

1 IN THE COURT OF COMMON PLEAS

2 SUMMIT COUNTY, OHIO

3 MEMBER WILLIAMS, et al.,

4 Plaintiffs,

5 -vs-

CASE NO. CV-2016-09-3928
 VOLUME I

6 KISLING, NESTICO
7 & REDICK, LLC, et al.,

8 Defendants.

9 - - - -

10 Videotaped deposition of ALBERTO R. NESTICO,
11 ESQ., taken as if upon examination before Chana
12 Margareten, a Notary Public within and for the
13 State of Ohio, at the Hilton Akron-Fairlawn Hotel
14 and Suites, 3180 W. Market Street, Fairlawn,
15 Ohio, at 9:21 a.m. on Thursday, February 7, 2019,
16 pursuant to notice and/or stipulations of
17 counsel, on behalf of the Plaintiffs.

18 - - - -

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Peter Graves - videographer
22 Member Williams
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24
25

1 I N D E X

2 EXAMINATION
3 ALBERTO R. NESTICO, ESQ.
4 BY MR. PATTAKOS 5

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1 THE VIDEOGRAPHER: We are now
2 ready to begin the deposition. Will the
3 court reporter please swear in the witness.

4 ALBERTO R. NESTICO, ESQ., of lawful age,
5 called by the Plaintiffs for the purpose of
6 Examination as provided by the Ohio Rules of
7 Civil Procedure, being by me first duly sworn, as
8 hereinafter certified, deposed and says as
9 follows:

10 - - - -

11 EXAMINATION OF ALBERTO R. NESTICO, ESQ.

12 BY MR. PATTAKOS:

13 Q. Good morning, Mr. Nestico.

14 A. Good morning.

15 Q. I am going to -- I don't want to assume, but I
16 should ask, have you taken any medication or
17 ingested any other substances recently that would
18 impair your ability to remember events accurately
19 or testify truthfully today?

20 A. No.

21 Q. Is there any other reason you would be unable to
22 remember events accurately or testify truthfully
23 today?

24 A. No.

25 Q. I'm sure you've taken many depositions, correct?

1 A. Correct.

2 Q. Have you ever had your deposition taken?

3 A. Once.

4 Q. Once. What were the circumstances there?

5 A. Involved a bar complaint issue.

6 Q. Is that about the website?

7 A. Yes.

8 Q. Okay. So that was just last year or just in the
9 last year?

10 A. Correct.

11 Q. You founded the KNR Firm in 2005, correct?

12 A. I did not.

13 Q. Who founded the KNR Firm?

14 A. Gary Kisling.

15 Q. Okay. And that's your partner, former partner?

16 A. Yes.

17 Q. Is he not a partner of the KNR Firm anymore?

18 A. No.

19 Q. Does anyone at the KNR Firm have the authority to
20 fire you?

21 A. No.

22 Q. No one at the KNR Firm has authority to terminate
23 your employment with the firm?

24 A. No.

25 Q. And no one at the firm has the authority to

1 terminate your partnership with the firm?

2 A. I don't understand what that means.

3 MR. MANNION: I am going to
4 object. Go ahead.

5 A. Sorry, I don't know what that means.

6 Q. There is no one at the firm that could say, Mr.
7 Nestico, we don't want you to be a partner of
8 this firm anymore for whatever reason --

9 A. Oh, okay. No.

10 Q. -- and terminate your relationship with the firm?
11 It's your firm, right?

12 A. Correct.

13 Q. Okay. You don't report to anyone at the KNR Law
14 Firm, do you?

15 A. Not formally, no.

16 Q. Right. So, you consult with your partners, of
17 course?

18 A. Yes.

19 Q. But they don't have authority to direct you in
20 any way, to take any action that you do not want
21 to take?

22 A. No.

23 Q. You have sole discretion over the firm's policies
24 and practices, correct?

25 MR. MANNION: Objection. Go

1 ahead.

2 A. What policies? I'm -- what are you talking
3 about?

4 Q. All of the firm's policies.

5 MR. MANNION: Objection.

6 A. If you could be more specific, Peter, I could
7 help you. But generally, I guess.

8 Q. Okay. Well, nobody else has the sole discretion
9 to set policies -- I will try to be more
10 specific. You have the final word over
11 everything that the firm does, correct?

12 MR. MANNION: Objection.

13 A. I guess.

14 Q. Well, why do you hesitate to answer that
15 decisively?

16 A. Because I consult with all of the other lawyers.
17 I consult with the partners. If they tell me,
18 you know, something isn't right, then I take
19 their advice and listen to them.

20 Q. Understood. But in the end, it's your decision?

21 A. I guess, yes.

22 Q. Okay. That's all I wanted to know.

23 A. Yeah.

24 Q. Thanks. The buck stops with you?

25 MR. MANNION: Objection.

1 A. It depends --

2 MR. MANNION: Wait a minute. Wait
3 a minute. Objection. That wasn't a
4 question.

5 Q. You're familiar with the phrase "the buck stops
6 here"?

7 A. Yes.

8 MR. MANNION: Objection.

9 Q. That applies to you at KNR?

10 MR. MANNION: I am going to object
11 to the circumstances.

12 A. And -- and I have to say, not always. And I
13 could explain.

14 Q. Please explain.

15 A. Each lawyer exercises their own independent
16 judgement. They are governed by the rules, just
17 like we all are. So they -- what they say
18 sometimes goes. It's their choice. So that's
19 why I hesitate when you ask that question.

20 Q. That's on a case-to-case basis --

21 A. Again --

22 Q. -- in representing their clients? You're --

23 A. I agree.

24 Q. You recognize that your attorneys have some
25 discretion to be professionals and use their

1 professional expertise in representing the firm's
2 clients, correct?

3 MR. MANNION: Objection. Go
4 ahead.

5 A. Yeah. What you are saying is correct.

6 Q. Okay.

7 A. It's on a case-by-case, they decide how to handle
8 the case and what to do and what not to do. They
9 are professionals and governed by the same rules
10 that I am.

11 Q. But ultimately if they do something that, in your
12 view evinces bad judgment, you would correct
13 them, correct?

14 MR. MANNION: I am going to
15 object. Are you talking about case-related
16 or administrative?

17 MR. PATTAKOS: Anything.
18 Anything.

19 MR. MANNION: Objection. Go
20 ahead.

21 Q. Anyone at the firm representing, whether it's a
22 janitor or an attorney, I mean even Mr. --

23 MR. PATTAKOS: Is it Reagan, is
24 that how you pronounce it?

25 MR. REAGAN: Yes.

1 Q. Okay. Even Mr. Reagan, who I understand is very
2 high up in your firm, if any of them do
3 something, and persist in doing it, let's say,
4 and you believe that's bad judgment and bad for
5 the firm, you will order them to stop, correct?

6 MR. MANNION: I am going to
7 object. Improper hypothetical, but go
8 ahead if you can.

9 A. I don't -- Mr. Pattakos, I don't order anybody to
10 do anything, I really don't. And we will have a
11 discussion and we will consult with ethics
12 counsel. We have ethics counsel on retainer. I
13 have always had ethics counsel on retainer. We
14 would consult with an ethics lawyer, decide what
15 is the appropriate action and take it.

16 Q. But you don't need ethics counsel on every single
17 matter, where you have to correct an employee, do
18 you?

19 A. If it --

20 MR. MANNION: Excuse me, wait.
21 Objection. I don't even know how that
22 could be answered. What do you mean
23 "correct an employee"? I don't know --
24 well, I need to understand the question,
25 too. I don't understand the question, so I

1 don't know whether to object.

2 Q. Please answer the question, Mr. Nestico.

3 MR. MANNION: If you can, go
4 ahead.

5 A. It depends on what employee. Are you talking
6 about a paralegal? Are you talking about a
7 receptionist? Are you talking about a lawyer?
8 Are you talking about intake? Are you talking
9 about -- what are you -- which one is it, that's
10 all I'm asking. It varies, correct. I'm not
11 going to call ethics counsel, because the
12 receptionist did something wrong.

13 Q. Of course not. And you are not going to call
14 ethics counsel every time an attorney does
15 something wrong, either?

16 A. No, I do.

17 Q. Every single time?

18 A. Every single time.

19 Q. Okay. Now, I want to be clear, you testified
20 before that you had sole control over the firm
21 and its policies?

22 MR. MANNION: Objection.

23 A. And I said, I don't have sole control. I told
24 you I consult with other lawyers.

25 Q. And you have ultimate authority to make the

1 decisions, though --

2 A. Yes, sir.

3 Q. -- let's say that?

4 A. Yes.

5 MR. MANNION: Let him finish the
6 question.

7 Q. How long has this been the case?

8 A. Since 2000 and -- I can't remember if it was '12,
9 beginning of '12 or the end of '12, 2012.

10 Q. When you bought out Mr. Redick and Mr. Kisling?

11 A. Correct.

12 Q. That was reported in the news. I think it said
13 2012 in the news --

14 A. Okay. That's --

15 Q. -- article.

16 MR. MANNION: Wait for a question,
17 please.

18 Q. Okay. That's --and we will look at that news
19 article, but I don't think this should be a
20 controversial issue.

21 So who are the current owners? Who has an
22 ownership interest in the KNR Firm besides you?

23 A. Just me. As in equity --

24 Q. Okay.

25 A. -- just me.

1Q. Okay.

2[REDACTED]

3[REDACTED] [REDACTED]

4[REDACTED]

5[REDACTED]

6[REDACTED]

7[REDACTED]

8[REDACTED]

9[REDACTED]

10[REDACTED]

11[REDACTED] [REDACTED]

12[REDACTED] [REDACTED] [REDACTED]

13[REDACTED]

14[REDACTED]

15[REDACTED]

16[REDACTED]

17[REDACTED]

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[REDACTED]

[REDACTED]

MR. MANNION: I'm going to object
to the form. Go ahead.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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MR. MANNION: Objection.

4

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MR. MANNION: Wait a minute.

6

Wait. Stop. Wait a minute. Wait for a

7

question, not a mock.

8

9

Q. Okay. I'm not sure it's that important actually,

10

so --

11

MR. PATTAKOS: Good morning.

12

MS. HAZELET: Good morning.

13

MR. PATTAKOS: Thank you.

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MR. MANNION: Objection to form.

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MR. MANNION: Well, I am going to

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object to "cash out", but go ahead.

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MR. MANNION: I will object to the

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form. Go ahead.

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MR. MANNION: Objection to form.

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Go ahead.

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Q. I recall. I'm sorry. Thank you. Okay. Let's look at an exhibit.

MR. PATTAKOS: I will mark Exhibit 1.

- - - -

(Thereupon, Plaintiff's Exhibit 1 was marked for purposes of identification.)

- - - -

Q. I will represent to you that this is an article that we printed off the internet from Ohio.com.

A. Okay.

Q. Akron Beacon Journal. Does this look like a true and accurate copy of the report that was published in the Beacon Journal about your law firm?

A. I would assume so.

Q. Okay. So, it says first that in 2012 managing partner, Rob Nestico, bought out the two other founding partners, Gary Kisling and Robert Redick. You've testified that that is accurate.

Then it says that four lawyers had been named shareholders of the personal injury law firm,

1 Kisling, Nestico & Redick, with headquarters in
2 Fairlawn.

3 What does it mean for them to have been named
4 shareholders? What rights does that get them,
5 let me ask it that way?

6 A. They get a say on any decision that is being
7 made.

8 Q. Anything else?

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 MR. MANNION: Objection.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]

MR. MANNION: I will object to the

form. Go ahead.

[REDACTED]

MR. MANNION: Objection. That's

not a question.

Q. Please explain, if you can.

[REDACTED]

Q. I'm not sure. What is it that they are entitled to precisely?

1 A. They are not entitled to anything.

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 MR. MANNION: Object to form,
8 again, and multiple questions. Go ahead.

9 [REDACTED]
10 [REDACTED]

11 Q. Okay. So who are -- who are all of these -- the
12 current shareholders, the people that have this
13 shareholder status, that is described in this
14 article? I know there is the people that are
15 named in the article, which -- who are, let's
16 start here, Josh Angelotta, John Reagan, Nomiki,
17 and Tom Vasvari.

18 Are they all still shareholders?

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. Are there any other employees at the -- of the
25 firm, whether attorneys or not, that get special

1 benefits that are not granted to other employees?

2 MR. MANNION: Objection to form.

3 Go ahead.

4 A. I don't know.

5 Q. You don't know?

6 A. No.

7 Q. Nothing that you could recall?

8 A. No.

9 Q. Brandy has a car, though, right?

10 A. She does.

11 Q. And that is a car paid for by KNR?

12 A. It is.

13 Q. Okay. So she has a car allowance?

14 A. Correct.

15 Q. Okay.

16 A. There are others, as well.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

MR. MANNION: I am going to object. I have no idea how this has any bearing on class action, Mr. Pattakos. We are not going to have you sit here for two days going down paths like this and then ask for more, so just know that this is part of your time.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. It's important for the lawyers to have nice cars, is that why they -- is that why you give them this car allowance?

MR. MANNION: Objection.

A. No.

Q. No?

A. No.

Q. It's just something nice that you do for them?

MR. MANNION: Objection.

A. What do you mean "something nice"? They need transportation.

Q. I understand they need transportation, but they typically drive high-end, luxury brands --

1 A. No.

2 MR. MANNION: Objection.

3 Q. -- as provided by the car like Mercedes?

4 A. Some do.

5 Q. Okay.

6 [REDACTED]

7 Q. Okay. That's fine. We could move on. So as of
8 January 2016, according to this article, there
9 were 29 lawyers at the firm.

10 A. Okay.

11 Q. Does that include Mr. Kisling in this
12 calculation?

13 A. I don't know.

14 Q. Well, I see he is still on the website.

15 A. As of counsel.

16 Q. Okay. So, when you report in your -- in the
17 media or your advertisements how many lawyers you
18 have, do you count Mr. Kisling?

19 A. I really don't know.

20 Q. Okay. Who would know?

21 A. Jamie. Anyone who is handling the PR.

22 Q. Jamie McCuan?

23 A. Yes.

24 Q. M-c-C-u-a-n.

25 A. It's not that anymore.

1 Q. She got married. What is her name now?

2 A. Vazzana.

3 Q. How do you spell that?

4 A. I think it's V-a-z-z-a-n-a.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. Okay. And Holly Tusco is the intake manager?

16 A. Yes.

17 Q. She oversees the whole intake process?

18 MR. MANNION: Objection.

19 A. Correct.

20 Q. And Kim Headily, you said?

21 A. Yes.

22 Q. What does she do?

23 A. She is the head of the litigation paralegals.

24 Q. As opposed to the pre-lit paralegals?

25 A. Yes.

1 Q. Okay. So Jenna oversees the pre-lit paralegals;
2 is that --

3 A. Correct.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 MR. MANNION: Brandy was in there,
22 too.

23 MR. PATTAKOS: I understand.

24 Yeah, there was someone else.

25 A. There was someone else. Some pre-lit lawyers,

1 some lit lawyers.

2 Q. How do you distinguish between which pre-lit
3 lawyers get auto privileges and which don't?

4 A. I don't.

5 Q. How does the firm?

6 A. They don't.

7 Q. It's just random?

8 A. Yeah.

9 Q. Okay.

10 A. They're hired in differently.

11 Q. So it comes with the package of benefits that
12 they would get hired --

13 A. Uh-huh.

14 Q. -- in with? I understand. Okay.

15 A. Sorry, yes.

16 Q. Okay. You said when you started the firm, there
17 were just the three of you, correct?

18 A. Correct.

19 Q. And then around 2008/2009, you said, there were
20 about eight lawyers?

21 A. I believe so.

22 Q. When you first took the 50 percent interest in
23 the firm?

24 A. Peter, I don't know a hundred percent.

25 Q. I -- it's fine. Do your best. A lot of the

1 stuff I'm going to -- a lot of these numbers I'm
2 going to ask you, I'm -- you are just going to
3 have to do your best. I know you're not going to
4 know a hundred percent.

5 A. That's what my best guess is.

6 Q. Okay. Could you just give me your best
7 recollection of how that number changed from then
8 until the present day?

9 A. What do you mean? We added them as we needed
10 lawyers.

11 Q. Uh-huh.

12 A. As we opened offices, we added, we hired more
13 lawyers.

14 Q. Okay. So how did that happen over the years?

15 A. I don't understand what you're asking. We hired
16 them. We needed them. The firm was growing.

17 Q. So basically one at a time this happened?

18 A. Sometimes, there were two or three at a time.

19 Q. Okay. I mean -- okay. Sometimes there were --

20 A. Rarely.

21 Q. Rarely. Sure. But there were times when you
22 were like, wow, things are really growing fast,
23 we better really make a push to get more lawyers
24 on board; is that fair?

25 MR. MANNION: Objection to the

1 characterization. Go ahead.

2 MR. PATTAKOS: The record will
3 reflect that Member William entered the
4 room. Hi, Member.

5 MEMBER WILLIAMS: Hi.

6 A. I don't know if it was the way you said it, but
7 if we needed more lawyers, because of cases,
8 because of the demand, because we opened an
9 office, various reasons.

10 Q. Any memories of instances when this happened,
11 that you could recall?

12 A. No.

13 Q. Okay. Around 2012, when you purchased your full
14 interest in the firm, from Kisling and Redick,
15 how many lawyers were at the firm at that time?

16 MR. MANNION: Objection. That's
17 not how that went. You just misstated,
18 Peter.

19 MR. PATTAKOS: Okay.

20 MR. MANNION: Kisling was out by
21 then.

22 MR. PATTAKOS: Okay.

23 MR. MANNION: Right?

24 MR. PATTAKOS: I understand.

25 MR. MANNION: Well, but don't ask

1 a question that you know factually is
2 incorrect from earlier testimony today.

3 A. So if you're saying after those two were finally
4 purchased?

5 Q. Yes.

6 A. How many lawyers were there?

7 Q. Yeah, about how many lawyers were at the firm at
8 that time.

9 A. I'm not kidding. I don't -- I don't know. It's
10 changed.

11 Q. I understand, but --

12 A. I really don't.

13 Q. -- what is your best estimate? Was it still
14 eight --

15 A. No.

16 Q. -- or was it closer to 20?

17 A. Could have been closer to 20.

18 Q. Was it more than 20?

19 A. I don't know.

20 Q. Okay.

21 A. Well, if you look at the article, article says 29
22 lawyers. It doesn't -- see, sorry, it doesn't
23 tell me. It says, 29 in 2016, when this article
24 was written.

25 Q. Right.

1 A. So it had to be somewhere between there.

2 Q. Okay. So -- so basically you are saying this
3 grew incrementally, there wasn't back and forth,
4 like you didn't have more than 29 lawyers at any
5 point before this 2016 article; is that fair?

6 A. That, I don't -- I don't know. It may have been
7 you may have gone to 30 to 31 and -- I --

8 Q. Okay.

9 A. But it didn't go to 40 and then back down to 29.

10 Q. Okay.

11 A. That didn't happen.

12 Q. That's fine. I'm just trying to understand the
13 basics.

14 Have you ever found that the firm didn't have
15 enough attorneys to handle its case load at any
16 given time?

17 MR. MANNION: Objection.

18 A. I don't remember. I would assume that is a
19 factor that goes into why you want to hire more
20 lawyers.

21 Q. Well, let me put it this way: Has the firm ever
22 had to turn clients down, because it didn't have
23 enough lawyers to work on the cases?

