him in a

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different way than you --
A. Yes.
Q. -- and they had the discretion to do that?
A. That's right.
Q. What was the difference between Ghoubrial's involvement in the KNR cases?
MR. RUBIN: Objection.
MR. MANNION: Objection.
A. I don't know. He developed certainly a connection with all the Plambeck doctors. Not -- yeah, all I suppose --
MR. KEDIR: Objection.
A. -- and then routinely became involved in the treatment of when I was there specifically in terms of providing injections, trigger point injections, trigger point injections, trigger point injections.
MR. RUBIN: Objection. Move to strike. Lacks foundation.
Q. How did you become aware of this?
A. I'd see it on the records and bills.
Q. Of your clients' cases?
A. Of my clients at KNR.
Q. And did I understand -- do I understand the testimony you just gave to mean that Dr.

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Ghoubrial gave injections on almost every file that he handled?
MR. KEDIR: Objection.
MR. RUBIN: Objection.
MR. MANNION: Objection.
A. Not almost every. Because again my split was way slanted towards the things that were my own, especially early on.
Q. Every file that Ghoubrial was involved with?
MR. RUBIN: Objection.
A. Yeah, I don't know if he did anything other than give injections --
Q. Okay.
A. -- that's my recollection. You know, it was a lot.
Q. So you were only saying that Ghoubrial wasn't on every file or on a great number of the files that you handled because those were cases that you had already brought over?
A. Right.
Q. But on the files that he was involved with, there were injections on every single one?
MR. RUBIN: Objection.
MR. KEDIR: Objection.
A. It seemed -- you know, seven years later, however

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long it's been, it seems like that. It's certainly a lot.
Q. What was your experience of the impact that Ghoubrial's involvement would have on these cases when he would treat the KNR clients?
MR. MANNION: Objection.
MR. RUBIN: Objection.
MR. MANNION: Which cases?
A. In the cases I handled, it seemed to just make it more difficult to settle because there's more different people who had a hand in getting the money. I don't think -- my experience was the insurance companies didn't give the injections much weight in terms of increasing the settlement value, so you'd have a slightly bigger pie, if bigger at all, divided among more people.
MR. MANNION: Objection. Move to strike.
MR. RUBIN: Join.
MR. PATTAKOS: Here's Exhibit 19.
- - - -
(Thereupon, Gary Petti Plaintiff's Exhibit 19 was marked for purposes of identification.)
- - - -
Q. You sent me this e-mail, correct?

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A. Yeah, I did.
Q. And it looks like an exchange that starts on the last page --
A. Uh-huh.
Q. -- and then the more recent communications occur as we move through the beginning of the document. So I see that you are writing to Mr. Nestico and Mr. Redick for a WD request. What's a WD request?
MR. MANNION: Wait a minute, wait a minute. Before you go any further, I'm going to object because there is a client name in here.
MR. PATTAKOS: Redacted --
MR. MANNION: If you look at the second to last page at the bottom, Ms. Blank, but it said in there --
MR. PATTAKOS: Okay.
MR. MANNION: -- had exited the car wash.
MR. PATTAKOS: We can make sure this is redacted before it gets -- this is not privileged or really confidential either. There's a lot of case law on that, but --

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Q. It is on the third page here.
A. Okay.
Q. KNRO4024.
A. Okay.
Q. Is what Mr. Phillips is describing here consistent with your experience of Dr. Ghoubrial's involvement on KNR cases?
MR. RUBIN: Objection.
A. In general terms, yeah.
Q. How so?
A. It didn't do anything to help the offers really. You know, if you do enough -- and I don't know all your guys' background, I'm assuming you know at least as much as I do. Most of the cases are dependent on the facts, not what the lawyers do or anything like that. So you have a low-impact chiropractic case with six weeks of care and a $4,000 bill, you know, whatever attorney all star is going to get a certain amount of money and the run-of-the-mill guy is going to get something very similar to that. So adding these injections, which is what I was familiar with, doesn't change much.
MR. RUBIN: Objection. Move to strike.

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MR. KEDIR: Objection.
A. It doesn't offset the cost of the injection really.
Q. So when he says I'm now five for five with -- "Five for my last five with Nationwide cases where they are flat out refusing to consider anything related to Clearwater." Did you ever have any experience like that?
MR. RUBIN: Objection.
A. Not exactly like that, but certainly where I had adjusters say, yeah, we're not paying for that.
Q. Paying for injections?
A. Yes.
Q. From Ghoubrial?
A. Yes.
MR. RUBIN: Objection.
MR. KEDIR: Objection.
Q. On KNR cases?
MR. KEDIR: Objection.
MR. RUBIN: Objection.
A. That's my recollection, yep.
Q. And when Mr. Phillips writes, "I am a bit concerned with the ethical dilemma this creates. It is not difficult to make an argument that we are treating Clearwater's interests as equal to

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our clients," do you agree with that?
MR. RUBIN: Objection.
MR. MANNION: Objection.
A. I agree that it's not hard to make that argument.
Q. Now if you take a look at Mr. Nestico's response on the first two pages -- actually, yeah, it starts at the bottom of the first page.
A. All right.
Q. What are your impressions of this e-mail and the context of the testimony you've provided today?
MR. MANNION: Objection.
MR. RUBIN: Objection.
MR. MANNION: Nonsensical question.
Q. Well, you've never seen this e-mail before, have you?
A. No.
Q. I'll repeat the question: What are your impressions in the context of the testimony --
MR. MANNION: Objection.
Q. -- you provided today and the subjects we discussed?
MR. KEDIR: Objection.
MR. MANNION: Objection. Which testimony?

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A. I think it's easy for Nestico to say because he doesn't do any of the work. So saying, go ahead and fight these battles doesn't cost him anything really. Lawyers who are pre-lit lawyers that are handling the cases, you know, it's always the worst cases that take the most time. So you fight this battle for hours and hours and hours and it just bogs you down. It keeps you from handling cases that are more profitable. And given that Nestico doesn't really care what you make on this case, he only cares that you make 100 for the month, 100,000. Like I said, it's easy for him to say, fight this fight. Because it's not his time and it's your time and it's not his bonus, it's your bonus. So it's easy to say.
MR. MANNION: Objection.
A. I also of course was on the defense side and ended up doing significantly more plaintiff's work. Not a fan of insurance companies and I absolutely agree that the insurance company, it doesn't matter what you do to a certain extent, like these guys are doing, you've got to find the favorable side for your client.
MR. MANNION: I'm going to object to the characterization of what we're

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doing.
THE WITNESS: Oh, okay.
A. Zealously representing people within the bounds of the law, whatever that entails, in any particular case.
So I don't have a lot to say other than it's easy for him to say, but as a practical matter, I'm not sure again that the treatment from Clearwater added value to the client's case.
MR. MANNION: Objection.
MR. RUBIN: Objection.
Q. And when you talk about insurance companies, to some degree, are always going to be doing their jobs --
A. Uh-huh.
Q. -- to represent their sides zealously, this isn't just that, is it? What Kelly Phillips is talking about here.
MR. RUBIN: Objection.
MR. MANNION: I'm going to object again.
A. I would say no. It's a -- it's a, you know, perception that these look like manufactured cases. And that certainly is an opinion that I share.

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Q. And this is relating to a specific provider that Nationwide and Progressive are looking at with extreme skepticism, correct?
MR. POPSON: Objection.
MR. RUBIN: Objection.
MR. MANNION: Objection.
A. Yes. They see it over and over and over and over again. And on the other hand, they see all kinds of people who treat elsewhere who aren't getting trigger point injections, but when they treat -- you know, when there's KNR involvement and certain chiropractor involvement then for some reason all these people need trigger point injections.
MR. RUBIN: Objection. Move to strike.
Q. And Nestico's response is basically just we're going to file suit on all these cases?
A. Yeah. Well, as long as we've got a good impact and clear liability and all the other things that make a good case, then we'll take this one on.
Q. But the client, again, never hears about the insurance company's view of the treatment that they get from Dr. Ghoubrial, correct?
MR. RUBIN: Objection.

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MR. MANNION: Objection.
A. That would be up to the individual lawyer on how they explained it.
Q. Well, Kelly Phillips testified that -- consistent with what you've said today -- was that you understood that was the business model --
MR. MANNION: Objection.
Q. -- and that his understanding of Nestico's response was that it wasn't the attorney's job at KNR to question Dr. Ghoubrial's treatment or his bills --
A. Right.
Q. -- and that his job would be in jeopardy if he continued to do so?
MR. RUBIN: Objection.
Q. Do you agree with that?
MR. MANNION: Complete mischaracterization. Absolute mischaracterization.
A. What I will say to that is the lady that I mentioned earlier, who was signed up by Kevin Sandel and I ultimately took over that case who had questions about why she was referred to Akron Square and why she couldn't do her own thing and why she couldn't use her medical insurance and

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all that, created a very, very difficult, what I perceived as an ethical situation for me, because I wanted to tell her the truth, what I believed to be the truth, which is that that's the way this works and you're part of a larger operation.
Q. Okay. There were other doctors that the firm could have sent its clients to other than Dr. Ghoubrial, correct?
MR. MANNION: Objection, saying the firm sent them to Ghoubrial. You know that's a mischaracterization.
MR. RUBIN: Join.
A. Certainly. You know, if people have health insurance, they can go anywhere for medical treatment ordinarily, at least in my experience. You know, there are a few -- a few that I've run across over the years. Doctors that is, MDs, that don't want to be involved in auto accident cases. But most of them, I would say in my experience, the overwhelming majority are -- if you have some means to pay, they'll treat you.
Q. If you have insurance, they'll accept your insurance, correct?
A. Right. Yeah.
MR. MANNION: Objection.

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from the client's health insurance, correct?
A. For sure. For sure.
Q. So was that your practice when you went to KNR?
A. My practice by the time I went to KNR most of it was chiropractic only. You know, if people had an MD and they were seeing that MD, then that's what they did. Now, most -- I didn't -- again, I ran my own show and Gary Petti didn't advertise, so I didn't have the capacity to myself generate lots of clients. I got lots of referrals. Every now and then I would get someone who was referred to me word of mouth because I represented their sister, their brother or whoever, and they were already treating with an MD or they had medical insurance that -- where they could go to an MD, but in terms of volume, most of my cases at the time I started at KNR were referred to me by chiropractors.
Q. What about the cases that you took in while you were at KNR?
A. I didn't get a lot of them to the point where I was negotiating on them. Like I said, Akron Square was a big player at KNR in terms of volume. That one case in November where Megan sent out the -- or prepared the package that

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included their narrative report was like in mid November, some point like that, and I was fired two weeks later, so -- and that --
MR. MANNION: I'm going to object.
A. -- three weeks maybe. I was conscious -- that was the first time I was consciously aware of the narrative report being part of a Plambeck chiropractor settlement package.
So I guess what I'm trying to say is I didn't see a lot of cases that I originated through to even the point where the portfolios were going out.
Q. Were there other doctors --
MR. POPSON: Objection.
Q. -- were there other MDs besides Dr. Ghoubrial that the firm would use?
A. Yeah.
MR. RUBIN: Objection.
MR. MANNION: I'm going to object to "the firm using".
Q. What do you recall about that?
MR. MANNION: You haven't established that the firm referred them to Ghoubrial.
A. The only -- the only instance that comes to mind

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is somebody sent some kind of a promotional thing to KNR and it was an MD willing to work on an assignment. So to me that was good news because I prefer MDs to chiropractors. And if I can get somebody to see an MD as opposed to a chiropractor, especially on an assignment basis where they're not getting -- you know, the client is not getting beat up to pay their bill, then I wanted to do that.
Q. What does an assignment basis mean?
A. You assign a portion of your settlement to the doctor in the event that settlement comes in, to pay your medical bill.
Q. Is that different from an LOP?
A. I use them interchangeably --
Q. Okay.
A. -- but they're not very particular.
Q. What do you recall about this?
A. I did that, I made the referral to whatever that person is, and Josh Angelotta most have as well independently, and then Redick called us into a meeting and Brandy was there and they both yelled at the two of us for doing that and said we should have referred it somewhere else, to some chiropractor who was nearby. And don't do it

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again because the other chiropractor refers us many more people. Those people never referred anything or very little, whatever it was.
Q. What would you estimate -- what's your estimate of the percentage of your clients who didn't have health insurance?
A. 50/50 maybe. I mean some of them would be employed and have, you know, Medical Mutual or something like that and then a significant portion would have CareSource, Medicaid/Medicare, something like that. So as far as the people who are truly uninsured, probably less than 50 percent.
Q. Less than 50 percent?
A. Yes.
Q. How much less?
A. I don't know.
Q. Was it your experience that the providers that the KNR firm worked with never accepted insurance payments from the --
MR. MANNION: Okay.
Q. -- client's health insurance?
MR. RUBIN: Objection.
A. Yeah, that is -- that's my understanding.
Q. What did you understand the purpose behind that

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going on that I wasn't aware of to justify the payment.
Q. But you're not -- you're still to this date not aware that any such thing --
A. Right.
Q. -- happened that would justify the payment, correct?
A. That's right.
Q. Did you ever go on any of the trips that Nestico would take KNR lawyers and healthcare providers on?
A. I did go to Florida. I don't remember the name of the city. Wherever the Hard Rock is.
Q. And who was on that trip?
A. The pre-lit people from the office and some chiropractors. The guy from Cincinnati, I can't remember his name. Tassi. I don't remember who else in terms of medical providers.
Q. Any MDs?
A. None that I'm aware of.
Q. Ghoubrial wasn't there?
MR. RUBIN: Objection.
A. I don't think so. Pre-lit lawyers and both Robs were there.
Q. Was Floros there?

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A. No, he was not.
Q. What did you do on this trip?
A. What I principally did was try to arrange a fishing trip that I could never get to work because of the weather, but we went to the casino and I think we golfed one round of golf somewhere, which I'm not much of a golfer, but we golfed. And I think we were supposed to do two, but it was raining the second day, which I wasn't going to go if I could arrange a fishing trip anyhow, I was going to go fishing, but it rained, so then we just hung out in the casino. I think we had one, sort of, group dinner where we all got together for dinner, but the rest of it was sort of on their own, which in hindsight I probably shouldn't have gone because I'm a gambler, I'm not really a golfer. I do like to hunt and fish and I gave up an opportunity to hunt locally here in Ohio to go down to Florida to sit in a casino, so...
Q. How many days was the trip?
A. I think it just two. A long weekend maybe.
Q. Do you understand, like, what the criteria was for who got to go on the trip?
A. No.

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MR. POPSON: Objection.
Q. How did you come to find out or be invited onto it?
A. E-mails I think, interoffice e-mails. Hey, we're having, the pre-lit guys are going. And I didn't know -- I don't know if there was a qualification on the pre-lit side for, you know, as a lawyer did you have to earn your way on. I doubt I did. Just because I hadn't been there that long. We must have went in October if I missed hunting to go. I wouldn't have gone in November so -- and I got fired in December. So it's almost certainly October, so I had only been there a few months before we went.

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(Thereupon, Gary Petti Plaintiff's Exhibit 31 was marked for purposes of identification.)

- - - -

Q. Here's Exhibit 31. This is an e-mail you sent me, correct?
A. Yes.
Q. What do you remember about this?
A. That it was shockingly racist.
MR. MANNION: Move to strike.
Q. Did you talk with anyone about it?

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A. No.
Q. Do you remember anyone talking about it?
A. No, I don't.
Q. Again, you weren't there much longer after this, correct?
A. Right.
Q. But you did receive this e-mail?
A. Yes, I did. I did. And I forwarded it to myself because, like I said, it was -- given the demographic of the firm's clientele, I thought it was shockingly racist, stereotypical.
Q. And what you do mean about the demographic of the firm's clientele?
A. Lots of minorities. High percentage of minorities.
Q. KNR claimed in an interrogatory response that you were terminated because you quote, did not return client calls, did not handle after-hours intake, were often absent without notification and had a poor work attitude.
Do you agree with that?
A. No, not in total. I'm not certain my attitude is fabulous. I thought it was a sweatshop and it was fairly difficult to put a good face on every day. As far as frequently absent without notice,

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that -- I mean we've got stacks of e-mails. I mean, there's no e-mail to that effect at all, that they ever said, hey, Gary why weren't you here?

I did, as I kind of described when I decided to come there, I didn't have to go, I could have stayed at Slater & Zurz. So when I went there, I was very clear. I did miss some time, but I like to do things. Every April I go trout fishing in Pennsylvania. I go on vacation with my family. I go deer hunting in November after Thanksgiving. I do those things. If you're going to tell me no, then I'm not going to work for you. They're important to me. So I didn't take any time away without notice.

After-hours intake, again, there's no e-mail to that. Nobody's ever said a word to me then or later or now would be the first I heard of it that I was suppose to do. I mean, we did get the e-mail saying that, you know, certain ones were done after hours. Because when I was there, Paul did all the after-hour intakes.

Q. Paul Steele?

A. Yes. Maybe they took turns, but it wasn't up for grabs. There was no assignment. So -- and

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returning client phone calls, I would say I was no better or worse than anybody as far as that goes. They would -- I don't know that I got a lot of complaints or any, from the clients about not returning phone calls, but in the Needles system there was a tickler and a tracking, which I didn't always use, so I would occasionally get an e-mail saying, you know, you've got however many hundreds of undone tasks according to Needles, but because I didn't always use it didn't mean -- it didn't mean that it didn't really happen. You just had to check the box on Needles to keep it from coming up.

So I did have conversations with guys there and basically they would just blow through their undone tasks and check, check, check, check, check, to shrink the box, to shrink the list of undone tasks, without even doing them --

Q. About Needles --

A. -- not completing the task.

Q. Okay. About Needles -- during Mr. Horton's deposition I would ask him questions about, for example, how many of his files Dr. Ghoubrial treated the client on or how many of his files Dr. Floros treated the client on. He said it

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would be easy to find out if you check Needles?

A. Absolutely simple.

Q. Yeah. Do you agree with that?

A. Yeah. It's got a search function and you can search by provider. All the different ones by provider. You can search by referral source easily.

Q. When's the last time you've spoken with Paul Steele?

A. On or about the day I got fired.

Q. Was he part of the group that you spoke with that informed you --

A. No, I didn't speak to anyone really.

Q. -- you were terminated?

A. Paul -- I sort of view Paul while I was there as essentially management. And I don't know if he was or not. But he -- I would not have shared any concerns with anyone there, least of all really Paul. Because I felt that Paul was a real KNR loyalist.

Q. Why do you believe you were terminated?

MR. MANNION: Objection.

A. Because they had no other way to address the narrative report thing, my objection to the narrative report -- well, John told me I wasn't a

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good fit. That's the reason he gave me, right, John?

MR. MANNION: Objection. Don't do that.

THE WITNESS: That's what he said.

Q. Okay.

A. I was all ready to quit. I would have given them my notice in three weeks. And I told John that, I told Redick that, I told Nestico that. The day I was fired they had Matt, one of the paralegals, a bigger guy, standing outside the door as if I was going to be disruptive. And John asked if I needed Matt to help me with anything out and I said, no, absolutely not. I've got a bottle of hot sauce because I had already moved everything out, I was ready to go.

I would have quit sooner, but we were coming up on Christmas. My wife already wasn't working, my oldest kids I think would have been unnerved about neither parent having a job through Christmas, at least that was my fear.

So -- and I had a bunch of my CLEs scheduled. Then we were going to hit Christmas, historically at least in my practice, the week between Christmas and New Year is kind of slow, so I was

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going to quit the first workday into the new year, but I didn't get the opportunity. I was going to give them my two weeks notice with the expectation that they'd say, okay, leave.

But I generated the fees, I hit the hundred however many times. They never sent me any e-mails saying that, you know, I was not doing anything right. I know Megan Jennings was a complete -- very tight with Brandy so I know when I sent that e-mail that Brandy knew instantly.

MR. MANNION: Objection.

Q. About the narrative reports?

MR. MANNION: Speculation.

THE WITNESS: Yes, you're right.

A. I believed when I sent it, that it was going to get to management instantly as soon as I sent it --

MR. MANNION: Objection.

A. -- and I was a little bit surprised that there wasn't any pushback immediately, but then even before I got fired, I expected to be fired because, you know, I thought, well, what are they going to say, hey, Gary, you have to do this, and I'm going to say, no, I'm not going to, and we're going to be at an impasse anyhow. So they almost

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had no choice once I sent the e-mail, but to fire me.

Q. Unless they were going to change their policy --

A. Right.

Q. -- and stop doing the --

MR. MANNION: Objection.

Q. -- narrative report?

MR. MANNION: Objection.

A. Right, right, right. And they're not going to.

Q. Let's just look back at the affidavit and I think this will be the end. Let's look at paragraphs 10 and 11. Let's look at paragraph 10 first.

This is an incident where you were in a training session and Mr. Nestico played a recording of a phone call that you had over the firm's phone line with a potential client.

So, did -- you understood that Mr. Nestico and the firm's management monitored all the phone calls that you had with the firm's clients?

A. Yes, I did.

Q. Did they tell you that?

A. I don't recall how I first learned of it, but I knew that they were listening. I think I probably sat in Nestico's office and listened to some, some calls.

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Q. And they would give you specific instructions on when you said something that was improper?

A. That one there was the only time that it was ever me. I think I listened to other people speak.

Q. So in these training sessions, like the one that's described here, you weren't the only one to have your phone calls played?

A. No, I think I was. I don't really know what that -- I don't remember what that whole thing was about, why we were all there, but it was a conference room, their big conference room, right when you walk in the door to the right, there was virtually every lawyer who worked in the Akron office was there. And like I said, I don't remember what we were all doing, but they played the recording of me attempting an intake.

Q. And you were criticized for it?

A. Yeah, yeah. It was -- after the intake Nestico asked, what did Gary do wrong? And they're crickets because of course nobody wants to criticize me to my face. And then Gary Kisling says, you know, I think that sounded like a setup, like it was a planted setup phone call. And honestly that had been my initial reaction, too, as I was talking to this guy because he was

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trying to get me to commit to promise him certain things. And I'm very reluctant to promise anybody anything because I can't deliver results as a lawyer, I can deliver effort. But then the conversation went on and the guy was hung up about his lost wages, but he was an independent contractor, which I know from experience that's difficult. I mean, you can't just not go to work as an independent contractor and say, I didn't work today, and, you know -- or I didn't work for ten days and I usually make 300 bucks a day, a lot of insurance companies demand much more specific proof than that so that's what I was telling this guy was like, look, we'll try, but it's going to be on you.

You're going to have to show us, you know, who you were going to work for, what you would have made that day. That you're so booked up that after you got better, you couldn't go do that job again.

That, you know, you're going to have to demonstrate conclusively that that stuff -- that that income was conclusively lost. And the guy basically said, well, you know, I've got some other people to talk to, I'll call you back.

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individual cases?
A. Yes.
Q. Who referred Richard Harbor to Dr. Ghoubrial?
A. I would not know that.
Q. You never referred a KNR client to Dr. Ghoubrial, did you, personally?
A. I never did, no.
Q. In fact, KNR typically did not refer cases to Dr. Ghoubrial, did they?
A. Typically, I would say probably not, but it came through the relation that everyone had with one another and most directly then through the chiropractor.
Q. Well, it would be a conversation between the chiropractor and the patient, true?
A. In my cases, certainly. I would never have intervened in that.
Q. Okay. And you don't know how the others did it, do you?
A. No, I do not.
Q. And when you worked at KNR, you were essentially either on the phone or working on cases, for the most part?
A. Yes.
Q. Were you paying a lot of attention to how

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everybody else was interacting on the phones or handling their cases?
A. None. Virtually none.
Q. Okay. As far as like what percentage of cases Rob Horton or Kelly Phillips or any other lawyer referred to a chiropractor, you don't know the exact percentage of those, do you?
A. Exactly, no. But like we discussed, I mean, it was principally chiropractic referrals.
Q. The same with how you practiced at Slater & Zurz, fair?
A. I almost never referred. Not almost -- yeah, almost never is fair to say. Most of my clients came to me from a referral source so I wasn't in a position to refer out and I didn't really direct care.
Q. And you didn't direct care at KNR either, did you?
A. Well, in terms of saying, you know, hey, go here.
Q. Well, if they wanted chiropractic care, you would give them a referral source, true?
A. Well, certainly that's true, but beyond that also, you know, hey, you'd select for them, you know, here's where you should go.
Q. But my question is: You wouldn't do that if they

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didn't want chiropractic care, would you?
A. You wouldn't ask. If they said, hey, I don't want to go to a chiropractor, I wouldn't send them to one.
Q. You never forced a client at KNR to get unwanted health care, did you?
A. I would never have, no.
Q. You never heard anybody do that, did you?
A. The lady I spoke to who is initially signed up by Sandel was very clear that she did not want to go to a chiropractor, but they told her she had to --
Q. Okay.
A. -- she felt forced to.
Q. And so one case out of all the ones you know at KNR, do you know of any other cases that allegedly somebody received unwanted health care?
A. I do not know of any other.
Q. Okay. And do you know Attorney Sandel?
A. I do know Kevin.
Q. Are you trying to say that something -- he does things wrong?
A. I'm saying that the pressure at KNR to refer people to chiropractors, specifically Akron Square, resulted in him, you know, pressuring her

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to go there.
Q. Did he tell you that?
A. No.
Q. Okay. You don't know why he sent her there, do you? That's your speculation?
A. It is --
Q. Okay.
A. -- yeah, based on what I saw at --
Q. Okay.
MR. PATTAKOS: Objection.
A. -- KNR.
Q. And did you ever go talk to Attorney Sandel about that after the fact and say, hey, what do you know about this?
A. No. And when I say I know Kevin, I should say I -- we went to law school together. Beyond that -- and I think we have some friends in common or some acquaintances in common --
Q. Right.
A. -- so I don't have an ongoing relationship with Kevin at all.
Q. And once that client went to see Akron Square, it was the discussions between Akron Square and that client that got them to see the medical doctor, true?

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A. True. In that woman's case I don't know that she then went to a medical doctor --
Q. Okay.
A. -- may have been exclusively Akron Square treatment. I don't remember.
Q. And of course you told her if you don't like it, stop. Fair?
A. Well, by the time I got involved, it was already over and I was just trying to settle the case.
Q. So her treatment was over?
A. Well, all the -- her treatment was over, all the material had been submitted to the insurance company, it was just negotiation, trying to get her some money.
Q. Okay. And you certainly, when you negotiated with the insurance company, you represented that that chiropractic care was reasonable and necessary, didn't you?
A. Probably not directly. I mean, it's not like -- most of those cases really settle themselves. Again, like I said earlier, there's very little legal stuff going on. You know, everybody -- it's a template sort of.
Q. Well, do you remember your conversations with the insurance company --

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A. No --
Q. -- in --
A. -- I do not.
Q. Okay. And when you say a template, you weren't provided a template from KNR, were you?
A. No. No.
Q. Okay. You're talking about a template just as you would have had at Slater & Zurz or anywhere else; is that what you mean?
A. Same thing that defense lawyers have. I mean, you see the medical treatment and how long it lasted, what the nature of it is with the nature of the impact and you already have a general range where this case is going to go, unless there's some other compelling reason otherwise.
Q. Did you go back and look at her treatment with Akron Square?
A. I'm sure I did.
Q. Do you remember telling the insurance company, hey, don't consider that?
A. Oh, I would never do that.
Q. You certainly wouldn't try to defraud the insurance company, would you?
A. No. No, I would not.
Q. I mean, if you thought the medical care wasn't

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reasonably and medically necessary, would you still try to collect for it?
A. I would not develop an opinion as to whether or not it was personally reasonable or necessary or anything like that.
I mean, my understanding of my role as a lawyer is to be a zealous advocate on behalf of my client and not make decisions about the facts and argue against them. So the care is what it is. If the insurance company says they don't want to pay for it, then I say, oh, come on, this is -- you know, these are the bills, this is how we have to get this case settled, but I'm not developing my own personal opinion as to whether or not it was reasonable and necessary and inserting it in the case.
Q. That's for the chiropractor and the medical doctor to determine, true?
A. Right. Sure.
Q. And you certainly don't want insurance companies dictating how your clients treat, do you?
A. No, I don't.
Q. I mean, the purpose for treatment, as you said I think, was two-fold. One, it has some evidentiary value in how to get the case settled

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--
A. Uh-huh.
Q. -- but two, it's to heal?
A. Yes.
Q. So if trigger point injections, for example, are helping somebody heal --
A. Uh-huh.
Q. -- then that patient or client may want those regardless of its impact on the settlement, true?
A. That is true.
Q. And do you think if injections are helping a person heal, that it's right for the insurance company not to consider them?
A. No, you would -- if they're helpful, they should be considered.
Q. And your job as a zealous advocate and representing that client is get the insurance company to reimburse the client for those, true?
A. That is true.
Q. Now, what was Monique Norris told about Dr. Floros and whether she should go see him or somebody else or anything, do you know?
A. I don't know anything about Monique Norris.
Q. And again, you'd have to look at the file?
A. Yeah.

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was not sitting around anywhere waiting on anything. I virtually always had something to do unless it was -- you know, unless there were -- I'm sure there were instances where, you know, I'm in a chiropractor's office at 1:00, I'm done signing somebody up at 1:30 and I've got to be back there at 2:30.

Q. So you wait around?

A. Yeah, so I'd wait around. Because by the time I get back to the office and then come back here, I don't have time to do anything there anyhow.

Q. How did the chiropractor know -- if the patient was coming in at 10:00 a.m., how would they know that the patient already wanted to seek representation?

A. My understanding is they would ask them.

Q. On the phone?

A. Yes.

Q. Okay. Some of those people were coming to the chiro because of telemarketing?

A. I think, as far as I'm aware, I'd assume nearly all of them.

Q. Okay. You thought -- you think that's sleezy?

A. I do, yes.

Q. But you took the referrals?

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A. Sure.

Q. I mean, the fact that it's sleezy wasn't a reflection on you, was it?

A. To a degree it was. It's one of the reasons why I don't do it anymore.

Q. Well, you didn't think there was anything actually wrong with it though, true? I mean, it's permitted, true?

A. It is permitted by the chiropractic. I'm glad lawyers aren't allowed to do it and I wish chiropractors weren't. I can't fault the chiropractors for doing it because, you know, it's effective. So you're not going to get injury people as a chiropractor or not many if you don't telemarket.

Q. And you never telemarketed yourself, true?

A. Never.

Q. Not at KNR or anywhere else, true?

A. No.

Q. And you never heard KNR telemarket, did you?

A. I did not.

Q. So did you think Town & Country was sleezy?

A. Yeah.

Q. But you brought them and introduced them to KNR?

A. Uh-huh.

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Q. Why is that?

A. They wanted them -- yes.

Q. Well, you wanted them, too, right? You would get referrals?

A. Yeah. I -- Town -- yeah, I mean, Town & Country was a sleezy chiro telemarketer.

Q. That you did a lot of business with?

A. I did.

Q. Of your 200 cases how many were Town & Country?

A. No idea.

Q. Did Town & Country give you more cases than anybody?

A. No.

Q. Who did?

A. Columbus Injury & Rehab.

Q. And who else?

A. That's it.

Q. How many of the 200 do you think were -- who was it again? Columbus --

A. Injury & Rehab.

Q. How many do you think were, percentage wise?

A. I don't know. See, that's the only reason why -- I met Town & Country through their office manager. As I mentioned earlier, the chiropractic wars down there were very intense,

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so I did business almost exclusively with Columbus Injury originally and then that business started to dwindle for no reason that I'm aware of other than I didn't have referrals for those peoples --

Q. Okay.

A. -- so they were finding local lawyers --

Q. Did they tell you that?

A. Yeah.

Q. Who told you that?

A. The office manager. I can't remember her name.

Q. At the chiropractor's office?

A. Yeah, yeah.

Q. Town & Country didn't tell you that though, did they?

A. Well, see then what happened was the former office manager at Columbus Injury got fired for some reason and hired at Town & Country. So she actually introduced me. Because like I said, I would be nice to those people and hang around with them and she said, hey, Gary, you know, these people, you should meet them, they've got tons of business, you should come meet them. So I actually hadn't been -- my recollection is I hadn't been doing business with Town & Country

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Q. I don't know. In the affidavit -- who prepared the affidavit?
A. Kickback is my word --
Q. Okay.
A. -- I mean it's certainly in the affidavit, yeah. I believe the payment to the chiropractor is a kickback.
Q. For the narrative report?
A. Yep. Yep. The narrative report has no independent value whatsoever in those cases and that it's paid strictly as a means to make the chiropractor happy.
Q. Now, you understand that other lawyers both at KNR and elsewhere disagree with you on the value of narrative reports, true?
A. The ones that are doing it.
Q. I'm asking. Well --
A. Yeah.
Q. -- if you don't think it's valuable, then you would assume those lawyers aren't doing it, fair?
A. No. No.
Q. Okay.
A. I would say if Dr. Floros is getting a kickback from KNR and he says, look, if you want referrals from me, you're not going to give them up -- I'm

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not going to give up that 200 bucks, so you've got to give me 200 bucks, too. So they either walk away from Floros or they pay the 200 bucks.
Q. Are you saying Dr. Floros said that?
A. I'm saying -- no, I never heard that.
Q. Okay. So you never heard somebody say that getting $200 for a prepared and typed-out, signed narrative report --
A. Uh-huh.
Q. -- was a kickback, did you?
A. No. Kickback is my word --
Q. Okay.
A. But I did hear John Lynett phrase it in a way that suggested the same thing.
Q. You think John Lynett was --
A. He knows it's a kickback. Everybody knows it's a kickback.
Q. And he does it anyway?
A. Yes.
Q. So you're saying John Lynett gives kickbacks to chiros?
A. Yeah. Everybody who pays the 200 bucks, it's a kickback.
Q. That's your opinion?
A. Yes.

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Q. Now, you would agree that that's not paid until there's actually a narrative report signed by the doctor talking about the patient, true?
A. I don't know that. I was told otherwise.
Q. Really?
A. Yes.
Q. What if you found out that you had to have the narrative report signed about that patient --
A. It wouldn't matter.
Q. Just wait. Signed about that patient and then a check was requested to pay for that narrative report?
A. It wouldn't matter.
Q. What if the lawyer on that individual case believed in his professional judgment that that narrative report had value?
A. Then --
Q. That wouldn't be a kickback, would it?
A. No, it wouldn't.
Q. Okay. And different lawyers have different judgments about what's valuable to a case, don't they?
A. They do.
Q. Now, you're not alleging that Dr. Floros, Akron Square or any chiropractor or medical provider

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actually made some type of cash payments to KNR, are you?
A. No.
Q. And other than paying for a narrative fee, you're not saying that KNR or Rob Nestico or Robert Redick, made any cash or other payments to the chiropractors, are you?
A. Other than the narrative reports --
Q. Right.
A. -- is that what you said? No, I would not be aware of that.
Q. For example, you're not saying that the client gets charged $200 for the narrative reporting, KNR and the chiros split it?
A. No, I don't know that.
Q. And, in fact, did you know that the narrative report is paid even when KNR refers the client --
A. I did know that.
Q. -- to the chiropractor?
A. I did know that.
Q. So --
A. Thirty to nothing though, right?
MR. KEDIR: What's that?
THE WITNESS: Thirty to nothing though.