24 A. No.

25 Q. What percentage would you estimate that of the

1 firms cases are handled on a contingency basis?

2 A. 99 percent.

3 Q. Okay.

4 A. If not 100.

5 Q. It's probably not a hundred, because there may be
6 some one off thing that may be one of the
7 partners, John or you would do for someone maybe
8 on a billable, correct?

9 A. Correct.

10 Q. Okay.

11 A. Do you need this anymore?

12 MR. MANNION: We're done with
13 that. Thanks. While you are looking for
14 that, I just want to be clear, because of
15 what happened with Gunning's deposition
16 that we're designating this entire
17 deposition as confidential and proprietary
18 and subject to the protective order.

19 We could go back afterwards and
20 look at any specific, but everything you
21 have asked so far, I mean, I don't think
22 that -- let me just stop there. It's all
23 designated as confidential.

24 MR. PATTAKOS: Okay. So,
25 theoretically, I don't have a problem with

1 that. I think the protective order
2 requires you, requires the parties to
3 designate specific portions of the
4 transcript.

5 I understand we're covering a lot
6 of ground, but what I ask is if I'm going
7 to agree to this approach that you give me
8 the designations promptly after the
9 transcript is received, okay?

10 MR. MANNION: Within a couple
11 weeks after the transcript.

12 MR. PATTAKOS: Not a couple weeks,
13 a couple of days.

14 MR. MANNION: Well, I may not be
15 able to do it in a couple days, because --

16 MR. PATTAKOS: Well --

17 MR. MANNION: -- it's a two-day
18 deposition. If I get it on a Wednesday and
19 I'm in trial or I'm in depositions, I'm
20 going to need more than a couple days to go
21 through it, so how about a week?

22 MR. PATTAKOS: A week is fair.

23 MR. MANNION: Great.

24 MR. PATTAKOS: Thanks, Tom. Let's
25 mark Exhibit 2.

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(Thereupon, Plaintiff's Exhibit 2 was marked
for purposes of identification.)

- - - -

MR. MANNION: Is there a date this
was printed; do you know?

MR. PATTAKOS: These were printed
within the last two days.

MR. MANNION: Perfect.

MR. PATTAKOS: All of the KNR
website material has been printed over the
last two days by my office staff.

Q. I assure you that this has not been altered in
any way, but as we go through these website
exhibits, because I'm going to show you a few
pages from the website and ask you questions
about it, if you see anything that looks funny to
you, please note for the record, so we could
address any discrepancies. I don't anticipate it
will be a problem, but I want you to identify any
concerns you have over that.

MR. MANNION: I just want to make
sure, are you asking him to review this to
see if there are any inconsistencies or
just if he sees one as he's going, to let

1 you know?

2 MR. PATTAKOS: If he sees ones as
3 he is going --

4 MR. MANNION: Okay.

5 MR. PATTAKOS: -- he could let me
6 know.

7 Q. This -- I am going to ask every time I hand you
8 one of these exhibits, does this look like a true
9 and accurate copy of content from your website
10 that we would have pulled from in the last couple
11 of days?

12 A. This is going to sound strange to you, I don't --
13 I didn't look at my website. I assume everything
14 that I see is correct.

15 Q. Okay.

16 A. But I haven't looked at it.

17 Q. You didn't have anything to do with designing the
18 website or approving it?

19 A. No, sir.

20 Q. You haven't looked at it all?

21 A. No, sir.

22 Q. Who do you trust to handle that for you?

23 A. Jamie.

24 Q. Jamie?

25 A. Yes. And she works with John Reagan sometimes.

1 She will work with Robert Redick at times, like
2 for content.

3 Q. Sure.

4 A. But as far as how it is set-up, there is also a
5 web design company that she works with, as well.

6 Q. Who is that?

7 A. Postali, out of Columbus.

8 Q. How do you spell that?

9 A. P-o-s-t-a-l-i.

10 Q. Okay.

11 A. I believe.

12 Q. So, who are the litigation attorneys and who are
13 the pre-litigation attorneys on this list?

14 A. You want me to go through this?

15 Q. If you would, please.

16 A. Well, I believe --

17 Q. Let me ask you this way, first, maybe this will
18 make it easier, so the firm currently has 36
19 attorneys?

20 A. Correct.

21 Q. Okay. That counts Mr. Kisling, who is of
22 counsel, correct?

23 A. I believe so. Again --

24 Q. He's listed --

25 MR. MANNION: Wait a minute.

1 Wait. He wasn't finished. Go ahead.

2 A. I haven't counted them.

3 Q. Okay. Let's just count these here. One, two,
4 three, four, five on the first page. Stop me if
5 I'm missing anything.

6 MR. PATTAKOS: Counsel, you too.

7 Q. Five on the second page, five on the third page.
8 Five on the fourth page, five on the fifth page,
9 five on the sixth page, and one on the last page,
10 so that is 36. 7 times 5, plus 1 is 36, correct?

11 A. Yes, sir.

12 Q. Okay.

13 MR. BARMEN: It's warm in here.

14 Do you mind if I -- it's actually right
15 behind you. Could you drop that down?

16 Thank you.

17 Q. So of the 36 lawyers at the firm, how many of
18 them are pre-litigation attorneys and how many of
19 them are litigation attorneys, roughly?

20 A. Half and half.

21 Q. Half and half. Okay. So, about 18 litigations
22 attorney and 18 pre-litigation attorneys?

23 A. Probably.

24 Q. Okay. Could you identify who the litigation
25 attorneys are on this list?

1 A. Lorri Britsch, Joel Gonzalez, April Hanlin,
2 Edmond Jaber, if you want to include Gary
3 Kisling.

4 MR. MANNION: Did or didn't? I
5 didn't hear that.

6 THE WITNESS: I said, if you want
7 to include --

8 MR. MANNION: Okay.

9 THE WITNESS: -- Gary Kisling.

10 A. Don Kral. I'm not sure if Marshall is or not.
11 Jack Lah, Kristen Lewis, Mark Lindsay, Kim
12 Lubrani, Mike Maillis, Natasha Niklas, Michael
13 Saltzer, I don't know if -- Brad Somogyi handles
14 probate, so I don't know --

15 Q. So he's a special -- he is in a special category?

16 A. Correct. I believe Ron Stump is, Nomiki Tsarnas
17 is, Kaitlyn, I think she is maybe a hybrid of the
18 two, I'm not sure. Chris Van Blargan, Thomas
19 Vasvari, Thomas D. Vasvari, Tom Walsh now is. He
20 just changed.

21 Q. What about Ken?

22 A. No.

23 Q. Ken is pre-lit?

24 A. Correct.

25 Q. What about Mr. Reagan?

1 A. Didn't I say him?

2 Q. You didn't.

3 A. How did I miss him. Sorry. Litigation. He is
4 the head of the litigation department.

5 Q. That's what I thought.

6 THE WITNESS: Sorry.

7 MR. PATTAKOS: Were you getting
8 nervous?

9 Q. Mr. Redick?

10 A. He handles pre-lit, he did some of the probate,
11 and he and I have litigated cases.

12 Q. But you're in sort of a special category, too --

13 MR. MANNION: Objection.

14 Q. -- is that fair to say?

15 MR. MANNION: Objection.

16 A. It's a catch all.

17 Q. I get it. I get it. And I get that you're the
18 boss and not members of -- won't fall into either
19 of these categories, I understand. Okay. So
20 let's count, Lori, Joel, April, Edmond, I'm not
21 going to count Gary, Don, Marshall, Jack,
22 Kristen, Mark, Kim, Maillis, Natasha, Saltzer,
23 Stump, Nomiki, Katilyn, Van Blargan, Vasvari,
24 Walsh, and Reagan, that is 20.

25 MR. MANNION: I'm going to object.

1 What's the question?

2 Q. That's 20 litigation attorneys that he just
3 identified, not counting Mr. Kisling.

4 A. Well, Katilyn --

5 Q. Is a hybrid?

6 A. I'm don't -- I'm not sure.

7 Q. Okay.

8 A. She may be.

9 Q. 19-and-a-half, 19, or 20. Okay. Fair enough. I
10 don't need to be -- we don't need to be a hundred
11 percent precise on this. We could follow-up, if
12 necessary.

13 A. If not 18, it's 19.

14 Q. Okay. So very close to have half and half in
15 actuality?

16 A. That's what I said.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

2 Q. Are they on the pleadings?

3 A. Sometimes.

4 Q. If they want to be?

5 A. Correct.

6

7

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14 Q. About whether to follow through with litigation,
15 you assess the -- say the settlement offer that
16 might or might not be on the table and maybe set
17 forth your strategy for the case, things of that
18 nature; is that fair?

19 MR. MANNION: I'm going to object
20 to the form. Go ahead.

21 A. That's fair.

22 Q. Okay. Now, in terms of the pre-lit lawyer's
23 option to participate in the litigation, how
24 often do they exercise that option in -- to your
25 knowledge?

1 A. 100 percent.

2 Q. 100 percent?

3 A. Because they are presenting it to them.

4 Q. No, no, no, not in the panel. How often do they
5 -- do they want to stay on the case?

6 A. Oh, I don't know.

7 Q. Okay. Do they get a special bonus if they stay
8 on the case?

9 A. No.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. Okay. So that would be -- so how about if a case
17 comes in, a pre-lit lawyer is assigned to it, but
18 then does not exercise the option to -- does not
19 exercise the option to participate in the
20 litigation, they will still get a bonus, correct?

21 A. Sometimes.

22 Q. Sometimes. And that's discretionary?

23 A. They talk to themselves with the -- whoever is
24 assigned as a litigator, and they will discuss it
25 amongst themselves.

1 Q. And there would be, say, a limited bonus for them
2 to split amongst themselves?

3 MR. MANNION: I will object to the
4 characterization, but go ahead.

5 A. You mean, by the percentage, so they decide of
6 that percentage they're going to get, what each
7 of the lawyers will get.

8 Q. Okay.

9 A. So they decide amongst themselves.

10 Q. And ultimately the ranking attorney on the case
11 gets to decide?

12 A. No, I said, they do it together.

13 Q. Okay. But at some point, someone has to have the
14 authority to resolve any disagreements; would you
15 disagree?

16 A. Yeah, I've never had to deal with that. They
17 literally will come to an agreement.

18 Q. Okay. Got you. What is your best estimate of
19 the percentage of the firm's cases that get
20 resolved by the pre-litigation department?

21 A. It's changed over the years. Early on, that's
22 what grew, and the reason why I don't have an
23 answer, clear answer, the firm grew, the
24 litigation department grew a lot faster than the
25 pre-lit department did.

1 And that's because more cases were going into
2 litigation. Insurance companies, obviously, are
3 fighting harder as the years go on. And that's
4 the result of it, you either hire more people --

5 Q. So, how has the percentage -- I just want your
6 best estimate.

7 A. Peter, it's gone from -- they -- the pre-lit
8 departments resolve maybe 70, 80 percent of the
9 cases, sometimes it's 90, sometimes it drops back
10 down. It depends. We are reacting to what the
11 insurance companies do.

12 Q. Sure. So you would say between 70 and 90 percent
13 over the years is a good range?

14 MR. MANNION: I am going to object
15 to the form. Go ahead.

16 A. Again, I don't want to be vague to you. It just
17 -- it changes, because if insurance companies
18 take one position one year, then that means more
19 cases are going to go into litigation, so that
20 means 70 percent are resolved pre-lit, 30 percent
21 go in.

22 If the insurance companies lighten up on the
23 litigation, and they're not pushing us to push
24 cases into litigation, it goes up.

25 Q. You track these numbers?

1 A. Of what? Like how many cases --

2 Q. Yeah.

3 A. No, it's just by closed, you know, how many cases
4 get closed.

5 Q. Okay. So you could -- you could find those
6 numbers?

7 MR. MANNION: Objection. What
8 numbers?

9 Q. You could go back and see how many cases were
10 closed by the pre-litigation in any given year --

11 A. No.

12 Q. -- or versus the pre-litigation department?

13 A. No. You could track what was closed by the firm.

14 Q. Okay.

15 A. I guess if you work hard enough and have to print
16 every -- and then, you know, separate them by the
17 lawyer and then figure if he was doing lit or
18 pre-lit or she was doing lit or pre-lit, how many
19 cases they close, why did they close them --

20 Q. Uh-huh.

21 A. -- did they close them, because there is no
22 coverage? You know, Needles, which is our
23 software system, as you know, allows you to
24 determine just closed date.

25 Q. Uh-huh.

1 A. Does that make sense?

2 Q. Sure. You'd also be able to determine in
3 Needles, if you went back and looked at every
4 case, you would be able to determine whether it
5 was resolved by pre-lit or litigation, correct?

6 MR. MANNION: I will object to
7 "also", because I don't know what you are
8 including in there, but go ahead.

9 A. If it was in their name, you can. I believe you
10 can.

11 Q. If a case gets filed, that would be noted in
12 Needles, correct?

13 A. Yes.

14 Q. Okay. Is there a large portion of cases that
15 would go to the litigation department, but would
16 not get filed?

17 MR. MANNION: Objection.

18 Q. Where a complaint is not filed?

19 MR. MANNION: Objection to
20 "large".

21 Q. Or a lawsuit is not filed, let me ask -- ask
22 that?

23 A. There are some.

24 Q. Some. Okay. But the bulk of the cases, would
25 you say, that go into the litigation department,

1 are cases that end up getting filed?

2 A. Fair.

3 Q. Okay. 95 percent?

4 MR. MANNION: Objection.

5 A. I don't know.

6 Q. Is that fair?

7 MR. MANNION: He said he didn't

8 know, Peter.

9 A. I'd be guessing.

10 Q. What is your best estimate?

11 MR. MANNION: Objection.

12 A. Just so I understand your question, so cases that
13 go into litigation, and then a complaint is
14 actually filed?

15 Q. Yes.

16 A. Okay. I would -- 95 may be fair.

17 Q. Okay. And if a case is filed, that would
18 certainly be noted in Needles, correct?

19 A. Yes, because the statute date goes in.

20 MR. MANNION: Breakfast is
21 catching up with me, Peter. Five, ten
22 minutes?

23 MR. PATTAKOS: Yeah. You know
24 what, I'm almost there. I think I only
25 have one more question before we could take

1 a break.

2 Q. Of the cases that go into litigation, what
3 percentage go to trial? What's your best guess?

4 A. Actually go to verdict, like a --

5 Q. Let's say, go to verdict.

6 A. Between five and ten percent, maybe.

7 Q. And that's just of the cases that go into
8 litigation, correct?

9 MR. MANNION: I'm sorry, what
10 is --

11 MR. PATTAKOS: The cases that go
12 --

13 MR. MANNION: -- the question?

14 MR. PATTAKOS: To verdict,
15 ultimate verdict.

16 MR. MANNION: Could you just -- I
17 don't understand what you're asking.

18 MR. PATTAKOS: What percentage of
19 the cases --

20 MR. MANNION: Yeah.

21 MR. PATTAKOS: - of the firm's
22 cases, that go into the litigation
23 department --

24 MR. MANNION: I got you. Okay.

25 MR. PATTAKOS: -- result in a

1 verdict?

2 Q. Your estimate is five to ten percent?

3 A. It may be even less.

4 Q. Okay.

5 A. Again, it depends on the year. It depends on the
6 timeframe.

7 Q. And, again, that would -- you could determine
8 that by going back in Needles, if you went back
9 and looked at every single case, correct?

10 MR. MANNION: Objection.

11 A. If you went and looked at every single case, yes,
12 I would assume you can.

13 MR. PATTAKOS: Okay. Okay. We
14 could take a break.

15 THE VIDEOGRAPHER: We are going
16 off the record. The time is 10:14.

17 - - - -

18 (Thereupon, a recess was had.)

19 - - - -

20 THE VIDEOGRAPHER: We are back on
21 the record. The time is 10:27.

22 Q. Are KNR attorneys expected to bill a certain
23 number of hours each year?

24 A. No.

25 Q. You don't set any billable hour requirements?

1 A. We don't operate -- it's contingency fee.

2 Q. Okay. You don't -- does -- does the firm's --
3 does the firm track the billable hours that its
4 attorney put in?

5 A. We don't do billable hours.

6 Q. Okay. But, I mean, say you have to file a
7 petition in a case, what do you do? You go back
8 and reconstruct or --

9 MR. MANNION: Well, I'm going to
10 object. This case has nothing to do with
11 quantum meruit fee petitions, but go ahead.

12 A. They do.

13 Q. Okay. Just to be clear, the firm doesn't require
14 its attorneys to track billable hours in any way?

15 A. No.

16 Q. And the firm's attorney, are they expected to be
17 in the office for a certain number of hours each
18 week?

19 A. No.

20 Q. The intake lawyers are, though, right? They are
21 supposed to be there to answer the phones; isn't
22 that correct?

23 MR. MANNION: Objection.

24 A. The pre-lit lawyers.

25 Q. The pre-lit lawyers, sorry, that's what I meant.

1 A. They are -- I would expect that they are there
2 from 8:15 to 5:15, I think it is.

3 Q. Okay.

4 A. It's changed over time. Some come in earlier and
5 leave earlier.

6 Q. Okay. But typically you measure the performance
7 of your attorneys by the results that they get
8 for the clients, correct?

9 A. No.

10 Q. How do you measure the performance of your
11 attorneys?

12 A. You look at cases that they handle, number of
13 cases they handle, if there's client complaints,
14 calls they handle.

15 Q. Number of calls?

16 A. Yeah. There is a number of ways.

17 Q. The more cases they handle and the more calls
18 they field, the better?

19 MR. MANNION: Objection, by
20 "better".

21 A. No.

22 Q. So how is it that you evaluate this number of
23 cases and number of calls?

24 A. I don't understand your question, I really don't.

25 Q. Okay. Well, I asked you how you measure the

1 performance of your attorneys, and you said
2 number of cases, number of calls --

3 MR. MANNION: I'm going to object.
4 He said a lot more than that in there.

5 MR. PATTAKOS: Those were two
6 things that he said, so I want to
7 understand how those fit into the
8 evaluation.

9 A. They look at, you know, number of cases they
10 close successfully that they handle, how they
11 handle the case, is just only an overview, it's
12 by the time they are done, because again each one
13 of these lawyers handle their case independently,
14 we don't interject on how they handle a case,
15 does that make sense? This is after the fact.

16 Q. I understand. You also evaluate the amount of
17 fees that the attorneys bring into the firm,
18 correct?

19 MR. MANNION: Objection. Go
20 ahead.

21 A. That's one of the components. And the only
22 objection I have to that is you said "bring into
23 the firm". What do you mean by "bring in"?

24 Q. Attorney fees that the firm collects from
25 resolving cases.

1 A. Okay. They don't bring it in.

2 Q. Okay.

3 A. Fair?

4 Q. How do you mean?

5 A. It's what they deposit. They don't bring them
6 in.

7 Q. You mean, bring them in to --

8 A. You said "bring them in". I'm saying, they don't
9 bring them in.

10 Q. They don't bring the clients in?

11 A. Right. They don't bring the clients in, the
12 fees, they don't bring them in.

13 Q. What do you mean by that?

14 A. Well, I'm saying what you said, you said "bring
15 them in", and they don't bring them in. I asked
16 you to clarify.

17 Q. We're talking about -- I just want to clarify
18 that you are talking about the amount of
19 attorneys fees that the firm ends up collecting
20 as a result --

21 A. Okay.

22 Q. -- the attorneys handling of the cases, correct?

23 A. Yes.

24 Q. Okay. And that is a component of the evaluation
25 of the performance of KNR attorneys, correct?

1 A. One of many, yes.

2 Q. Okay. One of many. Let's go through them all,
3 just to be thorough.

4 A. If they get terminated on cases, because you look
5 at the reason why were they terminated on the
6 case, is it because they didn't do something,
7 sometimes they just don't get along with the
8 client, their -- their personalities don't mesh
9 well, that's one possibility.

10 Q. That goes into client complaints, correct?

11 MR. MANNION: I'm sorry, what? I
12 didn't understand what the question was.

13 Q. Whether the -- whether the attorney was
14 terminated or whether the firm was terminated,
15 that falls under client complaints generally,
16 would it not?

17 MR. MANNION: I am going object to
18 "falls under", but go ahead.

19 A. It's part of it.

20 Q. Okay. What are the other main components of how
21 you evaluate the firms's attorneys?

22 A. Do they return calls, are they responsive to
23 clients' needs in a timely fashion? Do they
24 answer calls, new intake calls, or do they avoid
25 them? That's all I could think of sitting here

1 now.

2 [REDACTED]

3 [REDACTED]

4 MR. MANNION: Objection.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. What would you say the average bonus component
16 for a in -- for a pre-lit lawyer is currently?

17 MR. MANNION: I am going to
18 object. I don't think this has any basis
19 for class certification or the individual
20 classes. I don't think you should be
21 answering questions about these salaries,
22 and certainly don't guess on any of them.
23 It's proprietary.

24 MR. PATTAKOS: Are you instructing
25 him not to answer the question?

1 MR. MANNION: If you consider that
2 proprietary, like I do, I wouldn't answer
3 the question, but make your own decision.

4 MR. PATTAKOS: It's under the
5 protective order.

6 MR. MANNION: It doesn't mean you
7 are entitled to know everything, just
8 because there is a protective order. We'll
9 discuss that issue on a break or we could
10 take one now, otherwise he's not going to
11 answer the question.

12 MR. PATTAKOS: You answered
13 Brady's salary --

14 MR. MANNION: I would ask you --

15 MR. PATTAKOS: Brandy -- Brandy
16 answered --

17 MR. MANNION: I would ask you not
18 to make faces at the witness.

19 MR. PATTAKOS: I'm not making
20 faces at the witness, Tom.

21 MR. MANNION: We'll get a camera,
22 if we need to.

23 MR. PATTAKOS: Well, okay. Why
24 don't you do that. We could set one up.

25 MR. MANNION: Okay. I wish I had

1 one.

2 MR. PATTAKOS: You could set up
3 your own camera.

4 MR. MANNION: I said, we'll
5 discuss it at a break to see if I'm going
6 to instruct him or not.

7 MR. PATTAKOS: Why don't you take
8 a break right now, then.

9 MR. MANNION: Sure.

10 MR. PATTAKOS: Keep taking these
11 breaks, and we'll just have to be here
12 longer.

13 MR. MANNION: Wait a minute, what
14 do you mean "keep taking these breaks"? I
15 said, we'll do it at the next break if you
16 want --

17 MR. PATTAKOS: I want an answer to
18 the question before I move on, so -- let's
19 --

20 MR. MANNION: Okay. It's your --

21 MR. PATTAKOS: So let's go ahead
22 and take a break.

23 THE VIDEOGRAPHER: We are going
24 off the record --

25 MR. MANNION: You decided you want

1 a break. Let's take one. Peter wants a
2 break.

3 MR. PATTAKOS: This is only a
4 break, because you're insisting -- you're
5 instructing your witness not to answer the
6 question.

7 MR. MANNION: And let's be clear,
8 we could talk about that issue on the next
9 break, but that's fine, we will do it now.
10 It won't take long.

11 THE VIDEOGRAPHER: We are off the
12 record. The time is 10:35.

13

14 - - - -

15 (Thereupon, a recess was had.)

16 - - - -

17 THE VIDEOGRAPHER: We are back on
18 the record. The time is 10:38.

19 MR. MANNION: Ask the question.

20 Q. Mr. Nestico, I am just trying to understand the
21 basic compensation structure for your attorneys,
22 so I could understand the expectations that you
23 have for them.

24

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MR. MANNION: Objection. But go

4

ahead.

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17 Q. Okay. Amount of attorney's fees come to the firm

18 on the cases that that attorney handles, correct?

19 A. Amount of attorney's fees deposited.

20 Q. Deposited into the firm's account?

21 A. Correct.

22 Q. Okay. And what's the percentage that they could

23 earn --

24 MR. MANNION: Objection.

25 Q. -- of those fees?

1 MR. MANNION: Objection. Assumes
2 facts not in evidence, but go ahead.

3 A. You mean how they escalate, they go --

4 Q. How does the structure work?

5 A. I explained it to you. It goes in increments,
6 and they get a percentage accordingly.

7 Litigation is different than pre-litigation.

8 Q. Okay.

9 A. I don't know what they currently are. I haven't
10 been involved in that.

11 Q. Okay. What's a range of a bonus component that
12 the pre -- pre-litigation attorneys can earn?

13 MR. MANNION: Objection. Go
14 ahead.

15 A. Pre-litigation lawyers?

16 Q. Pre-litigation.

17 A. Well, obviously, from zero --

18 Q. Sure.

19 A. -- if they don't meet the first threshold.

20 Q. Sure.

21 A. Could be as high as 40 or 50, I don't know.

22 Q. 40 or 50 thousand dollars?

23 A. Correct.

24 Q. Okay.

25 A. Some more, some less. I don't know.

1 Q. I'm just trying to understand that a lawyer is
2 not going to necessarily -- like a lawyer may
3 double their salary approximately if they have a
4 good year, but they won't necessarily multiply it
5 by 10; is that fair?

6 MR. MANNION: Objection to form.

7 Go ahead.

8 A. Fair.

9 Q. Okay. You don't expect your attorneys to work
10 around the clock either, correct?

11 A. Absolutely not.

12 Q. When you hire attorneys in the pre-litigation
13 department, do you communicate -- you did say
14 8:15 to 5:15, correct?

15 A. Correct.

16 Q. You also expect them to work some off the clock
17 -- some, I don't want to say off the clock, but
18 you expect the attorneys to handle work out of
19 the office as necessary to manage their case
20 load, correct?

21 MR. MANNION: Objection. Form.

22 Go ahead.

23 A. No.

24 Q. Okay.

25 A. I don't.

1 Q. You expect them to be able to finish their job in
2 that 8:15 to 5:15 timeframe, that you described
3 earlier?

4 A. Correct.

5 Q. Okay.

6 MR. JONSON: Are we talking about
7 pre-litigation attorneys?

8 MR. PATTAKOS: Yes, sir.

9 THE WITNESS: That's why I said,
10 pre-litigation.

11 Q. How about for the litigation attorneys, how --
12 what are the -- what's the salary range and the
13 expected hours there?

14 A. I don't know. I -- there is no expected hours
15 for them. There is no time that they have to
16 show up at the office. If they're not they just
17 -- if they're not in court or taking depositions,
18 or whatever they are doing, I would like them to
19 be in the office. They don't have to be.

20 Q. I understand. What about the salary range?

21 A. I got nothing for you.

22 Q. You don't know?

23 A. No.

24 Q. You don't know what the attorneys make at your
25 firm?

1 A. No.

2 Q. You have no idea what Mr. Reagan makes?

3 A. No.

4 Q. Who would know?

5 A. Accountant. You could get a list.

6 Q. Okay. Okay. You were born in Canada?

7 A. Correct.

8 Q. What city?

9 A. Toronto.

10 Q. What year?

11 A. 1968.

12 Q. What's your birthday?

13 A. 7/31/68.

14 Q. I'm August 2nd. Where did you go to high school?

15 A. Father Bressani.

16 Q. How do you spell that?

17 A. Can I write it?

18 Q. Sure.

19 A. B-r-e-s-s-a-n-i.

20 Q. What year did you graduate?

21 MR. MANNION: You mean, high

22 school, right?

23 MR. PATTAKOS: High school.

24 A. '85.

25 Q. Okay. And where did you go to college? York?

1 A. York University.

2 Q. What year did you graduate?

3 A. I had two graduations there.

4 Q. Okay.

5 A. I -- for my bachelor's, it was '88 -- I can't
6 remember, '88 or '89.

7 Q. And what other degree?

8 A. Specialized honors in political science, which is
9 equivalent to a master's degree here.

10 Q. What year did you get that?

11 A. I think it was '92.

12 Q. Okay. And then you went to Touro Law School?

13 A. Yes.

14 Q. And you also attended the University of Akron?

15 A. As a visiting student.

16 Q. As a visiting student. Okay. Your degree is
17 from Touro?

18 A. Correct.

19 Q. Okay. And what year did you obtain your law
20 degree?

21 A. '98, I believe it was.

22 Q. And what year were you admitted to practice law
23 in Ohio?

24 A. '99.

25 Q. Okay.

1 A. Because I graduated December of '98.

2 Q. Okay. On your website profile, I will just show
3 you a picture of it. I'll just show you. Let's
4 just mark an exhibit. We don't need to spend
5 much time with it, but --

6 - - - -

7 (Thereupon, Plaintiff's Exhibit 3 was marked
8 for purposes of identification.)

9 - - - -

10 MR. PATTAKOS: This is Exhibit 3.

11 Q. Could you just confirm this is a true and
12 accurate copy of your website profile?

13 MR. MANNION: He said earlier that
14 he hasn't seen it, Peter, the website.

15 Q. Okay. Well, could you review and see if
16 everything looks right here? Let me ask, why
17 does it say Rob A. Nestico here? Did you change
18 your name?

19 A. No. It should be Alberto R. Nestico.

20 Q. Okay. How do you think it ended up Rob A.
21 Nestico?

22 A. Because more people know me as Rob.

23 Q. I see. Okay. They might have -- whoever was
24 responsible for this, might have thought that
25 your middle name was Alberto?

1 MR. MANNION: Objection as to what
2 someone else thought.

3 Q. Rob A. Nestico, I'm just speculating.

4 MR. MANNION: Objection.

5 Q. Okay. Well, it's says here that you've
6 successfully tried cases to verdict and argued
7 cases before the Ohio Supreme Court and 6th
8 District Court of Appeals?

9 A. Correct.

10 Q. How many cases have you tried to verdict
11 successfully?

12 MR. MANNION: I'm sorry, what do
13 you mean "successfully"? Got the verdict
14 or he considered it a win? What do you
15 mean by "successfully"?

16 MR. PATTAKOS: Both.

17 MR. MANNION: Objection.

18 Q. How many cases have you tried to verdict, whether
19 you won or not?

20 A. I'm trying to think back. There isn't a whole
21 bunch. I want to say a handful, maybe more.

22 Q. Five?

23 A. Maybe --

24 MR. MANNION: Objection.

25 A. -- five.

1 Q. Were they all personal injury cases?

2 A. Yes.

3 Q. Auto accidents?

4 A. And medical malpractice.

5 Q. And medical malpractice. Okay. Were you first
6 chair in all of those?

7 A. No.

8 Q. Were you first chair in any of them?

9 A. Yes.

10 Q. How many?

11 A. I think two.

12 Q. How many of those handful of cases did you win or
13 what percentage of them, if you could remember?

14 A. It depends what you consider a win. If we get an
15 offer higher than what the insurance company gave
16 you --

17 Q. Sure.

18 A. -- I consider that a win.

19 Q. Sure. Fair enough.

20 A. Four out of the five.

21 Q. Okay. What's the best result you ever achieved
22 as first chair at trial?

23 A. I don't remember, Peter.

24 Q. Okay.

25 A. You're asking the verdict, the result?

1 Q. The best result.

2 A. I don't remember.

3 Q. How many times have you argued before the Ohio
4 Supreme Court?

5 A. I was second chair on two cases.

6 Q. In the Ohio Supreme Court?

7 A. Correct.

8 Q. But you didn't argue?

9 A. No, I did not.

10 Q. What were those cases?

11 A. I don't remember the names of them. One was
12 against State Farm, one issue dealt with
13 jurisdiction, the other issue dealt with medical
14 payment coverage.

15 Q. Okay. And who was lead counsel on those cases?

16 A. Tom Vasvari on one, Chris Van Blargan, on the
17 other.

18 Q. About what were the years of those cases?

19 A. I don't remember.

20 Q. In the last five years?

21 A. No.

22 Q. Ten years ago?

23 A. Yeah. Well, one was probably the last
24 five years. I think the one with Chris Van
25 Blargan was.

1 Q. Okay. It says here, that you argued before the
2 6th District Court of Appeals, that should read
3 6th Circuit, correct, not the 6th District, in
4 Toledo? 6th District is state court.

5 A. It's the -- wait a second, sorry.

6 Q. I'm sorry, I'm on the -- I think I'm on the last
7 --

8 MR. MANNION: Second page?

9 MR. PATTAKOS: Second page.

10 MR. MANNION: Go back one, Rob.

11 THE WITNESS: The second?

12 MR. MANNION: Yeah, right in here.

13 A. 6th Circuit Court of Appeals.

14 Q. Okay.

15 A. With Dan Flowers.

16 Q. Were you second chair on that, as well?

17 A. Yes.

18 Q. Dan Flowers, you said?

19 A. I believe that's who was lead.

20 Q. And that's at the KNR Firm?

21 A. Yes.

22 Q. Okay. And then you were lead counsel on the Van
23 Horn case?

24 A. Correct.

25 Q. And that was representing over 200,000 claimants

1 against Nationwide Insurance Company?

2 A. Correct.

3 Q. That was a class action?

4 A. Correct.

5 Q. How many class actions have you successfully
6 gotten certified?

7 A. Two.

8 Q. Two. Was Van Horn your first?

9 A. Yes.

10 Q. Did you work with other counsel in that case?

11 A. I did.

12 Q. Who did you work with on that case?

13 A. Brain Kabateck and Austin Tie.

14 Q. And they are with another firm?

15 A. Yes.

16 Q. What firm are they with?

17 A. Two separate firms.

18 Q. Okay. But you were lead counsel?

19 A. Correct --

20 Q. And you were first --

21 A. -- one of them.

22 Q. Okay. Were you first chair?

23 A. There was no -- we all were first chair.

24 Q. Okay.

25 A. We all --

1 Q. Okay. So you were co-lead counsel; is that fair?

2 A. Fair.

3 Q. Okay. And had Kabateck and Tie prosecuted class
4 action cases before?

5 A. Oh, yes.

6 Q. Okay.

7 MR. PATTAKOS: Let's mark
8 Exhibit 4.

9 - - - -

10 (Thereupon, Plaintiff's Exhibit 4 was marked
11 for purposes of identification.)

12 - - - -

13 MR. MANNION: Could I have a copy,
14 please?

15 MR. PATTAKOS: Yes, Tom.

16 Q. Okay. Do you have any reason to dispute that the
17 contents of this document represents the KNR
18 website as of today?

19 MR. MANNION: Are you asking is it
20 on the website or you want him to go
21 through and verify that all the information
22 in here is accurate?

23 MR. PATTAKOS: I want him -- I
24 want him to go through first and let me
25 know if there is any reason that he knows

1 of to dispute that this is a true and
2 accurate copy of KNR's website, as it
3 appears right now.

4 MR. MANNION: How would he know
5 that if he hasn't been on the website?

6 MR. PATTAKOS: I'm going to ask
7 him if he has any reason to doubt it.

8 MR. MANNION: Answer, if you can.

9 A. I can't.

10 Q. You have no reason to doubt, correct?

11 A. If you printed it off, that's what it is.

12 Q. Okay. I would like you to read this and let me
13 know if there is anything here that you disagree
14 with?

15 MR. MANNION: Well, okay. Take
16 some time. Read through it.

17 A. You really want me to read the whole thing?

18 Q. Please do.

19 MR. MANNION: I am just going to
20 say for the record, Peter, while he is
21 reading that, none of the underlying
22 plaintiffs had class action claims handled
23 by KNR, so I don't see the relevance in
24 this. And you're certainly not going to
25 try to turn him into a class action expert,

1 as he sits here. He is here as a fact
2 witness.

3 MR. PATTAKOS: Tom -- Tom, you
4 know what, your speaking objection is
5 inappropriate.

6 MR. MANNION: This isn't a
7 speaking --

8 MR. PATTAKOS: You're suggesting
9 -- you're suggesting testimony to the
10 witness.

11 MR. MANNION: Wait a minute, what
12 are you talking about?

13 MR. PATTAKOS: Sure -- sure it is.

14 MR. MANNION: What?

15 MR. PATTAKOS: Tom, let me ask my
16 questions.

17 MR. MANNION: Wait, wait --

18 MR. PATTAKOS: This is his own
19 marketing --

20 MR. MANNION: What testimony did I
21 just suggest to the witness?

22 MR. PATTAKOS: I'm not going to
23 argue with you, Tom.

24 MR. MANNION: No, what I'm trying
25 to do is find out if there is a basis for

1 you to ask these questions.

2 MR. PATTAKOS: This is his
3 communication with potential clients. It's
4 relevant. I'm entitled to ask him
5 questions about it.

6 MR. MANNION: I'm not sure that
7 you are, actually.

8 MR. PATTAKOS: Okay, Tom.

9 MR. MANNION: Could you tell me --

10 MR. PATTAKOS: This is a
11 deposition, Tom.

12 MR. MANNION: That, I understand.

13 MR. PATTAKOS: You don't get to
14 decide what's relevant at a deposition.

15 MR. MANNION: Oh, my lord. The
16 Judge made it clear that the question
17 should be that what's pertinent to class
18 certification and to the extent anything
19 overlaps. He didn't say --

20 MR. PATTAKOS: The Judge did not
21 bifurcate the deposition in any way. The
22 Judge said that he was denying your motion,
23 because class action and merit's discovery
24 overlaps. So I'm going to ask him these
25 questions.

1 MR. MANNION: Exactly, that's what
2 the Judge said. So to the extent they
3 overlap. Trying to turn him into a class
4 action expert and ask him questions about
5 that is inappropriate and doesn't have to
6 do --

7 MR. PATTAKOS: I'm not going to
8 turn him into --

9 MR. MANNION: -- with any of the
10 plaintiffs' claims.

11 MR. PATTAKOS: I'm not trying to
12 turn him into an expert on anything.

13 MR. MANNION: We are -- I am going
14 to instruct you not to answer any questions
15 about this, Mr. Nestico. It has nothing to
16 do with the certification or an overlapping
17 issue, so -- or any claim of any plaintiff.

18 MR. PATTAKOS: That's ridiculous.

19 MR. MANNION: Well, that's okay.
20 That's what it is. I'm following the
21 Judge's instruction who said, take it up
22 after a witness is instructed not to
23 answer.

24 Q. So you're not going to answer questions about
25 this document at your attorney's instruction, Mr.

1 Nestico?

2 A. Correct.

3 Q. Okay. You don't believe, Mr. Nestico, do you,
4 that there is a shortage of competent litigators
5 in Ohio to handle personal injury cases, do you?