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Q. I understand your commentary, but let me --
A. Right.
Q. -- re-ask the question and if you can just answer the question.
A. I will.
Q. Okay. Because you do know how a deposition works?
A. I do.
Q. Okay.
A. I'm out of practice though.
Q. How many have you taken do you think?
A. Hundreds.
Q. How many trials?
A. Dozen.
Q. So you understand at trial you have to have a doctor relate the injuries to the accident --
A. Yes.
Q. -- true?
A. That is true.
Q. Okay. That's what the law says, right?
A. Right.
Q. Now you're not saying that -- well, strike that.
Do you understand that even on cases that KNR referred to Akron Square or other chiropractors or other medical providers, that when they

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received a narrative report, they paid for that narrative report. Did you know that?
A. I did know that.
Q. In those cases, certainly they weren't paying for a referral, were they? They were the ones who referred it to the chiropractor?
A. I look at it more as a global, as a big picture kind of thing. And in each of those referrals is worth much more than 200 bucks. So, yeah, you've got to pay on the ones that you referred us, too.
Q. Well --
A. And also -- I mean, we wouldn't be here -- there would be no argument if they weren't paying for a narrative report on the ones that they referred over. I mean, then it would be completely transparent. Now it's just pretty transparent.
Q. In your opinion?
A. Yeah, certainly my opinion --
Q. Okay.
A. -- well, I suspect more, other people know.
Q. Well, that's not -- I'm saying it's in your opinion -- you weren't there to have the discussions, to hear the discussions between the chiropractor and Mr. Nestico and Brandy, were you?

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A. Well, I was there when Brandy said Rob invented the narrative report thing and that's for business, number one. I was there when the chiropractor told me, well, look, if you -- essentially if you want referrals from me, you've got to get a narrative report every time.
Q. When did he tell you that?
A. I was still at Slater & Zurz and it was a West Tusc guy.
Q. Who was that?
A. I don't remember his name. It wasn't Tassi because Tassi, he's super tall and skinny. I remember him. It wasn't Tassi.
Q. Okay.
A. And I certainly dealt with Akron Square Chiropractic on many occasions before Floros was there and I never paid a narrative report to anyone, and I don't know any other lawyer who did.
Q. Did you look at all the cases that they had?
A. Certainly not all of them, no, but I never did and I don't think John Lynett was paying a narrative report back then either. KNR -- at some point it started. What started it?
Q. Well, do you understand that there's lawyers who

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think that it is a good value for $150 to $200 to get a narrative report?
A. I would say that that's -- I don't believe them. Again, it's a kickback and so you --
Q. In your opinion again?
A. It's not a matter of opinion --
Q. Okay.
A. -- it's not.
Q. Why don't you listen to the question and answer it, would you?
A. I am.
Q. Okay.
A. You asked me a question --
Q. You understand --
A. -- you said in my opinion and I answered --
Q. -- do you understand -- no, no, that's not what I asked. I said do you understand that there's attorneys who in their professional judgement having a narrative report from a chiropractor or a medical doctor causally relating the injuries to the accident is valuable. Do you understand that?
A. Are you speaking about the narrative reports that Dr. Floros and the Plambeck doctors create on every single case or virtually every single case?

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Are those the ones you're talking about or are you talking just generally? Because if you're saying generally, then I say -- and the lawyer is making a thoughtful decision about whether or not this is going to create a return on behalf of the client, then, yeah, I believe that.

But if you're saying they have decided without seeing the facts of the case, that we need a narrative report from a Plambeck doctor and Plambeck doctors only in virtually every single case and there's value in that, then I think they're selling you a bill of goods --

Q. Well, how --

A. -- and covering their own rear because they're doing it themselves.

Q. Well, how would you determine in any one case whether the report is valuable? What would you have to do?

A. You'd have to -- causation in a rear-end collision is essentially a given. And that's why they don't get it from any other doctors because you don't need it. The adjusters assume that you've got a sore back -- sore neck and sore back from this car accident case. Everybody gets that, that's why you don't get it from Columbus

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Injury, that's why you don't get it from Accident & Injury Center of Akron, because everybody knows that so why pay the guy 200 bucks to say what's obvious.

Q. Well, there could be preexisting injuries --

A. There could be.

Q. -- and the insurance companies will argue over whether the injuries were caused by the accident or not, true?

A. Certainly they could be, so you wait for all the evidence to come in and then you as the lawyer make a determination as to whether or not the amount you spend on that narrative report is going to result in -- and use your best judgement -- as to whether it's going to result in a net to the chiropractor -- or to your client.

Q. There were times too where you may be asking the insurance company for damages for future pain and suffering based on the prognoses, true?

A. Yes. I almost never. I mean, just I almost never got a narrative report --

Q. That's not what I asked --

A. I know, but --

Q. Well, I've asked you to answer my question.

A. From a chiropractor, no.

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Q. There's times --

A. From a chiropractor, no.

Q. I'm not asking about reports.

A. Okay.

Q. There are times where also you're going to try to recover for your client for future pain and suffering, true?

A. Every time that it's justified.

Q. And sometimes it is helpful to have a report from a doctor or some type of medical provider that causally relates that future pain and suffering to the accident, true?

A. Sometimes that is helpful.

Q. And you believe sometimes it's not, fair? Both.

A. Yeah. Yeah, sure.

Q. To determine that you'd have to look at the individual case, fair?

A. Yes, you would.

Q. And it's the lawyer's duty to look at the individual case and make a determination, true?

A. It's the lawyer's duty.

Q. And when you sat down with your clients whether you were at Slater & Zurz or at KNR, would you charge them for things that you didn't think were reasonably necessary?

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A. I wouldn't, no. But at KNR it was -- it was out of my control.

Q. Well, you went over the settlement memorandum with the clients, right?

A. Yeah, sometimes -- yes.

Q. With your clients you did, right?

A. Uh-huh. Well, the net. Like I said, I'm worried about a net.

Q. Well, you sat down with them with the settlement --

A. No.

Q. -- memorandum and went over --

A. It was very often -- most often over the phone. I almost never sat down with them.

Q. For the settlement memorandum?

A. Correct.

Q. Well, the settlement memorandum listed out all the expenses, true?

A. I know. Yes.

Q. Okay. And you would go over those with the client, wouldn't you?

A. Yep.

Q. That was your duty as a lawyer?

A. Yeah, I suppose.

Q. Okay. Well, what did you tell them about the

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call?
A. It's possible.
Q. You don't remember any?
A. No, I don't.
Q. You would have told them the same thing, that's between you and the medical doctor?
A. Yes, I would have.
Q. So you don't get along with Ghoubrial? You said he wouldn't call me?
A. No, I don't think he knows me at all --
Q. Okay.
A. -- and the way things were arranged at KNR, I mean, Rob and other people talked to doctors, not me.
Q. But you don't know that Dr. Ghoubrial ever called Rob Nestico saying what kind of care should I provide a patient?
A. I -- no, I do not know that.
Q. You've never heard anybody even say that, have you?
A. No.
Q. I'm going to show you -- what are we on E?
A. Yes, I believe -- no, F.
Q. F.
A. Yeah. E is Thera Reid.

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- - - -

(Thereupon, Defendant's Exhibit F was marked for purposes of identification.)

- - - -

Q. I just want to make sure we don't have anything more than a first name in here. Ah, son of a gun.
Okay. Do you recall --
MR. PATTAKOS: I'm going to ask this document be produced once you have a chance to redact it.
MR. MANNION: Yeah, I don't have a problem there.
MR. PATTAKOS: Okay.
MR. MANNION: Yeah. I can produce it now because he knows the client's name. If we agree, we can redact it and we won't say her name --
MR. PATTAKOS: That's fine.
MR. MANNION: -- other than her first name. Is that fair?
MR. PATTAKOS: Yeah, let's do that.
MR. MANNION: Anybody have a problem with that?

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MR. RUBIN: No.
BY MR. MANNION:
Q. Okay. Handing you what's been marked as Exhibit F. I'm not sure if -- and don't say her name out loud, if you don't mind, Mr. Petti. Look this over and see if this refreshes your recollection at all.
MR. PATTAKOS: I'm going to object to the whole e-mail chain not being included here too.
MR. MANNION: I don't know what you're talking about --
MR. PATTAKOS: Oh, I'm sorry.
MR. MANNION: -- I gave you two pages.
MR. PATTAKOS: Sorry, Tom.
A. Uh-huh.
Q. Apparently there was a complaint by a KNR client about your communications with them?
A. By complaint earlier when you asked about complaint, I assumed you meant like a bar complaint.
Q. Oh, I apologize. I did not, we're not allowed to ask about those.
MR. PATTAKOS: Tom, I don't care

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if you want to ask about bar complaints.
A. Yeah, I don't care.
MR. MANNION: We'd violate the order of the case.
MR. PATTAKOS: I don't really think so.
A. As far as dissatisfied clients, there were probably dozens.
Q. Okay. It doesn't mean the clients were always right, fair?
A. Fair. Sure.
Q. Now in this --
A. I have no specific recollection of this.
Q. If you look at this one though --
A. Uh-huh.
Q. -- your response you say I'm not convinced Ms. Blank is telling you the truth. Do you see that?
A. Yes.
Q. Then if you go down to the first sentence in the second paragraph, it says to pretend like she didn't understand the Medicaid issue --
A. Uh-huh.
Q. -- is a good example of you not getting the truth. Meaning from the client, true?
A. Right. That she went above my head and said,

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A. Yeah.
Q. Do you do any work in those cases?
A. Yes.
MR. KEDIR: Okay. No further questions.
- - - -
RE-EXAMINATION OF GARY M. PETTI
BY MR. PATTAKOS:
Q. Just a few minutes I hope.
Do you recall telling me in our previous conversations that a Plambeck chiropractor in the Columbus area told you that Mr. Nestico had lunch with him one day and told him about the narrative fees --
MR. MANNION: Objection.
Q. -- and the narrative reports?
A. I told you about a non-Plambeck doctor --
Q. Ah.
A. -- who had lunch with Rob Nestico and Rob brought up the idea of narrative report fees paid on cases to him.
Q. What do you remember about that?
A. That that doctor declined to be involved.
Q. What did the doctor tell you about his conversation with Mr. Nestico?

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A. That he had lunch with Rob and Rob brought up the narrative report and if he wanted to get narrative reports -- or produce narrative reports as part of their relationship and he said, no.
Q. Who was that chiropractor?
A. Kabin Carder. K-a-b-i-n, C-a-r-d-e-r. Now, as I told you in that conversation -- in that conversation, without naming Dr. Carder, he will deny -- he will say he remembers no such thing. He told me that very directly.
Q. Why is that?
A. Because he doesn't want to be involved. Same reason why he didn't take the narrative report fee in the first place.
Q. Is he still practicing?
A. He does.
Q. Is he a friend of yours?
A. We are acquaintances.
Q. When was the last time you talked to him?
A. Sometime in 2018. He was in the area. His kids do karate, something like that, martial arts. We didn't meet, but he asked me some questions about getting around up here.
Q. Let's look back at Exhibit H -- and I'll just show you my copy so you don't have to go digging.

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This is where John -- what did you say his last name was, the investigator?
A. Jon Thomas.
Q. Jon Thomas.
A. Uh-huh.
Q. Where Brandy e-mails you and says good call on sending Jon to look for that guy?
A. Right.
Q. Do you know whether Jon was paid separately for this task?
A. I don't know. I have no recollection of that happening.
Q. You don't know that he wasn't paid separately --
MR. MANNION: Objection.
Q. -- for the task either, do you?
MR. MANNION: Objection.
A. No, I don't know.
Q. You don't know either way?
A. Right.
Q. Exhibit K -- which one -- where is this? Do you have Exhibit K in front of you? Here, I'll just give you my copy.
Mr. Mannion was asking you questions about this document --
A. Right.

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Q. -- and he suggested that this document was evidence that KNR didn't actually take every case.
A. Uh-huh.
Q. Is it not clear from this document that the reason the firm didn't take the case in this instance is because there was quote, no insurance coverage anywhere?
A. Yeah, there was absolutely no possibility of recovery.
Q. So the firm would never take those type of cases, right?
A. Correct.
Q. And those cases were rare, correct?
A. Yes.
Q. Exhibit J -- again, I can give you my copy.
A. It's here somewhere --
Q. I just want to ask you, this e-mail that you sent on June 27th at 12:54 p.m. you write, now I see why people send an e-mail every time they do something.
A. Yeah, there was all that cover your rear.
Q. What did you mean by that?
A. The pervasive at KNR was lots -- like I mentioned earlier, there was an environment of sort of

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A. Yeah.
Q. You would also agree, wouldn't you, that on a soft-tissue case that never gets filed where the attorney's fee is going to be $2,000 or less, that it's extremely unlikely that a narrative report added any value no matter what was in it?
A. Yes.
MR. MANNION: Objection.
A. Yes, I would agree.
MR. MANNION: And say that without looking at one thing on the case? You're unbelievable.
Q. You can say with near certainty that a narrative report wouldn't add any value to a case like that, wouldn't you?
MR. MANNION: Wow.
A. Yes. That's why nobody gets them. That's why KNR doesn't get them from anybody else. And $200 is an arbitrary number. What number would be fair? If you said -- if you paid doctors enough, they're willing to do it. 250? 300? 500? What's the number? You tell me, Tom.
Q. Even if the narrative report did have some value in any given case at KNR, is there any doubt in your mind that it was intended to and did

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function as a kickback?
MR. MANNION: Objection.
Speculation.
A. No, there's no doubt in my mind.
Q. How did your lunch with Tom go? What else did you talk about?
A. It was pleasant. He was cordial, I was cordial. We met at the Courtyard in Brecksville and he asked me whatever questions he wanted to ask and I answered every one of them. I didn't hide anything. I told him substantially similar stuff to what I said today. More facts are known today, put at some point he -- you know, I was very direct, as I was today, about my belief that the narrative report is a kickback and he said something to the effect of what Nestico said that it's essentially prepayment for medical bills -- I can't remember your exact words -- is that possible? And I said, no, of course it's not possible.
Q. Prepayment for the preparation of medical records too, could that be something Tom said?
A. It could have been something like that.
Q. Well, do you believe that's possible?
A. No, no. Because they still -- no. It's not what

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they call it.
Q. Do you remember anything else that Tom told you on that lunch that was new information to you that you haven't testified to today?
A. No, I don't.
Q. And other than the call that is reflected in your affidavit when Brian Roof called you --
A. Uh-huh.
Q. -- do you recall any other communications with the defendants or defense counsel in connection with this case?
A. Just some texts.
Q. Texts from Tom?
A. Yes.
Q. About your deposition and scheduling?
A. About the deposition. And I think at one point he asked me to clarify something -- oh, Judge Cosgrove, there was an issue -- and I don't understand that because I didn't make any issue about -- I didn't make any representation about Judge Cosgrove, but at one point you said -- you asked me if I ever heard whether Nestico said that, you know, essentially he had Judge Cosgrove in his pocket and I said, no, I never heard such a thing, and I wouldn't have believed it and he

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said he wouldn't either. So that's really it.
MR. PATTAKOS: Okay. I have no further questions.
- - - -
RE-EXAMINATION OF GARY M. PETTI
BY MR. MANNION:
Q. Gary --
A. Yes.
Q. -- do you recall what I actually said was that the narrative fee includes the cost of the medical records?
A. I don't recall that.
Q. Okay. Well, that's a little different than saying it's prepayment for medical bills, true?
A. That would be true. And --
Q. Have you ever seen a settlement memorandum where Dr. Floros or Akron Square charged for the medical records and a report?
A. I can't say that I have.
Q. Okay. And that's because the cost of the medical records is included in the cost of the report, true?
A. I don't know --
Q. Okay.
A. -- but, you know --

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pre-med education in 1988; is that accurate?
A. Correct.
Q. Is all the information on this resume accurate, to your knowledge?
A. Yeah. I was able to actually get into medical school just before I graduated, so I -- they took me in based on my academic performance.
Q. And that was at the Medical College of Ohio?
A. Yes, sir.
Q. Where is that?
A. Now it's called the University of Toledo, College of Medicine.
Q. And what was your focus in medical school, if you had one?
A. In medical school you don't really have a focus. They give you a curriculum. It wasn't until after medical school that I decided to specialize.
Q. And what did you decide to specialize in?
A. In internal medicine.
Q. And that is, in fact, what you completed your residency in, correct?
A. Yes, sir.
Q. Internal medicine?
A. Yes, sir.

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Q. And that was from 1993 to 1996?
A. Yes, sir.
Q. Where did you go to high school?
A. Walsh Jesuit High School.
Q. What year did you graduate?
A. 1983.
Q. When did you move to the United States?
A. My family immigrated from North Africa in 1968 or '69.
Q. How old were you?
A. I was four.
Q. When you say immigrated from North Africa you mean Egypt?
A. Yes.
Q. Did you ever live anywhere else in North Africa other than Egypt?
A. No.
Q. Have you ever lived anywhere in Africa besides Egypt?
A. I believe we lived in Alexandria for a little bit, which is also part of Egypt.
Q. It's a city in Egypt, correct?
A. Yes, sir.
Q. So there's no other country that you lived in in Africa other than Egypt, correct?

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A. That's is correct, sir.
Q. Okay. It says here under medical practice that you are the president and owner of Sam N. Ghoubrial M.D. Inc., Wadsworth's largest primary care practice. Is that true?
A. To my knowledge, yes.
Q. And the address there is 195 Wadsworth Road, Suite 402, Wadsworth, Ohio 44281.
A. Yes.
Q. Is that a current address?
A. Yes, sir.
Q. How do you know you're Wadsworth's largest primary care practice?
A. Well, there were several practices that had gotten bought up by the hospital and so that left us with the most doctors and the largest patient base by virtue of attrition. And we acquired some other doctors in the area.
Q. Does this -- are you taking into account -- strike that.
Does Sam N. Ghoubrial M.D. Inc encompass both your family practice and the personal injury practice?
A. No, sir.
Q. What is the personal injury practice named?

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A. The dba is Clearwater.
Q. Okay. Why isn't that listed here under medical practice?
A. Well, it's not part of my medical practice in the strict sense of primary care, it's an adjunct, but it is a practice. It's just not something that we listed here --
(Phone ringing).
A. -- pardon me.
MR. BARMEN: If you could turn that ringer off.
THE WITNESS: The hospital may get ahold of me periodically.
Q. But it is a medical practice, the personal injury practice, correct?
A. Correct.
Q. And it says here you are board certified in internal medicine?
A. I'm actually in the process -- I'm board certified in '97, 2007 and I'm in the process of getting recertified now.
Q. So your board certification in internal medicine has expired?
A. Right. We're getting recertified.
Q. When did that expire?

EXHIBIT 3

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know the exact details.
Q. Drug companies were providing doctors with honorariums?
MR. BARMEN: Objection. How is any of this relevant?
A. On occasion.
Q. How does that work?
A. I don't know. It's been so long, I can't recall. We're talking about 16, 17 years ago.
Q. And this section on "Firms and Attorneys", what does that refer to?
A. Well, over the years I've been asked to testify on both behalf of plaintiffs and defense in various med-mal cases.
Q. And these are some of the firms that you've worked with?
A. Right.
Q. Not all of them though, correct?
A. No, not even close.
Q. You worked with close to 70 firms you would say?
A. At least, yeah.
Q. At least. Okay. This is just a few of the maybe bigger ones?
A. I don't even --
MR. BARMEN: Objection.

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A. -- know if it's that. It's just a few that I've done at the time that we assembled this list.
Q. Okay. These hospital committees and appointments that are listed here. Do you still hold any of these positions?
A. No, unfortunately the hospital closed.
Q. The hospital in Wadsworth?
A. Yes, sir.
Q. So these all relate to the same hospital?
A. Yes, sir.
Q. The Wadsworth-Rittman Hospital. Okay.
So when you opened the family practice in 1988 -- well, strike that.
Can you describe the family practice to me?
MR. BARMEN: Objection.
A. First it was '98. We took care of patients in a rural community, Rittman, Ohio. And we addressed all adult primary care needs.
Q. And that's what a family practice does, correct?
A. An internist, yes.
Q. An internist?
A. Yes.
Q. So an internist has a family practice, is that -- is it fair to say that those terms are synonymous?

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MR. BARMEN: Objection.
A. No. A family practice doctor can see children. I very seldom do that. My focus is on people generally 17 and 18 on up.
Q. Does anyone in the family practice see children, typically?
A. You mean in my practice?
Q. Yes.
A. I believe some of them do, yes. So we're family practice trained, they do.
Q. But you don't?
A. Very rarely.
Q. Okay. So typically you're treating adults?
A. Yes, sir.
Q. And who are your patients in the family practice today?
MR. BARMEN: Objection. What do you mean?
Q. I mean generally, what population do you serve?
MR. BARMEN: Objection.
A. We take care -- I take care of patients in the nursing home, in the office, occasionally house calls, assisted living, and in the office.
Q. Residents of Wadsworth or the surrounding area that need primary care; is that fair?

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A. That's exactly right.
Q. And you treat them as a primary care physician, correct?
A. Yes, sir.
Q. Do you provide any other treatment to these patients besides primary care in your family practice?
MR. BARMEN: Objection.
A. No. I refer them out if they need, you know, surgery or some sort of speciality care, but I provide predominantly primary care.
Q. Okay. Can you describe the difference between the family practice and the personal injury clinic?
MR. BARMEN: Objection.
A. Sure.
MR. BEST: I object. He's corrected you multiple times. It's not a family practice. Those are different specialities and you keep saying it. So I don't know if that's a habit you like to misquote people. He's never once described his practice as family.
Q. What would you prefer that I call the practice that's based out of the Wadsworth location?

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A. Internal medicine.
Q. The internal medicine practice.
A. Yes, sir.
Q. All right. That's what we'll call it.
MR. BEST: That's what it is --
Q. Well, Doctor -- I believe Doctor --
MR. BEST: -- if you know anything about medicine, but you don't know anything about medicine so that's okay, keep going with your uninformed questioning, it's very helpful.
Q. I believe Dr. Gunning referred to it as a family practice and that was the terminology that we developed during that deposition --
MR. BEST: Perhaps you should know more about medicine before you venture into it.
MR. PATTAKOS: Do you have anything else you want to talk to me or tell me about medicine before we continue, Mr. Best? So we can proceed? Okay. Thanks.
BY MR. PATTAKOS:
Q. Can you please, Dr. Ghoubrial, describe the difference between the personal injury clinic and

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the internal medicine practice?
A. Personal injury clinic, almost all those patients have been involved in some sort of accident whether it be a slip/fall or a motor vehicle accident.
The primary care internal medicine practice, that's involved in managing chronic conditions like high blood pressure or diabetes, wellness checks, things like that.
Q. What's the purpose of keeping the personal injury clinic separate?
MR. BARMEN: Objection.
A. I'm sorry?
Q. What's the purpose of keeping the personal injury clinic separate from the internal medicine practice?
MR. BARMEN: Objection.
A. Well, they're two different populations of patients. One population is geared towards conventional, just primary care. The other populat -- group of patients are just almost exclusively related to accidents. So it's a completely different patient population.
Q. Well, why would that require two separate clinics?

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MR. BARMEN: Objection.
Q. Two separate businesses?
MR. BARMEN: Objection. He didn't say it required it.
A. I didn't say it required it, it just made more sense because the two entities are completely separate. They have separate sets of credentialing. In other words, one is credentialed through insurance and the other one is not credentialed by the way of insurance companies.
Q. What does it mean to be credentialed through an insurance company?
A. Well, it's a long arduous process where you have to get credentialed through Anthem, Medicare, Medicaid, et cetera. And so the primary care practice is set up for that, whereas the personal injury practice is not.
Q. What does the process of getting certified by an insurance company entail?
MR. BARMEN: Credentialed not certified.
Q. Credentialed.
MR. BARMEN: Objection. Go ahead.
MR. PATTAKOS: Thank you. Thank

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you.
BY MR. PATTAKOS:
Q. What does the process of getting credentialed by an insurance company entail?
A. It's a very lengthy process. You have to submit the credentialing paperwork. It entails an on-site visit, you have to submit the applications on behalf of all the providers. Then you have to apply to get into their network. Then there's contractual obligations and things that need to be negotiated. So it's a pretty tedious long-term process.
Q. And that is what you need to go through in order to have insurance companies compensate you for care provided to their insureds, correct?
A. Correct.
Q. And you went through that -- you have gone through that process with various insurance companies with respect to the internal medicine practice, correct?
A. Correct.
Q. And why did you do that?
A. Well --
MR. BARMEN: Objection.
A. -- that's the way we were set up in 1998. That's

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the way the practice was set up originally.
Q. Who set it up?
A. I did.
Q. And why did you set it up that way?
A. Because that's the only type of patient we were seeing.
Q. A patient -- what type of patient? A patient with insurance?
A. No. Patients who are diabetic, glaucoma, hypertension. Primary-care type internal medicine patients.
Q. Well, what is it about those type of patients that would cause you to go through the process of becoming credentialed by insurance companies?
MR. BARMEN: Objection. Go ahead.
A. That patient base and that patient population has health care and they're fortunate enough to have health insurance and so it made sense for us to get credentialed so we could see those patients in the nursing home and the hospital and in the office setting.
Q. So why did you not go through that process of getting credentialed with respect to the personal injury clinic?
A. Several reasons. First of which, it's an

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extremely arduous and cumbersome process to do. No. 1, most of my patients have -- in the personal injury setting, they don't have any insurance. And No. 2, we won't get paid anyhow by the insurance company because it's usually a motor vehicle accident that's at fault. So it didn't make any sense for us to do it at the time because it was very expensive, very costly, very time consuming and it provided no benefit to the patient.
Q. How is it that it didn't provide any benefit to the patients?
A. Well, most of them didn't have health insurance to begin with.
Q. During what time period did most of the patients of the personal injury clinic not have health insurance?
MR. BARMEN: Objection.
A. Ongoing, until this day. Most of them don't have it and even if they do, they generally -- my understanding, they don't accept the claim.
Q. Insurance companies won't accept claims relating to auto accidents?
MR. BARMEN: Objection.
A. I don't have any firsthand knowledge, but it's my

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understanding that it's not to the patient's benefit because No. 1 most of them don't even have it anyway. And, No. 2, if they did have it, they would -- it's my understanding that they probably wouldn't agree to pay since usually the at-fault party, as you know, is some sort of automobile insured.
Q. How did you come to that understanding?
MR. POPSON: Objection.
A. Well, first of all, we didn't bother getting credentialed and then I just heard through my network of providers that most of them don't bother getting it because they don't pay for it.
Q. You used a lot of pronouns there, I just want to make sure I'm understanding this. You said you heard from your network of providers that most of them don't bother getting it because they don't pay for it. Who is "most of them" and who is "they"?
A. Well --
MR. BARMEN: Objection.
A. -- I talked to many of the chiropractors and they said, look, don't even bother because they don't even acknowledge the care and when they do, they say there's another at-fault party. And that's

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come up before in depositions, and that's what we said.
Q. Isn't it true, Dr. Ghoubrial, that when a patient has insurance, that that insurance company is typically obligated by contract to pay for the patient's reasonably necessary health care for injuries that they suffered?
MR. BARMEN: Objection. Are you talking about any specific company or contract?
A. I'm not sure what you're referring to.
Q. I'm referring to how insurance works generally.
MR. BARMEN: Objection.
A. Can you give me an example?
MR. BARMEN: He's not here as an insurance expert.
MR. PATTAKOS: I'm asking about his own personal knowledge of how insurance works. If I'm in a car accident and I get hurt --
MR. BEST: Objection. He's already testified to this --
MR. PATTAKOS: -- and I get --
MR. BEST: -- so I don't know why we're repeating it.

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Q. It's your testimony that most of the patients of the personal injury clinic do not have health insurance?
A. Either that or their primary care doctor doesn't want to see them.
Q. Okay. Well, which is it?
A. Both.
MR. BARMEN: Objection.
Q. How many -- what percentage of the patients in the personal injury clinic do not have health insurance? What's your best estimate --
MR. BARMEN: Objection.
Q. -- based on your experience treating them?
A. A significant number.
Q. What's that significant number?
A. I couldn't tell you.
Q. Is it more than half?
A. A substantial number.
Q. Is it more than half?
MR. BARMEN: Objection.
A. I can't tell you the exact number, Peter. I'm sorry.
Q. Is it -- does significant mean 15 percent?
MR. BARMEN: He's answered your question. He's not going to guess. His

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answer is his answer.
A. I can't guess, Peter. I'm telling you to the best of my knowledge, it's been a significant number.
Q. Okay. You understand the government provides health insurance for people that are below a certain income level, correct?
MR. BARMEN: Objection.
Q. You understand what Medicaid is?
MR. BARMEN: Objection.
A. Yes.
Q. Can you describe what Medicaid is --
MR. BARMEN: Objection.
Q. -- for the record?
A. Medicaid is just another vendor like any other insurance company.
Q. That provides highly, heavily subsidized healthcare to individuals with low income, correct?
MR. BARMEN: Objection.
A. I don't get involved with the insurance. We have a staff that does that. My job, Peter, is always to focus on the individual needs of the patient irrespective of whether they have insurance, whether they're in a car accident, whether

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they're diabetic, whether they're in a nursing home, my job is to see the patient. I don't even look at the fact to what insurance they have.
Q. So is it fair to say from all this testimony that you provided, is it fair to conclude that the real reason that you do not run the personal injury practice and the internal medicine practice as one business is that you want to accept insurance in one and you don't want to accept insurance in the other?
MR. BARMEN: Objection.
A. What I said is it's simply not feasible in the other.
Q. Why is that?
A. I already told you.
MR. BARMEN: Yes, multiple times.
Q. What's the answer, sir?
A. I said it twice --
MR. BARMEN: The same answer he's given you.
A. -- first of all, No. 1, the credentialing process is extremely cumbersome. No. 2, most of the patients, a vast majority of the patients, don't even have the health insurance. And No. 3, I've heard through a network of doctors and I have a

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whole host of doctors in my family, both my sisters, that if patients are involved in a car accident -- I've heard it through numerous sources -- usually it's the responsibility of the auto insurance, so they deny the claim. So that's my knowledge and that's where it ends.
Q. What doctors have told you that health insurance companies deny a claim for medical care for the reason that an auto insurance company may be liable for that care?
A. I don't --
Q. Who are the people that told you that?
A. I don't recall, it's been a while.
Q. How many people have told you that?
A. Several.
Q. Twenty or five?
A. I don't know.
Q. Is it closer to 20 or five?
A. I can't give you a number, Peter.
Q. Okay. Are you -- but you can't, sitting here, recall any specific example where that actually happened, can you?
MR. BARMEN: Objection.
A. Of what?
Q. Where an auto -- where a health insurance company

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names? Who's Bianco?
A. Michael Bianco, Lisa Esterle, Dr. Joshua Jones, Dr. Sam Ghoubrial, Dr. Richard Gunning, and at one time Dr. Lazzerini, Frank.
Q. What year did you open the personal injury clinic?
A. I couldn't give you the year. Roughly eight or nine years ago maybe, in that vicinity.
Q. Around 2010?
A. Roughly 2010, 2011.
Q. But you can go back and look at your books and come up with a definite date, couldn't you?
MR. BARMEN: Objection.
A. I don't know how far they go back.
Q. How do you split your time between the two practices?
A. I do a little bit of both.
Q. How often are you -- how many days a week do you treat personal injury patients versus family practice -- sorry -- internal medicine practice patients?
A. Sometimes three half days a week in personal injury, sometimes a little more. Sometimes two half days a week plus some additional time for nursing home and office, so it's split up.

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Q. You don't publish advertisements for the personal injury clinic, do you?
A. No.
Q. So how does the personal injury clinic get its business?
MR. BARMEN: Objection.
A. Well, the patients request the chiropractors feel the need for them to be seen by an allopathic provider. Because their modalities, as you know in the personal injury setting, you need to take a multidisciplinary approach, and I've testified to that before. The modalities the chiropractor can't do and the modalities I can't do, so the best approach to these patients is a multidisciplinary approach. So generally it's usually done by the patient and the chiropractor.
Q. When you said the chiropractors in this answer, which chiropractors?
A. Several. Like I'll be available, as you mentioned, in one of the chiropractic clinics, and they'll say, look, we have a doctor on board, if you can't see your doctor, you're more than happy to see one we have here, and so they make the choice together.
Q. The chiropractor and the patient?

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A. Correct. The patient has the final say.
Q. So the personal injury clinics' patients come primarily from chiropractors' offices and in recommendations from the chiropractors' offices?
MR. BARMEN: Objection.
A. I think it's more of a need that the patient has that the chiropractor can't fulfill.
Q. But the majority of the patients that you treat in that clinic were treating with a chiropractor who recognized that a need that they could not fill; is that fair?
A. That's fair, absolutely.
Q. Would you say the great majority?
MR. BARMEN: Objection.
A. Yes.
Q. Would you say all of the patients of the personal injury clinic are referred by chiropractics?
A. I can't say for sure, but I'd say the vast majority.
Q. How did you get into this business of treating -- of receiving these chiropractic referrals?
A. Actually that's a great question, it was an attorney by the name of Jim Slater. He met me for dinner and he said, Sam, we're having a great deal of difficulty of getting these patients

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seen. It's an underserved community, predominantly minority, they don't have a lot of health insurance, they can't get in to see a doctor, can you help us out? So I did. And so it was actually Jim Slater who got me involved.
Q. Of the Slater & Zurz law firm?
A. Yes.
Q. You said primarily minority, what do you mean by that?
A. Many of them are minority patients and many of them are socioeconomically disadvantaged.
Q. You mean minority ethnic groups?
A. Some. You know, some Latino, some African American, some from various parts of the world, some from the Middle East. And so these patients have yet to get established, yet to have insurance, yet to establish a primary care.
So it's an underserved area where they're looking for doctors to sort of take care of these patients. And it's hard enough for them to receive care in the conventional setting and certainly they can't find it in a setting like the one you're referring to.
Q. What's that?
A. Personal injury.