6 MR. MANNION: I'm sorry, say that
7 again? You don't believe?

8 Q. You don't believe there is a shortage of
9 competent lawyers in Ohio to handle personal
10 injury cases, do you?

11 MR. MANNION: I'm going to object
12 to the form. Go ahead.

13 A. I'm trying to understand that. You're -- no, I
14 don't think there is a bunch of incompetent
15 lawyers in Ohio.

16 Q. You don't believe there is a shortage either, do
17 you?

18 MR. MANNION: Objection.

19 A. You -- like -- there are -- there maybe some
20 incompetent lawyers. I don't know. I --

21 Q. I'm not asking whether -- there's surely
22 incompetent lawyers out there. I'm -- that's not
23 what I'm asking you. I'm asking, do you believe
24 there's a shortage of competent litigators in
25 Ohio to handle personal injury cases?

1 MR. MANNION: I'm going to object,
2 you know --

3 A. There's not a shortage. There is a lot of
4 competent lawyers in Ohio.

5 Q. Okay. So you certainly don't believe that there
6 are no other litigators in Ohio who could handle
7 personal injury cases as well as your firm does?

8 MR. MANNION: Objection to the
9 form.

10 A. I think we do a great job at it.

11 Q. I'm not -- I'm sure. And that's not the
12 question. You don't believe that there are no
13 other lawyers that do as good of a job, do you?

14 MR. MANNION: Objection.

15 A. I don't know.

16 Q. You don't know. Okay.

17 A. It's -- I don't know.

18 Q. But you recognize, Mr. Nestico, that there are
19 actually plenty of fine lawyers throughout the
20 State who are competent to handle personal injury
21 cases for their clients?

22 A. I will agree with that.

23 MR. PATTAKOS: Let's mark Exhibit
24 5.

25 - - - -

1 (Thereupon, Plaintiff's Exhibit 5 was marked
2 for purposes of identification.)

3 - - - -

4 Q. You don't have any reason to doubt that this is
5 an accurate depiction of your website, as it
6 currently exists, do you, Mr. Nestico?

7 MR. MANNION: Same objection as
8 before. Go ahead.

9 A. No.

10 Q. And this says, at Kisling, Nestico & Redick, our
11 Ohio personal injury lawyers are dedicated to
12 helping car accident victims recover the maximum
13 compensation possible, so they could move forward
14 with their lives.

15 We know the strategies insurance companies
16 and their lawyers use to minimize recoveries, and
17 we will use our understanding of their defense
18 tactics to build the strongest possible case for
19 you. We will use our extensive resources to help
20 you recover both physically and financially after
21 a serious accident.

22 I'm reading that correctly, sir?

23 A. Yes.

24 Q. This is essentially a promise by your firm to do
25 what it can to recover the maximum compensation

1 possible, correct?

2 MR. MANNION: Objection.

3 A. I don't read it as a promise. We are going to do
4 our best.

5 Q. Okay. This is something your firm has always
6 tried to do for its clients, correct?

7 MR. MANNION: Objection. Form.

8 A. Yes.

9 Q. You agree that your clients expect your firm to
10 do it's best, to maximize their recoveries,
11 correct?

12 A. Yes.

13 Q. And this has always been the case, correct?

14 A. Yes.

15 MR. PATTAKOS: Okay. Let's mark
16 Exhibit 6.

17 - - - -

18 (Thereupon, Plaintiffs' Exhibit 6 was marked
19 for purposes of identification.)

20 - - - -

21 MR. MANNION: I would ask, please
22 hand me a copy of these before you hand
23 them to the witness.

24 MR. PATTAKOS: I'm handing it to
25 the court reporter, so --

1 MR. MANNION: Well, then hand me a
2 copy -- hand me the exhibit first, then,
3 please, madam court reporter.

4 THE REPORTER: Sure.

5 Q. Again, you don't have any reason to dispute that
6 this is a true and accurate copy of the firm's
7 website as it exists presently?

8 MR. MANNION: Objection. Go
9 ahead.

10 A. I'm reading it. Okay.

11 Q. And this says, with legal representation by your
12 side -- this is the last full paragraph, you
13 won't have to settle for a low-ball offer from
14 the liable parties insurer. We will speak to the
15 insurance company on your behalf and ensure your
16 rights are protected.

17 I'm reading that correctly?

18 A. Yes.

19 Q. And this communicates something else that your
20 clients expect you to do, ensure that their
21 rights are protected, correct?

22 MR. MANNION: Objection to form.
23 Go ahead.

24 A. Yes.

25 Q. And you would also agree that your firm has a

1 duty to fulfill these expect -- expectations to
2 maximize their recovery and protect their rights
3 in resolving their legal claims, correct?

4 MR. MANNION: Well, I'm going to
5 object. Are you saying, this is a legal
6 malpractice case? Are you asking -- what
7 are you asking? I need --

8 MR. PATTAKOS: He answered the
9 question, didn't he?

10 THE WITNESS: No.

11 MR. PATTAKOS: Please answer the
12 question.

13 MR. MANNION: Wait a minute. What
14 do you mean by "duty"? What type of duty
15 are you referring to?

16 MR. PATTAKOS: Tom, I don't have
17 to answer that question for you --

18 MR. MANNION: Well --

19 MR. PATTAKOS: This is a speaking
20 objection. It's inappropriate.

21 MR. MANNION: No, it's not a
22 speaking objection.

23 MR. PATTAKOS: Are you instructing
24 him not to answer the question?

25 MR. MANNION: No, I'm trying to

1 understand the question, so I know whether
2 to tell him to.

3 MR. PATTAKOS: Tom, it's not -- I
4 don't have to make you understand my
5 question.

6 MR. MANNION: Yes, you do.

7 MR. PATTAKOS: This isn't -- no, I
8 don't.

9 MR. MANNION: Because if you're
10 asking him whether he committed -- whether
11 this is a legal malpractice issue, that has
12 no bearing on this case, according to you.
13 So I'm trying to find out what you mean.

14 MR. PATTAKOS: I am asking him to
15 answer the question that I asked him, okay,
16 Tom?

17 MR. JONSON: Could we have the
18 question back, please?

19 MR. PATTAKOS: Thank you.

20 - - - -

21 (Thereupon, the requested portion of
22 the record was read by the reporter.)

23 - - - -

24 MR. MANNION: Same objection.

25 Q. Let me ask you this first then -- you know what,

1 strike the question. Let me ask -- let me break
2 this up. You agree that your clients expect you
3 to do what you say here, to maximum recovery and
4 protect their rights in resolving their legal
5 claims, correct?

6 MR. MANNION: I'm going to object.
7 Which client are you referring to?

8 MR. PATTAKOS: Clients generally.

9 MR. MANNION: Well, I'm going to
10 object.

11 MR. PATTAKOS: Okay. Your
12 objection is noted.

13 MR. MANNION: Peter, seriously,
14 how could you say "clients generally"? Are
15 you talking about someone he represented,
16 one of his attorneys represented? Who are
17 you referring to?

18 MR. PATTAKOS: Are you done, Tom?

19 MR. MANNION: Ask a question that
20 makes sense.

21 Q. Please answer the question, Mr. Nestico.

22 A. What I think anybody expects is a lawyer to do
23 the best they can.

24 Q. Okay. And that's to maximize their recovery and
25 ensure that their rights are protected in

1 resolving the case, right?

2 MR. MANNION: Objection.

3 A. That would be part of it, sure.

4 Q. Sure. Okay. You agree that the KNR's attorneys
5 have a fiduciary duty to the firm's clients,
6 correct?

7 MR. MANNION: Objection. Which
8 attorneys to which clients?

9 A. My answer to that question would be, it depends
10 on how you define "fiduciary duty", and each
11 lawyer what they owe each client in any case.
12 Does that make sense?

13 Q. Sure. Makes enough sense, let's say that.
14 What's your understanding of these fiduciary
15 duties to the firm's clients?

16 MR. MANNION: I'm going to object
17 to firm's clients, again, but go ahead.

18 A. A lawyer should act reasonable; is that fair?

19 Q. If that's what you --

20 A. Yes.

21 Q. -- think the fiduciary duties require an attorney
22 to do is to act reasonable?

23 A. That's what I believe the definition is.

24 Q. Do you agree that the firm's clients place a
25 special confidence and trust in the firm and its

1 knowledge of the law and trust the firm to use
2 that knowledge for its client's benefit?

3 MR. MANNION: I'm going to object
4 to that. I mean, you want him now to say
5 that every --

6 MR. PATTAKOS: Tom, your speaking
7 objections --

8 MR. MANNION: No, no, no.

9 MR. PATTAKOS: - - are out of hand.

10 MR. MANNION: No, they are not.
11 Your questions are out of hand.

12 MR. PATTAKOS: They're ridiculous.
13 Tom, you don't get to comment on my
14 questions. That's not how depositions
15 work.

16 MR. MANNION: Well, you don't --

17 MR. PATTAKOS: This is
18 inappropriate and you know it. I'm asking
19 you, again, to stop.

20 MR. MANNION: You have five
21 plaintiffs in this case or four plaintiffs,
22 however many you have --

23 MR. PATTAKOS: Boy, Tom, you have
24 testified more than anyone else on this --

25 MR. MANNION: Identify --

1 MR. PATTAKOS: -- transcript.

2 MR. MANNION: Identify the clients
3 you're referring to.

4 Q. Mr. Nestico, you agree that the firm's clients,
5 all of them, place a special confidence and trust
6 in your firm, its knowledge of the law, and
7 expect the firm to use that knowledge for their
8 benefit, correct?

9 MR. MANNION: I'm going to object
10 again, speculating as to an entire group.
11 Go ahead.

12 A. I think what -- what's being objected to is me
13 trying to understand what everybody is thinking,
14 that's all. What is expected, I would assume
15 they expect their lawyers to represent them
16 zealously is a good definition and a way to
17 respond.

18 Q. They trust that you have special knowledge as a
19 lawyer, don't they, Mr. Nestico?

20 MR. MANNION: I will object,
21 again. You could answer. I object, but
22 you could answer.

23 A. What was the question?

24 Q. You agree that your firm is in a position of
25 influence over its clients by virtue of the trust

1 that the clients place in the firm?

2 A. No, I disagree.

3 Q. You disagree?

4 A. I disagree.

5 MR. MANNION: We have been going
6 two hours and you have not asked a question
7 that goes to class cert or any of the
8 underlying claims.

9 MR. PATTAKOS: That's a very
10 predictable opinion for you to take, Tom.

11 - - - -

12 (Thereupon, Plaintiff's Exhibit 7 was marked
13 for purposes of identification.)

14 - - - -

15 Q. Again, Mr. Nestico, there is no reason for you to
16 doubt that this is an accurate copy of the firm's
17 website, as it currently exists?

18 MR. MANNION: Objection. Go
19 ahead.

20 A. There's another page to this.

21 Q. Okay. But this isn't inaccurate, is it?

22 MR. MANNION: Objection. Go
23 ahead.

24 A. No.

25 Q. Okay. And you see where it says, KNR -- the

1 experienced attorneys at KNR know how to develop
2 a personal injury claim to maximize compensation?

3 A. Yes.

4 Q. This is what your clients trust you to do,
5 correct?

6 MR. MANNION: Objection.

7 Q. Maximize their compensation?

8 MR. MANNION: Object. Go ahead.

9 A. I don't know what each client expects, but I hope
10 so.

11 Q. Okay. You don't deny, Mr. Nestico, do you, that
12 the relationship between an attorney and client
13 bonds the attorney to most conscientious
14 fidelity, which is defined as the most abundant
15 good faith, absolute and perfect candor, or
16 openness and honesty, the absence of concealment
17 or deception, however slight?

18 MR. MANNION: Objection. Are you
19 asking him for an expert opinion on that?

20 MR. PATTAKOS: I'm asking if he
21 agrees with that.

22 MR. MANNION: That's asking for a
23 legal conclusion.

24 MR. PATTAKOS: Okay. Noted, Tom.

25 THE WITNESS: Answer?

1 MR. MANNION: I'm trying to debate
2 whether that's a proper question or not
3 here. I mean, he's essentially asking you
4 for an expert opinion, I think. I am going
5 to instruct you not to answer it. I am
6 going to --

7 MR. PATTAKOS: You're kidding me.
8 Tom, the only basis that you're allowed to
9 instruct the witness not to answer is if
10 you believe that it's for harassment or
11 intended for any improper purpose.

12 MR. MANNION: Yeah.

13 MR. PATTAKOS: You believe this is
14 intended for harassment?

15 MR. MANNION: Ab-- and improper
16 purpose, yeah, I do.

17 MR. PATTAKOS: You are not asking
18 -- you are instructing this attorney
19 witness not to answer a question about the
20 fiduciary duties that he owes to his
21 clients in a case where we have a fiduciary
22 duty claim pending?

23 MR. MANNION: That's not what I
24 said at all. I instructed him not to
25 become your legal expert when you read

1 something without giving him citations or
2 the full document.

3 MR. PATTAKOS: It's not how
4 depositions work, Tom.

5 MR. MANNION: Just starring at me?

6 MR. PATTAKOS: You're really
7 instructing him not to answer this
8 question?

9 MR. MANNION: I've instructed him
10 not to answer the question the way you
11 asked that, yes.

12 Q. You're not answering that question based on
13 Mr. Mannion's advice to you, Mr. Nestico?

14 A. Correct.

15 Q. Do you believe you shouldn't have to answer that
16 question?

17 MR. MANNION: Stop it. That's
18 totally improper. Do not answer that.
19 That is completely improper.

20 MR. PATTAKOS: There's nothing
21 improper.

22 MR. MANNION: That is completely
23 improper.

24 MR. PATTAKOS: What's improper,
25 here, Tom, is nothing that I'm doing, and

1 you know it, but we could save this for the
2 Judge. This is absurd.

3 MR. MANNION: Well, the whole line
4 of questioning is absurd. It has been two
5 hours --

6 MR. PATTAKOS: To ask him about
7 fiduciary duties in a case that alleges
8 breach of fiduciary duty?

9 MR. MANNION: We have no idea what
10 you are reading from, what the facts were,
11 what --

12 MR. PATTAKOS: I'm not asking him
13 about what I'm reading. I'm asking him
14 about the basic principle.

15 MR. MANNION: No.

16 MR. POPSON: You're reading from a
17 case, so you're asking for basically for
18 him to confirm whatever you think the law
19 and the case should be, that's what you are
20 doing.

21 MR. PATTAKOS: There's nothing
22 improper about that.

23 MR. MANNION: Yeah, there is.

24 MR. PATTAKOS: I'm asking if he
25 agrees with this legal principle. You

1 really think --

2 MR. MANNION: I don't think --

3 MR. PATTAKOS: -- it's improper?

4 MR. MANNION: I don't think that
5 it's proper to ask somebody to blanketly
6 agree with the legal principle without them
7 looking at the research.

8 MR. PATTAKOS: This is one of the
9 most outrageous objections that has ever
10 been made in a deposition, I'm sure.

11 MR. MANNION: At least you were
12 part of it.

13 MR. PATTAKOS: You are really
14 lowering the bar, Tom.

15 MR. MANNION: At least you were
16 part of it.

17 Q. Mr. Nestico, do you agree that your law firm and
18 the attorneys at your firm have a duty to avoid
19 self-dealing at the expense of their clients?

20 A. The individual lawyers or the law firm?

21 Q. Both.

22 A. Self-dealing, what of self-dealing?

23 Q. Profiting at the expense of your client without
24 advising your client of the profit?

25 MR. MANNION: I am going to object

1 to the form, but go ahead.

2 A. We make a profit every time we settle a case.

3 Q. I understand. But you understand what the
4 concept of self-dealing is, don't you?

5 MR. MANNION: Objection. Form.

6 Go ahead.

7 A. I think I do.

8 Q. Okay. You agree that the firm has a duty to
9 avoid it and the lawyers at the firm have a duty
10 to avoid engaging in self-dealing against the
11 firm's clients; do you not, Mr. Nestico?

12 A. Yes.

13 Q. Okay. You agree that an attorney has a fiduciary
14 duty to give his client accurate and complete
15 information about the financial terms of a
16 settlement reached in a personal injury case,
17 don't you, Mr. Nestico?

18 MR. MANNION: Objection to form,
19 but go ahead.

20 A. Yes.

21 MR. PATTAKOS: Mark the next
22 exhibit.

23 - - - -

24 (Thereupon, Plaintiff's Exhibit 8 was marked
25 for purposes of identification.)

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MR. MANNION: I do notice some
handwriting, Peter, four pages in, I just
want to --

MR. PATTAKOS: Yep, that's --

MR. MANNION: That's yours?

MR. PATTAKOS: That's not mine.

MR. MANNION: Okay.

MR. PATTAKOS: But that was on the
document that I was given.

MR. MANNION: It wasn't from the
website?

MR. PATTAKOS: No, this is not
from the website. I'll ask Mr. Nestico to
agree that this looks like documentation
that was submitted and delivered to the
client's doorsteps as part of a direct
solicitation.

MR. MANNION: Well, I am going to
object. Which client?

MR. PATTAKOS: This is just -- I
don't know which client this would have
been delivered to, but this is the firm's
own ad copy.

MR. MANNION: Okay.

1 A. At some point.

2 Q. At some point, right. And I could tell you that
3 my best -- my best understanding of this is that
4 this is two different -- this is contents from
5 two different envelope -- envelope type --
6 envelope type copy.

7 It's like a booklet that opens up and then
8 there's a CD, a magnet, a business card, and then
9 some letters that are inside the booklet. The
10 booklet is about three to four inches high, and
11 then opens long ways. Does that sound familiar
12 to you?

13 This would be the front of the advertising
14 copy here on the first page?

15 A. Right.

16 Q. And then this picture of all of the attorneys on
17 the second page would be on the back; does that
18 sound right to you?

19 A. It's possible.

20 Q. Okay.

21 A. I'm not going to --

22 Q. Okay. At any point, as you're going through this
23 exhibit, and you believe that any of this looks
24 like something that was not the firm's ad copy
25 that it published, then please let me know.

1 And another thing that, I think we could note
2 at the outset is, we see where Super Lawyers is
3 noted on the seventh page, and it lists Super
4 Lawyers from 2008 to 2015, so it stands to reason
5 that this was distributed some time around 2015
6 and 2016 --

7 MR. MANNION: Objection. Go
8 ahead.

9 Q. -- would you agree?

10 A. It's possible, yes.

11 Q. And then I believe there is another Super
12 Lawyer's notification on the last -- yeah, it's
13 the last page. That lists super lawyers from 20
14 -- 2008 to 2012. So this is -- this contains
15 material, I believe that was distributed in -- in
16 or around 2012 and in or around 2016. If you
17 have any reason to believe that's not the case,
18 please let me know.

19 A. I don't -- I think there might be a page missing.

20 Q. Okay. What do you believe is missing?

21 A. Because it's start with Super Lawyers, and I dont
22 know, or this --

23 Q. This is a compilation --

24 A. Yeah.

25 Q. -- of advertising materials, so I'll try to

1 clarify when I get back to my office or could get
2 -- when we get to a break and try to clarify how
3 this was distributed.

4 But for now, I just want to ask you questions
5 about the contents. I'd like you to turn to the
6 third page with your photo, where it says, we
7 understand accidents, here is my story.

8 A. Yes.

9 Q. And here you recount a story about how at the age
10 of 15 you were in a car accident where you
11 suffered serious injuries to both arms and you
12 had a steel rod surgically inserted into one of
13 the arms to keep it stable during your
14 three-month recovery in the hospital.

15 You then say, quote, during this difficult
16 and vulnerable time, my family and I were taken
17 advantage of by insurance companies. We did not
18 receive the just compensation that we deserved,
19 this is why I became a personal injury lawyer. I
20 want to make sure insurance companies don't take
21 advantage of injured people and deny them the
22 compensation they deserve.

23 This is all true, correct?

24 A. 100 percent.

25 Q. Okay. And you agree that you owe a duty to your

1 clients to do your best to ensure that they are
2 not taken advantage of in resolving their
3 personal injuries claims; do you not?

4 MR. MANNION: I am going to
5 object. Taken advantage of by insurance
6 companies, you mean?

7 MR. PATTAKOS: Taken advantage of
8 in the process of resolving their personal
9 injury claims.

10 MR. MANNION: Well, I'm going to
11 object. Object to the form, but go ahead.

12 A. I think it's says, insurance companies.

13 Q. But I'm not asking you specifically about
14 insurance companies. I'm asking if you agree
15 that you owe a duty to your clients to do your
16 best to ensure that they are not taken advantage
17 of in the process of resolving their personal
18 injury claims?

19 MR. MANNION: I'm going to object
20 to form, but go ahead.

21 A. That's fair.

22 Q. And you understand that all of your clients
23 expect you to protect them from being taken
24 advantage of, correct?

25 MR. MANNION: Object to "all

1 clients". Go ahead.

2 A. I think they all expect all the lawyers to.

3 Q. Sure. Okay. How was it that your family was
4 taken advantage of in this process?

5 MR. MANNION: Objection.

6 Absolutely not proper. I am going to leave
7 that decision to you. It's very -- it's a
8 personal issue.

9 A. Yeah, I'm not going to answer that question, and
10 the reason, Peter, is it involves confidential
11 settlement, so I'm not going to answer that.

12 Q. Okay. You say here, during this difficult and
13 vulnerable time --

14 A. Yes.

15 Q. -- my family and I were taken advantage of by
16 insurance companies.

17 You agree that when someone suffers injuries
18 in a car accident, they're generally going
19 through a difficult and vulnerable time, correct?

20 MR. MANNION: I'm going to object
21 to characterization. Go ahead.

22 A. I would say so.

23 Q. And that's why you wrote that, correct?

24 MR. MANNION: Objection.

25 A. That's how I feel.

1 Q. Okay. If we turn to page 5, which is two pages
2 ahead --

3 MR. MANNION: Which page?

4 MR. PATTAKOS: "Let us get money
5 for you", at the top.

6 Q. It says, you are probably finding yourself
7 dealing with issues and problems you have never
8 had to deal with before. You are going to be
9 asked many questions and be forced to make some
10 very important decisions. This is where we could
11 help.

12 You agree that the clients you're soliciting,
13 the car accident victims you are soliciting with
14 this advertisement, are probably finding
15 themselves dealing with issues and problems that
16 they've never had to deal with before, correct?

17 MR. MANNION: I'm going to object
18 to some of the characterizations in there,
19 but go ahead.

20 A. It is a direct mail solicitation; is that what
21 you're getting at?

22 Q. No. I'm asking if you agree that these people --
23 these people that are the target audience of this
24 advertisement, who are car accident victims,
25 correct?

1 A. Yes.

2 Q. Recent car accident victims, who they probably
3 are finding themselves dealing with issues and
4 problems they have never had to deal with before,
5 which is why it says this in this ad, correct?

6 MR. MANNION: Objection. Multiple
7 questions, but go ahead.

8 A. It is possible, yes, that they are dealing,
9 obviously, with these issues.

10 Q. Well, it says "probable" here. Do you agree that
11 it's probable, not just possible?

12 A. It's the same. You're playing -- it's semantics,
13 probable, possible --

14 Q. Okay.

15 A. We're saying the same thing.

16 Q. Okay. On the last page, the last sentence, right
17 above the Kisling, Nestico & Redick logo at the
18 top half of the page, it says, KNR cares deeply
19 about its clients and works tirelessly to provide
20 the means to put their lives together -- back
21 together, correct?

22 A. Correct.

23 Q. You understand, of course, that it's a traumatic
24 experience for someone to be injured in a car
25 accident?

1 A. I would think so.

2 Q. And that the damage caused is often more than
3 just physical, there is often mental and
4 emotional damage that accompanies the physical
5 damage?

6 MR. MANNION: I'm going to object,
7 but go ahead.

8 A. Sometimes, sure.

9 Q. And this can happen in a way that throws a person
10 completely off, such that a person needs to put
11 their lives back together, just as you state here
12 in this ad, correct?

13 MR. MANNION: I'm going to object.
14 Multiple questions, but go ahead.

15 A. That's fair.

16 Q. Okay. If we look at page 7 here, in the top
17 right, right under the Super Lawyers, the top
18 right paragraph --

19 A. That's not 7, hang on. 6.

20 Q. Okay. This is a quote from you, innocent people
21 are injured every day, says, Attorney Rob
22 Nestico. Their lives are completely turned
23 upside down due to forces beyond their control.

24 We fight hard to make sure someone is held
25 accountable and changes are made to prevent

1 accidents in the future.

2 I am reading that correctly?

3 A. Yes.

4 Q. And you said that, correct?

5 A. If I'm quoted, yes.

6 Q. And you said that, because you believe it's true,
7 correct?

8 A. Yes.

9 Q. Okay. If we look at the last page, there's
10 another quote from you in a similar space in the
11 top -- the first full paragraph, in the top
12 right.

13 Nestico -- okay. I'll read the whole
14 paragraph. Despite KNR's excellent reputation,
15 its lawyers acknowledge obstacles in finding due
16 justice. Nestico says one such reality is that
17 courts are being increasingly stacked, quote,
18 with judges who protect the insurance companies
19 over people, end quote.

20 He says, meaning, you say, individuals are
21 sacrificed at the expense of insurance company
22 profits. The courts and legislators have allowed
23 insurance companies to write whatever they want
24 in their policies.

25 Is that an accurate quote of you, sir?

1 A. Yes.

2 Q. And you said that, because you believe it to be
3 true, correct?

4 A. At that time, sure.

5 Q. And you don't believe it to be true anymore?

6 A. Well, things change.

7 Q. Have they changed in this regard, such that you
8 don't believe this is true?

9 A. Yes.

10 Q. How so?

11 A. The make-up of courts change constantly.

12 Q. Okay. So you think the courts are better now; is
13 that what you're saying?

14 A. I think they -- not that they're better or worse.
15 They just change and rulings change, case law
16 changes.

17 You know, I think at that time, I'm looking
18 at the intrafamily exclusion, that I don't
19 believe to be fair, that affects individuals that
20 are involved in accidents and families. But the
21 legislator came up with it, and the supreme court
22 enforces it.

23 Q. Okay. Any other aspect in which you no longer
24 believe what you say here?

25 MR. MANNION: Objection to form.

1 Go ahead.

2 A. No, I said -- I said that that's what I believe.

3 Q. Okay. So when you say that individuals are
4 sacrificed at the expense of insurance company
5 profits, does that mean you agree that it's
6 important that clients be fairly compensated?

7 A. I would agree with that.

8 Q. And that, at some level, an insurance --
9 insurance companies profits become too large,
10 such that the client doesn't get a fair
11 compensation, correct?

12 MR. MANNION: I am going to
13 object, but go ahead.

14 A. I don't think that -- first of all, insurance
15 companies, they have a job, and they serve a
16 purpose, that one ties in with the other. They
17 don't just look at their profits. They're
18 looking at claims, they look at various things.

19 They don't just -- you're trying to paint
20 this picture that I look at them like they're the
21 big, evil monster, and they're not. They have a
22 purpose. They serve a purpose. Just like
23 plaintiff lawyers serve a purpose, defense
24 lawyers serve a purpose, adjusters serve a
25 purpose, and insurance companies have their

1 purpose.

2 Q. What is that purpose?

3 MR. MANNION: Object.

4 A. Peter, that list will go on forever.

5 Q. Do your best.

6 A. I'm not going to do my best. They serve a
7 purpose.

8 Q. And you won't explain to me what that purpose is,
9 in your understanding?

10 A. To protect sometimes their own insured, that
11 that's what they do. They are there to
12 compensate others who are injured by their
13 insureds.

14 Q. Basically to eliminate risk, correct?

15 MR. MANNION: Ob -- excuse me.

16 What? That wasn't a question.

17 Q. Don't you agree that when you say that insurance
18 companies serve a purpose, that one of the
19 purposes of the -- that the insurance companies
20 serve, that's a good purpose, is to create
21 stability, not just for the -- not just for the
22 people with whom the insurance company contracts,
23 but also just our society as a whole?

24 MR. MANNION: I am going to

25 object. I have no idea what that question

1 was. But go ahead, if you understand it.

2 THE WITNESS: No, I'm actually --

3 I was actually going to say, I'm waiting
4 for a question.

5 A. What's your question?

6 Q. Do you disagree with that?

7 MR. MANNION: I am going to
8 object.

9 A. I don't know if I do or don't. It just depends
10 on the situation.

11 Q. Okay. Well, you agree that it's not right for
12 insurance companies to do whatever they can to
13 exploit the clients for their own profit,
14 correct?

15 A. I don't think they're exploiting them. What I
16 think that they are doing is they are evaluating
17 -- they have a position, and they're evaluating a
18 claim. They also protect people.

19 Q. Well, that's not what I asked you. I didn't ask
20 you if you thought whether they were doing it or
21 not. I asked you if you believe that it's not
22 right for them to do whatever they can to exploit
23 the clients for their own profit; you agree with
24 that, don't you?

25 MR. MANNION: I'm going to object

1 again. He's asking another legal opinion,
2 but if you have a legal opinion, give it.

3 A. Again, in my opinion, I believe that an insurance
4 company serves a purpose. And they are either
5 there to compensate you for your injuries or not.
6 If we're talking about an auto accident.

7 If you're talking about a homeowner's claim,
8 that they are, obviously, going to do everything
9 to minimize those claims, and not pay out as
10 much. That is just -- that's the nature of their
11 business model, I would assume.

12 Q. Mr. Nestico, I -- I -- respectfully, I didn't ask
13 you what your view of their purpose is. I'm
14 asking you a different question.

15 I'm asking you if you agree that it's not
16 right for insurance companies to do whatever they
17 can to exploit their clients for their own
18 profits?

19 MR. MANNION: I'm going to, again,
20 object. And I'm completely lost on why
21 you're asking that question in this case,
22 but go ahead, if you can.

23 A. Could you give me an example of exploiting? What
24 do you mean?

25 Q. No, sir. I am going to ask you the question

1 generally. Are you telling me you can't answer
2 that question?

3 A. Fine, I can't answer that question.

4 Q. Okay. Why not?

5 A. Because you're not giving me an example.

6 Q. Okay.

7 THE VIDEOGRAPHER: Excuse me, sir.
8 Could we change the tape, two minutes?

9 MR. PATTAKOS: Okay.

10 MR. MANNION: Okay. We'll take a
11 break at that two minutes then.

12 MR. PATTAKOS: In two minutes --

13 THE VIDEOGRAPHER: Yeah.

14 MR. PATTAKOS: -- or it will take
15 two minutes? How long will it take? Let's
16 just change the tape, no break. We're
17 staying here.

18 MR. MANNION: No, we're taking a
19 break.

20 MR. PATTAKOS: No, we're not. I'm
21 in the middle of a line of questioning,
22 Tom.

23 MR. MANNION: I don't care. We're
24 taking a break.

25 THE WITNESS: There is no question

1 pending.

2 MR. MANNION: There is no question
3 pending.

4 MR. PATTAKOS: I'm in the middle
5 of a line of questioning. I'm asking
6 everyone to stay in the room.

7 MR. MANNION: I don't care if you
8 ask or don't ask. I need a break. There
9 is no question pending. You took a break
10 every hour with your witness. We are
11 taking a break. I have to use the
12 restroom.

13 THE VIDEOGRAPHER: We are going
14 off the record. The time is 11:35.

15 - - - -

16 (Thereupon, a recess was had.)

17 - - - -

18 THE VIDEOGRAPHER: We are back on
19 the record. This is the beginning of media
20 number two. The time is 11:44.

21 Q. Okay. Mr. Nestico, I just want to clarify that
22 it's your understanding that it's your firm's job
23 to do whatever you can to keep the insurance
24 companies from exploiting your clients, correct?

25 MR. MANNION: I am going to object

1 to the form and the characterization.

2 A. I actually didn't say all that, you did. And my
3 firm has a lot of responsibilities.

4 Q. So you disagree?

5 A. Say it again.

6 Q. You agree, Mr. Nestico, that your firm has a duty
7 to do whatever it can to keep the insurance
8 company from exploiting its clients?

9 MR. MANNION: I'm going to object
10 again to "whatever it can" and "exploit".

11 A. Actually, I have an issue with "duty". What do
12 you mean? Which duty are you talking about?

13 Q. Just your job for your clients, Mr. Nestico.

14 A. Say that again.

15 Q. The attorney/client relationship?

16 A. Right.

17 Q. Part of that, part of the job, that you are doing
18 for your clients is to keep the insurance
19 companies from exploiting them, correct?

20 MR. MANNION: Objection, but go
21 ahead.

22 A. No, it is to represent clients.

23 Q. Okay. What are the insurance companies who most
24 frequently represent defendants in KNR cases?

25 MR. MANNION: Excuse me?

1 A. Say that again.

2 MR. MANNION: Insurance companies
3 don't represent clients. What are you
4 talking about?

5 A. That's why I said say that. Say that again.

6 Q. The insurance companies that you deal with most
7 frequently who are repre -- who are covering the
8 defendants in your cases?

9 A. Wow. There is a lot of insurance companies that
10 we deal with. You realize that we handle a lot
11 of cases?

12 Q. Uh-huh.

13 A. And there is no -- you can't say I see more of
14 these insurance companies versus this insurance
15 company. They are all over the place.

16 Q. And there is none that you see more frequently
17 than others?

18 A. No.

19 Q. Okay. I believe it's the fifth to last page here
20 of this Exhibit 8. You say, KNR now boasts an
21 arsenal of over 30-trial-ready attorneys and more
22 than 100 support staff members spanning their ten
23 locations?

24 A. Correct.

25 Q. That's -- and that was true at the time of this

1 publication, correct?

2 A. Correct.

3 MR. MANNION: Where were you
4 reading from?

5 THE WITNESS: Here.

6 MR. MANNION: Oh, I thought you
7 said second to last page.

8 MR. PATTAKOS: No, fifth to last
9 page.

10 Q. And you communicate the size of your firm and the
11 size of your support staff to communicate to the
12 clients that you have the resources to help them
13 resolve their cases --

14 MR. MANNION: Objection to form.

15 Q. -- correct?

16 MR. MANNION: Objection to form.

17 Go ahead.

18 A. I'm just stating a fact.

19 Q. And you state that fact to give the impression
20 that your firm has strengths and abilities that
21 come from these numbers, correct?

22 MR. MANNION: Objection to form.

23 A. Peter, it's -- you're not giving the impression.

24 It's a fact.

25 Q. Okay. And you have no reason to insert that fact

1 into -- why else would you tell the -- your
2 prospective clients that you have over 100
3 support staff members?

4 MR. MANNION: Objection. Go
5 ahead.

6 A. You're, again, stating a fact of who we have that
7 is available to them if they need them.

8 Q. Okay.

9 A. Right?

10 Q. Okay. Okay. When you say 30-trial ready
11 attorneys --

12 A. Uh-huh.

13 Q. -- it's not true that 30 attorneys at the firm
14 had trial experience at the time, right?

15 MR. MANNION: Objection. You're
16 mixing --

17 A. They are trial-ready.

18 Q. Okay. They are ready to get that experience,
19 even if they hadn't had it, correct?

20 MR. MANNION: Objection.

21 A. They are ready to try the case.

22 Q. Okay. At various points in this -- in this ad
23 copy, for example, on the fourth page you say --
24 it says, call now for a free consultation. If
25 you can't come to us, we'll come to you.

1 Do you see that?

2 A. Yes.

3 Q. The firm has always offered prospective clients a
4 free consultation, correct?

5 A. I believe so.

6 Q. And what does this mean, we'll come to you?

7 A. If they want the lawyer to come out and meet with
8 them, they can.

9 Q. So you're not referring to the investigator
10 there?

11 A. No.

12 Q. Okay. Is there any particular way the client is
13 supposed to know that you're not referring to the
14 investigator?

15 MR. MANNION: Excuse me? Could
16 you ask -- is there any way the client, you
17 said?

18 MR. PATTAKOS: Yes.

19 MR. MANNION: Are you saying,
20 they're already a client? I don't
21 understand the question.

22 Q. How does a client who reads, if you can't come to
23 us, we'll come to you, and then has an
24 investigator sent to their home, how are they
25 supposed to know that this, you can't come to us,

1 we'll come to you, doesn't apply to the
2 investigator?

3 MR. MANNION: Objection. I have
4 no idea what he's asking.

5 A. You asked a bunch of questions in there. Could
6 you just rephrase --

7 Q. I asked one question.

8 MR. PATTAKOS: You could please
9 read it back to him.

10 - - - -

11 (Thereupon, the requested portion of
12 the record was read by the reporter.)

13 - - - -

14 A. So the reason why I've said you have asked a
15 bunch of things in there, are they a client
16 first? That's the first. You are assuming that
17 it's a client. Are you saying the public?

18 Q. Let's say a client.

19 A. Okay. Well, the client would know, because they
20 would have communicated with the lawyer.

21 Q. Okay.

22 A. That's why I'm asking you "client".

23 Q. Okay. Turn to the page, third to last page, it
24 says, get money now, it's a dollar bill --

25 A. Uh-huh.

1 Q. -- with a KNR logo on it, that says, get money
2 now, Kisling, Nestico & Redick could help you get
3 a cash advance on your settlement.

4 Why did you include this in the
5 advertisement?

6 A. Because some clients need help in getting an
7 advance because of the accident.

8 Q. You believed you were performing a useful service
9 for your clients in providing them with cash that
10 they needed?

11 A. I'm providing them with information.

12 Q. Sure. About how to get that cash?

13 A. Yes.

14 Q. You understand that many of your clients would
15 like to get cash as quickly as possible, right?

16 MR. MANNION: Objection to all,
17 but go ahead.

18 A. It depends.

19 Q. It depends on what?

20 A. It depends on their financial position.

21 Q. Okay. So your clients want to resolve their
22 cases as quickly as possible and get cash as
23 quickly as possible, assuming they could get
24 maximum recovery in the process, correct?

25 MR. MANNION: Objection, but go

1 ahead.

2 A. All of that is fair.

3 Q. Okay. And you want to do everything you can for
4 your clients to ensure that their cases are
5 resolved as efficiently as possible, correct?