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Q. So how did it develop from there with -- from your conversation with Mr. Slater?
MR. BARMEN: Objection. Go ahead.
A. Well, eventually started talking to a few chiropractors, they said, yeah, you know, we have a need because these patients can't get seen, they kept having to go back to the ER, back to the ER, the family doctor won't see them. They don't have health insurance, they don't have anybody that will take care of them and they need to be treated. Can you help us out, so I did.
Q. Who was the first chiropractor you worked with in this way?
A. You know, I don't recall.
Q. Who are the chiropractors that you work with in this way?
MR. BARMEN: Today?
MR. PATTAKOS: Over time.
A. Gosh, there's been so many. Some of them have come and gone --
Q. Uh-huh.
A. -- but there's been quite a few.
Q. Who are the ones that send you the most patients?
MR. BARMEN: Objection. Go ahead.
A. Again, I don't keep track of that, so I don't

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know.
Q. Well, you only travel to so many clinics, correct?
A. Correct.
Q. What are the clinics that you travel to?
A. We go to Detroit Shoreway, Columbus, Akron, Canton.
Q. What are the clinics in these cities that you go to to treat?
A. They're chiropractic clinics.
Q. Right. What are the clinics? What clinic in Columbus: Town & Country?
A. Yeah. Town & Country is the name of one of them, yeah.
Q. Do you treat at any other clinics in Columbus?
A. No, sir.
Q. And in Akron you treat patients at Akron Square Chiropractic, correct?
A. I don't know what it's called, but --
Q. Dr. Floros' --
A. Dr. Floros --
Q. -- practice?
A. Yes, yes, sir.
Q. On Arlington Street.
A. Yes, sir.

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Q. And Town & Country is Dr. Khan, correct?
A. I think Dr. Khan is there but there's a few other doctors.
Q. Dr. Rendek, her husband, correct?
A. Yeah, but there's also chiropractors that they hire, so I think it's more than just them.
Q. Who are the chiropractors at the Detroit Shoreway Clinic?
A. I believe it's Dr. Cawley, Eric Cawley.
MR. PATTAKOS: What is -- David, why are you showing him notes in the middle of his testimony? You want to produce that and make it an exhibit, David?
BY MR. PATTAKOS:
Q. Dr. Ghoubrial, what's on the note that David Best just showed you?
MR. BARMEN: Objection.
A. It was nothing pertaining to this case.
Q. Okay. Who are the attorney -- sorry. What's the name of the chiropractic in Canton where you treat patients?
A. Canton Injury.
Q. And that's Dr. Tassi, correct?
A. I don't know he's there anymore.
Q. But he used to be there, correct?

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A. At one point I believe he was.
Q. You have traveled to Toledo to treat patients at a chiropractic clinic, haven't you?
A. Yes.
Q. And what's the clinic there where you would treat patients?
A. I don't know what it was called.
Q. Who are the chiropractors there that you would work with?
A. I can't recall. It was a woman chiropractor. I don't know.
Q. Patrice?
A. Patrice De-lesaon [sic].
Q. Lee-Sayon?
A. Lee-Sayon, yeah.
Q. That's her in Toledo?
A. Yeah.
Q. Have you traveled to Dayton or Cincinnati to treat patients at chiropractic clinics?
A. We have.
Q. What clinics do you treat at in those cities?
A. That's been probably seven or eight years ago, so I don't recall.
Q. Okay. But the ones, Detroit Shoreway, Columbus, Akron and Canton and Toledo, are those all

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ongoing?
A. Toledo is not anymore, I wish it were, but there just isn't enough of me to go around.
Q. And you fly on your private plane to go to these places?
MR. BARMEN: Objection.
A. Not anymore, no.
Q. Not anymore. When did you stop doing that?
A. You know, we haven't done that for probably about four or five years maybe, four years.
Q. And why is that?
MR. BARMEN: Objection.
A. Well, some of the girls were afraid to fly and we decided we could probably -- since we stopped going to Toledo and Cincinnati, we really didn't have much need for it so we stopped.
Q. Some of the girls, who are the girls?
A. Oh, I don't know. They come and they go.
Q. But when you're referring to them, that's the people that would accompany you on these trips?
A. Yes.
Q. To help you?
A. Yes, sir.
Q. Treat the patients?
A. Yes.

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Q. And were they physician assistants? Doctors? Nurses?
A. Some were administrative, some were medical assistants.
Q. You would take an administrative assistant with you to these clinics?
A. Yeah, clerical assistant.
Q. And what would they do?
A. They would assist with preparing documentation, paperwork, things like that.
Q. When did you start traveling to chiropractic clinics to treat patients?
A. I don't recall, it's been some time.
Q. Did you sell your interest in the airplane?
MR. BARMEN: Objection.
A. I no longer have it, yeah.
Q. When -- well, how did it come to be that you no longer have it?
MR. BARMEN: Objection.
A. Sold it.
Q. Who did you sell it to?
MR. BARMEN: Objection.
A. I don't know, I'm not the manager.
Q. The manager of what?
A. Well, there's a group who manages the plane and

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so I was just a small fractional owner.
Q. There were eight owners of the plane, I believe; is that correct?
A. It changes from time to time. I didn't know who the owners were.
Q. Well, you know Mr. Nestico was an owner, correct?
MR. BARMEN: Objection.
A. No, I'm unaware.
Q. You knew that Danny Karam was an owner, correct?
MR. BARMEN: Objection.
A. I believe I knew Dan was, yeah.
Q. Do you remember who any of the other owners were?
A. Not off the top of my head.
Q. You don't remember that you had any friendships or relationships with any of the other owners?
MR. BARMEN: Objection.
A. No --
MR. BARMEN: He doesn't remember who they are, Peter.
A. -- not really. I don't remember who they are.
MR. PATTAKOS: Well, maybe it would refresh his recollection to suggest that maybe it was some of his friends.
MR. BARMEN: Cute. Go ahead.
Q. It does not?

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A. No.
Q. Okay. Mr. Nestico testified he knew who they all were. I believe we have the documents.
MR. BARMEN: Objection. I don't believe that was the testimony, but go ahead.
Q. Who were the chiropractors in Dayton?
A. That's been so long ago, I have no idea.
Q. And Cincinnati?
A. Again, I don't know.
Q. The clinics that you worked with were mostly owned by Michael Kent Plambeck; isn't that true, sir?
MR. BARMEN: Objection.
A. I do not know who the owners were.
Q. So the Plambeck affiliation doesn't mean anything to you?
MR. BARMEN: Objection.
A. I've heard the name, but I don't know what he owns.
Q. Okay. Do you recall how you started doing business with KNR?
MR. BARMEN: Objection.
MR. POPSON: Objection.
A. I think we were introduced socially at some

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to do that but that has still not been provided to date.

MR. BARMEN: Objection. Move to strike.

Q. Well, we can talk about it. Interrogatory No. 26, in our first set of interrogatories that the Court ordered you to answer on February 5th, requires you to identify all evidenced-based studies, medical research, or surveys of which you are aware that supports or informs your treatment of KNR clients with injections?

MR. BARMEN: Right, that was specific to injections, exactly.

A. Yeah.

Q. And you wrote after lodging -- re-lodging some objections that you quote, rely upon your education, training, experience and professional judgment in treating patients --

A. Correct.

Q. -- is that true?

A. Yes.

Q. Does this mean that there are no evidence-based studies, medical research, or surveys of which you are aware that supports or informs your treatment of KNR clients with injections?

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MR. BARMEN: Objection.

A. Well, first of all, it's not just KNR clients, it's all clients. I don't treat any client differently no matter what they are. But, no, I do look at the literature.

Q. Can you identify any evidence-based studies, medical research or surveys of which you are aware that supports your treatment of these clients with injections?

MR. BARMEN: Objection.

A. There's been several articles published on myofascial pain and the treatment modalities, I don't know what they are, but I can certainly bring that up at a later time.

Q. You can't remember who wrote these studies or where they were published?

A. No. You have to understand that I look at hundreds and hundreds of documents every week so I can't, you know...

Q. But there's not one particular study that you think is especially good or one that you think is especially advanced or that has been especially helpful to your patients?

MR. BARMEN: Objection.

A. There have been several.

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Q. Please identify them.

A. Again, like I said, there's a whole litany of things. I don't recall what they are off the top of my head.

MR. PATTAKOS: Why don't we take a short break.

THE VIDEOGRAPHER: We're going off the record. The time is 11:39.

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(Thereupon, a recess was had.)

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THE VIDEOGRAPHER: We're back on the record. The time is 11:51.

BY MR. PATTAKOS:

Q. Dr. Ghoubrial, you testified that the patients of your personal injury practice were typically involved in some kind of accident, correct?

A. Correct.

Q. And most of those patients in your personal injury practice are treating with you for pain resulting from soft tissue injuries, correct?

A. Correct.

Q. And that's as opposed to broken bones or herniated discs or something like that?

A. We see some herniated discs.

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Q. But you don't treat broken bones, correct?

A. Typically not.

Q. Dr. Floros testified that he sends patients to you in cases where they are -- they have high inflammatory levels, where their pain medication that they receive from the emergency room ran out, they can't sleep, high pain levels, et cetera. Does that sound accurate to you?

MR. BARMEN: Objection. Go ahead.

A. Yes.

Q. Is there anything else you would add to that?

A. No.

Q. You describe how you treat a patient that comes to you from a chiropractor for pain resulting from a car accident?

MR. BARMEN: Objection.

MR. BEST: Objection.

MR. BARMEN: Any -- I mean, how do you expect him to do that when it's --

MR. PATTAKOS: He's done it thousands of times. I would --

MR. BARMEN: Right, exactly, it's all individual.

MR. PATTAKOS: I would just like him to describe the general process.

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fall under the list of diagnoses for which you are treating car accident victims with trigger point injections, correct?

A. As I told you, myofascial pain -- and I'll say it again -- that's a broad brush. It can encompass acute myofascial strain/sprain, trigger points in a car accident and it can encompass some patients who have fibromyalgia. So I've answered that question.

MR. BARMEN: Several times.

Q. Dr. Ghoubrial, have you ever diagnosed a patient for myofascial pain syndrome in your personal injury clinic?

MR. BARMEN: Objection.

A. No.

Q. You listed some contraindications for trigger point injections earlier?

A. Uh-huh.

Q. Let me go over this list. You said if the patient was on blood thinner, if the patient is diabetic, phobia of needles, bleeding diathesis, is that what you said?

A. Right.

Q. What is "diathesis"?

A. In other words, if they have a tendency to bleed

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because they're on -- they have a blood-clotting disorder. Some of these are relative, some of them are absolute contraindications. Recent surgery at the site. Those would -- that would be another contraindication. All those things.

Q. Allergy you also said?

A. Allergy, correct.

Q. You agree that systemic or local infection would also be a contraindication?

MR. BARMEN: Objection. Go ahead.

A. On occasion, yes.

Q. And of course if the patient refuses a trigger point injection, that's a contraindication?

A. Absolutely.

Q. And isn't it true, Dr. Ghoubrial, that acute muscle trauma is also a contraindication for trigger point injections?

A. No.

Q. All of the patients you see in the personal injury clinic have some form of acute muscle trauma, correct?

MR. BARMEN: Objection. Go ahead.

A. For the most part.

Q. And you're denying that acute muscle trauma is a contraindication?

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MR. BARMEN: Objection. Asked and answered. Go ahead.

A. Acute muscle trauma is an indication provided it meets the criteria for trigger points.

Q. So you dis -- so you're denying that it is a contraindication?

MR. BARMEN: Objection.

A. Yes.

MR. BARMEN: He said that twice already.

Q. Okay. Well, let's take a look back at the Alvarez study, that's Exhibit 2. We see table 3 and that is on page 657 in the bottom right and it's the fifth page. The table in the upper left-hand corner lists contraindications to trigger point injection and it says acute muscle trauma, and then it says information is from references 10 and 18. So that's the footnotes quote to study by Simons & Travell, and then quotes a study by Fischer, New Approaches in Treatment of Myofascial Pain.

Do you believe those studies are faulty?

MR. BARMEN: Objection.

A. I agree with a portion of those. I agree with acute muscle trauma because I think that paints

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it with a broad brush. Patients who are involved in motor vehicle accidents have acute muscle trauma and they also meet the criteria, on occasion patient-specific depending on case, for a trigger point. So I disagree with that particular statement.

Q. Isn't the point, Dr. Ghoubrial, that when a patient suffers acute muscle trauma, it's impossible to tell whether the pain is coming from a trigger point or not, which is why you wait for the acute pain to resolve before you identify a trigger point?

MR. BARMEN: Objection. Go ahead.

A. That's not the case. I've treated thousands of these patients, I can guarantee you more than the authors of these articles and I've seen the benefits of the trigger point injections and I know when to give them, how to give them, where to give them and when not to give them.

Q. Have you ever published a study on trigger point injections?

A. I have not.

Q. You think that's something you might do one day?

MR. BARMEN: Objection.

A. I don't know, never gave it any thought.

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Q. You ever publish a research paper?
MR. BARMEN: Objection.
A. No.
Q. Well, if we look back at Kishner, that is -- I'm sorry -- Exhibit 4, if we look at the "indications" section on the first page, again it says, conditions involving widespread --
MR. BEST: Lower your voice.
Q. -- pain complaints -- conditions involving widespread pain complaints such as fibromyalgia or endocrine disorder, are not suitable for injections. In addition -- this is in the third sentence --
MR. BEST: Can you keep your voice --
MR. PATTAKOS: David, I'm --
MR. BEST: -- at a normal conversational tone or we'll take a break until you can get yourself under control.
MR. PATTAKOS: David, you know, I'm not out of control --
MR. BEST: Yeah --
MR. PATTAKOS: -- this is on video.
MR. BEST: Great.

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MR. PATTAKOS: Please stop making ridiculous interruptions. Anyone can watch this video and hear that you are lying about me raising my voice.
MR. BARMEN: No, no, you were raising your voice.
MR. PATTAKOS: If I'm raising my voice, it's not at any level that's --
MR. BARMEN: You're doing it again.
MR. PATTAKOS: -- inappropriate -- oh, I'm doing it now, yeah.
MR. BARMEN: Well, you were doing it before when you where questioning the witness.
MR. PATTAKOS: I'm sorry, you want me to keep a monotone, David, is that what you're purporting to require me that I conduct this deposition in monotone?
MR. BEST: What you're going to do is you're going to keep a conversational tone or the deposition won't go forward.
MR. PATTAKOS: David, this tone is as conversational as is appropriate and I know you know that, so please stop. Okay?

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Your tricks, your little chaos-sewing mechanisms when you're worried about what your witness is going to say, it's very transparent, okay? So please stop. You're not helping yourself and you're not helping your client.
BY MR. PATTAKOS:
Q. Dr. Ghoubrial, I'm going to read this again, it's the second paragraph of the "indications" section. Conditions involving widespread pain complaints such as fibromyalgia or endocrine disorder are not suitable for injections. Then the third sentence, In addition, the finding of tenderness alone is not an indication for trigger point injection, because patients with fibromyalgia may also have myofascial pain trigger points.
Do you disagree with that?
MR. BARMEN: Objection.
A. Yes. In fact, many of the rheumatologists that we refer to do inject fibromyalgia patients with trigger points.
Q. Who are those rheumatologists?
A. Several. Jim Goske who's in the practice a while ago and there's others that use it.

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Q. Who else?
A. I don't know off the top of my head, but I know when I was in training they said that on occasion they use trigger point injections.
Q. Any other reason you disagree with this other than what you've already stated today?
A. I've treated thousands of patients with fibromyalgia and typically they respond well to some tricyclics, but on occasion they may need trigger point injections.
Q. Well, when you administer trigger point injections, how do you know the patient's pain is related to a trigger point and not the soft tissue trauma or other issues related to their accident?
MR. BARMEN: Objection.
A. Because they come in after the accident. They were pain free before and now they have pain afterwards. They have subjective and objective findings to support it.
Q. But, Doctor, you're also giving them narcotics, you're giving them other pain medication, you're giving them muscle relaxers, they're undertaking chiropractic treatment -- every single one of them is undertaking chiropractic, how do you know

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they're not getting better because of those things --

MR. POPSON: Objection.

MR. BARMEN: Objection.

Q. -- or how do you know that their injuries simply aren't resolving over time; how can you tell?

MR. BARMEN: Objection.

A. First of all --

MR. BARMEN: Wait, wait, whoa. Which of those questions do you want him to answer?

MR. BEST: Is it 20 or --

Q. Please, Doctor --

MR. BARMEN: No, no, no --

MR. BEST: -- all 20 --

Q. -- Please, Doctor.

MR. BEST: -- or just four of them?

MR. BARMEN: Which question do you want him to answer?

MR. PATTAKOS: Mr. Kuebler, please read the question again.

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(Thereupon, the requested portion of the record was read by the reporter.)

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MR. BARMEN: Whoa, whoa, whoa. That was eight questions. Which one do you want him to answer?

A. I'll start with --

MR. BARMEN: No, no, no. Stop. Which one of those eight questions do you want him to answer first?

BY MR. PATTAKOS:

Q. Dr. Ghoubrial, how do you know that it's the trigger points that are making the patients better?

MR. BARMEN: Answer that question.

MR. BEST: I object. He's answered it multiple times. I'm going to object.

A. I'll answer it again. It's an acute injury. They were pain free before they came in. A patient like, for instance, many of the ones -- Mr. Harbor, they weren't having the pain before. They came in after the accident with the pain. So therefore, it's an acute event. I administer the trigger point injections, ask for indication, they get resolution.

Now, to the second question, in the interest

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of time, as far as narcotics I don't use narcotics on every patient. In fact, that's one of the reasons that I like to use trigger points, when appropriate is to avoid the use of narcotics. Muscle relaxers, again, it's patient specific.

I can't emphasize to you enough that there is no class of patients where I just give everything to everyone. Each individual is specific.

Q. Dr. Ghoubrial, how do you know that it's not the chiropractic care or other medication that they're taking that's causing the pain to resolve?

MR. BARMEN: Objection. Go ahead.

A. As I testified to before, these patients get better in a multidisciplinary manner. You treat them with allopathic care. You treat them with chiropractic and physical therapy and occasionally pharmacological care that expedites their treatment. I know that because I've been doing it for ten years on thousands of patients. They wouldn't be seeing me had the chiropractor been sufficient. They would have simply said, I'm doing okay with the chiropractor.

Q. So you're saying it's better to provide as much

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treatment and as many different kinds of treatment as possible and the patient is more likely to get better that way?

MR. BARMEN: Objection.

MR. BEST: Objection.

MR. BARMEN: That's not what he said.

A. That's not what I'm saying. I'm saying that patients improve when you take a multidisciplinary approach to their care.

Q. What is a multidisciplinary approach?

MR. BARMEN: Objection.

A. In other words, depending on the patient, like I said it's patient specific, there's no one class of patients here. If a patient comes in -- and I'll use an example. They have cervical pain with guarding, spasm, and they also have a disc injury. So I can treat the cervical strain with some antiinflammatories, possibly with some trigger points. When I find out about the disc, the chiropractor may do some traction. If the disc is significant after the MRI, we may refer them to pain management. They can do some epidurals to try and shrink the disc. If that doesn't work, then they may require surgical

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amelioration. A long term opioid use at which point we refer them. So every patient is specific.

If you're looking for one answer that covers all patients, it just simply doesn't exist.

Q. I'm just looking for an answer of when you're injecting a patient with a trigger point injection within a week or two after they get into a car accident and they get better, I just want to know how you know that it's the trigger point injection and not the chiropractic care that they're receiving or not the antiinflammatory medications, muscle relaxers or narcotics that they may be taking or that the injury is simply not resolving over time, you haven't explained that?

MR. BARMEN: Objection.

MR. POPSON: Objection.

MR. BARMEN: He has.

Q. If you don't have a better answer than what you've provided, then let me know. But if you do, please, now would be the time to provide it.

MR. BARMEN: Objection. Move to strike the inappropriate narrative. Asked and answered.

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MR. MANNION: Objection. Plaintiff's counsel's ignorance as to the medical issues is not a proper method to impeach a witness.

MR. BEST: Sustained.

BY MR. PATTAKOS:

A. As I told you, each patient is different. You're looking for one answer that fits all patients --

Q. Any answer that would fit any patient --

MR. BEST: Don't interrupt him.

A. No, no, no, there's no such thing.

MR. MANNION: Objection. Interrupting the witness.

A. There's no such thing, Peter. Peter, I wish I could give you the answers you're looking for, but I can only tell you the truth. The truth is each and every one of the patients that I treat is a unique individual by virtue of their age, by virtue of their problems, by virtue of the medications they're on, by virtue of the contraindications, by virtue of when they present, how they present. So there is no uniform answer that I can give you, I can just tell you it's patient specific.

Q. Okay.

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A. Is that fair?

Q. If you say so. Let me ask you then a different question --

A. Okay.

MR. BARMEN: Super.

Q. -- let's talk a hypothetical individual, unique individual patient --

A. One patient?

Q. One patient that came to you from a chiropractor is receiving continued chiropractic care, you inject them with a trigger point injection after a week -- a week after their car accident -- let's say even more than one trigger point injection as you sometimes do where you inject three areas, however many, you use the trigger point injections. You also prescribed them muscle relaxers, narcotics, or even an antiinflammatory, nonsteroidal antiinflammatory. How would you ever know when that patient comes back three weeks later and says that they feel better, how would you ever know that this unique individual patient got better because of the trigger point injection and not because of any of those other modes?

MR. BARMEN: Objection.

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MR. POPSON: Objection. Form.

MR. MANNION: Objection. Incomplete hypothetical.

MR. BARMEN: Improper hypothetical. To the extent you can, go ahead.

A. I've had ten years of experience doing this. I know when to give them and I know when not to give them. If it's an acute event and I give the trigger point injection and I alleviate their pain and they're happy, I'm going to do it, Peter. If I can avoid the use of narcotics while I'm doing it, I'm going to do it. If I only need a week's worth of narcotics and a couple of trigger points, I'll take that route.

I want to get the patient back to being productive and working and pain free as quickly as possible.

Q. How do you know it's the injections that are working, Doctor --

MR. BARMEN: Objection.

A. Because --

Q. -- and not any of those other things?

A. They come back -- like I said, it's based on ten or 12 years of experience. They come back and

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they say, hey, these trigger point injections did great. I was in horrible pain before, after these injections, I'm now able to go back to work --

Q. How would the patient --

A. -- so your hypothetical --

Q. How would the patient know?

MR. BARMEN: Objection.

A. The patient tells me.

Q. Well, how do they know it's the injections --

A. I examine --

Q. -- and not any of these other modes of treatment?

MR. BARMEN: Don't argue with him, don't speak over him and don't raise your voice to him. Let him finish the answer to the question you asked.

A. Each patient, Peter, is an individual. I treat that patient according to their symptoms, according to their circumstances. And when they come back and tell me, Doctor, thank you, I've been able to get back to work within a few days of those cortisone shots that you gave me, I really appreciate it, I don't need to have them anymore, I know it was the medication. Because on the flip side I've seen patients

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who've had prolonged absence of care or gap in treatment that continue to suffer until they get the trigger point injections. So it's clinical experience, it's knowledge, it's academics.

Q. Do you always use Marcaine and Kenalog in the trigger point injections?

A. I try to, yes.

Q. Why do you use those?

A. Marcaine is a short-acting, roughly ten to 12 hour local anesthetic and that gives the patient immediate relief until the cortisone kicks in.

Q. The cortisone is the Kenalog?

A. Yes, sir.

Q. And what does the Kenalog do for the patient?

A. It's a long-acting antiinflammatory. It brings down the swelling, the inflammation. It decreases the release of the xylokines and the inflammatory cells in the local setting that's causing them the pain.

Q. Do you ever use trigger point injections with any other medication besides Marcaine and Kenalog?

A. Typically -- occasionally I use lidocaine, but usually it's Marcaine.

Q. You use lidocaine to replace the Marcaine?

A. Yes, sir.

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Q. But the Kenalog will be there, too?

A. Yes.

Q. Do you ever do a trigger point injection without a steroid?

A. Never.

Q. You agree that trigger point injection is an invasive procedure, correct?

A. Minimally.

Q. But it is invasive correct?

A. Minimally invasive, yes.

Q. You agree that it is an aggressive treatment, correct?

MR. BARMEN: Objection.

A. Not at all. Just the opposite.

Q. You've testified before that it is an aggressive treatment, are you going back on your prior testimony?

MR. BARMEN: Objection.

A. When you're referencing in this setting, to me an aggressive treatment is a -- getting your back cut open by a scalpel when you can get a cortisone shot with some Marcaine instead.

Q. I suppose it's all relative.

MR. BARMEN: Objection. Move to strike.

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A. Yes, sir.

Q. You understand there are many less invasive ways to treat back pain or trigger points, correct?

A. Yes.

Q. What are some of those ways?

A. Sometimes I just simply say, look, I think the best course of treatment for you -- I've done this hundreds of times -- is to just simply go to massage therapy and continue with your chiropractor and I see them for one visit and that's it. Sometimes I say, look, your pain is so significant here that I think you need to go to pain management. I refer them to pain management. When they have a multiple disc issue and they need a fusion, I refer them to neurosurgery.

Well, there's many, many ways to treat these patients. No one patient is the same as the second.

Q. Do you provide -- I'm sorry, sir. What are other modalities that you would recommend to your patients beside -- other less invasive modalities you would recommend to your personal injury patients besides massage?

A. Well --

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MR. BARMEN: Objection. Other than what he just told you?

MR. PATTAKOS: Yes.

A. If those patients are already under chiropractic care, if they're not, I recommend physical therapy. I'm not a physical therapist or a chiropractor so I think that's one less invasive. Occasionally TENS units, those are helpful.

Q. Anything else?

A. Yes. On occasions braces.

Q. What about RICE therapy?

MR. BARMEN: Objection.

A. Never used it.

Q. Do you understand what it is?

A. No.

Q. Rest, ice, compression, elevation.

A. Those are modalities that the chiropractor would recommend. By the time they get to me, they're not candidates for that. Or if they are, I send them back to the chiropractor.

Q. Do you provide trigger point injections to patients in your family -- I'm sorry, your internal medicine practice?

MR. BARMEN: Objection. Go ahead.

A. Typically I do joint injections there. Very

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seldom do I do trigger point injections.

Q. Why is that?

A. Well, it's a different patient population, as I discussed before. The patients in my practice are senior citizens who have arthritis in their shoulders, their knees, so I'll inject their knees, I'll inject their shoulders, occasionally I'll prescribe a systemic form or I refer them out.

Q. So you don't typically use trigger point injections in the internal medicine practice?

A. No.

MR. BARMEN: Objection.

Q. But you get people coming for back pain in your internal medicine practice all the time, don't you, Doctor?

MR. BARMEN: Objection.

A. On occasion, yeah.

Q. Why wouldn't trigger points be a suitable treatment for back pain that your patients come to your internal medicine practice with?

MR. BARMEN: Objection.

Q. Typically the patients I see -- again, I'm an internist so generally they're in their 60s, 70s or 80s, so it's generally an arthritic problem or

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it's a disc problem and I refer those for epidural injections. I get an MRI, locate the disc, and I send them either to neurosurgery or to pain management. So again, my patient population is different.

MR. PATTAKOS: Why don't we break for lunch.

THE VIDEOGRAPHER: We're going off the record. The time is 1:25.

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(Thereupon, a recess was had.)

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THE VIDEOGRAPHER: We're back on the record. This is the beginning of tape No. 3. The time is 2:54.

BY MR. PATTAKOS:

Q. Under what circumstances do you provide TENS units to your patients?

A. It's one of the modalities that we utilize for patients who have myofascial back pain, lumbar strain. We utilize that in concert as an adjunctive treatment.

Q. As -- you use that in concert as a what treatment?

A. An adjunctive treatment.

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Q. What does "adjunctive treatment" mean?

A. Additional treatment modality.

Q. And you were using the TENS units to treat for which diagnoses?

A. We treat a variety. Some cervical, some thoracic, some lumbar, some unilateral, some bilateral, some trapezius, some periscapular, any number.

Q. You're referring to body parts there. What type of injuries? Sprain and strains; is that what you're primarily referring to?

A. Lumbar strains, sprain, et cetera.

Q. Okay. How does the TENS Unit work to provide relief to the patients?

A. There was -- delivers low dose electrical frequency, it stimulates the muscle, and provides some relief.

Q. Does it provide relief to patients suffering from myofascial pain syndrome?

MR. BARMEN: Objection.

A. If you are talking in the context of fibromyalgia, are you talking in the context of the myofascial pain syndrome that we see in the motor vehicle accident setting?

Q. Either one.

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A. It does provide benefits in both settings, in my opinion.
Q. You rely on any research or peer-reviewed studies to support your use of TENS units?
A. Over the years, I've seen many articles that have pointed to the benefits of utilizing TENS units. And further more, it's another modality that allows us to avoid narcotics, when possible.
Q. Could you -- do any articles specifically come to mind, either the author or the specific contents of the articles?
A. There's -- I have seen dozens of articles, but none of them come to mind.
Q. Do you use the TENS units to treat patients for anything, other than strains or sprains?
A. Predominantly, that's it.
Q. Does the same go for back braces?
A. No. Back braces, I typically use in a patient who not only has lumbar strain, pain on range of motion, and may be engaged in some sort of physical activity or is trying to get to work and needs to be braced in order to give him some additional support.
Q. Okay. And that's typically for strains or sprains to the lumbar region?

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MR. BARMEN: Objection.
A. In the case of the back brace, yes, it's strain, sprain, but also it's significant pain on range of motion. Again, each patient is individual. And I can't say that enough times.
If the individual is sedentary, I probably wouldn't use a brace. But if I have a gentleman, who let's say, working on a forklift, and he was involved in a motor vehicle accident, he wants to get up, wants to be able to work, wants to be able to participate in the workplace, I try to use that as a modality. It's a great benefit to the patient. It's a nonnarcotic. He doesn't need medications and allows him to get to work quicker.
Q. Do you prescribe any other types of braces in the personal injury practice, other than lumbar supports?
A. No, sir.
Q. Great. Okay. I'm going to show you some spreadsheets that you produced last week in this litigation. We will mark them as Exhibits 5, 6, and 7.
This is one document, so I'm going to take the paper clips off. I don't have hard copies of these, so we'll just -- I e-mailed counsel yesterday.

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(Thereupon, Plaintiff's Exhibit 5, 6, and 7 were marked for purposes of identification.)

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A. Thank you, sir.
Q. Do you recognize these documents, sir?
MR. BARMEN: Wait a second. I just want to make sure.
A. Yes.
Q. Could you explain what these are and what each chart represents?
A. The first one you gave me is payments. It says basically what we were paid, which is a reduced amount of what we billed. So it's paid. The deductible here always reflects zero, because it's regular insurance software.
So, for instance, on the $1,500 charge on the very first one that you saw the $1,500, we got paid, represents a cut of anywhere from 30 to 50 to 60 percent in most cases.
Q. How do you know that? How could I tell from that chart or are you just --
A. You can't tell from that chart. This just

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reflects what we were -- what we actually were paid. But I know on 99.9 percent of the cases, we receive a reduction.
Q. Okay.
A. But --
Q. And you said it's typically about 30 or 40 or 50 percent, that reduction?
A. I wish it were that good. It varies anywhere from 30 percent to, you know -- I just settled a case now for 75 percent reduction.
So what you're seeing here is the paid amount, which represents a reduced figure from what's billed. The only way to find out would be to go through each individual patient and find out what was billed. The software doesn't do that.
Q. Okay. I just want to pull these up on my computer, if you give me one moment here.
Okay. Here we are. Okay. So, the deductible field on this first exhibit, I'm sorry, it's Exhibit 5?
A. Yes.
Q. That's essentially meaningless, because that only pertains to insurance, correct?
A. Correct.

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Q. Okay. So this just shows the amount paid on individual files; is that correct, that each -- each -- each line represents a particular case that was settled?
A. Yeah.
Q. Okay. So if you treated someone more than once, if they had more than one case with KNR, then they would appear as two separate lines?
A. Correct.
Q. I see. Okay. And this is all of the payments that you have received from KNR since you started the personal injury practice?
A. Well, I think since we immortalized the software. I don't know how far back it goes, so it depends. So I think this represents a significant number, yes.
Q. You don't know how far back it goes?
A. I don't. I don't do the billing or the coding. But it looks like a substantial number.
Q. Who created this? Who created this?
A. The office staff. I have billers and coders, so there is billing software, we talked about, that creates this.
Q. So someone would be able to tell you what year that goes back to?

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A. Yes, sir.
Q. Okay. So your office, this -- this software that you use, allows you to track payments made by various law firms, whose clients you treat?
A. Correct.
Q. And this is information that gets tracked in the system?
A. I don't know exactly how it gets tracked. I'm not involved in it. But it keeps a log or a diary of the patients and what we were paid on them.
And then if you find -- if you want to find out what we billed, you would have to look at each individual chart.
Q. Sure. Okay. We counted 6,065 entries on this spreadsheet.
MR. BARMEN: Which exhibit?
MR. PATTAKOS: This is Exhibit 5.
Q. Does that sound right to you?
MR. BARMEN: Objection.
A. I don't know. If it's there, I'm sure the information is --
Q. We might have made a counting error. I think it's somewhere in the ballpark.
Does that sound about right to you in terms

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of how many KNR clients you would have treated over the years?
MR. BARMEN: Objection.
A. I'll take your word on it, but I don't know for sure.
Q. Okay. But sitting here, that number doesn't sound like it's necessarily wrong to you, correct?
MR. BARMEN: Objection.
A. Not necessarily, no.
Q. Again, we might have made a counting error. I'm sure we could get it verified and come to an agreeable number.
So let's look at the bigger spreadsheet. Is that Exhibit 7?
A. Yeah.
Q. Please tell me what this represents.
A. Unfortunately, these represents -- this represents patients that we were paid zero on.
Q. That's -- that's the first -- the first group of pages?
A. Right.
Q. And this number at the top is $5,742,363.53?
A. Yeah.
Q. That's the amount of patient billing that you

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collected zero on?
MR. BARMEN: Objection. Go ahead.
A. To my knowledge, that sounds about right.
Q. Okay. So if we scroll down on this -- I'm scrolling. I'm on my computer. I will ask you to turn to page -- okay. At 165, the -- the zeros in the paid column and --
MR. BARMEN: When you say "165", are you talking about the Bates number?
MR. PATTAKOS: I'm talking about the Bates number, Ghoubrial000165.
Q. And then there is a blank page and then there is a new spreadsheet -- or new columns that begins with zero adjusted and just the amounts paid.
What is the significance of this? Is this -- and the amount, I will -- I will show you --
A. Let me separate these out.
Q. Sure. The amount that's at the top of this page, which is Ghoubrial000167 is approximately 7.9 million dollars that was paid, which also is consistent with the 7.911 paid that's showing in the paid column of the Exhibit 5?
A. Are you talking about the 5 million dollars we collected zero on?
MR. BARMEN: No, he's saying --

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collect anywhere between 30 and 40 percent.
Q. So these are cases that are still pending?
A. Yes, sir.
Q. So this is your accounts receivable?
A. Yes, sir.
Q. And that total is 1.74 million, correct?
A. It would appear to be.
Q. And that's with KNR cases only, correct?
A. Correct.
Q. And all of these spreadsheets are KNR cases only, correct?
A. I believe that's what you requested, sir.
Q. Yes, it is. Okay. If a client of your family pra --internal medicine practice came to you wanting to be treated for injuries suffered in a car accident, would you treat that patient through the family practice or the personal injury practice?
MR. BARMEN: Objection to the hypothetical. Go ahead.
A. Personal injury.
Q. And you would tell that client that you would not accept their health insurance as a result?
MR. BARMEN: Objection to hypothetical.