6 MR. MANNION: I am going to object
7 to "everything you can", but go ahead.

8 A. Fair.

9 Q. And if you could do so without filing a lawsuit,
10 all the better, not just because it's less work
11 for your firm, but it's good for the client,
12 because litigation takes a long time, and the
13 client could avoid the delays and risk by
14 achieving a comparable pre-suit settlement,
15 correct?

16 THE WITNESS: Could you read that
17 back to me?

18 Q. I will read it back. If you could settle the
19 case for your clients without filing a lawsuit,
20 all the better, not just because it's less work
21 for your firm, but it's good for the client,
22 because litigation takes a long time and the
23 clients could avoid the delays and risk by
24 achieving a comparable pre-suit settlement?

25 A. Fair.

1 Q. You understand that courts favor settlement, as
2 well?

3 MR. MANNION: Objection. Which
4 court?

5 Q. Ohio courts, as a rule, favor settlement,
6 correct?

7 MR. MANNION: I'm going to object.
8 Go ahead.

9 A. It's an opinion, but I would assume so.

10 Q. Okay. I'm going to read you a 10th District
11 case, an excerpt, it's Triplet V. Rosen,
12 Franklin, 1992-AP-6787. Tell me if you disagree
13 with this: Public policy favors settlements,
14 because when parties agree to settle cases,
15 litigation is avoided, costs of litigation are
16 contained, and the legal system is relieved of
17 the burden of resolving the dispute.

18 MR. MANNION: Objection to form.
19 Go ahead.

20 Q. You don't disagree with that, do you?

21 A. What I am going to say is I'm not going to argue
22 the law with you. That's -- if that's the
23 decision of that Court, that's the decision of
24 the Court.

25 Q. Do you disagree with what that Court says, in

1 your own belief?

2 A. No. I would do research. A good lawyer would do
3 research to see whatever case you're citing, I am
4 going to go look at it. I don't know what your
5 position is. I don't know what context that's
6 in. You're taking a snippet out of a case and
7 you're citing it to me.

8 Q. Okay.

9 A. Is that fair?

10 Q. No, it's not --

11 A. Well --

12 Q. -- but if that's your testimony, then just leave
13 it at that.

14 A. Okay.

15 Q. You agree that settlements favor victims who need
16 their compensation money for living expenses and
17 spares them the anxiety associated with
18 protracted litigation, correct?

19 MR. MANNION: Objection.

20 A. I'm not going to -- again, you're citing out of a
21 case, and you are not giving me all the facts,
22 Peter.

23 Q. You don't need -- you need facts to --

24 A. I do. I do.

25 Q. -- to say whether you agree with that as a

1 general --

2 A. I do. I need facts to evaluate a case. That's
3 what a good lawyer does.

4 Q. Okay. Now, your attorneys have elicited
5 testimony in this case and have claimed at
6 various points in litigation that KNR attorneys
7 are trained to discourage their clients from
8 getting loans; that's true, correct?

9 MR. MANNION: I'm going to object
10 to "trained", but go ahead.

11 A. Give me the facts, Peter.

12 MR. MANNION: Well, you're asking
13 him if one of our representations is true?
14 Where was that representation made?
15 What --

16 Q. Was it not true, Mr. Nestico, that your -- that
17 KNR attorneys are trained and instructed to
18 discourage their clients from getting loans?

19 A. Okay. So there's no training. Do you understand
20 that KNR lawyers have experience? KNR lawyers,
21 they bring along with them what they do.

22 Each one of those lawyers, when they come to
23 KNR, some have been personal injury lawyers, some
24 haven't. And if they haven't, they're going to
25 sit with a lawyer who has. So there is no

1 training, that's why I am pausing to what you're
2 -- you're asking me. Each lawyer is going to do
3 and say whatever they want in their cases.

4 Q. Okay.

5 A. They don't do what I tell them to do.

6 Q. So it's not true, then, that your attorneys are
7 trained or encouraged to discourage --

8 A. Do me a favor, stop using the word "trained".
9 And why don't you give me a different word. If
10 you say that the lawyers themselves, do they do
11 that, I'm sure a lot of them do, they discourage
12 them.

13 Q. We could move on. For how many years were you
14 sending out mailers that advertised the ability
15 to help get clients a cash advance?

16 A. When the legislator allowed us to do it.

17 Q. When did that change?

18 A. I don't remember.

19 Q. What legislation was it?

20 A. Allow for these loans. They are -- they're
21 non-collateralized loans.

22 Q. So you're saying that you started doing it, once
23 the legislature allowed it?

24 A. Once the law allowed us, once we were permitted
25 to, yes.

1 Q. Okay. And you have not --

2 A. Around that time, yes.

3 Q. And you have not stopped advertising that you
4 could help clients get a cash advance?

5 A. No.

6 Q. So you still do that, you still advertise to your
7 clients that you could help them get a cash
8 advance?

9 A. According to the supreme court, I am allowed to
10 do it.

11 Q. And you still do?

12 A. Yes.

13 Q. Okay. So let's look at the second to last page
14 here, where it says, let us get money for you, at
15 the top of the page. Dear sir or madam, it has
16 come to our attention from a police accident
17 report that you have been the victim of an
18 automobile collision.

19 MR. MANNION: Is there a question?

20 Q. Is that how you identify the people to distribute
21 these advertisements to, through the crash
22 reports?

23 A. Sorry, I'm just trying to think if there's other
24 ways for you. That is one way, yes.

25 Q. Okay. And where did you get these crash reports?

1 A. During what time period?

2 Q. During any time period.

3 A. Well, it's changed every time period.

4 Q. Okay.

5 A. It really has.

6 Q. Go through the time periods.

7 MR. MANNION: Where do you want
8 him to start?

9 MR. PATTAKOS: Start at the
10 beginning.

11 MR. MANNION: What year do you
12 want him to start in?

13 MR. PATTAKOS: The firm started in
14 2005. Start there.

15 A. 2005, we would have to pick them up at the police
16 station. And that continued -- I'm just trying
17 to think. That was one manner. There was
18 companies that would provide us just the name and
19 address that we would pay to obtain that
20 information. And, again, they would be going
21 also to the police department. So a lot of that
22 was from certain companies that provided that
23 information.

24 Q. And then what? How did it change after that?

25 A. Then, slowly, they started putting them up on

1 websites. That, I think was 2013. And then that
2 was in the individual police department websites.
3 Then after that, they went on another website
4 ohio crashreports.com -- or .gov, sorry.

5 Q. What year was that?

6 A. It was after '13. It was -- again, it is
7 something that all of the departments started
8 putting it on that site. So they started
9 uploading from there.

10 Q. Did you pay to get these crash reports from
11 police departments before they were put up
12 online?

13 A. Yes.

14 Q. Who did you pay?

15 A. There were a couple of companies that we used.

16 Q. And they would go request the reports from the
17 police department?

18 A. No. I don't know how they would get them. We
19 would get a list of name and addresses.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 MR. MANNION: Objection.

2 [REDACTED]

3 MR. MANNION: Yeah, you don't need
4 to answer that question.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. You would agree that you are one of the highest
9 advertising law firms in the State of Ohio,
10 wouldn't you?

11 MR. MANNION: How would he know
12 that? I am going to object.

13 A. There is no way of measuring that.

14 Q. Okay. How many law firms do you believe would
15 have a comparable advertising budget, just based
16 on what you know of the market?

17 MR. MANNION: Objection.

18 A. I don't know every major law firm in the State of
19 Ohio. I know some.

20 Q. Okay. How many of them do you think are
21 comparable, that you know of?

22 MR. MANNION: Wait a minute. How
23 many of what?

24 MR. PATTAKOS: How many law
25 firms -- how many law firms, is he aware

1 of, that have a comparable advertising
2 budget to KNR?

3 A. Plaintiff, personal injury?

4 Q. Any law firm.

5 A. I don't know.

6 Q. You have no ability to --

7 A. When you open it up to any law firm, no, I don't.

8 Q. How about personal injury, then?

9 MR. MANNION: Object.

10 A. There is a lot. Probably a dozen or more.

11 Q. A dozen. Okay. On the fifth to last page of
12 this mailer -- sixth to last page, I'm sorry --

13 MR. MANNION: Could I see the
14 front, just to see what you're looking at?

15 MR. PATTAKOS: It's this, with
16 photos of the attorneys.

17 MR. MANNION: Okay.

18 Q. Third paragraph, on the left side --

19 MR. MANNION: Wait one quick
20 second, I'm just trying to get there.

21 MR. PATTAKOS: It's this page,
22 Jim.

23 MR. POPSON: Okay. Thanks.

24 MR. PATTAKOS: Third paragraph on
25 the left hand-side.

1 MR. MANNION: I'm there.

2 Q. It says, more significant than the size of the
3 firm is the experience and dedication the
4 attorneys at KNR bring to each of their clients,
5 from four-million-dollar truck accident
6 settlements and million-dollar verdicts, to
7 policy limit settlements, and everyday cases that
8 may not reach beyond the thousands, there is no
9 case too large or too small for the attorneys at
10 KNR.

11 That's true, correct?

12 A. True.

13 Q. Your firm routinely settles cases for amounts
14 less than a \$10,000 case?

15 MR. MANNION: Objection to the
16 form, but go ahead.

17 A. What do you mean by "routinely"?

18 Q. It's a common occurrence.

19 A. When? You're asking generalities. Is there any
20 specific timeframe or just you don't care?

21 Q. Has there ever not been a time when the firm
22 wasn't routinely settling cases for amounts less
23 than \$10,000?

24 MR. MANNION: Objection. Triple
25 negative. Go ahead.

1 A. I was trying to figure out. No, we've handled
2 cases that we settled with less than \$10,000. We
3 have.

4 Q. Routinely?

5 MR. MANNION: Objection.

6 A. I don't know if routinely is --

7 Q. Every -- you're denying that every week the
8 pre-litigation attorneys settle multiple cases
9 for amounts less than \$10,000?

10 A. Oh, they do.

11 Q. Okay. Your goal is to sign as many clients as
12 possible who have viable claims, isn't it?

13 MR. MANNION: Objection.

14 A. Our goal is to sign up clients that need help, as
15 many clients that need help. That's our goal.

16 Q. As many client that need help as possible,
17 correct?

18 A. Yes.

19 Q. If a client comes to you with some evidence of an
20 injury and a crash report that shows that someone
21 else is liable, you'll take the case, correct?

22 MR. MANNION: Objection.

23 A. Well, I need a lot more facts than that.

24 Q. Well, what's the general criteria, then?

25 A. In evaluating a case?

1 Q. Uh-huh.

2 A. You are going to look at liability, who is at
3 fault, the amount of damage, property damage,
4 there's the injuries, what they sustained.

5 Q. Are your attorneys or staff instructed to follow
6 any guidelines as to thresholds as to these
7 measurables?

8 A. No.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q. Well, let's take a look at an exhibit.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 9 was marked
19 for purposes of identification.)

20 - - - -

21 MR. PATTAKOS: It's Exhibit 9,
22 right?

23 Q. Have you seen this document?

24 A. Yes.

25 Q. Could you identify it as a proposed stipulation

1 that Brian Roof sent to us, the plaintiffs, on
2 December 20th, 2017?

3 MR. MANNION: Objection as to who
4 sent it. Go ahead.

5 A. I could not.

6 Q. But you have no reason to doubt that that's what
7 this is?

8 MR. MANNION: Objection.

9 A. No.

10 Q. Okay. And it says, number 6, since 2009 KNR has
11 settled between 40,000 and 45,000 in which
12 investigators were used and the investigation fee
13 was charged.

14 Am I reading that correctly?

15 A. You are.

16 Q. You authorized Mr. Roof to send this to me,
17 correct?

18 MR. MANNION: Objection. You
19 can't ask about his attorney/client
20 communication.

21 MR. PATTAKOS: It's not
22 attorney/client --

23 MR. MANNION: Yeah, it is.

24 MR. PATTAKOS: It's not a
25 privileged communication.

1 MR. MANNION: Yes, it is.

2 MR. PATTAKOS: He either
3 authorized Mr. Roof or not. It has nothing
4 to do with --

5 MR. MANNION: No, no, no.

6 MR. PATTAKOS: -- It has nothing to
7 do with legal advice.

8 MR. MANNION: No.

9 MR. PATTAKOS: It's whether he
10 authorized Mr. Roof to send this to me.

11 MR. MANNION: No, that's not a
12 proper question.

13 MR. PATTAKOS: It absolutely is.

14 MR. MANNION: Completely not a
15 proper question.

16 Q. You are saying it's not a proper question?

17 A. It's not a proper question.

18 Q. Okay. Was that not true?

19 MR. MANNION: Is what not true?

20 MR. PATTAKOS: Paragraph 6 here
21 that KNR, since between 2009 -- between
22 2009 and December 20th, '17 -- 2017 that
23 KNR has settled between 40 and 45 thousand
24 cases in which investigators were used and
25 the investigating fee was charged?

1 THE WITNESS: That's possible.

2 Q. Did you assist Mr. Roof in compiling this number?

3 MR. MANNION: Objection. Again,
4 you are asking for privileged information.

5 MR. PATTAKOS: It's not
6 privileged --

7 MR. MANNION: It absolutely is
8 privileged.

9 MR. PATTAKOS: -- but your
10 objection is noted.

11 MR. MANNION: No, it's not an
12 objection is noted when you say,
13 attorney/client privilege.

14 Q. Are you refusing to answer the question, Mr.
15 Nestico?

16 A. No, I don't recall how we came up with that
17 number.

18 Q. You have no idea. Okay.

19 A. Not that I have no idea, I do not recall, I said.

20 Q. How would you have come up with this number?

21 A. If I don't remember how we came up with the
22 number, you're asking me, how would we have?

23 Q. Well, say you had to do it again, what would you
24 do?

25 A. You'd run a case list.

1 Q. In Needles?

2 A. Yeah.

3 Q. How would you do that?

4 A. I don't know. I would ask someone to do it.

5 Q. Who would you ask?

6 A. Either Kevin or have him call Needles.

7 Q. Kevin?

8 A. Thompson.

9 Q. That's the office manager?

10 A. No.

11 Q. What is Kevin?

12 A. Kevin handles business development.

13 Q. Okay. Right.

14 A. He has experience with Needles.

15 Q. So what percentage of the firm's cases involve
16 charging the investigation fee?

17 MR. MANNION: Objection. Go
18 ahead.

19 A. I think a lot of them.

20 Q. Like 95 percent?

21 A. I don't know.

22 Q. Does that sound right?

23 A. No. I think the majority of them could be, that
24 could --

25 Q. Closer to 50 percent or is it closer to

1 95 percent?

2 MR. MANNION: Objection. Go
3 ahead.

4 A. The vast majority; how is that?

5 Q. So closer to 75 percent than 50 percent?

6 A. Yeah.

7 Q. Okay. Closer to 75 percent or closer to
8 95 percent?

9 MR. MANNION: I feel like I'm at
10 the eye doctor. Does it look better here?

11 A. You're getting into that gray area, that's why
12 I'm just hesitating.

13 Q. Okay. You have no reason to believe that this
14 number is inaccurate, that 40 to 45 thousand
15 cases?

16 A. No.

17 Q. Okay.

18 A. That's --there's enough span there.

19 Q. Okay. So over seven years, that's at least 5,625
20 cases a year, correct?

21 MR. MANNION: Objection. Go
22 ahead.

23 A. If you divide it equally, yeah.

24 Q. How many law firms in the state do you believe
25 handle a comparable number of cases?

1 MR. MANNION: Objection.

2 A. I don't know how many they handle.

3 Q. Are you aware of -- how many law firms in
4 Northeast Ohio do you consider to be your
5 competitors?

6 MR. MANNION: Objection.

7 A. I don't know the number. I could tell you who I
8 think.

9 Q. Okay.

10 A. Of who I know.

11 Q. Okay. Please tell me.

12 A. I think Elk & Elk are comparable.

13 Q. Uh-huh.

14 A. Dyer, Garofalo is comparable.

15 Q. Comparable in what way?

16 A. You just asked, cases.

17 Q. Okay. The number of cases?

18 A. Yeah.

19 Q. What's -- what's that last?

20 A. Dyer, Garofalo.

21 Q. How do you spell that?

22 A. I don't know. Dyer, D-y-e-r.

23 Q. Any other firms?

24 A. There's a whole list of marketing that we get
25 from our marketing company, so I don't know.

1 Q. Okay. But these are only two firms you could
2 think of right now that you consider your
3 competitors in terms of volume of cases?

4 MR. MANNION: Objection to form.
5 Go ahead.

6 A. There is more.

7 Q. Who else?

8 A. I told you there is a list that we get from our
9 marketing company.

10 Q. But that you could -- that you're aware of now?

11 A. Every city has more. There's some in Youngstown.
12 I'm trying to remember the guy's name. There's a
13 whole list. If you want them, we will give them
14 to you.

15 MR. MANNION: Let us make that
16 determination.

17 THE WITNESS: It's of no
18 significance.

19 Q. Okay. So if you're settling, let's just say, an
20 average of 5,625 cases a year, even if all 36
21 lawyers at your firm were working on them an
22 equal number, that would mean your lawyers are
23 resolving approximately 156 per year, per lawyer,
24 on just the cases where investigation fees were
25 charged?

1 MR. MANNION: I'm going to object,
2 but go ahead.

3 Q. Does that sound right to you?

4 A. If we're doing the math that you are saying --

5 Q. Okay. Let's assume my math is right. And if
6 your lawyers were billing 2,080 hours a year,
7 which is 40 hours a week for 52 weeks, no
8 vacation, if they were spending that much time,
9 that would mean they are spending 13 and 1/3
10 hours, on average, on each case --

11 MR. MANNION: I'm going to --

12 Q. -- does that sound right to you?

13 MR. MANNION: -- object.

14 A. You are -- that is so wrong.

15 Q. Okay.

16 A. The entire statement is wrong. We don't bill by
17 the hour, I told you that before. On some cases
18 you spend some time, more on others, less on
19 others. You just -- what you're saying is
20 completely wrong.

21 Q. So you don't -- you don't believe it's true that
22 your attorneys spend an average of 13 and 1/3
23 hours on average on each case?

24 A. I don't know what that number is.

25 Q. Okay. But you don't expect them to work

1 overtime?

2 A. No.

3 Q. Okay. How is the high volume business model good
4 for your clients?

5 MR. MANNION: Excuse me? Wait.

6 I'm going to object. What is the high
7 volume business model?

8 Q. Go ahead and answer the question, Mr. Nestico.

9 A. I don't even know how to answer that question, I
10 don't. That makes no sense to me. The statement
11 you just made, Peter, makes zero sense to me.

12 Q. Okay. You understand that the more cases an
13 attorney is responsible for, the less attention
14 he'll be able to devote to any one client's case,
15 correct?

16 A. No --

17 MR. MANNION: Objection.

18 A. -- that is wrong.

19 Q. How is it wrong?

20 A. Some lawyers handle it better than others, so
21 it's wrong. You're making a generalization.

22 Q. Well, you would agree that if you're in the
23 client's shoes, and you have a contingency fee
24 agreement with a lawyer, it's generally in the
25 client's interest for that lawyer to devote more

1 attention to the client's case than less,
2 correct?

3 MR. MANNION: Objection.

4 Q. Because the client isn't paying any extra for the
5 attorney time?

6 A. You're making, again, a generalization.

7 Q. You disagree with that?

8 A. I disagree with the whole generalization of your
9 question.

10 Q. You disagree that generally the client wants more
11 attorney attention to their case than not; you
12 don't disagree with that, do you?

13 MR. MANNION: I'm going to object
14 again.

15 A. If you had to -- the clients, that would be only
16 case they would work on is their case.

17 Q. Okay. So you have to agree that there is an
18 inherent conflict between the client's interest
19 in having an attorney paying attention to their
20 case and the law firm's interest in bringing as
21 many cases as possible into the firm, don't you?

22 MR. MANNION: Objection.

23 A. I'm not going to -- you're characterizing
24 conflicts of interest in such a way that doesn't
25 even make sense, again.

1 Q. You don't see a conflict there?

2 MR. MANNION: Objection.

3 A. The lawyers and the firm handle the case for the
4 clients, to the best of their ability.

5 Q. Well, does the firm have any safeguards in place
6 to make sure that it's protecting the clients and
7 not taking in more cases than it could handle?

8 A. Protecting the clients, what does that have to do
9 --

10 MR. MANNION: Objection.

11 A. -- with --

12 MR. MANNION: Again, are we in a
13 legal malpractice case here? Is that what
14 you're admitting to? I'd like to know.

15 Q. So the answer is "no"?

16 MR. MANNION: What? He didn't say
17 that.

18 A. I didn't say that. I said, I don't under --

19 MR. MANNION: I don't understand
20 the question.

21 THE WITNESS: Right. That's what
22 I said.

23 Q. What don't you understand about the question?

24 MR. BEST: The question.

25 MR. MANNION: The question.

1 Q. I'll ask it again. What safeguards does the firm
2 have in place, if any, to make sure that the firm
3 is protecting its clients and not taking in more
4 cases than it could handle?

5 MR. BEST: He didn't say he didn't
6 hear you. He said he didn't understand the
7 question.

8 A. You're asking for safeguards --

9 Q. What -- what does the firm --

10 A. -- if the cases --

11 Q. What does the firm --

12 A. Peter, if the cases come in, I told you early on
13 and I've testified to it, we hired more lawyers.
14 That's what you do.

15 Q. Okay.

16 MR. MANNION: 2 p.m. might be the
17 -- I have to go in a minute here, but you
18 might be right on that over/under, Brad.
19 Just a couple more minutes and then I'm
20 going to have to take a break, Peter. So
21 just let me know when you're done in a
22 couple minutes here.

23 Q. You agree that there are certain economies of
24 scale that your firm and your clients benefit
25 from in handling high volume, correct?

1 A. No.

2 Q. No?

3 A. No.

4 Q. You don't agree with that?

5 A. No.

6 Q. How is it that you don't agree with it?

7 A. I don't agree with it.

8 Q. Okay. So you don't believe that your -- the size
9 of your firm number and the number of support
10 staff you have allows you to handle certain tasks
11 more efficiently for your clients?

12 MR. MANNION: Objection. Go
13 ahead.

14 A. The efficiency is determined by the lawyers.

15 Q. So you dis --

16 A. If they need more support, they ask for more
17 support, and they are given more support.

18 Q. So you're disagreeing with me, then?

19 A. Whatever your comment is, doesn't make any sense
20 to me. That's all I'm telling you.

21 Q. Okay.

22 A. No offense.

23 Q. Okay. None taken, sir.

24 Just one more exhibit.

25 - - - -

1 (Thereupon, Plaintiff's Exhibit 10 was marked
2 for purposes of identification.)

3 - - - -

4 Q. And I'm going to represent to you that this is --
5 this was printed out from your web page yesterday
6 or the day before.

7 It says, in the second paragraph here, we
8 continue to refine our approach to injury cases
9 every day and our dedication to remaining on the
10 cutting edge of our field gives our clients the
11 advantage necessary to obtain maximum
12 compensation for their injuries.

13 How is it that you remain on the cutting edge
14 of your field?

15 A. Technology.

16 Q. What type of technology?

17 A. The use of technology.

18 Q. What technology?

19 A. Again, I am going to tell you this is all
20 proprietary, because I'm not going to tell you
21 how we handle cases.

22 Q. Okay. Proprietary technology.

23 A. Did you say something?

24 Q. No. Proprietary technology, I just want to
25 confirm that is your answer?

1 A. Okay.

2 MR. PATTAKOS: You want your
3 break?

4 MR. MANNION: Yeah. That would be
5 great.

6 MR. PATTAKOS: So we are going to
7 take an hour?

8 MR. MANNION: Sounds good.

9 MR. PATTAKOS: Back at 1:30.

10 MR. MANNION: Approximately 1:30,
11 yeah.

12 THE VIDEOGRAPHER: We are going
13 off the record. The time is 12:21.

14 - - - -

15 (Thereupon, a recess was had.)

16 - - - -

17 THE VIDEOGRAPHER: We are now back
18 on the record. The time is 1:33.

19 Q. Just a housekeeping item from before lunch.

20 MR. PATTAKOS: Mark Exhibit 9 --
21 mark whatever exhibit we're on.

22 MR. POPSON: What are we on?

23 THE REPORTER: 11.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 11 was marked

1 for purposes of identification.)

2 - - - -

3 Q. Okay. This is just another page from your
4 website that we printed out. You have no reason
5 to doubt that that's an accurate representation
6 of the firm's website as of today, do you?

7 A. No.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. Okay. So, 1.2 million over a year, then, is the
25 threshold?

1 A. It's not a threshold. These are goals --

2 Q. Uh-huh.

3 A. -- performance goals, that you set for them.

4 Q. And that's the first performance goal for an
5 experienced pre-litigation attorney, correct?

6 MR. MANNION: Objection to form.

7 Go ahead.

8 A. Okay. You say "first" --

9 Q. Uh-huh.

10 A. -- explain that to me. I don't understand what
11 you mean by, this is the first goal.

12 Q. Well, why don't you explain to me what the --
13 what the various benchmarks are that the
14 pre-litigation attorneys are expected to achieve.

15 A. There isn't --

16 MR. MANNION: I am going to
17 object. Go ahead.

18 A. -- sorry.

19 Q. Okay. But you admitted that the \$100,000 a month
20 is a benchmark that's communicated to the
21 attorneys.

22 How is that communicated?

23 MR. MANNION: Objection as to
24 mischaracterization, but go ahead.

25 A. Okay. So here's what there -- so if you're more

1 experienced, one of the goals would be to see how
2 long -- or to get to \$100,000 in fees a month.
3 There are seasoned lawyers that don't do that.
4 They haven't accomplished that.

5 Q. Okay. And it's true, isn't it, that for lawyers
6 that achieve that threshold, they receive a bonus
7 as a result of achieving that threshold, correct?

8 MR. MANNION: Objection to
9 "threshold". Go ahead.

10 A. Okay. So, and maybe we're saying the same thing,
11 I don't -- what I'm trying to explain to you, so
12 let's say you have from 0 to 250,000 in fees is
13 achieved, that's a percentage, they get a
14 percentage of those fees.

15 Then from 250, I think it's 500, they get
16 another percentage. And that percentage
17 increases. And that's how it -- it goes up in
18 those increments.

19 Q. And this is documented?

20 A. No.

21 Q. You don't have this in a document?

22 A. No.

23 Q. Anywhere?

24 A. Anywhere.

25 Q. It's just a --

1 A. They -- when they're hired, they're explained
2 them -- to them.

3 MR. PATTAKOS: Okay. Mark the
4 next exhibit, please.

5 - - - -

6 (Thereupon, Plaintiff's Exhibit 12 was marked
7 for purposes of identification.)

8 - - - -

9 Q. Brandy testified about this document at her
10 deposition. It's an e-mail she sent to the
11 pre-lit group. Subject, November intakes, Monday
12 December 3rd.

13 She writes, intakes during business hours for
14 November, and then lists six different attorneys
15 here, and the number of intakes they've taken in,
16 correct, for that given -- for that given month,
17 for that month of November 2012? Do you agree
18 with that?

19 A. Yes.

20 Q. And she says, just a reminder that objective
21 cases will be assigned to the attorneys who are
22 doing intakes.

23 What does that mean?

24 A. Just a reminder that objective -- so objective
25 cases are cases that involve more than a soft

1 tissue case.

2 Q. Like a broken bone, for example?

3 A. That would be an objective.

4 Q. What is another example of an objective? Is
5 there something less than a broken bone that
6 would be considered an objective?

7 MR. MANNION: Objection to "less
8 than". Go ahead.

9 A. Yes.

10 Q. What's that?

11 A. Well, there's significant soft tissue, like a
12 bulging disk, herniated disk case, that maybe
13 didn't require -- did not require surgery, that
14 could be an objective. A case with concussion,
15 TBI, that is another.

16 Q. What's TBI?

17 A. Traumatic brain injury.

18 Q. Okay. Anything else that is less than a broken
19 bone, that you would still consider -- less
20 severe, let's say, than a broken bone, that you
21 would still consider to be an objective injury?

22 MR. MANNION: Object to form. Go
23 ahead.

24 A. I can't think of any.

25 Q. Okay. Concussion, TBI, broken bone. What other

1 type of objective injury?

2 A. I said, herniated disk.

3 Q. Herniated disk.

4 A. Bulging disk.

5 Q. Bulging disk. Could you think of any more?

6 A. Not off the top of my head.

7 Q. So why were objective cases assigned to the
8 attorneys who are doing intakes?

9 A. By virtue of percentage, they're going to get
10 more objective cases, because they are handling
11 more intakes.

12 Q. Why did the firm make that decision?

13 A. I don't --

14 MR. MANNION: Excuse me? What
15 decision?

16 MR. PATTAKOS: To assign objective
17 cases, based on the number of intakes an
18 attorney did.

19 A. Peter, I wasn't copied on this e-mail. I don't
20 know what she was thinking. I don't think there
21 is anything wrong with the e-mail. You want,
22 obviously, more experienced lawyers handling, you
23 know, more severe cases, I guess.

24 Q. So someone who does more intakes is more
25 experienced, in your opinion?

1 A. Not always. That's one, you're rewarding your
2 lawyers for being committed to doing a good job,
3 and wanting to step up. So I don't see anything
4 wrong with that.

5 Q. Okay. I didn't ask you if you saw anything wrong
6 with it, I am just asking the reason for it?

7 A. Back in 2012, someone would have had to talk to
8 me. I don't know if anyone did, but I don't have
9 any problem. As I sit here today and read this,
10 if I got this today, I have no problem with that.

11 Q. Does the firm still assign objective cases in
12 this way?

13 A. I don't think so.

14 Q. How does the firm assign objective cases?

15 A. Whoever takes the call.

16 Q. Okay.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 13 was marked
19 for purposes of identification.)

20 - - - -

21 Q. Okay. Here Brandy writes, in November -- on
22 November 9th of 2012, from now on objective
23 injuries will not be distributed evenly. These
24 cases will be distributed to the pre-lit
25 attorneys that are doing intakes by percentage

1 from the month before.

2 Who made this decision?

3 A. I don't know.

4 Q. You have no -- did you have any knowledge that
5 this is how objective intakes were being
6 distributed?

7 A. I don't know what I knew in 2012.

8 Q. You were copied on this e-mail, weren't you, sir?

9 A. On this last one, I was.

10 Q. So you received this e-mail and you don't know
11 who made the decision to --

12 A. No. It could have been Robert.

13 Q. Okay. But you're saying that you didn't have
14 anything to do with it?

15 MR. MANNION: Objection. He
16 didn't say that.

17 A. I said, I don't remember.

18 Q. Okay. Do you have any memory of why objective
19 injuries were distributed to the pre-lit
20 attorneys that are doing intakes by percentage,
21 as reflected in this document?

22 A. I answered it for you, I don't remember.

23 Q. You don't remember. Okay. Brandy Gobrogge is,
24 of course, the firm's operations manager,
25 correct?

1 A. Correct, now she is.

2 Q. And she reports directly to you?

3 A. If you want to call it that.

4 Q. What do you mean?

5 A. She reports to John Reagan. She reports to
6 Robert Redick. She reports to Josh. It's just
7 been all divided.

8 Q. Okay. In what way?

9 A. Depending on what she's doing, I assume, and who
10 would cover that area.

11 Q. Okay. But as operations manager, she ultimately
12 answers to you over anyone else, correct?

13 MR. MANNION: Objection to form.

14 A. Generally, yes.

15 Q. Okay. When she had her deposition taken in this
16 case last October, you listened to the deposition
17 by phone, correct?

18 A. I did.

19 Q. Did you listen to all of it?

20 A. I did.

21 Q. Have you reviewed the testimony since? Have you
22 reviewed the transcript?

23 A. I did shortly after that.

24 Q. Okay. So you have reviewed the transcript,
25 sitting here today?

1 A. Yes.

2 Q. Okay.

3 A. It was three months ago.

4 Q. Do you believe that any position of
5 Ms. Gobrogge's testimony was untruthful or
6 inaccurate?

7 MR. MANNION: Objection.

8 A. There were certain portions, I don't remember
9 specifically, but there were.

10 Q. Nothing sticks out in your mind?

11 A. No, but I know that there were.

12 Q. Okay.

13 A. Not a lot.

14 Q. Not a lot. Okay.

15 MR. MANNION: And he asked two
16 questions there, so just to be clear, he
17 said untruthful or inaccurate.

18 THE WITNESS: Inaccurate is -- I
19 apologize.

20 A. She didn't lie, is that --

21 Q. Okay.

22 A. Okay.

23 Q. So you remember that there were inaccuracies, a
24 few, not many, but there were a few inaccuracies
25 in her testimony, but you can't, sitting here

1 right now, remember what they were?

2 A. Correct.

3 Q. Okay.

4 A. They weren't that important.

5 Q. They weren't that important.

6 A. Okay.

7 Q. Okay. You personally review every settlement
8 statement?

9 A. No.

10 Q. No. Which settlement statements do you review?

11 A. Depending on what time period.

12 Q. Okay.

13 A. Really -- like now, I don't review hardly any.

14 Q. You don't review the write-downs anymore?

15 A. No.

16 Q. Okay.

17 A. Unless there's some fees, if it's more than, I
18 think a thousand dollars, they'll send it to me.

19 Q. A write-down of more than a thousand dollars?

20 A. Of our fees, correct.

21 Q. What about the doctor's fees?

22 A. No. They call them.

23 Q. Okay.

24 A. Again, like I told you, different time periods.

25 Q. Sure.

1 - - - -

2 (Thereupon, Plaintiff's Exhibit 14 was marked
3 for purposes of identification.)

4 - - - -

5 Q. These are settlement statements for, I believe
6 all four of the named plaintiffs. These are all
7 the settlement memoranda that we have.

8 Do you have any reason to doubt that these
9 are true and accurate copies of these settlement
10 memoranda for the plaintiffs in this case?

11 A. No.

12 Q. Okay. Let's -- well, just walk through this
13 first page on Member Williams' settlement
14 memorandum.

15 A. Uh-huh.

16 Q. So the total amount at the top is the total
17 amount recovered, correct, from the insurance
18 company?

19 A. At that time, yes.

20 Q. Okay. You say "at that time" --

21 A. Right.

22 Q. -- as opposed to what?

23 A. Well, sometimes if there is additional funds or
24 additional disbursements that are made, like I
25 know -- one second --

1 Q. Thera Reid had an additional disbursement,
2 correct?

3 MR. MANNION: Wait a minute. He
4 was still answering the question, Peter.

5 MR. PATTAKOS: Okay.

6 A. Yes.

7 Q. Is that what you're looking at for her --

8 A. Yes.

9 Q. -- her settlement statement, I think it's the
10 last page.

11 A. Well, wasn't there -- there is one -- there is
12 one after.

13 Q. Okay. So the last distribution that went to
14 Thera included another settlement memorandum?

15 A. Yes.

16 Q. Okay. I don't have that today. And what happens
17 with these subsequent distributions? What does
18 that reflect?

19 A. It's different. It could be for MedPay, it could
20 be Medicaid lien, it could be for Medicare lien
21 that comes in later.

22 Q. Okay. So just looking at this first page, again,
23 this memorandum relates to the amount that was
24 recovered at that time, correct?

25 A. Yes.

1 Q. And the distribution of those funds, correct?

2 A. Correct.

3 Q. So the first line underneath the recovery is
4 deduct and retain to pay Kisling, Nestico &
5 Redick, LLC for, and this is, correct me if I'm
6 wrong, for the first -- for the firm's payments
7 to these various entities that the firm had
8 already made, correct?

9 A. Yes, advanced cost.

10 Q. Okay. So the recovery goes in the IOLTA account,
11 correct?

12 A. Yes.

13 Q. And then a check to Kisling, Nestico & Redick is
14 cut from the IOLTA account for this first amount
15 here, 190.10, which is the total of these items
16 under the deduct and retain to pay heading,
17 correct?

18 A. It's goes to the cost account.

19 Q. Okay. To the KNR's cost account?

20 A. Correct.

21 Q. So you keep a separate cost account for costs on
22 all of the cases?

23 A. Absolutely.

24 Q. And that is a single account, that's the cost
25 account?

1 A. Yes.

2 Q. Okay. And then the second heading here, deduct
3 and retain to pay to others?

4 A. Yes.

5 Q. These checks are cut directly from the IOLTA
6 account to these entities listed here?

7 A. Yes.

8 Q. And then an additional check is cut to the client
9 as well, correct?

10 A. From the IOLTA.

11 Q. Also from the IOLTA account. Okay. So this MRS
12 Investigations, that's the investigator fee,
13 correct?

14 A. Yes.

15 Q. And that is to Michael R. Simpson and his
16 company, MRS, correct?

17 A. Yes.

18 Q. And these amounts that go to various, it looks
19 like health care providers, Selson Clinics
20 Neurology, Summa Wadsworth-Rittman, UHMP, IOD,
21 are these typically for records?

22 A. They could be.

23 Q. Okay.

24 A. Sometimes they're for like for films.

25 Q. Film?

1 A. Films, like X-rays.

2 Q. Okay. Which is a form of a medical record.

3 Okay.

4 A. Okay.

5 Q. Is there any other items that would typically be
6 paid to providers from this?

7 A. Yes.

8 Q. Such as?

9 A. Lots.

10 Q. Okay. Identify, please.

11 A. Reports, medical reports.

12 Q. Narrative reports, for example?

13 A. Narrative would be on there.

14 Q. Okay.

15 A. Filing fees. I'm trying to think what else would
16 be on there. Expert fees. If you use
17 demonstrative evidence, they have fees for that.

18 Q. So expenses that the firm would have had to
19 advance on behalf of the client throughout the
20 litigation, correct?

21 A. To advance their case, correct. Sure.

22 Q. Okay. And then generally in the deduct and
23 retain to pay to other section, this is other
24 fees that other parties are owed, commonly
25 medical providers, correct?

1 A. Correct.

2 Q. Okay. Any other party that's commonly paid out
3 of this?

4 A. Again, it could be whoever has a lien. If
5 Medicaid, Medicare have liens.

6 Q. Loan company?

7 A. Loan company would be on there. It would be in
8 that section there, but then they would show up
9 on top.

10 Q. The loan company would show up on top, too?

11 A. Yeah.

12 Q. As what?

13 A. As money that was received.

14 Q. Right. Okay. Thank you.

15 A. You have got to show it coming in, show it going
16 out.

17 Q. Understood. And we see that on the next page
18 with Monique Norris, correct?

19 A. Yes.

20 Q. Okay. So her 500 from Liberty Capital is part of
21 the recovery?

22 A. Yes. It's actually -- let me back up for you.
23 It's not part of the recovery. You have to
24 document -- like I said, it's like an accounting
25 -- the accounting principles, in and out. You

1 have got to show money coming in, money going
2 out. The money never comes into KNR, so we don't
3 receive it.