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A. We would tell them, look, we could run it through them, but the at-fault party is here. And typically they've retained an attorney and they tell us what to do. So we do whatever the client directs us.
Q. So if a client came to you and said, hey, look, I really -- I don't want to sign a letter of protection, I really would prefer to just be treated through the internal medicine practice and have my insurance pay for it, you would accommodate that client, correct?
A. We would still treat them through the -- through the personal injury side. We would just take our chances and submit it to the adjuster and see what happens.
Q. Submit it to the health insurance adjuster?
A. No, no, we'd submit it to the motor vehicle accident adjuster. If they had an attorney, we would submit it to wherever the patient directs us. Each case is different.
Q. So what if the patient was insisting on paying with their own health insurance?
MR. BARMEN: Objection to the hypothetical. Go ahead.
A. I don't recall if that's come up, to be honest

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with you. I don't know what we would do.
Q. If a client comes to your office with back pain, comes into the internal medicine office, with back pain, you will accept payment from their insurance company, correct?
A. As I said to you before, my patient population is 60, 70, 80, 90 years old. And generally their back pain is not related to a motor vehicle accident. Most of the time it's arthritic, discogenic, degenerative, osteoarthritis, et cetera.
Q. Some kind of chronic condition, right?
A. Yeah, it's a chronic condition, right.

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(Thereupon, Plaintiff's Exhibit 8 was marked for purposes of identification.)

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Q. Plaintiff's Exhibit 8. Do you have any reason to doubt that this is a true and accurate copy of the website for Wadsworth Medical Center?
A. No.
Q. It looks like a true and accurate copy, correct?
A. Correct.
Q. And here on the first page, it says, welcome. Our office, under the guidance of four private

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practitioners, aims to provide quality medical care to patients in the Wadsworth and surrounding areas.
A. Right.
Q. While specializing in adult and geriatric medicine, we offer services to patients in early childhood, adolescence, young adulthood and up. We take pride in being a private, independent office, which allows us to provide the best of care for our patients.
A. Correct.
Q. That's accurate, correct?
A. Correct.
Q. And it says, our services, trigger point injections --
A. Correct.
Q. -- is listed there? Same day acute visits, correct?
A. Right.
Q. Also, joint injections is there, as well. And it says, we accept most major insurance companies, including Aetna, Anthem, BCBS, Cigna, Hometown - The Health Plan, Humana, Medicare, Medical Mutual, Summa, and United Healthcare. Am I reading that correctly?

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A. Absolutely.
Q. And is that true that you accept all of those insurance companies?
A. Through Sam Ghoubrial, MD, Inc., yes.
Q. Okay.
A. But not -- but not through Clearwater.
Q. Right. I understand.
A. So there's two separate things.
Q. I understand. Through the internal medicine practice?
A. Right. So there is two separate things. I don't want to get confused here and say, well, you know, this is the same as that, because you are comparing apples and oranges.
Q. I understand. And the Wadsworth Medical Center is not for personal injury practice, though, correct?
A. Correct. Although, I will say, if patients live in Wadsworth, and they've been in a motor vehicle accident, they may come to us, referred by a chiropractor, with an attorney, and we do see them at that location. So --
MR. BEST: Just answer the question.
THE WITNESS: Yeah.

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MR. BEST: I want to get done before midnight.
Q. What is Healthgrades?
A. I don't know.
- - - -
(Thereupon, Plaintiff's Exhibit 9 was marked for purposes of identification.)
- - - -
Q. Here is Exhibit 9. It's the Healthgrades page with your name on it. It says you are an internal medicine specialist in Wadsworth, Ohio, and has been practicing for 23 years.
You graduated from Ohio Medical College-Toledo, in 1993 and specializes in internal medicine. Lists your address for the Wadsworth practice and then says, insurance accepted, and lists Aetna, Anthem Blue Cross Blue Shield, Blue Cross Blue Shield, Cigna, Coventry Health Care, First Health, Coventry Health Care, Humana, and MultiPlan.
Is this an accurate reflection of health insurance that you have accepted in the internal medicine practice?
MR. BARMEN: Objection.
A. That's correct. Yes.

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Q. Do you know how these -- this information appeared on this website?
A. I don't know. I didn't generate it.
Q. There's nothing false on this website, is there?
MR. BARMEN: Objection.
A. I don't know anything about MultiPlan, but the others look to be reasonable. We didn't generate it, so I can't speak to the accuracy.
- - - -
(Thereupon, Plaintiff's Exhibit 10 was marked for purposes of identification.)
- - - -
Q. Here's exhibit 10. This is a new patient form that we downloaded from the Wadsworth Medical Center website.
Does this look like a true and accurate copy of one of the Wadsworth Medical Center's new patient forms?
A. Yes.
Q. And on the first page, you request the patient to fill out their insurance information, correct?
A. Correct.
MR. BEST: It lists Dr. Jones at the top, so I doubt it's correct.
MR. PATTAKOS: We pulled it a

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couple weeks ago --
MR. BEST: Sure.
MR. PATTAKOS: -- so maybe the website -- well, David, why don't you check the website right now.
MR. BEST: I'm pretty sure you're not telling the truth.
MR. PATTAKOS: I'm sure you could pull it up right now, if we're not. And if it's not on the Wadsworth Medical web page, you should point it out, otherwise you're just barking again, which is pretty obviously the case.
Q. Okay. You testified as to your various reasons for not accepting insurance payments in your personal injury clinic earlier today?
A. Yes, sir.
Q. And your business reasons. What you do instead is ask the patients to execute a letter of protection, that gives you a lien on the client's settlement funds, correct?
MR. BARMEN: Objection.
A. I don't do any of that. I just see the patient. I don't know what they do.
Q. Who is "they"?

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A. Yes. There is no way of knowing that.
Q. I'm sorry, paid. I'm sorry, paid. When I say, charged, these clients ended up paying between a thousand dollars, 2,035 of these clients ended up paying between a thousand dollars and $1,499 out of their settlements.
MR. BARMEN: Objection.
Q. Does that sound like it's wrong to you?
MR. BARMEN: Objection.
A. I would have to look at it more closely.
Q. Okay.
A. I don't know.
Q. But just sitting here --
A. I don't know.
Q. Okay. And another 4,000 -- well, total, if you go between $700 and $1,999, that is 4,077 of the 6,665, based on our count, which is 61 percent. Does that sound wrong to you?
MR. BARMEN: Objection.
A. I didn't hear your question.
Q. Well, we calculated that the bulk of these 6,000, that more than 60 percent of these 6,665 files, ended up paying between $700 and $1,999.
MR. BARMEN: Objection.
A. I don't know what the question is.

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Q. The question is, does that sound wrong to you?
MR. BARMEN: Objection.
A. I have no way of knowing.
Q. So you have no reason to deny that that's the case?
MR. BEST: Objection.
MR. BARMEN: Objection.
MR. BEST: Objection. He just said he didn't know.
A. I don't know.
Q. You would agree that that's consistent, that that amount being charged to the clients, is consistent with your typical course of treatment of these clients, correct?
MR. BEST: Objection. First of all, you keep using the word "charged". What is wrong with you? Do you do this intentionally or are you that slow?
MR. PATTAKOS: I'm using the term "charged" to refer to the --
MR. BEST: Well, you keep using charge, charge, charge, the way you charge, so either ask an appropriate question and be consistent or go on to another topic.
MR. PATTAKOS: It's very clear

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what I'm talking about, David. I know you need to bark about something, but let's continue.
MR. BEST: I need to bark about an accurate record. And you are putting words into the witness's mouth that are not true. He has never said anything about these numbers being charged, but you repeated it at least 30 times.
Q. Dr. Ghoubrial, you agree that you -- that your practice, the personal injury clinic, has been paid 7,911,063.16 from out of KNR clients settlements since -- at least since the personal injury clinic opened, correct?
MR. BARMEN: Objection.
MR. BEST: Objection.
MR. POPSON: Objection.
A. What are we talking about here?
Q. We're talking about the first number on Exhibit Number 5, in the top right corner.
A. Are you talking about collected or charged, because --
Q. I'm talking about the amount you -- the personal injury clinic has collected.
A. Collected, yes. But these numbers don't reflect

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what was charged.
Q. What was written off. I understand that.
A. Right.
Q. You charged a lot more than $7,911,633, but this $7,911,633 is what the clinic ended up collecting from these clients settlements, correct?
MR. BARMEN: Objection.
A. Correct.
Q. There is no dispute about that, is there?
MR. BARMEN: Objection.
A. I don't know. I haven't looked at it carefully enough to know.
Q. Okay. Well, there is no dispute that that is what this document appears to reflect, correct?
MR. BARMEN: The document says what it says.
A. The document is what it is. I haven't looked at it. I didn't generate it, so I don't know.
Q. So you have no reason, sitting here, to believe it's inaccurate, do you?
MR. BARMEN: Objection.
MR. BEST: Objection.
A. I don't know.
- - - -
(Thereupon, Plaintiff's Exhibit 11 was marked

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A. That's correct.
Q. Okay. And she received a trigger point injection on May 5th, correct?
A. That's correct.
Q. And the charge for that trigger point injection was $400, correct?
A. I don't know what the code is.
Q. Well, you could see --
A. I assume, it's a 20552 --
MR. BEST: Sam, wait for a question and don't assume anything.
Q. Well, we could get out the informations on the codes if there is a question about this. That's fine. We could be very clear.
MR. BARMEN: If you have the opportunity to be clear, why wouldn't you want to?
MR. BEST: You know why.
- - - -
(Thereupon, Plaintiff's Exhibit 12 was marked for purposes of identification.)
- - - -
Q. Here, let's take a look at Exhibit 12. Do you recognize this document?
A. I have not seen it before, no, but it looks like

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a --
MR. BEST: The question is, have you seen it?
THE WITNESS: No.
MR. BEST: If you don't listen to his questions we are going to be here for weeks.
Q. What does it look like, Dr. Ghoubrial? What does this document look like to you?
A. It looks like a coding sheet.
Q. Do you understand that your attorneys produced this document in this litigation?
A. I don't know what they produced.
Q. Do you have any reason to doubt that your attorneys produced this document in this litigation?
MR. BEST: Other than the fact that you are saying it and you rarely tell the truth.
A. I don't know.
MR. PATTAKOS: Could we get a stipulation that the defendants produced this document in this litigation?
MR. BARMEN: I produced this document in this litigation. However, this

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document includes something at the back that is -- yep, it's all Bates stamped. Yep, I produced this document, Bates stamped Ghoubrial20 through 27.
Q. You can't describe what this is, Dr. Ghoubrial?
MR. BARMEN: He told you, it looks like billing codes.
Q. Do you agree these are billing codes that would be commonly used by your office?
MR. BARMEN: Objection.
A. Yes.
Q. By the personal injury practice?
A. Yes.
Q. What is a billing code?
A. Basically, again, I'm not a biller and a coder, so I don't know exactly what it is, but you have to talk to somebody who -- who does the billing and the coding, so --
Q. Okay. You have no idea what a billing code is?
A. My rudimentary knowledge, something tells me that it's a code tied to a procedure or a visit that we did.
Q. Okay. And from this document, it looks like the procedure one or two TPI is coded 20552. Do you agree?

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A. Yes.
Q. And for three plus TPI, that's 20553?
A. Correct.
Q. And when you treat a patient in your personal injury practice, you record whether you gave a patient trigger point injections, correct?
A. Correct.
Q. And you record whether you injected one or two muscle areas or three or more, correct?
A. Correct.
Q. And these codes would correspond with that, correct?
A. It would be up to the billers and the coders.
Q. And if we look at the health insurance claim form Ms. Perkins' file here, at Exhibit 11, we see for code 20552, that the charge was for $400. Do you agree?
A. Yes.
Q. Okay. And that reflects trigger points being injected into one or two muscle groups, correct?
A. Correct.
Q. And there is a charge here for L0631 for $1,500. Would you agree that that reflects the back brace that Ms. Perkins received from your office?
A. Yes.

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Q. And a charge of $1,500, correct?
A. Correct.
Q. And for 99203, we see a charge for $300. Would you agree that that is the charge for Ms. Perkins' initial office visit to your clinic?
A. Correct.
Q. And E0730 would reflect that a TENS Unit was distributed to Ms. Perkins for which she was charged $500, correct?
A. Correct.
Q. And the J1030 is a charge for Kenalog, correct, one cc?
A. Correct.
Q. And the 99213 shows a charge of $150 for a follow-up office visit, correct?
A. Correct.
Q. And that appears to be the sum of the charges; you agree?
A. I do.
Q. Okay. It looks like Ms. Perkins was referred to you from Canton Injury Center; do you agree with that?
MR. BEST: Objection. She was not referred to him.
Q. The office.

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A. I don't know. It was Dr. Jones who saw the patient, so --
Q. Well --
A. -- I would have to speak to -- to Dr. Jones. I don't know how --
Q. If we look at page 2 of this document summarizing the medical specials, we see that Canton Injury Center is listed here?
A. Correct.
Q. Would you agree that that indicates that Canton Injury sent the patient to your clinic?
MR. BARMEN: Objection.
A. Not necessarily.
Q. Who would have sent this patient to your clinic, if not Canton Injury?
MR. BARMEN: Objection.
A. The patient may have requested to see the medical doctor on their own.
Q. And then Canton Injury would have recommended you, correct?
MR. BARMEN: Objection.
A. We don't know what the circumstances are, so I would be guessing.
Q. Okay. If we look at the settlement memorandum --
MR. BARMEN: That's this.

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Q. -- on the 6th to last page here, we see Clearwater Billing Services charge of $2,890 that was written down to $1,500. Do you agree with that?
MR. BARMEN: Wait, wait. He's not there yet.
A. What page are you on?
Q. The 6th to last page, the settlement memorandum.
MR. BARMEN: Before that.
THE WITNESS: Here?
MR. BARMEN: No, it's before that. Keep going. There.
A. Okay.
Q. You agree that that's an accurate reflection of the charges?
A. Yes.
Q. And if you take a look at page 4, you could see that --
MR. BARMEN: Page 4?
MR. PATTAKOS: Page 4 of this document, the fourth page.
MR. BARMEN: This one.
Q. Dr. Jones writes, I prescribed Flexeril, 10 milligrams, Motrin 800 milligrams. She will follow-up in two weeks.

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You agree that reflects that she was prescribed a muscle relaxer and a nonsteroidal anti-inflammatory drug, correct?
A. Yes.
Q. And then if you turn the page, you'll see a note for June -- I'm sorry, that was on May 5th, 2016, that first prescription, correct?
A. Yes.
Q. And then you see on June 2, 2016, that if you look under plan, there is a note from Dr. Jones that says, I did give her refills of Flexeril, 10 milligrams and Motrin 800 milligrams each, number 60?
MR. BARMEN: Well, you're skipping the first line.
Q. I have advised her to scale back on the medications and see how she does without them. Okay. I did give her refills of Flexeril, 10 milligrams, and Motrin 800 milligrams each. And that was on June 2, 2016, correct?
A. Finish it. Zero refills to have on hand in case she's going forward. We will plan on releasing her today, as she is much improved. If anything changes, she will let us know. So let's read the whole thing, as opposed to part.

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didn't -- he could read this or you could read it. It's what the record says. He wasn't involved.

If that's not -- if he was involved, then point out where he was involved. If we misunderstood, show where he was involved. Otherwise, I don't see what's productive about him reading someone else's record. You could read it. You said before, it's what the record says is what it says.

A. I didn't see the patient, that's my answer.

Q. If we look at this form 1500, and we see one, two three, four of them, with Handchrist, LLC and Clearwater Billing Services listed. These charges can be confirmed here, correct?

MR. BARMEN: Objection.

MR. BEST: Objection.

A. What page are you looking at?

MR. BARMEN: This one.

A. Yes.

Q. And these codes are the same codes that we saw on Ms. Perkins' file, correct? 99204 -- well, it looks like 99204 may be an initial follow-up code; is that fair?

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MR. BARMEN: Objection.

Q. Or an initial visit code?

A. Correct.

Q. And 99213 is a follow-up visit?

A. Yes.

Q. And 2055 -- for which she was charged $150, correct?

A. Correct.

Q. And she was charged $350 for the initial visit, correct?

A. Correct.

Q. And she was charged $800 for 20553, which is trigger point injections to more than three -- three or more muscle regions, on April 29th, correct?

A. Correct.

Q. And then on May 13th, there is another 99213 for $150 and another 20553 for $800, correct?

A. Correct.

Q. And a J1040, which is Kenalog, two cc, for $80, correct?

A. Correct.

Q. Do you have any reason to doubt that these 1500 statements accurately reflects the treatment that was received from your clinic by Ms. Dyson?

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MR. POPSON: Objection.

A. No.

Q. And we don't see any code here, other than for trigger point injections, the Kenalog, and office visits, correct?

A. Appears that.

Q. We also see that Ms. Dyson received nine prescriptions for muscle relaxers and nine prescriptions for narcotics. And you could see that from the charts from your office.

A. Again, I didn't treat this patient.

Q. You have no reason to believe that these charts that you produced are inaccurate, do you, sir?

A. No.

Q. Or that KNR's office produced --

A. No.

Q. -- do you? Okay. She received Percocet on April 22nd, April 29th, May 13th, May 27th, June 15th, June 24th, July 8th, July 29th, and August 19th. And it looks like she received Flexeril, ten milligrams on every one of these dates, as well.

MR. BARMEN: Is that a --

A. Correct.

MR. BARMEN: Wait until he asks a

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question.

Q. And if we see the assessment at page 558, it was cervical strain, lumbo -- lumbosacral strains, and injuries are complicated by fibromyalgia.

MR. BARMEN: This page, 558, here.

A. That's correct.

Q. And it says, she will follow-up -- at the bottom, under plan, she will follow-up in one-and-a-half weeks with my partner, Dr. Ghoubrial?

A. Correct.

Q. That is something that happened in your practice, correct, that --

A. Sure.

Q. -- that a patient would treat with one of the doctors in your practice and then follow-up with another, correct?

A. Yes.

Q. Okay. Let's go back. I want to cover the diagnosis for Ms. Perkins. So let's go back to Exhibit 11. If we see the assessment, and this is at the fourth page, we see sprain of ligaments in the lumbar region and strain of musculature in the lumbar region.

That's the sum total of the diagnoses here, correct?

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muscle groups and was given muscle relaxers on June 24th. On June 10th he was prescribed Percocet. On June 24th he was prescribed Percocet again. And his diagnosis was a lumbosacral strain.

Is that all accurate?

A. Yes.

Q. And if we look at the 1500 forms, if you turn right past your notes, we could see the codes, 99205 for an initial office visit, charge of 350. 99214 twice for charges of $100 apiece for follow-up visits, correct?

A. Right.

Q. And on the next page, we see a 20553 for trigger points, $800. And then a J3301, which is -- it looks like a new one, $160. What is J3301?

A. I don't know.

MR. POPSON: It's only ten years ago.

Q. You think that could be for Kenalog?

MR. BARMEN: Objection. Don't guess.

A. I don't know.

Q. What else could it be for?

MR. BARMEN: Objection. He's not

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going to speculate, Peter. He said he doesn't know.

MR. PATTAKOS: I'm asking him if he knows.

MR. BARMEN: He said he doesn't, so no matter how many times you ask him, that will continue to be the answer. And you could roll your eyes and do whatever you want, but that's the answer.

MR. PATTAKOS: I'm sure we could look it up.

MR. BARMEN: Well, then why don't you do that.

Q. Okay. We see at the end of this document, a settlement memorandum -- actually, at the very end, the last page, that out of the settlement paid of $9,000, you were paid $1,200; is that accurate?

MR. BARMEN: Well, the practice, but --

Q. The practice, Dr. Sam N. Ghoubrial, MD, correct? $1,200, correct?

A. Correct.

- - - -

(Thereupon, Plaintiff's Exhibit 15 was marked

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for purposes of identification.)

- - - -

Q. Okay. Moving right along. I know this is tedious. Let's get through it as quickly as we can. Here is Exhibit 15, records for Chetoiri Beasley relating to an accident that occurred on November 3rd, 2017.

And she was treated more than once. So I'm going to go accident by accident, because they're separate -- separate transactions.

We see another medical lien here, correct, on the first page?

A. Correct.

Q. And it looks like you, again, treated this patient yourself, correct?

A. Correct.

Q. And the accident was, again, on November 3rd, she saw Akron Square, it looks like on November 7th, and you have to turn the page back to the Akron Square ledger to see that. And then treated with your office on November 8th; is that correct, the first treatment with your office was November 8th?

A. That's correct.

Q. And we can see from the 1500 form, that she was

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charged $300 for 99203, initial office visit, $500 for an E0730 TENS Unit, $1,000 for 20553 trigger point injection, $50 for J1030, Kenalog, and then 299213s for -- $150 each, for follow-up visits, correct?

A. Correct.

Q. Could you surmise anything from these records when you see a $1,000 charge for the same 20553 code, as we sometimes see an $800 charge for?

A. I don't know.

MR. BARMEN: Wait. Wait. Could you surmise what? What's the question?

MR. PATTAKOS: Anything.

Q. I am just asking what the difference is, when we see -- when we see different pricing for the codes, for the same code, does that just reflect pricing changes over time, perhaps, or does that reflect a different intensity of treatment?

MR. BARMEN: Objection.

A. I think it reflects pricing changes over time.

Q. Because the codes are -- have standardized price -- prices generally, correct?

A. Correct.

Q. Okay. And it looks like she was prescribed muscle relaxers on November 8th and then

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Q. When you give a patient a TENS Unit, do you ask them if they already have one?
A. Absolutely.
Q. You know, Ms. Beasley already had a TENS Unit?
A. No, I did not.
Q. Well, here's another file from an accident where she treated with -- an accident that occurred on January 14, 2015. We're going to mark this as Exhibit 16.

- - - -

(Thereupon, Plaintiff's Exhibit 16 was marked for purposes of identification.)

- - - -

Q. We see the medical lien with your office, correct?
A. Correct.
Q. And you treated Ms. Beasley the first time around, too, correct?
A. Correct.
Q. And you diagnosed her with cervical, thoracic, and lumbar strain?
A. Correct.
Q. The accident happened on January 11th and she was in your office on January 14th, correct?
A. Correct.

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MR. BARMEN: Of 2015.
A. 2015, that's two years earlier.
Q. Yes.
MR. BEST: Three years.
THE WITNESS: Three years.
MR. POPSON: Two-and-a-half.
MR. PATTAKOS: Two-and-a-half, sure.
MR. BEST: Two years, ten months.
Q. And we see that -- if you turn past the progress notes from your office, you see the 1500 forms, and you go two past the 1500 forms, you will see that she treated at Akron Square, on January 12th.

Again, was first in your office on January 14th, for the January 11th accident. And the 1500 forms reflect a $350 charge for the 99204 initial visit, on January 14th. A 20553, $800 for trigger points, on January 14th. An $80 charge for the J1040, on January 14th, that's the Kenalog. And another $500 for another TENS Unit -- well, this is the first TENS units, the E0730.

And then we have follow-ups on January 28th, for $150, and then another $800 for the 20553, trigger points, and another $80 for J1040 Kenalog.

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She came back, again, on February 11th. So we have the $150 follow-up office visit, 99213. The $800 trigger points, again, at 20553, and the $80 in Kenalog for the J1040.

And then on the 18th of February there is another follow-up office visit, $150, 99213. And it looks like that's it; is that correct?
A. Yeah.
MR. BEST: Objection.
MR. BARMEN: Objection.
MR. POPSON: Could you repeat the question, please?
Q. And we have -- she was prescribed narcotics, Percocet, on November 8th and November 15th, correct?
MR. BARMEN: Objection. The documents speak for themselves.
A. I don't dispute the documents. The only thing with regard to the TENS Unit, she obviously didn't have a TENS Unit when we saw her the second time, because I asked her and she took it.

So we don't give TENS units to patients who already have them. So she must have lost it, disposed of it, whatever, it wasn't working, so

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she got another TENS Unit.
Q. How do you know that you asked her?
A. We ask everybody.
Q. Okay. We see the settlement memorandum that the clients signed. It looks like there is two copies here. Clearwater Billing Services collected $3,000; is that correct?
A. I don't see where you're looking at.
Q. I'm looking at the third to last -- fourth --
MR. BEST: Peter --
Q. -- fourth to last page.
MR. BEST: -- do you understand that all you're doing is reading documents that no one is challenging? Is this really how you want to spend your time? We're running out of time. If you have real questions to ask Dr. Ghoubrial, I don't understand why you're not doing that.
MR. PATTAKOS: Got to make a record, David.
MR. BEST: There is a record. You got the documents.
MR. POPSON: The exhibit is in.
MR. BARMEN: Right. And we don't dispute it.

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Tramadol on February 14th, correct?
MR. BARMEN: Objection.
MR. BEST: Objection.
A. Correct.
Q. And --
MR. BARMEN: Whoa, whoa, whoa, you just said, Percocet -- or narcotics on February 14th. The record states he was changing Percocet to Tramadol. He didn't prescribe both.
MR. PATTAKOS: Tramadol is not a narcotic?
MR. BARMEN: You said, Percocet.
MR. PATTAKOS: I said, Tramadol on February 14th.
MR. BARMEN: It says, Tramadol, as he declines Narco.
Q. Is Tramadol not a narcotic?
A. Tramadol is in the narcotic-like family. And so, as the way I heard the question, was Tramadol, and I looked at it and it said Tramadol.
Q. Okay. Well, Tramadol is not a narcotic?
A. It's a narcotic-like compound, it's sort of like --
MR. BARMEN: The question is, is

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it a narcotic, that's the question?
A. The answer is, it's a narcotic-like compound.
Q. What's a narcotic-like compound?
A. In other words, it's not a true opioid, in the sense of Percocet, Vicodin. It's an opioid analog.
Q. Is it a controlled substance?
A. Yes.
Q. And the diagnosis reflected on your chart is cervic -- cervical, thoracic strain and lumbar strain, correct?
A. Correct.
Q. And if we turn past the 1500 forms, we see a treatment date reflected for Akron Square Chiropractic. The first date of treatment there was December 16th, which was one day after the December 15th accident, correct?
A. You're talking about December 30th?
Q. It looks like December 16th, sir.
MR. BARMEN: No, that page. And we'll stipulate that December 16th is after December 15th.
MR. PATTAKOS: Thank you.
A. Yes.
MR. PATTAKOS: Okay. Could I have

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that 1500 Form?
Q. So let's go back to Exhibit 17, because this is paper clipped, how about I just add this to the document.
Dr. Ghoubrial, you could add this form 1500 to Exhibit 17, and just put it on the -- make it the first page of the exhibit, if you would like -- well, actually make it the second page.
MR. PATTAKOS: I'm sorry, Brad, did I give you a copy?
MR. BARMEN: You did not.
Q. Oh, it's two pages. Uh-oh, Dr. Ghoubrial, I believe I screwed up. Could I see that back? Thank you. It's two pages of 1500 forms, there we go. Please insert those after the first page.
MR. PATTAKOS: And here's for Brad and me and everyone else.
Q. So we are back to the December 15th, 2013 accident.
MR. BARMEN: Whoa, whoa. Are you talking about 17 or 18, because 17 is the 2011 accident?
MR. PATTAKOS: I'm sorry.
Q. April 16, 2011 accident. And we see -- we see a -- if we look at this 1500 form, 99204, initial

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visit, on April 22nd, $350. A 99213 follow-up, on May 13th for $150. A L0631 back brace for $1,500.
And then three follow-up visits, 99213, $150 each, on June 3rd, June 24th, and July 15th, 2011. As well as another TENS Unit charge on the next page, on May 13th, 2011, the E0730 --
MR. BARMEN: Objection to "another", because there was only one given for the 2011 accident.
MR. PATTAKOS: Okay.
Q. -- $500, correct?
MR. BARMEN: And it says what it says.
Q. I'm reading that correctly; am I not, Dr. Ghoubrial?
A. Yes.
Q. And if you turn to the next page, you see treatment date at Akron Square Chiropractic of April 21st, 2011, the day before you first treated with Clearwater.
MR. BARMEN: Is that a question?
Q. Correct, on the next page?
MR. BEST: Objection.
A. What are you asking, Peter?

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Q. That the patient -- that this reflects a first treatment date at Akron Square of April 21st, 2011, correct?
MR. BARMEN: Objection. Go ahead.
A. The paper reflects that.
Q. Okay. And Dr. Gunning treated this patient. Diagnosed the patient with cervical and lumbosacral strain, correct?
A. That's correct.
Q. And it says that the patient declined trigger point injections today, correct?
A. Correct.
Q. And if we look at the complete chart from your office, we see Flexeril prescriptions given on April 22nd, May 13th, June 3rd, June 24th, and July 15th.
A. Well, first of all, let's go back to -- let's go back to the visit on April 22nd. Percocet was given, Flexeril was given, and Motrin was given. On May 13th, all it looks like, there was no Flexeril, there was Flexeril and Motrin and Percocet.
Q. On May 13th?
A. Correct.
Q. May 13th, yes. Okay. Okay. Flexeril and

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Percocet on May 13th and then on June 3rd, we have Flexeril and Percocet, again, correct?
A. Correct.
Q. As well as the Motrin, correct?
A. Correct.
Q. And then, again, on June 24th we have the Percocet, the Flexeril, and the Motrin, correct?
A. Yes.
Q. And then on July 15th, we have Percocet, Flexeril, and a referral to chronic pain management, correct?
A. Yes.
Q. Okay. And --
MR. PATTAKOS: Is that --
MS. HAZELET: I think you already marked it.
MR. PATTAKOS: 18?
MS. HAZELET: Did you not distribute those? We already talked about 18, I'm sorry.
MR. BARMEN: I have 18.
MR. PATTAKOS: Okay.
MR. POPSON: We didn't get it.
MR. PATTAKOS: Here is 18. Thank you.

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- - - -
(Thereupon, Plaintiff's Exhibit 19 was marked for purposes of identification.)
- - - -
Q. Here is Exhibit 19, which is another accident for which Taijuan Carter treated with your office and was represented by KNR.
I'm sorry, sir. I want to go back to Exhibit 18 and confirm the settlement memorandum in here, except it's not.
MR. BARMEN: Yeah, I don't see it.
Q. Well, let's move on.
MR. BARMEN: That would be swell.
Q. We see Taijuan Carter had another medical lien for an injury received on October 6th, 2015, correct?
A. Correct.
Q. And, actually, sorry, here he was represented by Slater & Zurz?
A. Correct.
Q. And he, this time, received trigger point injections. And we could see that from the 1500 form that is closer to the back of this document.
Well, it looks he might have transferred from Slater & Zurz to KNR, because the settlement --

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the KNR settlement memorandum reflects Kisling Legal Group at the end, so we'll have to straighten that out, but --
MR. BARMEN: Move to strike.
Q. For the October 6th accident, we see on the form 1500 an initial visit on October 14th, 2015, a 99203, for $300, trigger point injections for $800 on that day under 20553, as well as the --
A. Wait a minute, what date are you talking about here?
Q. I'm talking about October 14th, 2015.
A. Okay. I see that.
Q. Okay. And then the Kenalog for $80, J1040, and a TENS units given on that day for $500. So now the third TENS Unit that Mr. Carter has received, E0730.
And then we see follow-up visits, 99213, for $150 on October 21st and 28th. And on the 28th, we have trigger points, again, for $800, under 20553, the Kenalog under J1040, and then a final follow-up visit on November 11, 2015?
A. Where do you get the third TENS Unit?
Q. I'm sorry, did Mr. Carter have a TENS Unit --
A. He had another TENS Unit, but then he didn't have it anymore at the time of the second accident.

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Q. The previous two files also reflect that he was charged $500 for a TENS Unit.
A. But what I'm trying to tell you is, he got a TENS Unit, because he never had retained the first TENS Unit that he got in the first place.
Q. Okay. And in this settlement memorandum it reflects that Clearwater was paid $1,300, it appears on charges of 2,480, correct? And you could look at the two. One looks like the final and then the last page looks like a draft, correct?
A. Correct.
Q. And if you look back at the chart from your office, it looks like you treated this gentleman for this -- this time around and diagnosed him with a periscapular strain in the thoracic region, a lumbar strain, a right knee injury, and a right ankle injury, correct? And that's on Ghoubrial0661, the third page here.
A. Correct.
Q. And he was given muscle relaxers; Zanaflex on October 14th and November 11th, as well as narcotics; Norco, on October 14th and Percocet on October 28th, correct?
A. Correct.

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(Thereupon, Plaintiff's Exhibit 20 was marked for purposes of identification.)

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Q. Here is Exhibit 20. Records for Kimberly Fields, one of your former patients, and KNR client. We see a medical lien on the first page here, correct?
A. Correct.
Q. And the first date of service reflected on this lien is October 11th, 2017, for an injury that occurred on September 20th, 2017, correct?
A. Correct.
Q. And if we turn past your chart and the TENS Unit consent form, we see an initial date of treatment of September 27th, at Akron Square.
And we turn two pages to the 1500 Form, we see that on October 11th, she was charged for an initial visit, $300, 99203, and then $500 for a TENS Unit on that same date, under E0730, correct?
A. Correct.
Q. And then a follow-up visit on October 18th under 99213 for $150, and a charge for trigger point injections, for $1,000, under 20553, correct?

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A. Yes.
Q. And then there was another visit on October 18, 2017, under J1030, for a $50 charge, and then an A4556 for $160.
Do you what the A4556 is?
A. No.
Q. TENS Unit supply kit; does that make sense?
A. It's possible, yes.
MR. BARMEN: Objection.
Q. That's what's reflected on Exhibit 12, on the first page of the codes, it says A4556, the TENS Unit supply kit.
What is a TENS Unit supply kit?
A. I believe those are additional adhesive pads.
Q. Okay. To connect the TENS units to the patient's body?
A. Sometimes the adhesive pads lose their stickiness. And if a patient is using the TENS units a lot, sometimes the adhesive part wears out, so we furnish them with another one.
Q. And the diagnosis here was cervical strain and trapezius muscle strain, correct, if you go to the third page of this document where you signed the chart?
A. Correct.

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Q. And she received muscle relaxers on October 11th, Zanaflex, four milligrams, and Mobic, 15 milligrams, correct?
A. Correct.
Q. The Mobic is a muscle relaxer?
A. No, the Mobic is an anti-inflammatory.
Q. Okay. Thank you. And her case resolved, if we look at the second to last page for -- I'm sorry, the third to last page, for $2,314 total. And on a bill, Clearwater Billing bill of $2,160, Clearwater was paid $500, correct?
A. That's correct.
Q. And the client walked away with $500, correct?
A. Correct.
Q. Okay.
A. It's a 75 percent reduction there, Peter. It should make you happy.
MR. BARMEN: Yeah, he doesn't care.
Q. I'm not here to be happy or not. I'm just trying to get these facts on the record, sir. Thank you.
MR. BARMEN: We already told you multiple times that we would stipulate to these. Yet, you insist on going through

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correct?
A. Correct.
Q. What is dystonia?
A. Dystonia is an abnormal distortion of a shoulder, pelvic muscle group as a result of an abnormal contracture. So they become dystonic, dis abnormal tonia, lack of tone or dysfunctional tone. It's common in cerebral palsy patients.
Q. So the new diagnoses you provided were cervical strain, acute lumbar strain, and an exacerbation of the dystonia, correct?
A. Correct.
Q. And he went on to receive more Percocet, Vicodin -- I'm sorry, Ibuprofen, Flexeril, and Percocet, on May 11th?
A. Correct.
Q. And then Percocet, Flexeril, and Motrin prescriptions on May 25th?
A. Correct.
Q. And Percocet, Motrin, and Flexeril again prescribed on June 8th, and, again, Percocet, Motrin, and Flexeril on June 22nd, correct?
A. Correct.
Q. And if we turn the page to the settlement memorandum, Dr. Sam N. Ghoubrial, MD was paid

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$2,000, correct?
A. Correct.
Q. And that's the personal injury clinic, correct?
A. Correct.
Q. And when we see above on the deduct and retain to pay a $50 fee to Clearwater Billing Services, that is for records?
A. Correct.
Q. To the personal injury practice?
A. Correct.
Q. And you charge the clients $50, a $50 flat fee to prepare the records?
MR. BARMEN: Objection. They are not his clients.
Q. The patients?
A. We submit it to the attorney, records. We prepare the records and give them to the attorney.
Q. And the attorney sends a check to you for $50?
A. Correct.
- - - -
(Thereupon, Plaintiff's Exhibit 23 was marked for purposes of identification.)
- - - -
Q. Okay. Two more. Here is Exhibit 23.

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MR. PATTAKOS: It looks like Tom is calling.
MR. BARMEN: No, Tom has been on the phone.
MR. PATTAKOS: I see.
MR. BARMEN: I think I hear him snoring.
MR. MANNION: I'm here.
Q. This is a second file for Mr. Harbour.
A. I don't have the -- the first page of this. Shouldn't there be a medical assignment?
Q. Well, let's see if it's later in the document. We may not have one here. Well, it looks like we either don't have the medical assignment or we just neglected to include it in this exhibit.
MR. BEST: Or you treated him without one.
Q. Or, yeah, perhaps, you did treat him without one.
A. We could have.
Q. And I certainly don't know. The vehicle accident, this chart reflects, on the first page, happened on May 10th, 2012. And he saw you on May 23rd, correct?
A. Correct.
Q. I believe we have the 1500 forms here. If we

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turn -- actually, if we turn just past your chart, we see that he treated at Rolling Acres Chiropractic on April -- I'm sorry, May 21st, two days before he first treated with your clinic.
And then on the form 1500, the initial visit, $350 was charged on May 23rd, under 99204, along with a TENS units, E0730, for $500; is that correct?
A. I'm not there yet, Peter.
Q. Okay.
A. Now I'm there. On May 23rd, the 99204, the 350, and then the E0730, correct.
Q. And then there was a follow-up visit on June 6th for $150?
A. Correct.
Q. Another follow-up visit, on June 20th, for $150?
A. Yeah.
Q. And on June 6th, it looks like there was a $400 charge for trigger point injections, under 20552 and $80 for the Kenalog on that same date, under J1040, correct?
A. Correct.
Q. And there were trigger points on June 20th, as well, for $400, and the Kenalog for 80 under those same codes, correct?

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A. Correct.
Q. And the chart reflects that he was prescribed Flexeril on May 23rd and June 6th, as well as narcotics on May 23rd, June 6th, and June 20th, in the form of Percocet, correct?
A. Let me get back there. You keep jumping back and forth, it makes it a little tedious.
Q. I understand. I'm sorry.
A. You're talking about May 23rd, Flexeril and Percocet, along with Ibuprofen, correct. June 6th, he got Percocet, Motrin, and Flexeril. June 20th, just Percocet, that's correct.
Q. And the diagnoses in addition to cerebral palsy are cervical strain and a lumbar strain, correct? Sorry, if you go back to the chart.
A. Correct.
Q. And if we look at the settlement memorandum at the end, we see a fee of $1,900 paid to Clearwater Billing Service, in addition to the $50 document fee, correct?
A. I don't see the settlement memorandum.
Q. If you look at the second to last page.
A. Correct.

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(Thereupon, Plaintiff's Exhibit 24 was marked

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for purposes of identification.)

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Q. Okay. The last one, Thera Reid. Here is Exhibit 24. Thera came to you with a broken arm, correct? It says on the first page of your chart --
A. Correct.
Q. Okay. It says, the motorcycle driver slammed on the brakes and Thera went flying off the back of the motorcycle and broke her right humerus.
A. Correct.
Q. You proceeded to inject Thera Reid with trigger points on that day, on -- I'm sorry, on April 27th, 2016, which was a week after the April 20th accident under -- and if you turn to the form 1500, which was after the chart --

MR. POPSON: I have an objection. It wasn't the only injury she reported to him, but --

MR. PATTAKOS: Okay. Yeah, I'm just -- sure.

MR. POPSON: You're not trying to imply that he was injecting her broken arm, right?

MR. PATTAKOS: No, I'm not.

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MR. POPSON: Okay. Because she also had had shoulder, neck, and back pain.

MR. PATTAKOS: Right. And we will get to the diagnosis.

Q. But she was charged the -- for the initial visit $300 under 99203, as well as trigger points on that date, three of them, under 20553, for $800 and the $80 for the Kenalog, under J1040.

Received trigger point injections, again, for $800 under the same code, on a follow-up visit, 99213, $150 for the follow-up visit, 800 for the trigger point injections, and 40 for one cc of Kenalog, under J1030.

She then came back, again, on May 18th, if you turn the page. And, again, on the 25th, under 99213 code, she was charged $150 each. Received trigger points again for $800, on May 25th, and $40 for the Kenalog, correct?

A. Correct.
Q. And there was another visit on June 1st for which there is only the follow-up charge under 99213, correct?
A. Correct.
Q. If we go back to your first -- the chart for your first encounter, you see that you diagnosed her

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with a cervical strain, a thoracic sprain, and a lumbar spa -- strain.
A. Also, a fractured humerus, if you look in the body of the dictation, it says, upper extremities, the right upper extremity is in a sling and she sustained a fracture.
Q. Right.
A. So there is no disputing that.
Q. Okay. And you identified four trigger points. It looks like you identified four trigger points twice; is that what happened?
A. Identified a total of eight trigger points.
Q. Okay.
A. Four in the lumbar and four in the cervical, thoracic. She was badly injured.
Q. And it says, you will refer her to Dr. Chonko. Who is Dr. Chonko?
A. Orthopedic surgeon.
Q. Because you referred her to an orthopedic surgeon, because she needed surgery, correct?
A. I referred her to an orthopedic surgeon, because of the fracture. Whether he decides to operate or immobilize it, is his decision.
Q. And on June 1st, 2016, it says, on your note there -- actually, we could even look at May

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25th, it says she is going to have extensive surgery on her right arm for the fracture to the shoulder. And on June 1st it says, she is going to have surgery of her shoulder, correct?

A. Right. And it also says -- let's read the whole thing. The trigger points were very beneficial to her neck. And she needed narcotic analgesics, not only because of the neck, the back, and the fracture.

Q. And she received four prescriptions for narcotics from you, correct?

A. Correct.

Q. And that was on April 27th, May 4th, May 10th, and June 1st, correct?

A. That's correct.

Q. And no muscle relaxers, no TENS Unit, and no back brace, correct?

A. Correct.

Q. And this was after her first date of treatment at Akron Square, being April 22nd, 2016. And you could see that from the first page; is that correct?

A. Correct.

Q. Okay. Dr. Ghoubrial, of these 13 files that we just went over, 13 out of 13 were offered trigger

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point injections, 11 out of the 13 received trigger point injections, 10 out of the 13 received TENS units, 12 out of the 13 received a prescription for muscle relaxers, at least once, and 10 out of 13 received a prescription for narcotics.

Is that unusual to you?

MR. BEST: Objection.

MR. BARMEN: Objection.

MR. POPSON: Objection.

A. It's patient specific. Sometimes they get narcotics, sometimes they don't. Sometimes they get muscle relaxers, sometimes they don't. That pool that you picked out of is a very small group of 13. More than half of the patients that we see in our practice receive no narcotics. And --

MR. BARMEN: You answered the question.

A. -- that's it.

Q. More than half receive no narcotics?

A. Correct.

Q. So you're saying that this -- this distribution of who was offered trigger point injections, who received them, who received TENS units, who received prescriptions for muscle relaxer, and

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who received a script, prescription, for narcotics is not representative?

MR. BARMEN: Objection. Wait a minute. You mean, the 13 files you cherry picked out of thousands?

MR. PATTAKOS: Let me be clear, these were the only 13 files that I have had access to. I wasn't able to cherry pick anything.

MR. BARMEN: That is absolutely false, because there are files I produced to you just last week that aren't in here, because they are not Bates stamped.

MR. PATTAKOS: What are those? What files are those?

MR. BARMEN: Files that you sent me releases for, that I produced to you within the last week.

And, actually, I have a few of them in my bag. And you know, you received them. They're Bates stamped, and you haven't used them here.

MR. PATTAKOS: Who are they for? Let's --

MR. BARMEN: Wait a minute --

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MR. PATTAKOS: If you have them in your bag, let's mark them as exhibits.

MR. BARMEN: So for you --

MR. BEST: No.

MR. BARMEN: No, no, no. But for you to say that every file you have has been marked is unequivocally false, and you know it.

MR. PATTAKOS: Who else did you provide -- you provided me a file for, what's her name? She's from Columbus. Anita Hudson.

MR. BEST: I forgot. It slipped my mind.

MR. BARMEN: So wait, so all -- just that one, all of a sudden you --

MR. PATTAKOS: Let's see Anita Hudson --

MR. BARMEN: -- realize that what you just said is wrong.

MR. PATTAKOS: Let's see Anita Hudson's chart.

MR. BARMEN: Brittany Justice.

MR. BEST: We're not giving him new records.

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MR. BARMEN: No, it's not new records. He has them.
MR. BEST: No, we're not giving them to him now.
MR. BARMEN: I'm not.
MR. BEST: He could do whatever the heck he wants, but he blew his opportunity, because --
MR. PATTAKOS: We don't have any Ghoubrial documents for Brittany Justice. Right. Brittany Justice did not treat with Dr. Ghoubrial, apparently, Brad, so you didn't give me a file for Brittany Justice.
You did -- I believe you did give me a file for Anita Hudson --
MR. BARMEN: Sharde Perkins.
MR. PATTAKOS: Yeah, we already -- we already went over Sharde Perkins. Anita Hudson is the only one. And, you know what, we'll print out a copy of that at the break.
MR. BEST: We're not taking any more breaks. We're finishing this deposition. It's 5:20.
MR. PATTAKOS: Well, we started an

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hour late, later than we would have, because you guys insisted on instructing, obstructing at Dr. Gunning's objection.
MR. BEST: We started late, because you were late.
MR. PATTAKOS: Uh-huh.
MR. BEST: It was not anything to do with Dr. Gunning.
MR. PATTAKOS: The -- we finished late, because you obstructed. The Judge rejected your arguments and you tied us up --
MR. BEST: You could keep dancing around --
MR. PATTAKOS: -- you tied us up for 40 minutes.
MR. BEST: If you want to finish the deposition, keep going.
MR. PATTAKOS: We are going to keep going.
MR. BEST: Good.
MR. PATTAKOS: Let's just print out Anita Hudson, I believe we have it.
MS. HAZELET: Yeah. Okay. I will be right back.

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MR. PATTAKOS: Thank you. Okay.
MR. BEST: Do you have a question?
MR. BARMEN: His brain walked out of the door. He has to wait until she comes back.
MR. BEST: If you have questions, let's ask them, please.
MR. PATTAKOS: Okay. Anita Hudson, apparently, was not treated by Dr. Ghoubrial or his practice. So we have been over all of the files that we had received from Dr. Ghoubrial's office.
MR. BARMEN: You mean, all of the file for which you produced releases, right?
MR. PATTAKOS: Yeah, we don't -- well, no, because the one you still haven't produced, I forget his name.
MR. BARMEN: Which one, because you also --
MR. PATTAKOS: Todd something.
MR. BARMEN: You also e-mailed me last week and said I had never given you Harbour, which obviously you had, because they weren't Bates stamped by me, so check

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your own records.
MR. PATTAKOS: I'm not sure about that.
MR. BARMEN: You're not sure about that?
MR. PATTAKOS: Do you have this document?
MR. BARMEN: I'm sorry, Harbour's are 24 -- 23 and 24 --
MR. PATTAKOS: Brad --
MR. BARMEN: They are not Bates stamped by me, Peter --
MR. PATTAKOS: We don't need to argue about this.
MR. BARMEN: -- which means you didn't get them from me.
MR. PATTAKOS: We don't need to argue about this.
MR. BARMEN: There is no argument. You are wrong, you just can't acknowledge it.
Q. These -- this reflects a printout from cms.gov. Do you know what cms.gov is?
A. Yes.
Q. What is it?

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A. Centers for Medicare Services.
Q. What does this document reflect?
MR. BARMEN: Objection.
A. I don't know.
Q. Well, if I represent to you that today I went in and put in the year 2019 and entered the codes for trigger point injections, 20552 and 20553, as well as for a back brace, under L0631, and TENS units under E0730, in Ohio, the specific locality, which you could see in the field, in the middle here, under number 1520200, this is the official government record of what Medicare and Medicaid pay for these codes.
Apparently, they pay nothing for TENS units and nothing for back braces. And for trigger point injections, 1 to 2, under the 20552 code, we see a range of $38.22 to $59.08. And then for the 20553 code, we see a range of $43.48 to 68.08.
Do you have any reason to doubt this is the case, Dr. Ghoubrial?
MR. BARMEN: Objection.
A. First of all, I have no idea, because I haven't see this document. Second of all, as I explained to you in great detail, we're not credentialed

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with them for this. And third of all, most of the patients don't have this insurance, anyway. So this document is completely irrelevant.
Q. A lot of them do have this insurance, don't they?
MR. BEST: Objection.
A. No, they don't. They don't have it. It's completely irrelevant.
Q. Okay.
A. This document is the most irrelevant document you produced.
Q. Okay. Do you understand the difference between a facility price and a non-facility price?
MR. BARMEN: Objection.
A. No.
Q. You understand that a hospital facility that's certified by the federal government, as such, is allowed to charge a bit higher for these codes to compensate for overhead?
A. Peter --
MR. BARMEN: Objection. He said he didn't know. He's not going to take your word for it, Peter. Move on to the next question.
A. As I told you, I know nothing about this document.

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MR. BARMEN: You answered it.
A. And that's it.
Q. Okay. And you're aware of what a limiting charge is?
A. No.
Q. You don't deal with this in your own practice?
MR. BEST: He just said "no".
Q. You don't deal with this in your internal medicine practice?
MR. BARMEN: Objection.
A. I don't deal with any of the billing in my internal medicine practice.
Q. Do you treat Medicaid patients or Medicare patients in your internal medicine practice?
A. I don't look at what the insurance they have. I don't pay attention to that. That's not something I do.
Q. You testified that a lot of your patients were elderly?
A. Correct.
Q. So it stands to reason that they have Medicare coverage, if they're elderly, correct?
A. Correct.
MR. BARMEN: Objection.
Q. So you probably do treat a significant portion of

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patients with Medicare coverage in your office, correct?
MR. BARMEN: Objection. Don't guess.
Q. In the internal medicine practice.
A. Peter, I have already testified. We're not credentialed on the other side. We're here to talk about the personal injury business. That's what you've named in your -- in your lawsuit.
As far as my practice goes, I don't do any of the billing. I don't know what percentage are Medicare, I don't what percentage are Medicaid.
Q. You don't turn away Medicare patients from your internal medicine practice, do you, Doctor?
MR. BARMEN: Objection.
A. I don't handle the scheduling, either.
MR. PATTAKOS: How do I make this go away, this stupid thing?
MR. BARMEN: I often myself wonder how to make stupid things go away, Peter.
MR. PATTAKOS: Okay. Thank you. My brain, she did it.
MR. BARMEN: Oh, that's patently obvious.
Q. So you have no idea what a limiting charge is?

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credentialed through that entity for this. Never seen this before. And I know of no law pertaining to this at all.

MR. BARMEN: Show me the document where it talks about the waiver --

MR. PATTAKOS: That's all I was asking.

MR. BARMEN: -- or supports your interpretation.

MR. PATTAKOS: We can take a break here in a moment.

MR. BEST: We're not taking no breaks.

THE WITNESS: We're going to keep going.

MR. BEST: You either finish or not, but we're not taking any breaks.

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(Thereupon, Plaintiff's Exhibit 27 was marked for purposes of identification.)

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Q. Let's look at Exhibit 27. I am going to represent to you that this is another printout that I made at cms.gov web page today, filling in Ohio as the locality, and searching for approved

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Medicare and Medicaid prices for the other codes that you are routinely treating KNR clients with.

And that is the initial office visit, the follow-up office visit, and the, essentially, steroids. It says, methylprednisolone here, which is what came up when I entered the same J1020, 30, and 40 codes --

MR. BEST: Peter is going to be a witness in this case.

Q. -- that you were using for the --

MR. BARMEN: He already is.

Q. -- I'm sorry, Kenalog. And these are the prices that came up, a range of -- well, first of all, Medicare and Medicaid don't appear to cover the steroid codes.

And for an initial office visit, charges are approved between $75 and $115 for the initial visit, and $50 and $78 for follow-up visits.

Do you have any reason to disagree with this document or believe that this --

MR. BEST: Objection.

Q. -- does not reflect what the government pays --

A. What's your question?

Q. -- for Medicaid or Medicare patients?

MR. BEST: Objection.

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MR. POPSON: Objection to form.

A. What's the question?

Q. My question is, do you believe that this is an accurate reflection of what the government is paying for these codes for patients who have Medicaid and Medicare coverage?

MR. BARMEN: Objection.

A. I don't know, No. 1. No. 2, as I've told you before, we're not credentialed. And number three, you know very well that in these cases the at-fault party is the motor vehicle accident, so this pertains to nothing. This document means --- each document you give me means less than the one before.

MR. BARMEN: Just answer his question.

Q. Dr. Ghoubrial, you would agree that if a --

A. I am going to answer this.

Q. You would agree that one of your patients who came to the personal injury clinic that was injured in a car accident and had Medicare or Medicaid coverage would be much better off paying these prices than paying the prices that you're charging for the same code, wouldn't you?

MR. BARMEN: Objection. Improper

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hypothetical.

MR. MANNION: Objection. Improper hypothetical and incomplete.

A. I told you, they -- we do as the patient instructs. You just got done providing 12 attorney liens, telling us, where the patient tells us where to send these. So they go to the attorney, as the patient directs us.

They have never once, in the ten years I have been doing this said, Medicare, Medicaid, or any other insurance.

Q. So you're saying that the patients are asking to sign the medical liens?

A. The patients not only --

Q. As opposed to -- as opposed to being advised by the law firm or advised by your office that your office will not treat them unless they sign those medical liens; is that what you're saying?

A. No.

MR. BARMEN: Objection to form.

A. I treat the patient irrespective. And I told you three times already, I treat all patients. And you saw the millions of dollars in free care that we just give to these patients.

So, three things, again. We're not

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MR. BEST: Mr. Buffoon, over there.
MR. PATTAKOS: What --
MR. BEST: Trust me, there is no law that says what you said --
MR. BARMEN: Wait until he asks you a question.
MR. BEST: -- none. No statute, no law, no case. So you're making it up. And you somehow have this fiction in your brain of what it should be, but it's not the way you want it to be.
So he's already explained this to you. My advice to him, he could do what he wants, my advice to him is quit talking about it. He's given you plenty of explanation.
MR. BARMEN: There is no question.
MR. PATTAKOS: David, that's a nice answer that you just provided for you client. If that's the best that you think you could do, as his attorney --
MR. MANNION: Oh, stop it.
MR. PATTAKOS: -- the record reflects that.

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MR. MANNION: Peter, stop the nonsense.
MR. PATTAKOS: It is noted.
Q. Dr. Ghoubrial --
MR. MANNION: Stop the nonsense.
Q. -- you don't think you have an obligation to make sure that your clients are paying a fair price for the treatment that they receive?
MR. BARMEN: Objection.
MR. MANNION: Objection. Argumentative.
Q. Do you really believe that?
MR. BARMEN: Objection.
MR. BEST: Objection.
A. I've already asked it -- you've already asked it and I've already answered you on at least a dozen occasions, probably two dozen by now.
My obligation is to render quality care. I told you we weren't credentialed. I told you we do as the patient directs us. And you just were so kind to point out the fact that every one of these patients was represented by a law firm. So I did what I was told by the patient, that's it.
Q. What does a law firm have to do with it?
A. The patient directs what's being done with their

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care and what is being done with their chart, they have to sign a HIPAA Form, where they want it to go, and how they want it handled. We honor that. So if you have someone here who said we didn't honor it, I'd be happy to listen to you.

- - - -

(Thereupon, Plaintiff's Exhibit 28 was marked for purposes of identification.)

- - - -

Q. Here is Exhibit 28. This is a printout from Amazon.com for an Aspen Medical Evergreen lumbar brace, showing a price of $173, you're charging $1,500 for.
MR. BARMEN: Wait. First off, are you representing that it's the same exact brace?
MR. PATTAKOS: Same exact price as what?
MR. POPSON: You mean, the same exact brace?
Q. Well, Dr. Ghoubrial, I --
MR. BARMEN: Wait. You just put something in front of us and you made a statement that you are representing that this is the same brace that he provides.

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Where are you getting that from? The Aspen Medical Evergreen, where are you getting that from?
Q. Do you agree, Dr. Ghoubrial, that you mark up the lumbar braces by more than a thousand dollars?
A. Not even close.
MR. BARMEN: Objection.
MR. MANNION: Objection.
Q. What do you pay for those -- what do you pay for those lumbar braces?
A. Not even close. And I want you to pay attention to this answer. No. 1, you're not taking into account my 12 years of training, my 20 years of practice experience, the liability associated with what I do. The liability associated with what the staff does.
The overhead with regards to the staff's salaries as well as my salary. The overhead associated with the billing, the billing software, the personnel, the transcriptionist, and the liability associated with the practice.
So you have missed it completely. There is no thousand percent or 1,200 percent markup. That just simply doesn't exist.
Q. Because -- because the overhead is captured in

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that price, that you charge the patients for the brace; is that what you are saying?

MR. POPSON: Objection.

MR. BARMEN: Objection.

A. I've already answered your question.

Q. Do you mean to say that you are justified in the markups that you charge, because of the overhead that you have in your office, your liability insurance --

MR. BEST: I object.

Q. -- and all of your employees and everything else?

A. I've already answered it.

MR. MANNION: Objection. He did not say it was a markup.

MR. BEST: There is no requirement to justify --

Q. What does that -- Dr. Ghoubrial, what does the -- what does what you just said have to do with the markup on the lumbar supports that you provide?

MR. BARMEN: Objection. First of all --

A. I just told you.

MR. BARMEN: Wait a minute. We've not established that it's the same brace --

MR. MANNION: Objection. He did

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not say it was a markup. Stop putting words in his mouth.

MR. BARMEN: This is something you just pulled off of Amazon.

MR. PATTAKOS: The Judge ordered you to produce this information and you have not done it, so I'm doing my best.

MR. BARMEN: No, no, no, no. No, no, no. That is an absolute blatant lie. I sent you an invoice for the braces, so you could look at that and you tell me, looking at that, if this is the same brace, because I think you know it's not.

- - - -

(Thereupon, Plaintiff's Exhibit 29 was marked for purposes of identification.)

- - - -

Q. Let's take a look at Exhibit 29.

MR. BARMEN: Oh, you mean the thing you just said I didn't produce?

MR. BEST: One lie after another.

MR. PATTAKOS: You got that right, Mr. Best.

Q. These are documents that were produced by your attorney. They're not Bates stamped.

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MR. BARMEN: The ones he said I didn't produce just now.

Q. Okay. So, Cybertech one-size fits all brace, it's actually less expensive. It's $100 each, if we look at the last page; is that correct?

MR. BARMEN: So the point is what you just gave him in Exhibit 28 and tried to represent as being the same, you're now recognizing and admitting that was not the same.

MR. PATTAKOS: So his markup was actually higher?

MR. BARMEN: The point is, you're blatantly misrepresenting two things --

MR. MANNION: Objection to the word "markup".

MR. BARMEN: -- one, that this was the same brace in 28, which is false and you know it. And, two, that I didn't produce the invoice, which is false, and you know it. Continue.

MR. PATTAKOS: Are you sure you're done?

MR. MANNION: Objection --

MR. BARMEN: For now.

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MR. MANNION: -- continued use of the word "markup". He never said that's what it was.

MR. BARMEN: It's clear on the record.

Q. So this last page on this Exhibit 29 is an invoice from Tri-Tech Medical Supply.

Who is Tri-Tech Medical Supply?

A. They supply us with equipment.

Q. And that is run by Scott Wilson, correct?

A. Correct.

Q. And this reflects an invoice in, dated January 9th, 2018, for 100 Ultima 3T TENS units and 30 Cybertech one-size fits all braces, correct?

A. Which invoice are you referring to?

Q. The last page.

A. That's correct.

Q. So, it's true that you're paying approximately $100 for the braces that you are charging your personal injury patients $1,500 for, correct?

MR. MANNION: Objection.

MR. BARMEN: Objection.

A. It's not that simple, Peter.

Q. Explain.

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A. I told you, you're not looking at the whole picture. You are missing 90 percent of it.
Q. Please explain.
A. Allow me to explain. You're not factoring in the liability. You're not factoring in the -- my overhead, my training, the staff's training, the liability coverage associated with the product. Liability coverage associated with the staff. The staff training the patient on how to properly use, whether it be the TENS Unit or the brace.
You're not taking into account, the overhead with regard to the software, and you're not even taking the overhead with regards to the rent in the office, so you're missing it completely. You missed it completely.
Q. So, have you conducted an analysis of all of these factors and how they impact the pricing that you end up charging the personal injury clients for these supplies?
MR. BARMEN: Objection. Go ahead.
A. We took a look at the marketplace about seven or eight years ago and looked at what these things were going for and we felt we were right on par midline with what they sell for, generally, that's it.

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Q. So the high volume that you handle, the high volume of patients that you handle, justifies the markup that you charge to the patients?
MR. BARMEN: Objection.
MR. BEST: Objection.
MR. MANNION: Objection.
MR. BEST: That's not what he said.
MR. BARMEN: It's not even close to what he said.
A. That's not what I said, Peter.
Q. Well, how does -- how is it not what you're saying? It sure sounds like that's what you're saying, so please explain to me --
MR. BARMEN: Objection.
MR. MANNION: Objection.
Argumentative.
Q. Please explain to me why you're referring to all of these overhead expenses in justifying the markup for these supplies, sir --
MR. BARMEN: Objection.
Q. -- because I don't understand it.
MR. MANNION: Objection.
Argumentative. Move to strike.
A. I have already answered it. He could read back

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my answer for you. It's the same.
Q. Okay. If we look at the third to last page of this document, we see charges for gloves, syringes, needles, alcohol, pad preps, I believe that's it?
A. Yes.
Q. Could you tell me, looking at this document, what the quantities of each of these supplies is that is ordered here?
I see an invoice, for example, if we look at the glove, I see invoice quantity one, for glove exam, that doesn't mean you're buying one set of gloves, correct?
A. It's one box or one container.
Q. Do you know how many come -- how many gloves are in a box?
A. No.
Q. And similarly, you don't know how many syringes are in one container, that's reflected here in the quantity of four?
A. I do not.
Q. And you don't know how many needles, you don't know how many alcohol pads, you don't know how many needles, and needles again, going down to these HP -- HCPCS codes?

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A. Correct.
Q. Okay. But someone must know, correct, in your office?
MR. BARMEN: Objection.
Q. Someone knows?
A. Yeah.
Q. Who would know in your office?
A. Whoever does the ordering.
Q. Okay. And you could determine who that is for me, correct?
A. Yeah.
Q. Okay.
MR. MANNION: I can't wait until you depose someone from the Cleveland clinic, Peter. They'll love these questions. Maybe you could transform the whole medical industry.
MR. BARMEN: He is a crusader.
MR. BEST: He and AOC, they'll get together when they fix the climate. He is going to be just as smart as she is.
MR. MANNION: This is the most ignorant line of questioning, I think I've ever heard in a case like this. It has zero bearing on this case.

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Q. Are you aware of this regulation, Exhibit 30? This is from the Ohio Administrative Code, Section 5160-1-13.1, titled Medicaid Consumer Liability.
Are you familiar with this?
A. Yes.
Q. Do you believe you comply with this?
MR. BARMEN: Objection.
A. If the institution is credentialed, for instance, if I go work for Dr. so and so, or this organization, if that institution is credentialed with it and I'm credentialed with it, contemporaneously, then this applies.
For instance, there is an organization called, MDVIP, they charge $5,000 a year to be a member no matter what. If a patient has Medicaid not -- they don't participate in the program. And as I told you five or six or seven times, we're not credentialed, that entity. So it's illegal for us to use it.
Q. So you believe this statute doesn't apply to you, because you do not accept Medicaid or Medicare?
MR. BARMEN: Objection.
A. We can't. I told you, we're not credentialed through that entity.

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Q. So, this statute provides -- says, that providers are not required to bill the Ohio Department of Medicaid. And I'm looking at Section C here. Providers are not required to bill the Ohio Department of Medicaid for medicaid-covered services rendered to eligible consumers.
However, providers may not bill consumers in lieu of ODM unless: No. 1, the consumer is notified in writing prior to the service being rendered that the provider will not bill ODM for the covered service. And two, the consumer agrees to be liable for payment of the service and signs a written statement to that effect prior to the service being rendered.
And, three, the provider explains to the consumer that the service is a covered Medicaid service and other Medicaid providers may render the service at no cost to the consumer.
A. Again --
Q. Am I read that correctly, sir?
A. You're reading.
MR. BARMEN: Objection.
A. Let me finish --
Q. And you believe this does not apply to you?
A. Let me finish. No. 1, the entity isn't even

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credentialed, so it doesn't apply. No. 2, most of them don't give their insurance information. And, number three, and most importantly, the consumer directs, as item No. 2 that you pointed out, unfortunate, that you pulled this document out, it says, the consumer agrees to be liable for payment of the services, and signs a written statement. That's what the lien is for.
Q. Have you ever consulted with the government about this interpretation of this regulation?
MR. BARMEN: Objection.
A. I know what the regulation is, and I have consulted with proper counsel.
Q. Okay. Have you sought an opinion from the Ohio Department of Medicaid on your interpretation of this regulation?
MR. BARMEN: Objection.
MR. BEST: I object. He just said, he talked to his proper lawyers.
MR. BARMEN: It's ridiculous.
A. I talked to proper counsel. You have to be credentialed. You can't bill them unless the entity you work for is credentialed.
In other words, if Peter Pattakos has a medical practice that takes Medicaid and I'm not

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credentialed with Medicaid, I can't bill, even though you are.
MR. BEST: You explained it.
MR. MANNION: Well, I guess you could bill, but it would be fraudulent. That's what he wants you to do, apparently.
A. And you know they're not the at-fault party, anyway.
MR. BARMEN: You answered his question.
Q. You don't tell the clients they're going to be charged?
A. I answered that question.
Q. Pardon me, Dr. Ghoubrial. You don't inform the clients of the price they're going to be charged for the braces and TENS units when you distribute them, do you?
MR. BARMEN: Objection.
A. You -- I've answered that question three times already. Whether it be my private practice, my hospital setting, my personal injury, I never discuss prices. I render the care that they need irrespective of what the cost is. That's the third time I've answered that.
Q. You make them sign consent forms, showing that

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easy for anyone who counts the lines you've taken up in this deposition to realize how ridiculous that soliloquy just was.

MR. BARMEN: I have a more immediate concern of the way you're reading this and trying to portray that the word "costs" here, is talking about the price of treatment. When you read, including the risks, benefits, and costs of foregoing treatment, it's not used in that context, Peter.

MR. PATTAKOS: What context?

MR. BARMEN: The context you're trying to make the word "costs" here equate to the price of a particular modality of treatment.

MR. PATTAKOS: That's what your testimony is, Brad?

MR. BARMEN: No, that's what I'm trying to point out to you.

MR. PATTAKOS: To the witness?

MR. BARMEN: Because you're misrepresenting, the way you're reading it.

MR. BEST: He's answered the question.

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Q. Dr. Ghoubrial, do you disagree with anything in Section B here?

A. As I stated, Peter, if you read in the very first sentence, the opinions in this chapter are guidance for physicians, are not intended to be established standards.

And I told you what my standard was. I always do what's best for the patient, no matter what the cost, whether they have insurance, whether they don't. No matter how the patient presents. I treat them with the same dignity, respect, and efficiency, as I would my own family member, that's it.

Q. You testified earlier that you never discussed the cost or price of treatment with your patients?

A. Correct.

Q. Why is it that you never discussed the cost or price of treatment with your patients?

MR. BARMEN: Objection.

A. Because I simply give them the best treatment that's available irrespective of whether they are able to pay, including my treatment.

Q. You testified earlier about how your personal injury practice started and why you started it.

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And you said that local chiropractors who started sending you patients saying things like, Sam, we're having a great deal of trouble getting these patients seen. They were primarily minority patients. They don't have health insurance. Patients from under served areas, where they're looking for doctors to take care of them and they can't find it in a setting, a personal injury setting.

Do you recall that testimony, sir?

MR. BARMEN: Objection.

A. Yes.

Q. And you've testified that these patients are in a chiropractor's office, they want to see an MD, and because they don't have insurance and they don't have access to a provider, their MDs don't want to get involved with motor vehicle accidents, and et cetera, and that is why you opened the personal injury practice, correct?

MR. BARMEN: Objection.

MR. BEST: Objection.

A. Yes.

MR. BEST: We're repeating everything that he's already testified to six hours ago.

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Q. Okay. It's true Dr. Ghoubl -- Dr. Ghoubrial, pardon me, that there are a number of places in Akron Ohio, that a patient could go to be treated under Medicaid or Medicare coverage or even where uninsured patients can go and receive treatment for acute injuries, including back pain?

MR. BARMEN: Objection.

A. Absolutely.

Q. And those places accept Medicaid patients, they accept Medicare patients, and they even give charity care, correct?

MR. BARMEN: Objection.

A. The patient comes with their own free will. They are free to go wherever they want, whenever they want, and to whoever they want. No one is forced to see me.

Q. Well, there is a lot of places where these patients could go to get care at a much lower cost than they get from you; isn't that true?

MR. BARMEN: Objection.

A. I don't know.

Q. Do you know AxessPointe?

A. I've heard of it. I don't know anything about it.

Q. You have heard of AxessPointe, but --

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MR. MANNION: Do you tell your clients that some lawyers charge less per hour?

Q. -- you don't know anything about it?

A. I've heard about it.

Q. You know it's one minute away, they have an office that is one minute away from Dr. Floras' office on Arlington Street?

MR. BARMEN: Objection. He said he doesn't know anything about it, other than hearing about it. How would he know where it was?

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(Thereupon, Plaintiff's Exhibit 32 was marked for purposes of identification.)

- - - -

Q. Does this refresh your recollection, handing you Exhibit 32? I am going to read this. First page, this is from their web page that we printed off yesterday. AxessPointe Community --

MR. BARMEN: Do you have any exhibits or questions, that don't just involve you reading documents?

Q. -- provides affordable, high-quality health care to families and individuals in Summit and Portage

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counties.

We offer a full range of services including medical, dental, women's health, behavioral health and a reduced-rate pharmacy. Our fees are based on current income and family size.

We accept most insurance plans including Medicaid and Medicare. To find out more about our services, fees, insurances plans accepted or to schedule an appointment, please call.

A. They're right across the street --

MR. BARMEN: Wait. There is no question.

A. -- patients can go.

MR. BARMEN: Wait for a question, please.

Q. Dr. Floras doesn't send patients there, though, does he?

MR. BARMEN: Objection.

A. I can't speak for what Dr. Floras does.

Q. If we move on, it says that, on the about us page --

A. Peter, what's the question?

MR. BARMEN: Wait for it.

Q. It says, there is five current sites in Northeast. It says that AxessPointe Community

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Health Centers, originally named Akron Community Health Resources, Inc., opened its doors in 1995 after receiving funds from the Bureau of Primary Health Care to establish the first federally qualified health center in Summit County.

Five current sites in Northeast Ohio, including three in Akron, one in Kent and one in Barberton. As an FQHC, we deliver primary medical and dental care in medically underserved areas.

AxessPointe also provides -- I won't read that sentence. Third paragraph, while our focus is on uninsured, underinsured and Medicaid/Medicare patients who may not have access to affordable health care, our services are welcome to all.

A. What's your question, Peter?

Q. My question, Dr. Ghoubrial, is: It's really not true that it's hard for patients to find doctors to treat them for injuries even when they don't have insurance and even when they are underserved?

MR. BARMEN: Objection.

A. Yes, it is.

Q. Why can't they go to AxessPointe?

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MR. BARMEN: Objection.

A. They can.

MR. BARMEN: Seriously, Peter, do you have any questions for this witness that don't just involve you reading documents into the record?

Q. They can. Why don't they?

MR. BARMEN: Objection.

A. You have to ask the patient. AxessPointe is right across the street. They're free to go.

Q. Could it be that a law firm and a chiropractor are colluding to send them to you?

MR. BARMEN: Objection.

A. Absolutely not.

MR. BARMEN: Objection. Move to strike. Don't just --

THE WITNESS: He asked a question. Listen, he asked a question.

MR. BARMEN: No, you listen. Give me time --

THE WITNESS: Just listen --

MR. BARMEN: -- after the question is asked --

THE WITNESS: Look, let me --

MR. BARMEN: -- before you --

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THE WITNESS: You're interfering. Let me just answer the question.

A. Ask a question, Peter, and get to the point.

Q. Dr. Ghoubrial, I just did get to the point. This is a place that has five locations all across Northeast Ohio saying, we'll take anybody.

A. What's the question, Peter?

Q. My question is, how could it be true that these chiropractors that are sending patients to your clinic, where you don't accept insurance, and you're charging millions of dollars to thousands -- to 6,000 patients --

A. What's the question?

Q. How could it be true that these chiropractors are sending these patients to you, because they don't have health insurance, and they're underserved and they can't find care elsewhere?

MR. BARMEN: Objection.

A. The patients are free to go to AxessPointe --

MR. MANNION: Objection.

A. -- they're free to come to me, they're free to go to wherever they want. I've told you that six times.

Q. If only that were true, Doctor. It just doesn't seem to be.

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A. It's true.

MR. BARMEN: Objection. Move to strike.

MR. MANNION: Move to strike.

- - - -

(Thereupon, Plaintiff's Exhibit 33 was marked for purposes of identification.)

- - - -

Q. Plaintiff's Exhibit 33, this is an exhibit. Are you familiar with Faithful Servants Health Care?

A. Never heard of it.

Q. Okay. Free urgent health care services with a Christ-like compassion --

MR. BEST: Would you please stop yelling. And please stop reading things that are typed, that humans can read.

Q. For those without insurance and the economic means to access traditional medical care. You've never heard of this place?

A. Never. What's the question, Peter?

Q. Well, I first asked you if you've ever heard of this place? And the main office for this outlet is 65 Community Road, in Tallmadge, Ohio.

MR. BARMEN: Is that a question?

A. Peter, what's the question?

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Q. Well, this just shows further, Doctor, that it's not true that --

A. What's the question?

Q. It's not true that underserved patients need you to treat them outside of their health insurance, is it?

MR. BARMEN: Objection to form.

A. Peter, you're not paying attention to the answer, and you're not even asking the question. What do you want?

Q. Well, you don't deny, Doctor, and for example ---

A. Peter, what do you want?

Q. Look at the patient eligibility page. Where it says that if you have annual income at or below 200 percent of the federal poverty guidelines, you are eligible to be a patient at this place.

A. What's your question?

MR. BARMEN: Status must be verified.

Q. Even without medical insurance or with Medicare or Medicaid, but lacking a primary care provider --

MR. BEST: Sam, Sam, wait.

MR. BARMEN: Objection. Why do you skip the line about, status must be

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verified?

MR. PATTAKOS: You know, I can't win. You tell me to hurry up. You get mad when I read something. You get mad when I don't read something.

MR. BARMEN: Because you intentionally skip things that fly in the face of your argument, Peter, and you know that. And you are about as transparent as a jellyfish and just as slimy.

MR. PATTAKOS: Oh, boy. Brad, that's the nicest thing anyone has ever said to me.

MR. BEST: If you have a question, why don't you ask it, so we could get done with this.

Q. We then see that they provide urgent medical care conditions for minor illnesses and injuries; cuts, sprains, back pain, possible broken bones --

MR. BEST: Would you stop yelling? What is wrong with you, mentally? Stop yelling. Ask a question like a normal human.

MR. PATTAKOS: Are you done

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--

A. I already gave you my answer. My answer is not going to change I don't care who you cite.

Q. Okay. You are familiar with UpToDate, correct?

A. Yes.

Q. I just have a few more records from UpToDate to show you, a few more studies from UpToDate.

What is UpToDate?

A. UpToDate is an online portal that gives internists and other providers information on various topics in medicine. I've used it from time-to-time.

Q. You have a subscription to it, don't you, Doctor?

A. Not now.

Q. Why not now? Because the hospital closed?

A. No.

MR. BARMEN: Objection.

Q. Why don't you have a -- why don't you have a subscription to UpToDate now?

A. I just don't use it. I use other journals.

Q. Okay. You agree that UpToDate is a reliable source for current medical research?

MR. BARMEN: Objection.

MR. BEST: Objection. He's already addressed all of that.

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MR. MANNION: Objection.

A. Some things I agree with and some things I don't.

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(Thereupon, Plaintiff's Exhibit 39 was marked for purposes of identification.)

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Q. Here is Exhibit 39. It talks about what UpToDate is. It states here on the first page, about us, more than 6,900 world-renowned physician authors, editors, and reviewers use a rigorous editorial process to synthesize the most recent medical information into trusted, evidence-based recommendations.

A. But all 6,900 of those are not working on back pain. They're working on everything from hematology to prostate cancer.

Q. But you don't disagree that that is what UpToDate provides, do you, Doctor?

A. No, but it's not just on back pain.

- - - -

(Thereupon, Plaintiff's Exhibit 40 was marked for purposes of identification.)

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Q. Here is Exhibit 40. UpToDate's editorial policy, just so we could eliminate any doubts. Well, you

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know, I would -- wouldn't really need to use this if there wasn't so much sniping about how evidence-based research is somehow inappropriate to enter into a deposition. But we might as well cover it. Dr. Ghoubrial, this is an UpToDate --

MR. MANNION: Objection. Inappropriate comment.

Q. This is UpToDate's editorial policy. It says --

A. I've seen it.

Q. Okay. You agree this is a true and accurate statement?

A. Yes.

MR. BARMEN: Objection.

Q. And it says, UpToDate is updated daily following a continual comprehensive review of peer-reviewed journals, clinical databases and other resources.

A. On a multitude of subjects, yes.

Q. Okay. It says, under --

MR. BEST: The deli person at Giant Eagle could practice medicine, if they read this.

Q. It says under peer-reviewed, the deputy editor for a specialty, as well as the editor-in-chief and/or section editors assigned to a topic, review all UpToDate content, including new

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topics, updates and recommendations.

In addition, each UpToDate specialty has assembled a group of peer reviewers, often in conjunction with a sponsoring specialty society, who are responsible for reviewing selected topics in each specialty.

You don't doubt that, do you?

MR. POPSON: Objection.

MR. BARMEN: Objection. It says what it says.

A. It says what it says. No comment.

Q. Okay.

A. How many more of these do you have, Peter?

Q. Just a few, Doctor.

MR. POPSON: You said that the last time.

- - - -

(Thereupon, Plaintiff's Exhibit 41 was marked for purposes of identification.)

- - - -

Q. Here is a study from UpToDate on treatment of acute low back pain. Here's Exhibit 41. We just pulled this two days ago.

It says on page 4 -- I'm sorry, page 2, under general approach to care, it says, the goal of

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me, showing standard of care, I am going to tell you those standards of care are relevant, they do apply to a certain basket of patients, but not all. You have to individualize the care.

So if you have another study, I am going to give you the same answer. If you have a study after that, you're going to get the same answer. You have to individualize your care, because each patient is an individual, not a study group or a series of guidelines. You have to plug in those guidelines according to what the patients' needs are.

Q. I understand that, Doctor.

A. That's it. Are we done now? Are we done now?

Q. You said you don't disagree with the standard of care --

A. No, I said it has to be applied properly.

Q. Do you disagree with any of the standards of care that I have read today?

MR. BARMEN: Objection.

A. No. As long as they're applied in the proper context, in the individual setting, each set of standards of care have to be applied individually. So that answers all of your questions. And it saves you a whole lot of time

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and it saves me a whole lot of time.

Q. We are still going to go through this. If we look at page 5 where it says, lumbar supports. It says, there is no evidence to suggest that lumbar supports such as corsets or braces have therapeutic value for most patients with acute low back pain.

Do you agree with that statement?

MR. BARMEN: Objection.

A. No, I didn't. Each and every patient is specific. It's said "most". Some patients, it's very appropriate, others it isn't. These are individuals. This is not a class of patients, they are individual patients. And if you don't treat them that way, you are committing malpractice, in my opinion.

Q. And if you turn to, pardon me, the top of page 6 it says, paraspinal injections. It says a variety of injections -- this is at the top of page 6.

A. I see.

Q. It says, variety of injections, eg, epidural spinal, trigger point, or facet joint injections have been advocated for patients with back pain. There is little evidence to support any type of

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injection for nonspecific acute low back pain.

MR. POPSON: Objection.

"Nonspecific".

Q. Do you agree with this, Doctor?

MR. BARMEN: Objection.

A. No, I don't.

Q. And what's the basis for your disagreement?

A. Because if you read carefully it says, there is little evidence to support any type of injection for nonspecific acute low back pain. My patients are specific, so this is specific low back because as it pertains to focal trigger points. So I agree with that.

Q. Just a few more. We don't even need to look at this one.

A. Peter, the answer is going to be the same.

Q. We have to walk through it.

MR. BEST: You think you're dealing with someone rational, Sam. He's not rational.

A. How many more? You said you only had a few more and you pulled out 20.

Q. No, this is just copies.

A. Huh?

- - - -

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(Thereupon, Plaintiff's Exhibit 42 was marked for purposes of identification.)

- - - -

Q. This is just copies. Here is page 42.

A. How many more?

Q. I mean, Exhibit 42.

A. Could you please let me know how many more you have, Peter, so I could know whether I need to call these people back?

Q. This one and two more.

A. And then are we done?

Q. No. We'll be done with these studies and then I'll only have a few more questions to ask, okay?

A. Thank you, Peter.

Q. Did I hand this to you?

A. Uh-huh.

Q. This is an UpToDate study -- UpToDate summary, I should say of subacute and chronic low back pain: Nonpharmacologic and pharmacologic treatment.

It says at the bottom of the first page, the last sentence, most patients -- more than 85 percent who are seen in primary care have nonspecific low back pain, which is low back pain that cannot reliably be attributed to a specific disease or spinal pathology.

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Rapid improvement in pain and disability and return to work are the norm in the first month.

You agree with that, Doctor?

A. No.

MR. BARMEN: Objection.

A. It doesn't apply to the patient population we're working with. And furthermore, each patient is individual. When you're talking about an office setting patient versus a PI patient, which you're talking about, this doesn't apply at all.

Q. Okay. So --

A. Where else would you like to go?

Q. Let's keep going to page five where it says, lumbar supports. It says, there is no compelling evidence that lumbar supports are effective in patients with chronic low back pain.

Do you disagree with that?

MR. BARMEN: Objection.

A. Yes. First of all, we're not dealing with chronic low back. We're dealing with acute low back in this type of setting. So I would, yes, I disagree with it. And on occasion, I've seen some of my colleagues in the neurosurgical field use it for chronic low back pain.

Q. If we turn to page 12, it says, transcutaneous

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electrical nerve stimulation, which is TENS?

A. Yes.

Q. TENS refers to the use of a small battery-operated device to provide continuous electrical impulses via surface electrodes, with the goal of providing symptomatic relief by modifying pain perception.

A meta-analysis of nine trials comparing TENS with sham, placebo, or pharmacologic therapy found no improvement in lower back pain score.

Do you disagree with those findings?

MR. BARMEN: Objection.

A. I do.

MR. POPSON: Subacute patients, nonacute patients. Objection.

A. We're talking about acute patients. We're only talking about nine studies. There are thousands out there.

Q. Okay. We could stipulate that the rest of this study says what it says, correct?

A. Thank you. Thank you, Peter.

Q. Okay. Dr. Ghoubrial, it's true that the only use for trigger point injections that is supported by any evidence-based research at all is for chronic myofascial pain syndrome?

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MR. BARMEN: Objection.

Q. And only then after aggravating factors are illuminated and more conservative treatment is attempted, such as rest, ice, compression, elevation, hot and cold pack, or oral or topical nonsteroidal anti-inflammatory drugs.

MR. BARMEN: Objection. Asked and answered multiple times six hours ago.

A. No. It works quite well in the acute setting. It's ideal to alleviate pain. And it allows you to avoid narcotic analgesics. I testified to that ten times already.

- - - -

(Thereupon, Plaintiff's Exhibit 43 was marked for purposes of identification.)

- - - -

Q. Here is Exhibit 43, which is another UpToDate report.

A. I thought we were finished with these.

Q. This is the last one.

MR. BEST: He lied, as usual.

A. This is the last one, Peter?

Q. This is the last UpToDate report.

A. Okay.

MR. BEST: He will come up with

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some other crap, don't worry.

A. What would you like to look at?

Q. Yes. Rheumatic disorders. It says, overview of soft tissue rheumatic disorders. You agree that myofascial pain syndrome is a rheumatic disorder, soft tissue rheumatic disorder, correct?

MR. BARMEN: Objection.

A. In this context, no, because they're talking about fibromyalgia, which is a rheumatic disorder. I'm talking about acute lumbar, thoracic, periscapular, cervical strain. Myofascial pain syndrome is fibromyalgia, in this setting. Disagree with it completely.

MR. BEST: 11th time, by my count, that you've explained that.

Q. This study distinguishes between MPS and fibromyalgia. And you see at the bottom of page six, it specifically says, myofascial pain is generally treated similarly to fibromyalgia.

A. Again, myofascial pain, depending on terminology, depending on the group that you're talking to, myofascial is sometimes synonymous with fibromyalgia. I'm talking about acute lumbar strains as a result of a whiplash injury or a blunt force trauma injury. It doesn't apply

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here.
Q. Well, it does say that trigger point injections using dry needling saline, or botulinum toxin, have been effective in clinical trials for the treatment of myofascial pain.
A. I don't disagree.
Q. Okay. You agree with that. Now, if we proceed to the next page or page 7, there is general initial approach. It says, six points of management can often be initiated during the first visit in a patient with a suspected soft tissue rheumatic disorder, even before the results --
MR. BEST: Objection. There is no patient that he has described that fits this category. Why are you doing this?
Q. -- appropriate laboratory or radiologic tests are available. And these six points are, to exclude systemic disease, eliminate aggravating factors, explain the illness, provide self-help strategies, provide pain relief, and explain the prognosis.
You don't disagree with that, do you, Doctor?
MR. BARMEN: Objection.
A. This is outside the context of the acute lumbar,

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thoracic, perispinal, periscapular, cervical strain involved in a motor vehicle accident.
And I do perform a comprehensive history. I explain their illness. I provide them with referrals to physical therapists, if they need it. And I explain the prognosis. And I provide pain relief, so everything in here I'm being -- I'm doing.
Q. If you turn the page to page 9 it says, under pain relief, refers to acute injuries from myofascial pain syndromes.
You agree that when you're treating trigger points, you are treating myofascial pain, acute myofascial pain, correct?
MR. BARMEN: Objection.
MR. BEST: Objection. He has answered this repeatedly.
Q. You don't deny that, do you, Doctor?
MR. POPSON: Objection. Go ahead.
Q. Doctor, you don't deny that?
A. No, I don't.
Q. Okay. And it says, pain -- it says under pain relief, acute injuries should be treated with the RICE regimen: Rest, ice, compression of injured tissue, and elevation.

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Then it goes on to say, despite the paucity of adequate controlled clinical studies, heat and cold modalities have been used for many years in the treatment of musculoskeletal disorders.
A. There is no con --
MR. BARMEN: Wait. There is no question now.
Q. Then lower on the page, at the bottom, it says, in addition to the RICE regimen, other simple, frequently used measures include use of oral or topical nonsteroidal or antiinflammatory drugs, and other topical applications with agents such as lidocaine or capsaicin.
A. Yeah.
Q. After that, it says, If simple measures have not sufficed, injecting the affected area with a long-acting glucocorticoid-local anesthetic mixture can be effective in bursitis, tendinitis, carpal tunnel syndrome, or MPS.
You agree with that, correct?
MR. BARMEN: Objection.
MR. BEST: Objection.
A. It depends on the case, it depends on the patient. Sometimes it's appropriate in the acute setting, sometimes it's appropriate in a

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long-term care setting. I've already answered the question.
Q. You understand, Dr. Ghoubrial, that the use of steroids in trigger point injections is -- strike that.
You agree that what this overview that we're looking at here with Exhibit 43, very clearly states that trigger point injections can be effective only if simple measures have not sufficed.
You're not denying that that's what this -- this research says?
MR. BARMEN: Objection.
MR. BEST: Objection.
MR. POPSON: Objection.
MR. MANNION: Objection. Mischaracterization.
MR. BEST: He's addressed it.
A. Right. I already addressed it. I know what it says.
MR. BEST: Ad nauseam.
A. I don't necessarily agree with it, because as I stated to, you have to apply it on a case-by-case basis.
MR. BARMEN: And you also have to

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compare apples to apples, which this does not do.

Q. This is page 10. Okay.

Let's go back to the Alvarez exhibit. I think it's 2 or 3. It's Exhibit -- I think it's Exhibit 2.

MR. BEST: I told you he was lying.

MR. BARMEN: Of course.

Q. You understand, Dr. Ghoubrial, that --

MR. BARMEN: Wait. Wait. You got to find Exhibit 2.

MR. PATTAKOS: Well, I'm going to ask him a question before I'm going to ask him about the exhibit.

Q. Do you understand, Dr. Ghoubrial, that the use of steroids in trigger point injections is contraindicated?

MR. BEST: Objection.

MR. BARMEN: Objection.

A. The use of what?

Q. Steroids.

MR. BEST: That's retarded.

A. No, I don't understand that.

MR. PATTAKOS: What did you say,

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David?

MR. BEST: I said it's retarded.

If you would study the medical literature in reality, you would know that your statement is retarded.

Q. Let's take a look at page 7 of this Exhibit 2, which is, again, the Alvarez study --

A. We've already gone over it.

Q. -- published in -- well, we haven't gone over this part. And I want to see how retarded this statement is that David is taking such issue with, Dr. Best.

MR. BARMEN: Here's mine, so you don't have to dig it out of that pile.

Q. Okay. If we look at, it's page 658 on the bottom. I'm sorry, this is -- this prints out differently than it is on the computer.

A. That's okay, Peter.

Q. One, two, three, four, five. It's the fifth page of the document and it's --

A. Absolutely, Peter --

Q. -- page 658.

A. -- what could we do to help you?

Q. Where it says, injection solutions, in the second column there, you see --

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A. Yes. Very good.

Q. It says, an injectable solution of one percent lidocaine or one percent procaine is usually used. Several other substances, including diclofenac, Voltaren, botulinum toxin type A, Botox, and corticosteroids have been used in trigger-point injections.

However, these substances have been associated with significant myotoxicity. Procaine has the distinction of being the least myotoxic of all local injectable anesthetics.

You disagree with that statement, Doctor?

A. Yeah.

MR. BARMEN: Objection.

A. Marcaine, lidocaine are short acting anesthetics. They're used throughout every single ER to numb up every single patient who has had any kind of laceration. And they are used by virtually every rheumatologist and they're used by me.

I completely disagree with that. We mix them up and we use them together and we get good results.

Q. The issue wasn't with the Marcaine, Doctor, it's with the steroid, isn't it?

MR. BARMEN: Objection.

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A. Any long-term use of glucocorticoids, by meaning a year or more, could be detrimental. But when you're giving someone just a series of trigger point injections, I have never seen a problem with that.

Q. Kenalog is a steroid, correct?

A. Correct.

Q. And it has been associated with significant myotoxicity; has it not?

MR. BARMEN: Objection.

A. In long, long-term administration, not short.

Q. Well, if we look at -- that statement says -- that statement cites footnotes 10 and 19, there is a study by Travell and Simons and a study --

A. I'm telling you --

Q. -- by Fischer.

A. -- I'm aware of the studies. Only long-term use of glucocorticoids are detrimental.

Q. Okay.

MR. BEST: That is what Dr. Best said. That's interesting.

MR. BARMEN: God, I admire you.

MR. BEST: Do what I did for 44 years, you pick up a couple of things.

A. Peter, do you have anything else?

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Q. I do, Doctor.
A. Or could I go? I have other things that I need to attend to, patient-wise.
Q. Doctor, what is Twin Crown Properties?
MR. BARMEN: Objection.
A. Twin Crown Properties, I have no idea.
Q. Do you have any real estate investments with Danny Karam?
MR. BARMEN: Objection.
A. None.
Q. Have you ever worked with Danny Karam on any business adventure?
MR. BARMEN: Objection.
A. Not that I can recall, no.
Q. Have you ever invested in any real estate that Danny Karam assisted you on the transaction with, in any way?
MR. BARMEN: Objection.
A. Not to my recollection, no.
Q. Why did Josh Jones leave your practice?
A. He wanted to be closer to Columbus. He felt that that was more of a metropolis for him.
Q. Any other reason?
A. Not that I know of.
Q. Do you own any other companies besides Clearwater

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and Sam Ghoubrial, MD, Inc.?
A. GLTCP.
Q. What is GLTCP?
A. Geriatric Long-Term Care Providers.
Q. And that is your nursing home practice?
A. It's nurse practitioners, yes.
Q. What is Handchrist, LLC?
A. It was just a DBA that no longer exists.
Q. What was the purpose of that DBA?
A. Initially, it was set up by my attorney, Chad Brenner. And it was very complicated. And we just did away with that. So it was something that was set up that was never really put to much use.
Q. Doctor, the private plane that we spoke about earlier, that you owned an ownership -- that you had an ownership interest in --
A. Yes.
Q. -- you created an LLC, a corporation to hold your share of the airplane, correct?
MR. BARMEN: Objection.
A. It never matriculated. It was TPI, but we never used it.
Q. TPI Airways?
A. Yeah.

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Q. Why did you name the airplane TPI Airways?
A. I don't know.
Q. Does it have anything to do with Trigger point injections?
A. No.
Q. Dr. Ghoubrial, you're aware that health insurance companies only pay for trigger point injections under extremely limited circumstances, aren't you?
MR. BARMEN: Objection.
A. No.
- - - -
(Thereupon, Plaintiff's Exhibit 44 was marked for purposes of identification.)
- - - -
Q. Here is Exhibit 44. Anthem is an insurance company that you do business with, isn't it, Doctor?
A. Not in the personal injury side, no.
Q. No, in your family -- in your internal medicine practice, you do accept care from Anthem, correct?
A. Correct.
Q. You are an approved provider for Anthem, correct?
A. Correct.

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Q. Do you know what a clinical UM guideline is published by an insurance company?
A. Vaguely.
Q. What do you understand this to be?
A. I think it's an overall practice guideline.
Q. Well, doesn't this describe and limit the circumstances under which an insurance company is going to pay for particular treatment?
MR. BARMEN: Objection.
A. Again, it doesn't apply to what we're talking about.
Q. Doctor, it applies to the circumstances under which Anthem is going to pay for trigger point injections, is --
A. We're not --
Q. -- is it not?
MR. BARMEN: Objection.
A. We're not credentialed with Anthem.
Q. You are under the family -- you are under the internal medicine practice?
A. Did you name the internal medicine practice?
Q. Are you not going to answer questions about this document, Doctor?
A. All I'm telling you is, it's not relevant. I don't know anything about this document. And

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I've never seen it.
Q. Well, it's says that for trigger point injection to be considered medically necessary all of these general and specific criteria have to be met.
It says, A, there is a regional pain complaint and a neurological, orthopedic, or musculoskeletal system evaluation, which includes the member's description of pain as it relates to location, quality, severity, duration, timing, context, and modifying factors. Followed by a physical examination of associated signs and symptoms.
And conservative therapy, for example, physical or chiropractic therapy, oral analgesia, steroids, relaxants or activity modification fails or is not feasible.
And when necessary to facilitate mobilization and return to activities of daily living, an aggressive regimen of physical therapy or other therapeutic modalities. And the response to therapy must be documented for medical review prior to additional therapy authorizations.
Additionally, the pain complaint or altered sensation in the expected distribution of referred pain from a trigger point and the taut

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band palpable in an accessible muscle when the trigger point is myofascial. And exquisite spot tenderness at one point along the length of the taut band when the pain is myofascial.
And some degree of restricted range of motion of the involved muscle or joint, when measurable. And the above specific criteria are associated with at least one of the following minor criteria.
Reproduction of clinical pain complaint or altered sensation by pressure on the tender spot. Or local response twitch elicited by snapping palpation at the tender spot or by needle insertion into the tender spot. Or pain alleviation by elongating, stretching the muscle, or by injecting the tender spot.
Your delivery of trigger point injections does not meet this criteria, does it, Doctor?
MR. BARMEN: Objection.
MR. BEST: Objection.
A. Each patient is specific. I treat them individually. These are just guidelines. You can't put a whole group of patients in one set of guidelines. Each patient is different.
Q. Doctor, what I'm saying is, the treatment that

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you provide to the clients of your personal injury clinic would not meet these standards; would it, Doctor?
MR. BARMEN: Objection.
A. In the private practice setting, we never, to my recollection, give trigger point injections.
Q. I appreciate that information, but I also want you to confirm that your delivery of trigger point injections in the personal injury practice does not meet these standards, does it?
MR. BARMEN: Objection.
A. Not necessarily. Each patient is specific.
Q. Well, you typically do not wait for conservative therapy to fail before you administer trigger point injections; do you, Doctor?
MR. BARMEN: Objection.
A. It depends on the case. It depends on the patient.
Q. All of the files that we looked at today, you did not wait for conservative therapy to fail, did you, Doctor?
MR. BARMEN: Objection.
A. You looked at 13 out of several thousand.
Q. And none of those files did conservative therapy -- could conservative therapy have been

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legitimately determined to fail, could it, Doctor?
MR. BARMEN: Objection.
A. They were already in conservative therapy.
Q. Most of the trigger point injections that your practice delivered to these patients, were delivered within a week or three weeks of the accident.
You understand that, don't you, Doctor that conservative therapy has to proceed for more than a week to three weeks before that trigger point injections could be given under these criteria?
MR. BARMEN: Objection.
A. Depending on the patient. Just another set of criteria.
MR. BEST: Peter would send everyone home in excruciating pain. That's a much better treatment.
- - - -
(Thereupon, Plaintiff's Exhibit 45 was marked for purposes of identification.)
- - - -
Q. Here is Exhibit 45.
MR. BEST: Who cares if they're hurt.

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myofascial pain syndrome. It doesn't identify anything else here, other than myofascial pain syndrome, does it, Doctor?

MR. BARMEN: Wait. But it is talking about myofascial pain syndrome as a chronic condition, that's what this relates to.

MR. PATTAKOS: Yes.

MR. BARMEN: Of course, you don't want to point that out.

MR. PATTAKOS: It relates to trigger point injections.

THE WITNESS: No.

MR. PATTAKOS: The top of the documents say --

MR. BARMEN: Trigger point injections for myofascial pain syndrome, a chronic condition.

A. We're talking about acute, Peter. So you're not helping yourself, Peter, you're hurting yourself.

Q. Doctor --

MR. MANNION: Do you have any understanding of medicine?

Q. -- do you see where, pain that persists, this is in the third paragraph, pain that persists for

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extended periods of time generally greater than three months, and fails to be alleviated with conservative approaches, may be treated with injections of local anesthetics, anti-inflammatory drugs, and/or corticosteroid in an attempt to deactivate the trigger point.

MR. BARMEN: Right. When you're dealing with chronic MPS.

Q. You agree, Doctor, that your delivery of trigger point injections in your personal injury practice does not comply with this standard?

MR. BARMEN: Objection.

A. It's a case-by-case --

MR. MANNION: Objection. That standard doesn't apply.

A. It's a case-by-case basis. I don't treat my patients depending on what the insurance company will or will not pay for. So you could save that next study as well, because you're going to get the same answer.

MR. PATTAKOS: I don't need this.

THE WITNESS: You don't need any of them.

Q. Okay.

A. What other questions do you have, Peter?

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Q. Insurance companies don't pay for TENS units, do they, Doctor?

MR. BARMEN: Objection.

A. I don't know.

Q. Well, Aetna doesn't, do they?

MR. BARMEN: Objection.

A. I don't give them out.

Q. You don't give them out to your -- your internal medicine practice patients, Doctor; is that what you were just going to say?

MR. BARMEN: Objection.

A. We don't utilize them in the internal medicine side of our practice. Typically, if they have that kind of re-factoring pain, we try NSAIDS, we use pain management. We use a whole litany of things.

- - - -

(Thereupon, Plaintiff's Exhibit 48 was marked for purposes of identification.)

- - - -

Q. This is Exhibit 48. It's Aetna's policy on TENS units.

A. Plus, for this, you need to have a DME. So you have to have a durable medical equipment and we don't have that for insurance companies. You

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have to be a DME supplier. So we couldn't do it if we wanted to. That's why we can't.

Q. Doctor, it says here on the second paragraph --

A. Peter, you're not listening. It doesn't matter, because you have to have a durable medical equipment license when you give TENS units on the insurance side.

Q. I appreciate that, Doctor. I want to ask you a question about this, the second paragraph here. Aetna considers TENS experimental and investigational for acute pain, less than three months duration, other than post-operative pain.

TENS is also considered experimental and investigational for any of the following, not an all-inclusive list, because there is inadequate scientific evidence to support its efficacy for these specific types of pain.

You see chronic low back pain is listed here as is fibromyalgia.

A. We're talking about traumatic patients here, so I don't know what you're talking about.

Q. It says that it is not -- TENS is experimental and investigational for acute pain of less than three months duration.

You, agree, Doctor, that your delivery of

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TENS units to your personal injury clients often violates this policy?

MR. BARMEN: Objection.

MR. BEST: Objection.

MR. BARMEN: A, it's not a policy. Go ahead.

MR. PATTAKOS: It says "policy".

MR. BARMEN: It's not a policy that applies to him.

THE WITNESS: The policy doesn't apply to me.

MR. PATTAKOS: I'm not asking whether it applies to him or not.

MR. BARMEN: So you're asking if he is somehow held to this standard?

THE WITNESS: No, I'm not held to that standard, Peter. I don't use it. I do what's best for the patient. Do you have any more questions?

MR. PATTAKOS: I sure do.

MR. MANNION: Doctor, why don't you let Aetna determine how you practice medicine? I don't understand.

MR. PATTAKOS: We could go through these briefly.

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- - - -

(Thereupon, Plaintiff's Exhibits 49, 50, and 51 were marked for purposes of identification.)

- - - -

THE WITNESS: What is this?

THE VIDEOGRAPHER: I need to change the tape.

MR. PATTAKOS: Okay.

THE VIDEOGRAPHER: We're going off the record. This is the end of tape number 5. The time is 8:06.

- - - -

(Off the record.)

- - - -

THE VIDEOGRAPHER: We're back on the record. This is the beginning of tape number 6. The time is 8:08.

MR. MANNION: Doctor, where were you when Norris was treated by Dr. Gunning?

THE WITNESS: I was in Columbus.

MR. MANNION: Thank you.

MR. PATTAKOS: Have I marked these discovery requests yet?

MR. BARMEN: You gave it to me, you haven't given it to him. You gave me the RPDs as 49.

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MR. PATTAKOS: 49 for the interrogatories, 50 for the request for admission, and 51 for the request for production of documents.

Q. Dr. Ghoubrial, have you seen these documents before?

MR. BARMEN: Wait. Let me make sure I got them numbered right. You gave them to me differently, Peter.

MR. PATTAKOS: Do you have the request for admission?

MR. BARMEN: I don't. You didn't give me the rogs either.

MR. PATTAKOS: You have them.

MR. BARMEN: No, you gave me the RPDs and you gave me the RFAs. You didn't give me the rogs.

MR. POPSON: Probably an extra one sitting over there somewhere. First set of interrogatories?

MR. BARMEN: Yeah, thanks. I think we lost Tom.

MR. MANNION: Hello.

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MR. BARMEN: We lost you. You are back.

MR. MANNION: Yep.

A. You said 20 minutes.

Q. Have you seen those documents, Doctor?

A. I believe we have, yes.

Q. Have you reviewed all of those responses and verified that they are true, to the best of your knowledge?

A. Yes.

Q. And they are, in fact, true to the best of your knowledge, those responses, correct?

A. Yes.

Q. And you reviewed them carefully and made sure of that?

A. To the best of my knowledge, yeah.

Q. Okay. Dr. Ghoubrial, Dr. Gunning testified to your use of the term nigger point injections and afro-puncture in casually referring to your practice.

MR. BEST: That is not what he said.

MR. BARMEN: Objection. That is not what he said, and you know it.

MR. BEST: That's a damn lie.

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A. You know, that's extremely offensive to me since I'm probably the only one in this room that is African-American. And I take that as a personal insult from you.
Q. So you claim that the term n-i-g-g-e-r is a slur that offends Egyptian-Americans?
A. All people who are of African-American descent it offends, including myself.
Q. Are you claiming that you are not Caucasian, Doctor?
MR. BARMEN: Objection.
A. I'm from the Middle East.
Q. Do you understand the differences between the Caucasian Race, the Negroid Race, and the Mongoloid Race, Doctor?
MR. BARMEN: Objection.
A. All I could tell you is I'm from the Middle East and I don't have white skin. So if you're some kind of a racist, trying to take a jab at me, I don't appreciate it.
Q. But you did use those terms, didn't you, Doctor?
MR. BARMEN: Objection.
A. Not to my recollection. And I never used them towards any of my patients. I've nothing but the upmost respect. And I've served the minority

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community for over 25 years, and continue to do so.
Q. So is Dr. Gunning lying when he says he has heard you use those terms several times?
MR. BARMEN: Objection.
MR. BEST: Kidding with his white friends --
MR. MANNION: I'm going to object. He never said to a patient.
MR. BEST: -- you lying dog.
A. It may have been taken out of context. And it was never directed at anybody, but a Caucasian.
Q. So you have used those terms?
A. Again, I may have in jest, I don't recall.
Q. How would the term afro-puncture relate to a Caucasian?
MR. BARMEN: Objection.
A. I don't even know that I used that term.
Q. Dr. Gunning says that you did. He said it this morning.
A. Well --
MR. BARMEN: Objection.
A. -- I can't speak to what Dr. Gunning said or what he didn't say.
Q. Why would you use the term n-i-g-g-e-r point

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injections to refer to Caucasian people?
A. I never have.
Q. Now, you're saying you never have used those terms?
MR. BEST: Objection.
A. I said I may have made some racial slurs towards Dr. Gunning, but it may have been in locker room jest decades or more ago. But I have always -- never treated my patients with any kind of disrespect. And I've never used them towards an African-American.
I've used them towards Dr. Gunning. I called him that. And I think you could ask him that, if you'd like.
MR. BARMEN: He did.
Q. Dr. Gunning testified that you took an aggressive approach to patients who were needle-phobic. Do you agree with that?
MR. BARMEN: Objection.
A. No.
Q. Well, I am going to read you some of his testimony.
MR. BEST: How would he know? He's never been in the room. This is retarded. Good lord, you have no shame, I

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mean, none. You have reached the category of the amoral human being.
Q. Here we go. Okay. I asked Dr. Gunning, when we spoke on the phone on October 2nd, you told me that Dr. Ghoubrial instructed you when treating these patients to sneak the needles into the client's back when they weren't looking.
Dr. Gunning said, what I said was, he has, referring to you, his own way of dealing with these clients, especially people who might be needle-phobic.
He would say, don't necessarily say the word "needle" to them. Don't necessarily say "shot. Tell them that you want to put the medication right where the pain is. And that was his approach to informed consent.
I tended to be more likely to show the patient the needle. And, of course, as a result -- let me stop there. Is what he's describing, true?
MR. BARMEN: Objection. Wait a minute. So once again you misrepresented something to the witness. When you said, the testimony was he took an aggressive approach. Go ahead.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Thera Reid**

I, Thera Reid, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with an accident in which I suffered injuries on April 20, 2016.

2. Nearly immediately after my accident, I was contacted by telemarketers from Akron Square Chiropractic ("ASC"), who offered to pick me up and transport me to ASC for chiropractic care. The telemarketer also told me that I would be contacted by other telemarketers, that the other telemarketers were untrustworthy, and that I should not speak to any other telemarketer, chiropractor, or attorney who was not associated with ASC.

3. After ASC's telemarketers contacted me, I agreed to visit ASC for chiropractic care on April 22, 2016, and was picked up by an ASC representative in a van. The van stopped on the way to ASC to pick up one other person. Anytime I received treatment from ASC, I was picked up and transported to ASC by an ASC representative. Before I could receive any treatment from Dr. Floros, I was required to sign a series of documents, including an acknowledgment that I was solicited to

Thera Reid

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Rachel Hazelet

EXHIBIT 8

ASC by a telemarketer. A true and accurate copy of paperwork I completed for ASC is attached as **Exhibit A.**

4. When I arrived at ASC, representatives of ASC told me that I should speak with ASC's attorneys and sat me in a room with a telephone for that purpose. ASC representatives called KNR on my behalf and handed me the telephone once a KNR representative was on the line. Immediately after the conversation with KNR concluded, an ASC representative handed me a blank KNR fee agreement to sign.

5. On advice from ASC and the KNR representative I spoke to on the phone, I signed the KNR fee agreement, trusting that ASC and KNR were acting for my benefit, rather than their own financial gain. No one explained that by signing the fee agreement, I was authorizing KNR to deduct the costs of my medical care directly from my settlement, that I would be charged an investigation fee relating to having signed the fee agreement, that KNR would deduct a narrative fee from my settlement to compensate Dr. Floros and ASC for referring me to KNR, or that KNR and Dr. Floros would send me to treat with Dr. Ghoubrial, who would be paid directly out of my settlement. A true and accurate copy of the fee agreement I signed is attached as **Exhibit B.**

6. Dr. Floros and KNR directed me to treat with their pain-management physician, Dr. Ghoubrial. Based on the advice I received from Dr. Floros and KNR, on April 26, 2016, I agreed to receive treatment from Dr. Ghoubrial. I believed that Dr. Ghoubrial maintained a personal office at ASC because each time Dr. Ghoubrial treated me, he did so at ASC.

7. At the beginning of my treatment, I informed Drs. Floros and Ghoubrial that I had health insurance that could cover my medical care. In response, representatives of ASC and Dr. Ghoubrial's practice informed me that information concerning my health insurance was not needed until later. Based on this information, I believed that that the costs of my medical care would not detrimentally impact my settlement.

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8. In connection with my accident, Dr. Ghoubrial's practice gave me a series of trigger-point injections. I do not recall any person at Dr. Ghoubrial's practice ever informing me that I would be charged for the procedure, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar procedure for a much lower price elsewhere.

9. Roughly one month into KNR's representation of me, I recall that a doctor at the Summa Health System trauma center advised me that I should not be treating with a chiropractor based on the extent and severity of my injuries. I was further advised to go immediately to an orthopedic surgeon who could repair fractures in my shoulder. When I communicated these concerns to KNR, I was told me to continue treating with Dr. Floros because withdrawing from his care would harm my lawsuit. A true and accurate copy of the email I sent to KNR is attached as **Exhibit C.** When I discussed these same concerns with Dr. Floros, he told me that if I withdrew from his care, I would be required to immediately pay out-of-pocket for the treatment I had received to date.

10. Toward the end of Dr. Ghoubrial's treatment of me, I recall that he referred me to Dr. Chonko, an orthopedic surgeon. Dr. Ghoubrial led me to believe that Dr. Chonko would perform my shoulder surgery. When I consulted with Dr. Chonko, he immediately told me that he does not perform surgical procedures relating to the shoulder because he is a hip surgeon.

11. Dr. Chonko, in turn, sent me to Dr. Matthew Noyes. When I consulted with Dr. Noyes, his office told me that he would not perform surgery on me unless I agreed to pay for the surgery out of my settlement proceeds, despite that I had health insurance. Dr. Noyes also informed me that he was planning to leave the Akron, Ohio area for one year, and that he wanted me to wait to have the surgery so that he could do it when he returned. I did not receive the surgery from Dr. Noyes because I would not agree to have the cost of the surgery deducted from my settlement.

12. During KNR's representation of me, I was facing eviction from my home. When I informed KNR representatives of concerns relating to being homeless, KNR representatives routinely told me

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not to worry about not having a home for myself or my children. A true and accurate copy of one such email I sent to KNR is attached as **Exhibit D.** When KNR finally communicated a settlement offer in relation to my accident, I believed that I had no choice but to accept the offer as it was communicated to me so that I could afford a home for myself and my children.

13. This settlement offer came shortly after my interactions with Dr. Noyes. Because of my need to get my children off of the streets and into a home, I had no choice but to settle the case before I had the opportunity to receive the shoulder surgery that I needed. Had KNR advised me to treat with my own physician in connection with this case, or had Floros or Ghoubrial immediately advised me to see a surgeon, I would have received the surgery I needed prior to settlement of the case.

14. As of the date of signing this affidavit, I have not received surgery on my shoulder and continue to live in severe pain as a result of not receiving the surgery in a timely manner.

15. When my case settled in January 2017, I received only $12,349.70 of the $48,720 that KNR recovered in connection with my accident after the deduction of all fees and expenses incurred at KNR's direction. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement for Dr. Floros or an investigator fee for MRS Investigators. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed my lawyers would never deduct illegitimate charges from my settlement. I was never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by MRS Investigations. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit E.**

16. I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial's practice, being in charge of my medical care, would not charge me extreme markups for the injections I was provided.

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I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

17. I would have refused to sign the settlement reflected in **Exhibit E** had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, or the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Thera Reed 5-10-19

Signature of Affiant Date

Sworn to and subscribed before me on 5-10-2019 at Akron, Ohio.

Rachel Hazelet

Notary Public, State of Ohio

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CONFIDENTIAL PATIENT INFORMATION

DATE	4-22-2016
NAME	Thomas Reid
STREET ADDRESS:	[redacted]
CITY	Akron
ZIP	Ohio
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	
SSN	
EMAIL ADDRESS:	

SEX: ___Male ✓Female
MARITAL STATUS: ✓Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain ✓	Upper/Mid Back Pain ✓	Low Back Pain ✓
Shoulder pain (right / left) ✓	Elbow pain (right / left) ✓	Wrist/Hand Pain (right / left)
Hip Pain (right / left) ✓	Knee pain (right / left) ✓	Ankle/Foot Pain (right / left)
Headaches ✓	Chest Pain ✓	Face Pain
Nausea / Vomiting ✓	Dizziness / Memory Loss ✓	Anxiety / Depressed / Fatigue ✓

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 4-20-16

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: MK

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): _____

EXHIBIT A

PATIENT ACKNOWLEDGMENT

I confirm I was contacted by telephone, on one or more occasions, by one or more persons who I understood to be representatives of Akron Square Chiropractic regarding the availability of a chiropractic consultation and spinal screening examination.

I WAS TOLD IN THE VERY FIRST SUCH TELEPHONE CONVERSATION (AND IN EACH CONVERSATION THEREAFTER) THAT THE CALLER WORKED FOR THIS HEALTH CARE FACILITY AND DR M FLOROS, DC, AND THAT THE CALL(S) HAD NO RELATION TO, AND NOTHING WHATSOEVER TO DO WITH, MY INSURANCE COMPANY, OR THE OTHER DRIVER'S INSURANCE COMPANY OR ANY INSURANCE COMPANY, OR ANY POLICE DEPARTMENT, OR ANY GOVERNMENT AGENCY, HOSPITAL, OR OTHER SERVICE OR ENTITY.

NO PERSON WHO IDENTIFIED HIMSELF OR HERSELF AS BEING EMPLOYED BY OR AFFILIATED WITH ANY INSURANCE COMPANY, GOVERNMENT AGENCY, POLICE DEPARTMENT OR HOSPITAL HAS EVER ADVISED ME OR SUGGESTED TO ME THAT I VISIT OR SEEK TREATMENT FROM AKRON SQUARE CHIROPRACTIC.

The caller(s) told me that the chiropractic consultation and 10 point spinal screening examination were offered without any obligation to accept the appointment and at no cost to any insurance company or me.

I was not pressured to set an appointment by the caller(s), and decided to make an appointment and go to the chiropractor solely out of concern for my own health and well being, after my recent accident.

I acknowledge that the consultation and 10 point screening examination were offered without obligation to become a patient of Akron Square Chiropractic, or to receive treatment from Akron Square Chiropractic.

I attest that these statements are true and a complete recollection of my recent telephone conversation(s).

I, the patient named below, attest that the employee named read the statement above aloud and in full to me.

Date: 4-22-16 Name (Signature): TR

Printed Name: Thera Reid

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Thera Reid, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent MYSELF for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 20 day of April 2016 in Summit County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third (1/3) of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 20 day of April 2016

X Thera Reid
CLIENT

ATTORNEY

EXHIBIT B

Thera
Thera Reid [therareid@yahoo.com]
Sent:Sunday, May 08, 2016 7:22 PM
To: Marti Dunlavy

Sorry I'm a bug. I'm confused about what's going on. Talked to the trauma center, they don't want me to see the chiropractor and that I'm suffering from a concussion. I talked to Richard as well today. He's still saying Donnie does not have insurance. ThT Allstate is sending an adjuster, to value his bike, this week. Does this mean its almost over??? I'm not saying settle but I'm so down mentally emotionally and physically. Will b seeing a therapist soon. B in touch with info from those visit(s).

Sent from Yahoo Mail on my Android device

EXHIBIT C

Marti Dunlavy

From: Marti Dunlavy
Sent: Thursday, November 10, 2016 12:20 PM
To: 'Thera Reid'
Subject: RE:

Thera, everything is here – so we don't need anything.
Part of the problem was that the Dr. Noyes that you saw has an office inside chonko's office but his stuff came from other places.
I know it has been frustrating and you need some good luck. We are helping you – and we will get as much money as we can for you on your settlement.
Don't stress too much about Oasis – that will get worked out.

From: Thera Reid [mailto:therareid@yahoo.com]
Sent: Thursday, November 10, 2016 12:16 PM
To: Marti Dunlavy
Subject:

What is going on? I spoke to Mat the other day, he said waiting on bill from chonko. I call chonko and all involved, they ALL said they sent you what is requested back in June/July. I'm on the street right now. 2 month waiting list for homeless shelters and 5 months plus for Amha. I have been in touch with my congressman, thinking maybe there is another direction I can go! I'm gonna owe out the ass for oasis and have nothing for my kids when all is said and done with at this rate. I'm pissed enough to swallow nails. Something has to give yesterday!!! Sick and tired of bs and kicked in the face when I'm down. You guys offered to help me! I'm sorry but it seems like I'm working for you.

EXHIBIT D

KNR01751

260443 / Thera Reid

Settlement Memorandum

Recovery:

REC	Allstate Insurance Companies*	$ 45,500.00
PSF	Oasis Legal Finance	$ 3,220.00
		$ 48,720.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick

Floros, Dr. Minas	$ 150.00
chartswap#1211588	$ 53.18
MRS Investigations, Inc.	$ 50.00
Summa Health System	$ 107.12
Clearwater Billing Services, LLC	$ 50.00
Total Due	$ 410.30

DEDUCT AND RETAIN TO PAY TO OTHERS:

Kisling, Nestico & Redick	($15,1665.65)	$ 14,000.00
Ohio Tort Recovery Unit		$ 9,000.00
Oasis Legal Finance		$ 5,096.00
Akron Square Chiropractic	($5,025.00)	$ 4,500.00
Clearwater Billing Services, LLC	($3,460.00)	$ 3,000.00
National Diagnostic Imaging Consultants		$ 200.00
North Star Orthopedic Group		$ 164.00
Total Due Others		$ 35,960.00

Total Deductions	**$ 36,370.30**
Total Amount Due to Client	$ 12,349.70
Less Previously Paid to Client	$ 3,220.00
Net Amount Due to Client	**$ 9,129.70**

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and attorney's fees with Kisling, Nestico & Redick. I acknowledge that it accurately reflects all costs, including but not limited to, the investigation fee, and all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. If any amount was withheld from the settlement for potential subrogation interests, any balance due after the subrogation interest is satisfied may be subject to Attorney Fees not to exceed the contractually agreed amount. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick.

Date: 1-26-17

Name: Thera Reid
Thera Reid

Firm: _____
Kisling, Nestico & Redick

EXHIBIT E

KNR02195

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Taijuan Carter**

I, Taijuan Carter, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with multiple accidents in which I suffered injuries between 2011 and 2015.
2. The first such accident was an auto accident that occurred on April 16, 2011. Within a few days of this accident, I recall that a telemarketer from Akron Square Chiropractic ("ASC") called me by phone and asked me to visit their office to receive chiropractic care for the injuries resulting from the accident.
3. After receiving the call from ASC, I visited Dr. Floros at ASC for chiropractic care on April 21, 2011. When I visited ASC on this day, I had not yet retained an attorney to represent me in connection with the accident. ASC representatives informed me that Dr. Floros would not treat a patient if the patient was not represented by an attorney. A true and accurate copy of the form I completed for ASC is attached as **Exhibit A.**

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Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
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EXHIBIT 9

4. Once I indicated to ASC that I did not have legal representation, an ASC representative made a phone call to a KNR, put me on the phone with a KNR representative, and handed me paperwork to fill out for KNR at ASC's office. That paperwork included the KNR fee agreement. A true and accurate copy of the agreement I signed is attached as **Exhibit B.**

5. Dr. Floros and KNR advised me to treat with their pain-management physician, Dr. Ghoubrial. Based on their advice, I visited Dr. Ghoubrial's practice on April 22, 2011, the day after my first visit to Dr. Floros. A true and accurate copy of the medical lien that Dr. Ghoubrial required me to sign on my first visit to his practice is attached as **Exhibit C**. Representatives of Dr. Ghoubrial's practice informed me that they would not treat me if I did not sign the medical lien.

6. During my visits to Dr. Ghoubrial's practice in connection with my 2011 accident, I was given a back brace and a TENS unit to take home with me. No one at the practice ever informed me what the practice charged for the back brace or the TENS unit, or that Dr. Ghoubrial would earn a substantial profit from charging me for them, or that I could or should obtain similar devices for a much lower price elsewhere.

7. When my case settled in November 2011, I received only $5,084.88 of the $16,350.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a $200 narrative fee from my settlement for Dr. Floros or a $50 investigator fee for AMC Investigators. I had likewise never heard of Clearwater Billing Services, LLC. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask question about them because I trusted my KNR lawyers and the doctors that they had me treat with and I believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit D.**

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Resident Summit County
Notary Public, State of Ohio
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8. My second accident during this timeframe occurred on December 15, 2013. I signed up with KNR and ASC both on December 16, 2013, the day after my accident. True and accurate copies of the forms I completed for ASC and KNR are attached as **Exhibit E.**

9. Dr. Floros and KNR again advised me to treat with Dr. Ghoubrial, who they described as their own pain-management doctor. My first date of treatment with Dr. Ghoubrial's practice was on December 18, 2013, two days after I signed on with ASC and KNR. A true and accurate copy of the medical lien I was required to sign on my first visit to Dr. Ghoubrial's practice is attached as **Exhibit F.**

10. During my visits to Dr. Ghoubrial's practice in connection with my 2013 accident, I was provided with a second TENS unit, despite that I had already received one. As before, no one at the practice ever informed me what the practice charged for the device, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

11. In addition to receiving a second TENS unit, I was also given trigger-point injections. I did not want trigger-point injections, but I was informed by Dr. Ghoubrial's practice that receiving such injections was a requirement if I wanted to receive narcotics for pain relief. No one at the practice ever informed me what the practice charged for this procedure, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar treatment for a much lower price elsewhere.

12. When my case settled in January 2015, I received only $1,579.50 of the $7,500.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a $200 narrative fee from my settlement proceeds for Dr. Floros or a $50 investigator fee for AMC Investigators. As with my first KNR settlement, I assumed that all these charges, as well as the medical

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expenses taken out of my settlement, were legitimate and I did not ask question about them because I trusted my KNR lawyers and the doctors that they had me treat with and I believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit G.**

13. My third accident during this time frame occurred on October 6, 2015. I was not represented by KNR for this accident, but I was treated by Dr. Ghoubrial's practice and Dr. Floros. I saw Drs. Floros and Ghoubrial for this accident two days after the accident. True and accurate copies of the forms I was required to complete in connection with this treatment are attached to this Affidavit as **Exhibit H.**

14. As with my 2011 and 2013 accidents, I received from Dr. Ghoubrial's practice a series of trigger-point injections and a third TENS unit, even though I had already received two prior TENS units. Like with my prior two accidents, I received no information from Dr. Ghoubrial's practice about the price of this treatment, that Dr. Ghoubrial stood to profit substantially from it, or that I could obtain similar treatment at a much lower cost elsewhere.

15. Throughout the entirety of my relationship with Dr. Ghoubrial's practice and Dr. Floros, I was never asked if I had insurance coverage. I recall that I did have active insurance coverage that could have been used during each accident, instead of having the charges deducted from my settlement. Instead of asking whether I wanted to use my insurance coverage, Drs. Ghoubrial and Floros and my KNR attorneys led me to believe that I would not need to worry about covering the costs of my care. Based on their reassurances, I also believed that the costs of my care would not detrimentally impact my settlements.

16. During the entirety of KNR's representation of me, KNR never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by AMC

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Investigations or any other investigator, nor did I interact with a KNR investigator or an individual purporting to be a KNR investigator.

17. The only information KNR provided to me about the nature of the investigator fee was that it was their fee for gathering information and retrieving records, which was discussed in relation to the other administrative costs deducted from my settlement. I did not question the small charge to AMC Investigations on my settlement memoranda and trusted that my KNR attorneys would not charge me illegitimate fees.

18. Throughout my legal matters, I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial, as my physician, would not charge me extreme markups for medical treatment or supplies for profit. I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

19. Each time KNR presented me with a settlement memorandum to sign, KNR did not explain to me what the individual charges represented. I would have refused to sign each settlement memorandum had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, and the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 4/24/19 Date

Sworn to and subscribed before me on 4-24-19 at Akron, Ohio.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

CONFIDENTIAL PATIENT INFORMATION

PERSONAL INFORMATION:

NAME: Taliuan Carter TODAY'S DATE: 4/21/11

STREET: [redacted]

CITY: Akron STATE: Ohio ZIP: 44313

HOME PHONE [redacted] CELL PHONE _____ PAGER _____

BIRTHDATE [redacted] SOCIAL SECURITY NUMBER [redacted]

SEX ☑ Male ☐ Female MARITAL STATUS: ☑ Single ☐ Married ☐ Divorced STUDENT STATUS: ☑ N/A ☐ F/T ☐ P/T

EMPLOYER NAME: _____ OCCUPATION: _____

EMPLOYER ADDRESS: _____ WORK PHONE: _____

EMPLOYER CITY: _____ STATE: _____ ZIP: _____

SPOUSE'S/SIGNIFICANT OTHER NAME: _____

SPOUSE'S EMPLOYER: _____ SPOUSE'S WORK PHONE: _____

NAME AND PHONE NEAREST FRIEND/RELATIVE NOT LIVING WITH YOU: [redacted]

PRESENT COMPLAINT:

PLEASE DESCRIBE YOUR SYPMTOM (S) BRIEFLY: 1. Knock pain 2. Shoulders pain 3. Upper back pain 4. Middle backs pain 5. lower back pain 6. Stiffness, Burning

ARE THESE SYMPTOMS DUE TO AN ACCIDENT? ☑ Yes ☐ No IF YES, TYPE OF ACCIDENT: ☑ Auto ☐ Work ☐ Other

DATE OF ACCIDENT: 4/16/11 ACCIDENT REPORTED: ☐ No ☑ Yes ☐ Worker's Comp ☐ Insurance carrier ☐ Employer

HAVE YOU RETAINED AN ATTORNEY FOR THIS ACCIDENT ☐ Yes ☑ No

IF YES, THE NAME AND PHONE NUMBER _____

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON _____

NAME OF YOUR AUTOMOBILE INSURANCE _____

NAME OF YOUR HEALTH INSURANCE _____

MEDICAL HISTORY:

☐ Anemia	☐ Muscular Dystrophy	☐ Rheumatic Fever	☐ High Blood Pressure	☐ Allergies	☐ Cancer
☐ Polio	☐ Multiple Sclerosis	☐ Scarlet Fever	☐ Tuberculosis	☐ HIV	☐ Sinus Trouble
☐ Asthma	☐ German Measles	☐ Nervousness	☐ Heart Trouble	☐ Numbness	☐ Convulsions
☐ Epilepsy	☐ Concussion	☐ Dizziness	☐ Digestive Orders	☐ Neuritis	☐ Rheumatism
☐ Diabetes	☐ Arthritis	☐ Venereal Disease	☐ Hepatitis	☐ Backaches	

EXHIBIT A

Apr. 21. 2011 1:25PM No. 8788 P. 1/4

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

TAIJUAN CARTER, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent _____ for all purposes in connection with clients' injuries and damages arising out of an incident which occurred on the 16 day of April, 11 in _____ County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Client's case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Client's case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Client's share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Client's care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Client's claim. Client understands Attorneys will investigate Client's claim and then Attorneys shall have the right to withdraw from representation.

Signed this 21 day of April, 14

CLIENT

ATTORNEY

EXHIBIT B

Apr. 21. 2011 1:26PM No. 8788 P. 3/4

[redacted]

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
MEDICAL ASSIGNMENT

Re: Patient Taijuan Carter

First date of service: 4/22/11

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 4/16/11.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 4/22/11

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 4 25 11

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3200 W. Market St., Suite 300
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

1134 Brown Street Suite 1A Akron, Ohio 44301 (330) 925-1500

EXHIBIT C

214892 / Taijuan Carter **Settlement Memorandum**

Recovery:

REC	Merchants Insurance Group	$ 16,000.00
REC	Preferred Capital	$ 350.00
		$ 16,350.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC

Clearwater Billing Services, LLC; docs fee		$ 50.00
Comprehensive Pain Management *; recs fee	EF	$ 8.19
Floros, Dr. Minas; narrative fee		$ 200.00
Summa Health System; 1105-95 05690599		$ 34.80
Summa Health System; mrn 05690599		$ 18.63
AMC Investigations; 214892		$ 50.00
Total Due		$ 361.62

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Radiology*		$ 30.00
Akron Square Chiropractic		$ 4,272.00
Clearwater Billing Services, LLC		$ 1,500.00
Comprehensive Pain Management *		$ 700.00
EMPI, Inc.*		$ 957.62
Kisling, Nestico & Redick, LLC	($5,333.33)	$ 3,600.00
Millennium Laboratories		$ 573.68
Preferred Capital Funding		$ 481.50
Summa Emergency Associates, Inc.*		$ 225.00
Total Due Others		$ 12,339.80

Total Deductions	$ 12,701.42
Total Amount Due to Client	$ 3,648.58
Total Amount to be Paid by Client	$ 1,786.30
Net Amount Due to Client	$ 5,434.88
Less Previously Paid to Client	$ 350.00
Net Amount Due to Client	**$ 5,084.88**

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 11/28/17

Name: Taijuan Carter

Firm: Kisling, Nestico & Redick, LLC

EXHIBIT D

CONFIDENTIAL PATIENT INFORMATION

DATE	12/16/13
NAME	TAIJUAN V. CARTER
STREET ADDRESS	[redacted]
CITY	AKRON, OHIO
ZIP	44311
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	
SSN	
EMAIL ADDRESS:	

SEX: X Male ____ Female
MARITAL STATUS: X Single ____ Married ____ Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 12/15/13

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: American Family Ins.

NAME OF YOUR CAR INSURANCE: _____

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): United Health Care

EXHIBIT E

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Taijuan Carter, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 15 day of December, 13 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 16th day of Dec, 2013

CLIENT

ATTORNEY

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.

MEDICAL LIEN

Re: Patient TAILUAN CARTER

First date of service: 12/15/13

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 12/15/13.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 12/18/13

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 1-20-14

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

EXHIBIT F

215 East Waterloo Road, Suite 12, Akron, Ohio 44319
Phone: (330) 331-7207
Fax: (330) 331-7567

236538 / Taijuan Carter

Settlement Memorandum

Recovery:

REC	American Family Insurance*	$ 6,000.00
MP	Electric Insurance Company	$ 1,000.00
REC	Preferred Capital Funding	$ 500.00
		$ 7,500.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC

Clearwater Billing Services, LLC;	$ 50.00
Floros, Dr. Minas; MZ	$ 200.00
P & G Reporting, LLC; inv # 4150	$ 27.50
Summit County filing fee	$ 360.50
AMC Investigations;	$ 50.00
Total Due	$ 688.00

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic	$ 1,350.00
Clearwater Billing Services, LLC	$ 1,300.00
Kisling, Nestico & Redick, LLC	$ 1,350.00
National Diagnostic Imaging Consultants	$ 110.00
Preferred Capital Funding	$ 622.50
Total Due Others	$ 4,732.50

Total Deductions	$ 5,420.50
Total Amount Due to Client	$ 2,079.50
Less Previously Paid to Client	$500.00
Net Amount Due to Client	$ 1,579.50

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 4/24/15

Name: Taijuan Carter

Firm: Kisling, Nestico & Redick, LLC

EXHIBIT G

CONFIDENTIAL PATIENT INFORMATION

DATE	10-8-15
NAME	TaJuan Carter
STREET ADDRESS	[redacted]
CITY	Akron, Ohio
ZIP	44311
CELL PHONE/HOME PHONE	[redacted] HOME:
DATE OF BIRTH	[redacted]
SSN	[redacted]
EMAIL ADDRESS:	[redacted]

SEX: X Male ____ Female
MARITAL STATUS: X Single ____ Married ____ Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/ Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER Fall / Slip

DATE OF ACCIDENT: 10-6-15

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: _____

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): _____

EXHIBIT H

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa Esterle D.O.
215 East Waterloo Road
Akron, Ohio 44319
Phone: (330) 331-7207

Registration
(Please print)

Date: 10-8-15

Patient Information

Name: CARTER TAQUAN V. Phone: [redacted]
Last First Middle

Address: [redacted]

City: Akron State: Ohio Zip: 44311

Sex: ☒ Male ☐ Female Age: 40 Date of Birth: [redacted]

☒ Single ☐ Married ☐ Widowed ☐ Separated ☐ Divorced SSN [redacted]

Employer: _____ Occupation: _____

Business Address: _____

Business Phone: _____

In case of an emergency, who should we notify? Gwendolyn Reed

Phone: 330-572-9509 Relationship: Girlfriend

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207
Fax: (330) 331-7567

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa M. Esterle D.O.

Authorization for Release of Protected Health Information

Patient Information

Name: CARTER (Last) TaiJuan (First) V (Middle) Phone: [redacted]

Address [redacted]

City: Akron State: Ohio Zip: 44311

Sex: ☒Male ☐Female Age: 40 Date of Birth: [redacted]

SSN: [redacted]

I hereby authorize _____
to release any and/or all medical records to:

_____.

This consent authorizes the release of the aforementioned requested information regarding my treatment, hospitalization, emergency or ambulatory health care and/ or evaluation.

I understand that I may revoke this authorization at any time by putting it in writing and presenting it to the Hanchrist Medical Professionals staff. I understand that tha renovation will not apply to information that has already been released in response to this authorization. I understand that the revocation will not apply to my insurance company when the law provides my insurer with the right to consent a claim under my policy.

Unless otherwise revoked, this authorization will expire on the following date, event or condition _____. If a specific expiration date, event or condition is not listed, this consent will expire in three months from the date signed. Further disclosure of the information is prohibited without specific written consent of the person to whom it pertains. I am aware that in some instances, I may be charged a fee for copies and records requested.

I understand this is authorization is voluntary and that I may refuse to sign this authorization. My refusal to sign will not affect my ability to obtain treatment, receive payment, or eligibility for benefits unless allowed by law. I understand that any disclosure of information carries with it a potential for an unauthorized re-disclosure by the recipient and the information may no longer be protected by federal confidentiality or privacy laws/ rules. If I have questions about disclosure of my health information, I can contact the privacy officer.

10-8-15
Date Signed

Patient Signature

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207
Fax: (330) 331-7567

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa Esterle D.O.

Auto/ Personal Injury Information

Name of person injured: Tadyan Carter
Date of accident: 10-6-15
Place of accident: (Street/ intersection) [redacted]
Description of accident:
Walking down basement stps and step gave way and I fell
Person at fault: Landlord
Person at fault insurance company:
Insurance company address:

Insurance company phone number:
Claim number assigned:
Name of attorney handling case: Stahn and Lore
Attorney address:
1 Cascade Plaza # 2210
Akron, Ohio 44308
Attorney phone number: 330-762-0700
Are you filing a personal injury claim? Yes or No
Your auto insurance name:
Your auto insurance address:

Your auto insurance phone:

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207
Fax: (330) 331-7567

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Chetoiri Beasley**

I, Chetoiri Beasley, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with two accidents in which I suffered injuries between 2015 and 2017.

2. The first such accident was an auto accident that occurred on January 11, 2015. Within one day of this accident, I recall that a telemarketer from Akron Square Chiropractic ("ASC") contacted me by phone and asked me to visit their office to receive chiropractic care for the injuries resulting from the accident.

3. After receiving the call from ASC, I visited Dr. Floros at ASC for chiropractic care on January 12, 2015. When I visited ASC on this day, I had not yet retained an attorney to represent me in connection with the accident. After I told ASC representatives that I did not have an attorney, ASC told me that KNR could provide me with better legal representation than other law firms because KNR and ASC were closely associated and worked together. A true and accurate copy of the form I completed for ASC is attached as **Exhibit A.**

NOTARIAL SEAL STATE OF OHIO

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

EXHIBIT 10

4. The next day, when I returned to ASC for additional chiropractic care, ASC representatives called KNR on my behalf. After the phone call, I was given paperwork to fill out for KNR, including a fee agreement. No one explained the fee agreement to me, including that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement, a true and accurate copy of which is attached as **Exhibit B.**

5. Dr. Floros and KNR advised me to treat with their pain-management physician, Dr. Ghoubrial. Based on their advice, when I was at ASC on January 14, 2015, I agreed to receive treatment from Dr. Ghoubrial. During my first treatment with Dr. Ghoubrial, I noticed that he maintained a personal office at ASC, next to Dr. Floros's personal office. A true and accurate copy of the medical lien that Dr. Ghoubrial required me to sign on the date of my first treatment is attached as **Exhibit C.**

6. When I was presented with the document reflected in **Exhibit C**, I informed Dr. Ghoubrial that I would prefer to pay the cost of my bills out-of-pocket, and that I did not agree to authorize KNR to deduct the cost of my medical bills from my settlement. I also told Dr. Ghoubrial that I had insurance that could cover the cost of my medical care. In response, Dr. Ghoubrial informed me that he would not treat me if I did not sign the document reflected in **Exhibit C.**

7. In connection with my 2015 accident, Dr. Ghoubrial provided me a TENS unit to take home with me. I told Dr. Ghoubrial that I did not want a TENS unit if I would have to pay for it. Dr. Ghoubrial told me not to worry about the cost, led me to believe that it was free, and suggested that everyone who treated with him received a TENS unit. No one ever informed me what I would be charged for the TENS unit, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

8. In addition to the TENS unit Dr. Ghoubrial provided me, I also received trigger-point injections. I did not want trigger-point injections, but Dr. Ghoubrial told me that I was required to

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

Rachel Hazelet

receive them to accompany my chiropractic care. Before Dr. Ghoubrial administered the injections, I further objected to the procedure by telling him that I did not like needles. In response, he simply told me that the shots would benefit my back. Based on this experience, I believed that Dr. Ghoubrial was trying to persuade me into accepting injections even though I had indicated I did not wish to receive them. No one ever informed me what I would be charged for trigger-point injections, that Dr. Ghoubrial would earn a substantial profit from charging me for the procedure, or that I could or should obtain a similar treatment for a much lower price elsewhere.

9. When my case settled in April 2015, I received only $6,950.83 of the $21,000.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement for Dr. Floros or an investigator fee for MRS Investigators. I had likewise never heard of Clearwater Billing Services, LLC. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit D.**

10. My second accident during this timeframe occurred on November 3, 2017. I signed up with KNR on November 4, 2017, the day after my accident. I recall that an individual who called himself a KNR investigator visited my residence to have me sign a fee agreement for KNR. No one explained that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement, a true and accurate copy of which is attached as **Exhibit E.**

11. After signing up with KNR, I visited Dr. Floros to receive chiropractic care for the injuries from the accident based on advice from KNR. My first visit to Dr. Floros was on November 7,

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Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

Rachel Hazelet

2017, three days after I signed up with KNR. A true and accurate copy of the form I completed for ASC is attached as **Exhibit F.**

12. During my first visit to Dr. Floros, I was also asked to signed a document authorizing Dr. Ghoubrial's practice to treat me, even though I did not receive treatment from Dr. Ghoubrial until the next day. A true and accurate copy of the form I completed for Dr. Ghoubrial's practice is attached as **Exhibit G.**

13. As with my first accident, I again told Dr. Ghoubrial that I would prefer to pay the cost of my bills out-of-pocket, and that I did not want to authorize KNR to deduct the cost of my medical bills from my settlement. I also told Dr. Ghoubrial that I had insurance that could cover the cost of my medical care. Dr. Ghoubrial nonetheless informed me, as he did with my first accident, that I could not be treated if I did not sign the document reflected in **Exhibit G.**

14. In connection with my 2017 accident, Dr. Ghoubrial gave me a second TENS unit, despite that I had already received one. Before I accepted the second TENS unit, I informed Dr. Ghoubrial that I already had one. Dr. Ghoubrial told me in response that I should take another one, further leading me to believe that I would not be charged for it. As before, no one informed me that I would be charged for the device, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

15. In addition to receiving a second TENS unit, I was also given trigger-point injections. No one ever informed me that I would be charged for this procedure, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar treatment for a much lower price elsewhere.

16. When my case settled in April 2018, I received only $9,058.14 of the $28,600.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement

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Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

Rachel Hazelet

proceeds for Dr. Floros or an investigator fee for AMC Investigators. As with my first KNR settlement, I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit H.**

17. Throughout the entirety of my relationship with Dr. Ghoubrial and Dr. Floros, I recall that I informed Dr. Ghoubrial and Dr. Floros, as well as their representatives, that I had insurance coverage that could have been used during each accident, instead of having the charges deducted from my settlement. Rather than offering to use my insurance or informing me that I could receive treatment from another provider who would accept my insurance, Drs. Ghoubrial and Floros and my KNR attorneys led me to believe that I would not need to worry about covering the costs of my care. Based on their reassurances, I also believed that the costs of my care would not detrimentally impact my settlements.

18. During the entirety of KNR's representation of me, KNR never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by AMC or MRS Investigations or any other investigator. KNR did not explain to me why I was charged an investigator fee. I did not question the small charges to AMC or MRS Investigations on my settlement memoranda and trusted that my KNR attorneys would not charge me illegitimate fees.

19. Throughout my legal matters, I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial, as my physician, would not charge me extreme markups for medical treatment or supplies for profit. I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

Attorney Rachel L. Hazelet
Notary Public, State of O
My Commission
Has No Expiration
Sec 147.0

Rachel Hazelet

20. Each time KNR presented me with a settlement memorandum to sign, KNR did not explain to me what the individual charges represented. I would have refused to sign each settlement memorandum had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, and the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant Date 5-03-19

Sworn to and subscribed before me on May 3, 2019 at Akron, Ohio.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

CONFIDENTIAL PATIENT INFORMATION

DATE	1-12-15
NAME	Chetoiri Beasley
STREET ADDRESS	[redacted]
CITY	Akron OH
ZIP	44306
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	[redacted]
SSN	[redacted]
EMAIL ADDRESS:	

SEX: ___Male ___Female
MARITAL STATUS: ___Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/ Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 12-Dec-15 1-12-15

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: _____

NAME OF YOUR PERSONAL HEALTH INSURANCE (If you have): _____

EXHIBIT A

PS

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Chatairi Beasley, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 11 day of January, 15 in Summit County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 13 day of January, 15

CLIENT

ATTORNEY

EXHIBIT B

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa M. Esterle D.O.

MEDICAL LIEN

Re: Patient Chastoni Beasley

First date of service: 1-14-15

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 1-11-15.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 1-14-15

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 1-19-15

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

e 1-16-15 DS

215 East Waterloo Road, Suite 12, Akron, Ohio 44319
Phone: (330) 331-7207
Fax: (330) 331-7567

EXHIBIT C

247295 / Chetoiri Beasley

Settlement Memorandum

Recovery:		
REC	Pekin Insurance Company	$ 20,500.00
PSF	Preferred Capital Funding-Ohio, LLC	$ 500.00
		$ 21,000.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC	
Floros, Dr. Minas; narr fee	$ 150.00
MRS Investigations, Inc.	$ 50.00
Summa Health System	$ 22.47
Summa Health System	$ 39.20
Clearwater Billing Services, LLC	$ 50.00
Total Due	$ 311.67

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic		$ 3,880.00
Clearwater Billing Services, LLC		$ 3,000.00
Kisling, Nestico & Redick, LLC	($6,833.33)	$ 6,075.00
National Diagnostic Imaging Consultants		$ 110.00
Ohio Tort Recovery Unit		$ 400.00
Preferred Capital Funding-Ohio, LLC		$ 622.50
Total Due Others		$ 14,087.50

Total Deductions	$ 14,399.17
Total Amount Due to Client	$ 6,600.83
Less Previously Paid to Client	$ 500.00
Net Amount Due to Client	$ 6,100.83

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 4-20-15

Name: _____
Chetoiri Beasley

Firm: _____
Kisling, Nestico & Redick, LLC

EXHIBIT D

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Chetoiri Beasley, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent Myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 3 day of November 2017 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Client's case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, Medical Malpractice, Disability, or Employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf.
IN THE EVENT OF NO RECOVERY, CLIENT SHALL NOT OWE ATTORNEYS FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys as required in the Attorney's professional judgment in preparation for settlement and/or trial of Client's case. Such expenses include a flat rate fee of $50.00 to $100.00 for investigative services provided by a third party. IN THE EVENT OF NO RECOVERY, CLIENT SHALL NOT OWE ATTORNEYS FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay directly to any doctor, hospital, expert and/or other medical creditor any unpaid balance due to them for Client's care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Client's claim. Client understands Attorneys will investigate Client's claim and then Attorneys shall have the right to withdraw from representation.

5) Client agrees to allow us to provide medical and health insurance providers with information and status updates to facilitate medical care and/or resolution of client's medical expenses/subrogation claims per the client's authorization.

DATE: 11/04/17

CLIENT

ATTORNEY

EXHIBIT E

CONFIDENTIAL PATIENT INFORMATION

DATE	November 7 2017
NAME	Chetorei K Beasley
STREET ADDRESS	[redacted]
CITY	Akron OH
ZIP	44302
CELL PHONE/HOME PHONE	[redacted] HOME:
DATE OF BIRTH	[redacted]
SSN	[redacted]
EMAIL ADDRESS:	

SEX: ___Male X Female
MARITAL STATUS: X Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/ Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right left)	Knee pain (right left)	Ankle/Foot Pain (right / left)
Headaches X	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT X	WORK INJURY	OTHER

DATE OF ACCIDENT: 11-03-17

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: PASSENGER

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): CARESOURCE

EXHIBIT F

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Lisa M. Esterle D.O.
MEDICAL LIEN

Re: Patient Chetairi Beasley
First date of service: 11-08-17

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all medical services rendered as a result of an injury that I received on 11 3 17.

Said amount being fair and reasonable price of medical services provided by our medical providers for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC. Furthermore, I also request that you forward all my records and bills to my attorney.

I fully understand that I am directly/fully responsible and guarantee payment to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 11-02-17 _____

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 11/10/17 _____

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207 Fax: (330) 331-7567

Revised June 2017

EXHIBIT G

275579 / Chetoiri Beasley

Settlement Memorandum

Recovery:

PSF	Oasis Legal Finance	$ 350.00
REC	Erie Insurance	$ 27,000.00
PSF	Oasis Legal Finance	$ 750.00
PSF	Oasis Legal Finance	$ 500.00
		$ 28,600.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick

AMC Investigations;	$ 50.00
Clearwater Billing Services, LLC	$ 50.00
Floros, Dr. Minas	$ 150.00
Chartswap	$ 42.00
Medinform	$ 26.00
Akron General Medical Center	$ 63.86
Total Due	**$ 381.86**

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic	($4,010.00)	$ 3,200.00
Clearwater Billing Services, LLC	($2,150.00)	$ 1,500.00
Kisling, Nestico & Redick		$ 9,000.00
National Diagnostic Imaging Consultants	($200.00)	$ 100.00
Oasis Legal Finance		$ 2,260.00
Ohio Tort Recovery Unit		$ 3,100.00
Total Due Others		**$ 19,160.00**

Total Deductions	**$ 19,541.86**
Total Amount Due to Client	$ 9,058.14
Less Previously Paid to Client	$ 1,600.00
Net Amount Due to Client	**$ 7,458.14**

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and attorney's fees with Kisling, Nestico & Redick. I acknowledge that it accurately reflects all costs, including but not limited to, the investigation fee, and all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. If any amount was withheld from the settlement for potential subrogation interests, any balance due after the subrogation interest is satisfied may be subject to Attorney Fees not to exceed the contractually agreed amount. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick.

Date: 4-20-18

Name: _____
Chetoiri Beasley

Firm: _____
Kisling, Nestico & Redick

EXHIBIT H

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Monique Norris**

I, Monique Norris, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with a car accident in which I suffered injuries on July 29, 2013.

2. Within a matter of hours after I initially contacted KNR on July 30, 2013, an individual who called himself a KNR investigator visited me to have me sign a fee agreement for KNR. At the time the investigator visited me, I had not decided whether I wanted to have KNR represent me in connection with my accident. I likewise do not recall verbally agreeing to the representation during my initial contact to KNR. Because I still had questions about my case and the process relating to KNR's representation of me, I hesitated to sign the fee agreement.

3. Despite my hesitation, I was told that KNR could not discuss my case until I signed up with the firm and reluctantly signed an electronic copy of the agreement. I was not given a copy of the document I had signed. No one explained that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement, that I would be charged a sign-up fee for the investigator visiting me to sign the fee agreement, or that KNR would send me to

EXHIBIT 11

treat with Dr. Floros and Dr. Ghoubrial, both of whom would refuse to accept my health insurance, as a part of a referral relationship KNR actively maintained with such providers. A true and accurate copy of the fee agreement I signed is attached as **Exhibit A.**

4. The day after I signed-up with KNR, I received advice and instruction from my KNR attorney to treat with Dr. Floros at Akron Square Chiropractic ("ASC"). Based on that advice and instruction, I visited ASC for chiropractic care on July 31, 2013. In the paperwork I completed for ASC, I indicated that I had active health insurance coverage through Buckeye Insurance, a true and accurate copy of which is attached as **Exhibit B.**

5. Because I was not satisfied with the treatment I was receiving from Dr. Floros, I complained to KNR and asked to treat with a different chiropractor. In response, KNR advised me that my case would become more difficult and would take longer to resolve if I stopped treating with Dr. Floros. When I brought these concerns to Dr. Floros, he offered to increase the amount of care I was receiving and advised me that treating with a different chiropractor would hurt my case.

6. Once I began treating with Dr. Floros at KNR's advice and instruction, I was sent to treat with their pain-management physician, Dr. Ghoubrial. I first received treatment from Dr. Ghoubrial on August 2, 2013. No person at Dr. Ghoubrial's practice asked me whether I had health insurance, despite that I did have insurance that could have paid for my medical care instead of having such costs deducted directly from my settlement. A true and accurate copy of the medical lien that Dr. Ghoubrial required me to sign on the date of my first treatment is attached as **Exhibit C**.

7. In connection with my accident, Dr. Ghoubrial's practice provided me a TENS unit to take home with me. No one at Dr. Ghoubrial's practice ever informed me that I would be charged for the TENS unit, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

8. In October 2013, a few months into KNR's representation of me, I explained to my KNR attorney that I wanted to resolve my case as quickly as possible. In response, I was provided what I now understand to be forms for a loan from a company called Liberty Capital Funding LLC ("LCF") as a means to access settlement proceeds in advance of my case's resolution. KNR did not inform me of other sources of funding that were not as costly, caused me to believe that LCF was the best available source of funding, and did not disclose to me in any manner that KNR's managing partner had a relationship with LCF. I would not have taken out a loan from LCF without the information and recommendation I received from KNR. A true and accurate copy of the contract I signed with LCF is attached as **Exhibit D.**

9. When my case settled in May 2014, I received only $1,845.91 of the $6,732.55 that KNR recovered in connection with my accident after all fees and expenses were deducted from my settlement. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement for Dr. Floros or an investigator fee for MRS Investigators. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit E.**

10. Throughout the entirety of my relationship with Dr. Ghoubrial and Dr. Floros, I recall that I informed Dr. Ghoubrial and Dr. Floros, as well as their representatives, that I had insurance coverage that could have been used to cover the cost of my medical care, instead of having the charges deducted from my settlement. Rather than offering to use my insurance or informing me that I could receive treatment from another provider who would accept my insurance, Drs. Ghoubrial and Floros and KNR led me to believe that I would not need to worry about covering

the costs of my care. Based on their reassurances, I also believed that the costs of my care would not detrimentally impact my settlements.

11. During the entirety of KNR's representation of me, KNR never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by MRS Investigations. KNR did not explain to me why I was charged an investigator fee. I did not question the small charges to MRS Investigations on my settlement memorandum and trusted that my KNR attorneys would not charge me illegitimate fees.

12. I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial's practice, in charge of my medical care, would not charge me extreme markups for the TENS unit I was provided. I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

13. When KNR presented me with the settlement memorandum reflected in **Exhibit E**, KNR did not explain to me what the individual charges represented. I would have refused to sign the settlement had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, and the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 5/6/19 Date

Sworn to and subscribed before me on 5·6·2019 at Fairlawn, Ohio.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Monique Norris, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent Myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 29 day of July, 13 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 30 day of July, 2013

Monique Norris
CLIENT

ATTORNEY

EXHIBIT A

KNR004320

CONFIDENTIAL PATIENT INFORMATIO

DATE	7-31-13
NAME	Monique Norris
STREET ADDRESS	[redacted]
CITY	Akron
ZIP	44306
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	
SSN	
EMAIL ADDRESS:	

SEX: ___Male X Female
MARITAL STATUS: X Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain X	Upper/ Mid Back Pain	Low Back Pain X
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 7/29/13

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: Nationwide

NAME OF YOUR CAR INSURANCE: Motorist mutual

NAME OF YOUR PERSONAL HEALTH INSURANCE (If you have): Buckeye

EXHIBIT B

KNR004295

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
MEDICAL ASSIGNMENT

Re: Patient Monique Norris

First date of service: 8/2/13

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 7/29/13.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

X **Dated:** 8/2/13 X

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: _____

Kisling, Nestico & Redick, LLC
Attorneys at Law

@ 8-2-13 TS

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

1134 Brown Street Suite 1A Akron, Ohio 44301
Phone: (330) 331-7207
Fax: (330) 331-7567

EXHIBIT C

My name is Monique Norris and I reside a[redacted] Akron, OH 44306. I am entering into this non-recourse civil litigation advance agreement ("Agreement") with Liberty Capital Funding LLC ("Company") as of 10/30/2013.

1. I accept the sum of **$500.00** from Company. I direct the funds to be distributed as follows: **$500.00** payable to Monique Norris.

2. I assign to Company an interest in the proceeds from my Legal Claim (defined below) equal to the funded amount of **$500.00** plus all other fees and costs to be paid out of the proceeds of my legal claim. I understand that the amount I owe at the end of the first six month interval shall be based upon the amount funded plus the displayed annual percentage rate of return (APRR) charge plus the below listed fees. Each six month interval thereafter shall be computed by taking prior six month balance owed and accessing the displayed six month APRR charge to that total (semi-annual compounding) plus the below listed fees. This shall continue for thirty-six months or until the full amount has been repaid.

MANDATORY DISCLOSURE STATEMENT

2. **Total amount of funding received by consumer $500.00**

3. **Itemized fees:**

Processing	**$50.00**
Delivery	**$75.00**
Fee Total:	**$125.00**

4. **Total amount to be repaid by consumer - *(plus itemized fees)***
***(you will actually pay 24.5% based upon a 49.00% APRR with semi-annual compounding)**

if at 6 months: Must be paid by 4/30/2014	**$778.13**
if at 12 months: Must be paid by 10/30/2014	**$968.77**
if at 18 months: Must be paid by 4/30/2015	**$1,206.11**
if at 24 months: Must be paid by 10/30/2015	**$1,501.61**
if at 30 months: Must be paid by 4/30/2016	**$1,869.51**
if at 36 months: Must be paid by 10/30/2016	**$2,327.53**

*The "if at 6 months" payment means any payment I make between the day after I get the money and 6 months from that date. The "if at 12 months" payment means any payment I make between the 6 months date and the 12 month date. This is how all the payment dates are calculated.

Seller Initials MN

EXHIBIT D

KNR004224

DEFINITIONS

3. **"Customer or Seller"** is *Monique Norris* who receives the money.

4. **"Company** or **LCF"** is Liberty Capital Funding LLC, Liberty Capital Funding LLC who gives the money.

5. **"Legal Claim"** means (a) the matter which occurred on or about *7/29/2013* which is captioned Monique Norris ; (b) all applicable proceedings, proceedings on appeal or remand, enforcement, ancillary, parallel, or alternative dispute resolution proceedings and processes arising out of or relating to such case; (c) any other proceedings founded on the underlying facts giving rise to such case in which Customer is a party; and (d) any arrangements made with Customer with another party to such case which resolves any of the Customer's claims against such party.

6. **"Proceeds"** means all property or things of value payable on account of the Legal Claim including, without limitation, cash, negotiable instruments, contract rights, annuities and securities whether obtained by judgment, settlement, arbitration award or otherwise. Without limitation, "Proceeds" shall include a reasonable estimate of the monetary value of all non-cash benefits receivable by Customer on account of the Legal Claim.

OBLIGATION TO REPAY IS CONTINGENT

7. If my Legal Claim is lost and no money is awarded or owed to me then I do not have to repay any money to Company. If I am successful on my Legal Claim and I am awarded or owed money, Company shall receive its money before I receive any remaining monies.

FEES AND COSTS

8. I agree to pay the entire amounts listed on the schedule on page 1. I understand that all fees and costs will be added to the APRR sums that I pay company out of the proceeds of my legal claim.

9. The annual percentage rate of return (APRR) is charged starting from the date of this Agreement until the first date of the scheduled payment period(s) listed on page 1. So for example if you make a payment in month 5, you shall pay the full amount owed listed in "if at 6 months" and so on.

10. In the case of multiple fundings, each funding will be treated as a separate and independent transaction and these fees shall accrue on each funded sum from the date of each individual funding.

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ASSIGNMENT OF PROCEEDS

11. I hereby assign to and grant to Company an assignment, lien and security interest in the proceeds of the Legal Claim in the amount listed on the last line of the Mandatory Disclosure Statement (*$2,327.53*), which is the amount I would be required to repay after 36 months from today. Nonetheless, I will pay Company the amount that is due at the time of payment, which shall fully satisfy my obligation to Company under this Agreement, whether that amount is lower or higher than *$2,327.53*.

12. If this assignment and / or lien violates any law, then I agree to pay Company all of the funds due under this Agreement immediately upon the payment of the Legal Claim proceeds as a separate and independent contractual obligation.

13. I direct my attorney, and any future attorney representing me in my Legal Claim, to honor this assignment and/ or lien.

14. The amount due under this Agreement shall be deducted from any money collected as a result of my Legal Claim and will be paid immediately upon collection to Company. The only payments that will take priority over this, and be paid first, are my attorney's fees and costs, legitimate medical liens and payment to any statutory lien holders.

15. I will not receive any money from the proceeds of the Legal Claim until Company has been paid in full. I acknowledge that my receipt or use of any funds prior to the full re-payment to Company may constitute an illegal conversion.

REPRESENTATIONS AND WARNINGS

16. Company has explained to me that the cost of this transaction may be more expensive than traditional funding sources such as a bank, credit card, finance company or obtaining money from a friend or relatives.

17. I acknowledge that my attorney has not offered any tax or financial advice. My attorney has made no recommendations regarding this transaction other than the appropriate statutory disclosures.

18. Company has advised me to consult a lawyer of my own choosing before signing this Agreement. I have either received such legal advice or knowingly choose not to.

19. Company has advised me to consult a financial or tax professional of my own choosing before proceeding with this transaction. I have either received such professional advice or knowingly choose not to.

20. Because Company is taking a significant and genuine risk in giving me this funding, I understand that they expect to make a profit. However, Company will be paid only from the proceeds of my Legal Claim, and agrees not to seek money from me directly if my Legal Claim is not successful.

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21. I have every intension of pursuing my legal claim to its conclusion. I understand that if I decide not to pursue the Legal Claim, I must notify Company by writing, email or fax within FIVE (5) BUSINESS DAYS of that decision.

22. I agree that I will not knowingly create additional assignments of or liens against the proceeds of the Legal Claim without the prior written consent of Company except for those liens or assignments that naturally arise during the prosecution of any Legal Claim (e.g. medical, Medicare, etc as permitted by law). I specifically promise not to create any assignments and / or liens against the proceeds of the Legal Claim in connection with any additional fundings or loans from other companies or persons that I might receive after the date of this Agreement. Any additional unauthorized funding may be deemed a default under this agreement by Company and may result in all sums becoming immediately due and owing. Upon notification of customers desire to seek additional funding, Company may demand the name of such other funding company and seek to offer a lower cost solution to customer; seek to be "bought out" of its position; do nothing but maintain its position and await the conclusion of the legal claim.

23. Company reserves the right to decline any further advances agreed upon but not yet made under this Agreement if, in the sole discretion of Company, the circumstances of the Legal Claim have adversely changed. This shall not affect my obligations to Company regarding any funds that actually were advanced, including but not limited to fees and charges.

OTHER PROVISIONS

24. **THE COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM.**

25. I understand that I am not assigning my cause of action (the Legal Claim) to Company, but rather I am assigning a right to a portion of and granting a lien against any proceeds of my Legal Claim. Company will play no role whatsoever in the prosecution or the settlement of my legal claim.

26. I have instructed my attorney to cooperate with Company and to give Company periodic updates of the status of my Legal Claim as Company requests. I consent to the sharing of this information. If I change attorneys, I will notify Company within 48 hours of the change, and provide Company with the name, address and phone number of my new attorney.

27. I understand that the risk of me not recovering in my Legal Claim is Company's risk. If I do not recover money, I will owe Company nothing.

28. This is a non-recourse funding and is not a loan, but if a Court of competent jurisdiction determines that it is a loan, then I agree that interest shall accrue at the maximum rate permitted by law or the terms of this agreement, whichever is less.

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29. If any provision of this Agreement shall be deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other provision. This written Agreement represents the entire agreement between the parties. It may only be modified in writing. No prior understandings, representations or agreements between us can change the written terms of this Agreement.

30. Company has fully explained to me the contents of this Agreement and all of its principal terms, and answered all questions that I had about this transaction. This was done in English or French or Spanish *(when appropriate)*, the language I speak best.

31. Company will send any notices required under this Agreement to me at the address listed above, *and to my attorney, at the address listed in this paragraph:* If I move, I will notify Company of my new address within 72 hours.

Rob Horton
3412 West Market St.
Akron, Ohio 44333

32. I represent to Company that there are no pending tax claims, child support liens, criminal allegation(s) or charge(s) against me.

33. If there is a dispute as to the amount owed at the time that my Legal Claim is resolved, it is expressly understood that my attorney shall not disburse any proceeds to me, or to anyone else on my behalf, except for the fees and/or actual disbursements incurred by my attorney in connection with the prosecution of my Legal Claim, until such dispute is resolved. I hereby make the foregoing an irrevocable direction to my attorney, or his successors. Additionally, my attorney shall keep the proceeds in his or her client trust account while any dispute is pending. If this dispute continues beyond a 120 day period, my attorney may elect to transfer the funds from his or her client trust account and deposit the proceeds with a court of competent jurisdiction.

34. I consent to my credit report being run at any time in connection with my applying for and receiving this funding.

35. I further instruct my attorney to not attempt to assert any type of "equitable fund" or attorney's fees or costs to be paid by Company for my attorneys' efforts to pay Company their proceeds.

MISSTATEMENTS, FRAUD, CRIMINAL ACTS

36. I will be liable to Company for all sums advanced, together with outstanding fees and charges, and regardless of the outcome of my Legal Claim, if and only if I make a material misstatement in this application or in connection with my Legal Claim, or commit a fraudulent or criminal act either in connection with this transaction or in a matter that would adversely and significantly impact on my Legal Claim or the ability of Company to recover from the proceeds under this agreement.

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CONSUMER'S RIGHT TO CANCELLATION:

37. YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM COMPANY.

To cancel this agreement you must either return to the company the full amount of disbursed funds by delivering the company's uncashed check to the company's offices in person, within five business days of the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of the disbursed funds in the form of the company's uncashed check, or a registered or certified check or money order, by insured, registered or certified United States mail, postmarked within five business days of receiving funds from the company, at the address specified in the contract for the cancellation.

CHOICE OF LAW, VENUE AND FEES/COSTS FOR DISPUTE RESOLUTION

38. I agree that any disputes that may arise out of this Agreement shall be adjudicated in Florida. This Agreement will be interpreted in accordance with the laws of the State of Florida.

39. I understand that if Company does not receive payment as required by this Agreement and Company needs to take action to pursue such payment, Company may collect, in addition to the amount due and owing, reasonable attorney's fees and costs incurred in enforcing its rights. I agree that an amount equal to one third (33 1/3%) of the amount due and owing is a reasonable attorney's fee. More generally, I and Company agree that the prevailing party in any legal action arising out of this Agreement shall be entitled to reasonable attorney's fees and costs, and one-third (33_%) of the sum at issue is a reasonable attorney's fee. Additionally, either party may demand that such dispute be heard under the rules of the American Arbitration Association before a single arbitrator with his or her decision being considered final and non-appealable by either party.

40. I understand that if a dispute arises between myself and the company concerning this agreement, that the responsibilities of my attorney, representing me in my legal claim, shall not be any greater than my attorneys responsibilities under the Florida Rules of Professional Conduct.

Seller Initials MN

INSTRUCTIONS

41. This Agreement may be executed in separate counterparts. A signature transmitted by FAX or Email shall be effective with the same force and effect as an original signature.

42. I will instruct my attorney to mail all payments to:

Liberty Capital Funding LLC
8276 Calabria Lakes Dr.
Boynton Beach, FL 33473

The payment instructions set forth herein are irrevocable and are not subject to modification in any manner, except by Company or any successor to Company so identified by them and only by written notice to me canceling or modifying the payment instructions contained herein. A copy of this contract shall be provided to both me and my attorney. I hereby accept funding from Company under the terms of this Agreement, grant Company a Security Interest and Lien under the terms hereof, and assign the proceeds of my Legal Claim as specified in this Agreement on 10/30/2013.

DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY, OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSCACTION.

Seller

Seller Initials MN

KNR004230

ATTORNEY ACKNOWLEDGMENT OF ASSIGNMENT OF PROCEEDS OF CLAIM

I, Rob Horton of Kisling, Nestico & Redick, am counsel to Monique Norris in the Legal Claim which arose on or about 7/29/2013 in which Monique Norris is expected to receive proceeds from its resolution. I hereby acknowledge the assignment and/or placement of a lien upon the proceeds of the above Legal Claim by my client and granted to Liberty Capital Funding LLC pursuant to a Funding Agreement between both parties. I understand that I am instructed to follow Monique Norris's Irrevocable direction and authorization to pay such sums that shall be due and owing at the time of the resolution of the above Legal Claim. At such time that the above Legal Claim is ready for disbursement, I shall contact the above Company for a proper pay-off amount I shall at disbursement time send said check made payable to Liberty Capital Funding LLC **located at 8276 Calabria Lakes Dr. Boynton Beach, FL 33473**.

If any dispute arises over the amount owed LCF, it is expressly understood that I shall pay LCF the non-disputed amount owed by Monique Norris. I shall not disburse any proceeds to Monique Norris or to anyone else on Monique Norris's behalf, except for my attorney's fees (not to exceed 40%) and/or actual disbursements incurred by me in connection with the prosecution of this Legal Claim, until such dispute is resolved. I shall keep the proceeds in my client trust account while any dispute is pending. If the dispute continues beyond 120 days, I may notify LCF and Monique Norris and then transfer the funds from my client trust account and deposit the proceeds with a court of competent jurisdiction. I am being paid per a written contingent fee agreement and all proceeds of the civil claim or action will be disbursed via my client trust account or settlement fund established to receive proceeds from the defendant on behalf of Monique Norris. I further represent that to the best of my knowledge Monique Norris has **NOT** taken any other fundings, advances, loans or any funding encumbrances on the above Legal Claim other than LCF herein. I agree to notify LCF if at any time I am no longer counsel on this Legal Claim, or I have joined additional co-counsel to also work on this Legal Claim. While I am not endorsing or recommending this transaction, I have reviewed the contract and all costs and fees have been disclosed to my client, including the annualized rate of return applied to calculate the amount to be repaid by my client. This document is part of the contract between Customer and Company.

Dated: 10/30/2013

Kisling, Nestico & Redick

By: Robert P. Horton, Esq.
Robert P. Horton, Esq. (Oct 30, 2013)
Attorney Signature

Seller Initials MN

232154 / Monique Norris

Settlement Memorandum

Recovery:

REC	Motorists Mutual Insurance Company	$ 250.00
MP	Motorists Insurance Group	$ 1,000.00
REC	Nationwide Insurance*	$ 4,982.55
REC	Liberty Capital Funding LLC	$ 500.00
		$ 6,732.55

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC		
Akron General Medical Center	$ 6.00	
Clearwater Billing Services, LLC	$ 50.00	
First Healthcare	$ 12.00	
Floros, Dr. Minas	$ 200.00	
Mercy Health Partners	$ 15.00	
MRS Investigations, Inc.	$ 50.00	
Professional Receivables Control, Inc.	$ 16.00	
Akron General Medical Center	$ 40.89	
Total Due	$ 389.89	

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic	$ 500.00	
Clearwater Billing Services, LLC	$ 600.00	
CNS Center for Neuro and Spine	$ 260.00	
Kisling, Nestico & Redick, LLC	($2,077.51) $ 1,750.00	
Liberty Capital Funding LLC	$ 800.00	
National Diagnostic Imaging Consultants	$ 80.00	
Ohio Tort Recovery Unit*	$ 506.75	
Total Due Others	$ 4,496.75	

Total Deductions	$ 4,886.64
Total Amount Due to Client	$ 1,845.91
Less Previously Paid to Client	$ 1,500.00
Net Amount Due to Client	$ 345.91

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 5/25/14

Name: Monique Norris

Firm: Kisling, Nestico & Redick, LLC

EXHIBIT E

KNR004235