4 Q. But the client received it?

5 A. The client receives it, so you have to show it go
6 out, because you're paying.

7 Q. I understand.

8 A. That's the only one with the loan at the top.

9 MR. MANNION: Look at the last
10 page.

11 THE WITNESS: That one has Oasis
12 on the top.

13 Q. Yes. The last page, Thera Reid's has a loan,
14 again --

15 A. Yes.

16 Q. -- that's consistent. Right. Okay. The charge
17 for Clearwater Billing Services under deduct and
18 retain to pay on the second page here --

19 A. Yes.

20 Q. -- for \$50?

21 A. Yes.

22 Q. That's for Dr. Ghoubrial's entity, Clearwater
23 Billing Services?

24 A. Yes.

25 Q. So if there is a charge for Clearwater Billing

1 Services in the top section, the deduct and
2 retain to pay section, that means that Ghoubrial
3 is charging for medical records to be provided?

4 A. Yes.

5 Q. And that means -- he wouldn't be doing that
6 unless he treated the patient, correct?

7 MR. MANNION: Well, I am going to
8 object to saying Ghoubrial did.

9 Q. Ghoubrial or one of his -- one of his employees?

10 A. Yes.

11 Q. So on the third page, it's Mr. Harbour's
12 settlement memorandum, where I believe the first
13 case that the firm handled for him, the first of
14 the four cases.

15 A. Okay.

16 Q. And it's says at the bottom that Dr. Ghoubrial
17 was paid \$2,000 for medical expenses, correct,
18 for --

19 A. Yes.

20 Q. -- his medical bill?

21 A. I could tell you there is a mistake, but --

22 Q. What's the mistake?

23 A. They're not suppose to list it as Sam M.
24 Ghoubrial, MD.

25 Q. And why is that?

1 A. Because he asked. He bills through Clearwater
2 Billing.

3 Q. Okay.

4 A. So that was just the formality, but it's -- it's
5 not the way it should be listed there.

6 Q. It should be listed as Clearwater?

7 A. Correct.

8 Q. Could it be that there was a time when the
9 settlement memoranda for Ghoubrial's treatment
10 was, they were all listed, Sam Ghoubrial, and
11 then at some point the firm changed its policy?

12 MR. MANNION: Objection.

13 A. No. And the firm didn't have a policy, number
14 one. Number two, like I said, the doctor wants
15 it under Clearwater Billing. The problem is with
16 Needles, if one person changes the provider's
17 name, it stays there, and it comes out again any
18 time someone goes back in to click it.

19 Q. Okay.

20 A. Until -- and then you got to always keep going
21 back in and fix that, and continue to fix it.

22 Q. So Ghoubrial asked the firm to list him as
23 Clearwater Billing in the settlement statement?

24 A. It's on his bill.

25 Q. Okay.

1 A. I believe. I think on the bottom right, on the
2 HCFA form, it has Clearwater Billing.

3 Q. Okay. And there was a charge on every one of
4 these memoranda for either MAC or MRS
5 Investigations, correct?

6 A. Yes.

7 Q. Okay.

8 A. They're various amounts.

9 Q. Back to Ms. Norris for the second page, on the
10 second page, we see under deduct and retain to
11 pay, a \$200 charge to Dr. Minas Floros?

12 A. Yes.

13 Q. Do you see that?

14 A. Yes.

15 Q. And that's for the narrative report, correct?

16 A. Correct.

17 Q. And when you see Dr. Floros or another
18 chiropractor listed under this deduct and retain
19 to pay section in an amount between 100 and 200
20 dollars, it's safe to assume that that's the
21 narrative report, correct?

22 MR. MANNION: Objection, but go
23 ahead.

24 A. Generally.

25 Q. Okay. What else would it be?

1 A. If they give testimony, sometimes. Some of the
2 doctors will charge only a couple hundred dollars
3 if it's a quick review or inquiry that the
4 insurance companies want.

5 Q. Is it true that every time a doctor is paid to
6 testify for the client, that the firm advances
7 that expense before the settlement is reached?

8 A. Is it true that if we ask the doctor to testify?

9 Q. Yes.

10 A. Okay. In a deposition?

11 Q. Or any ti -- any -- in a deposition or at trial
12 --

13 A. Right.

14 Q. -- what you were just referring to here --

15 A. Yes.

16 Q. -- it will always appear in this top section that
17 that expense always gets advanced or do the
18 doctors sometimes wait?

19 A. No.

20 Q. Okay.

21 A. No, they don't wait. Those fees are advanced.

22 Q. Okay.

23 A. They get paid.

24 Q. And why is that?

25 A. I wish it wasn't. That's -- it's an expense that

1 we're responsible for, we're asking for it.

2 Q. Okay. Okay. When the firm is paid its
3 contingency fee, that fee is calculated from the
4 gross amount recovered, correct?

5 MR. MANNION: I'm going to object,
6 but go ahead.

7 A. Yes.

8 Q. From the total amount recovered?

9 A. Yes.

10 Q. Okay. So the firm is going to get, or at least
11 be entitled to, let me say, its percentage
12 regardless of what these doctors end up taking,
13 correct?

14 A. Correct.

15 Q. Okay.

16 A. We're entitled up until -- up to that point.

17 Q. Right. And sometimes you take less?

18 A. A lot of times we take less.

19 Q. Okay. Understood.

20 MR. PATTAKOS: We'll mark the next
21 exhibit.

22 - - - -

23

24

25

- - - -

1 Q. The first page is a contingency fee agreement
2 that Member Williams provided. I believe this
3 was an exhibit to our complaint. The rest were
4 produced by your attorneys in this lawsuit.

5 Do you have any reason to doubt that these
6 are true and accurate copies of the documents
7 produced by your attorney?

8 A. What you just said, Member Williams, how would
9 she get this? It's blank. I don't think this is
10 from Member Williams.

11 Q. Okay. But it's still a true and accurate copy of
12 a contingency fee agreement that the firm used,
13 correct?

14 A. Yes.

15 Q. Wherein all of these contingency fee agreement
16 examples, it's the same where the law firm's fee
17 is deducted from the gross proceeds, correct?

18 A. Correct.

19 Q. That never changed?

20 A. No.

21 Q. When the client comes in to sign the settlement
22 statement, the settlement memorandum, and get
23 their settlement check, the law firm does not
24 provide them an itemized breakdown of these
25 medical bills, do they?

1 MR. MANNION: Objection.

2 Q. Does it, I should say?

3 A. If the client asks for it, they get it.

4 Q. It's not presented with the document that the
5 clients are given to sign and take home, is it?

6 MR. MANNION: Objection.

7 A. So I'll explain you what happens.

8 Q. Please.

9 A. They walk in with the file. The -- the lawyer
10 has the entire file right in front of them.

11 Q. The physical file?

12 A. The physical file in front of them with the
13 settlement memorandum and copies of all the
14 checks.

15 Q. Copies of all of the checks, but is there copies
16 of documentation that shows, for example, what
17 the -- just looking at say the third page of --
18 with Mr. Harbour's settlement memorandum, what
19 this \$2,000 from Dr. Ghoubrial --

20 A. That would be in the --

21 Q. -- consists of?

22 A. It would be in the hard file.

23 Q. That's in the hard file?

24 A. Right there for the client to see --

25 Q. And so --

1 A. -- if they want.

2 Q. The attorney comes in and has this file and that
3 includes a full breakdown of what this 200 -- or
4 this \$2,000 was charged for?

5 A. Well, if I'm not mistaken, I think he reduced.
6 His bill would have been higher.

7 Q. This doesn't show any reduction here. It shows
8 \$2,000.

9 A. I think it was higher, but whatever the amount
10 is, it would be there.

11 Q. Wouldn't -- if there was a reduction, wouldn't it
12 be noted here?

13 A. Some of the lawyers fail to do that.

14 Q. But they were supposed to do that?

15 A. Yes.

16 Q. Okay. Well, for example, you see on Monique's on
17 the second page, Kisling, Nestico & Redick was
18 entitled, it looks like, you know, you see the
19 2,077.51 in parentheses?

20 A. Yep.

21 Q. It looks like she was entitled to take 27 -- 2000
22 -- the firm was entitled to take 2,077.51, but
23 the firm ended up taking a write-down and took a
24 fee of 1,750 in this case, correct?

25 A. Yep. And so did Akron Square took a write-down,

1 and so did Clearwater. You can't tell by looking
2 at this, unless you look at the actual file, but
3 Clearwater's bill was \$850 and I think Akron
4 Square's was \$750.

5 Q. Okay.

6 A. So what they should have done is put it in
7 parentheses, put what the total amount billed and
8 the total amount accepted.

9 Q. They did that here for the law firm, but they
10 didn't do it for the doctors?

11 A. Correct.

12 Q. And this is on -- this is for the attorney who
13 handled the case, it's their responsibility to do
14 this?

15 MR. MANNION: Objection. Go
16 ahead.

17 Q. To make this notation on the settlement
18 memorandum?

19 A. We ask them to. The paralegals do it or the
20 lawyer doesn't do it.

21 Q. Why do you ask them to do it?

22 A. So that the clients could see what the charge
23 was.

24 Q. Okay. And you see that on Mr. Harbour's second
25 to last memorandum, and the last page for Thera

1 Reid, you can see some of these write-downs?

2 A. Yes, that was done correctly.

3 Q. So but what you are saying is that --

4 A. See this one here, on Thera Reid, the -- the Ohio
5 Tort Recovery Unit, that's Medicaid, that was the
6 amount held in escrow, so next to it should have
7 said, amount held in escrow.

8 Q. And that was what was eventually delivered to
9 her?

10 MR. MANNION: Wait --

11 A. I don't know.

12 MR. MANNION: Did you ask if 9,000
13 was delivered to her or just the amount --

14 Q. The amount that was held in escrow was eventually
15 released to her?

16 MR. MANNION: Well, I'm going to
17 object.

18 Q. Was it not?

19 A. I don't remember if there was any payment to
20 Medicaid, if they had a payment.

21 Q. Okay.

22 A. That's why I said there is another disbursement
23 fee.

24 Q. But basically what you are saying is that you
25 can't just tell from this settlement statement

1 whether -- the settlement memorandum, whether
2 there was a write-down of a doctor's bill,
3 because sometimes the attorneys didn't notice --
4 note -- make note of it, you would have to look
5 at the underlying --

6 A. They would explain it.

7 Q. -- invoice?

8 A. The lawyers would explain it to them at the
9 disbursement, and say, you know, while they are
10 going through all of the charges, and say, and
11 Akron Square reduced their bill, it was X amount,
12 we're only paying them 5. Just because it
13 doesn't show it there --

14 Q. They were supposed to explain it, you don't know
15 for a fact they did, right?

16 A. I'm sure they did.

17 Q. Okay. How are you sure that they did?

18 A. Because that's -- there -- as lawyers, they are
19 responsible to explain everything to the client.

20 Q. Well, they were also --

21 A. And you would have to ask each lawyer, because I
22 guarantee you every conversation is going to be
23 different.

24 Q. Okay.

25 A. What we expect is that they explain that to the

1 client, and I believe they do.

2 Q. Okay. Because that's what they are supposed to
3 do, correct?

4 MR. MANNION: Objection. Go
5 ahead.

6 A. That's what they should do. As professionals,
7 they should.

8 - - - -

9 (Thereupon, Plaintiff's Exhibit 16 was marked
10 for purposes of identification.)

11 - - - -

12 Q. You recognize this as an e-mail you sent to the
13 firm's attorneys on February 13, 2013?

14 A. Yes.

15 Q. And you write, any fees being reduced by more
16 than \$1,000 will need to be approved by me and
17 only me. Please give the settlement memo to
18 Sara. Thank you.

19 A. Yes.

20 Q. Why -- what was the purpose of this instruction?

21 A. Something must have happened where the attorney
22 just took off our attorney's fees a significant
23 portion, without talking to any partner.

24 Q. Are you sure this refers only to attorney's fees?

25 A. Guaranteed.

1 Q. What does this mean, for clarification, this is
2 on cases outside chiro?

3 A. I don't think one has anything to do with the
4 other. I really don't. This, unfortunately,
5 being in -- you're better off today, being in the
6 habit of just typing out on your phone, because
7 this is all done from my phone, and just
8 responding to another e-mail.

9 So I'm not certain this has anything to do --
10 because that doesn't even make sense. For
11 clarification, this is on cases outside chiro.
12 All chiro are to still be submitted as usual.

13 Q. So you have no --

14 A. I don't --

15 Q. Okay.

16 A. -- Peter.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 17 was marked
19 for purposes of identification.)

20 - - - -

21 Q. You recognize this as an e-mail sent by Brandy on
22 September 19, 2012 to all attorneys, pre-lit and
23 litigation?

24 A. Yes.

25 Q. And she writes, per Rob, please start scanning

1 his settlement approvals with notes to the client
2 folder. This makes things easier, because you
3 have notes on the settlement memorandum that
4 explain why the offer is so low. Example, low
5 impact, et cetera. At times he needs to have
6 this information readily available, so he could
7 discuss with chiropractor.

8 A. Uh-huh.

9 Q. Please scan to client folder and label, ARN
10 settlement approval.

11 What is so funny?

12 A. I wish they did it.

13 Q. Okay. Why is that?

14 A. They don't -- they didn't always do it.

15 Q. Okay. Why did you want them to do it?

16 A. It's says right there, when I -- so I could
17 discuss it with the doctors any time I'm asking
18 to take a reduction. And what I don't understand
19 from this is this is on Brandy's -- there's
20 something that is missing in this e-mail.

21 Q. What is missing?

22 A. I don't know. And I will tell you why I say
23 that, you have Brandy's signature block here, but
24 yet you have Brandy's -- this up here is from a
25 cellphone, then you have my cellphone, and at the

1 top it shows that it's coming from me.

2 What happened in between? I just don't know,
3 I don't -- but if you want to ask me about this
4 question, about this part of it --

5 Q. Yeah.

6 A. -- I just don't know what's -- you follow me?

7 Q. I'm not sure I do, but I'm not sure that it
8 matters.

9 A. Okay.

10 Q. So --

11 MR. BARMEN: Wait a minute, it
12 does matter if this was somehow altered
13 before it was given --

14 MR. MANNION: It looks like it
15 was, you forwarded Brandy's e-mail, but I
16 don't see the forward on there.

17 THE WITNESS: I wouldn't have
18 forwarded Brandy's e-mail, because it's,
19 per Rob.

20 MR. MANNION: Yeah, I know.

21 MR. PATTAKOS: Rob, you might be
22 just resending it. It looks like you are
23 sending it to Brandy or maybe Brandy wrote
24 up this e-mail and you sent it out.

25 MR. MANNION: But usually it has a

1 forward, an FW in the subject line.

2 THE WITNESS: Right. I don't
3 know.

4 MR. BARMEN: There is a Re up
5 there.

6 MR. MANNION: There is a Re, but
7 not FW.

8 THE WITNESS: I don't know.

9 Q. Okay. Well, this shows that you were reviewing
10 the settlement -- you were approving the
11 settlement memoranda at this time?

12 A. Some of them, yes.

13 Q. And which ones?

14 A. Again, I don't remember which ones. There are
15 certain ones that they would give to me.

16 Q. Okay. So if -- strike that.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 18 was marked
19 for purposes of identification.)

20 - - - -

21 Q. So at the bottom of this page is an e-mail from
22 Brandy, and then your response is right above.

23 Brandy says, no settlement memos are to leave
24 the office without Rob's approval until further
25 notice. No fax disbursements and no mail

1 disbursement, period. If you have any approvals
2 tomorrow, please bring to me.

3 Do you know what this means?

4 A. No settlement memos are to leave the office.

5 Leave the office, something happened where
6 someone sent the settlement memorandum out.

7 Without Rob's approval until further notice.

8 Okay. So someone sent a settlement
9 memorandum. It says, no fax disbursements, no
10 mail disbursements, period. Okay. If you have
11 any approval, please bring to me. So someone
12 released information through either did a fax,
13 mailed, they did something.

14 Q. This doesn't mean that no settlement memos are to
15 be distributed until you approve the amounts?

16 A. No, sir.

17 Q. Okay.

18 A. And my respond, if anyone does this or faxes any
19 client information, that's why I'm saying
20 something went out, client information, outside
21 this office without approval will be terminated
22 without question.

23 And I noticed that Gary Petti forwarded to
24 his home address, which was a violation of our
25 confidentiality agreement.

1 Q. But you don't remember what the specific issue
2 was here?

3 A. It has to do with client information, I could
4 assure you that.

5 Q. There was a sit -- you are saying there was a
6 breach that someone sent information that -- to
7 someone that wasn't supposed to be sent to?

8 A. It is possible. That's what my concern was.
9 That's why I'm saying, if anyone does this, for
10 me to actually say this, and to threaten
11 termination, means that they're violating an
12 ethical rule, and that is never tolerated.

13 Q. Look back at the settlement memos.

14 A. You want me to get the settlement --

15 MR. POPSON: I think it was 13.

16 Q. Yes, please.

17 THE WITNESS: You're going to make
18 a mess. I had it nice and organized.

19 Q. I'm looking at the -- under the deduct and retain
20 to pay to others.

21 A. For which settlement memo?

22 Q. For each one, and what I want to ask you about is
23 it appears to me that there is not a single
24 dollar distributed from any of these settlements
25 to a client's health insurance company?

1 A. That's not true.

2 Q. So tell me where that is wrong?

3 A. Ohio Tort Recovery.

4 Q. And what's the Ohio Tort Recovery?

5 A. Medicaid.

6 Q. That's Medicaid?

7 A. Yes.

8 Q. Okay. So for clients that were on Medicaid that
9 Ohio Tort Recovery unit represents payment to --
10 reimbursement to Medicaid, correct?

11 A. Correct. And then you have Progressive Insurance
12 would have been MedPay.

13 Q. Where is that?

14 A. Under Richie Harbour's settlement memo, that has
15 the recovery of 22,500.

16 Q. Okay. And this is MedPay that was a part of the
17 auto insurance, correct?

18 A. Correct.

19 Q. And that's what MedPay is?

20 A. Correct.

21 Q. Let's make sure I understand this. Ohio is not a
22 no-fault state, correct?

23 A. It's an at-fault state.

24 Q. Right. Okay. And MedPay is generally where the
25 driver's auto insurance pays for medical bills up

1 to a certain amount, correct?

2 A. No, it's not just the driver's.

3 Q. And the passenger's?

4 A. Yes.

5 Q. So this was not -- this Progressive payment for
6 Mr. Harbour's settlement was not health insurance
7 paying, it was auto insurance paying health bills
8 under MedPay, medical bills under MedPay?

9 A. It is a form of health insurance.

10 Q. Understood.

11 A. Because you asked, look at the Robinson v. Bates
12 case, and it will tell you.

13 Q. Okay. You don't believe there's a shortage of
14 competent chiropractors and doctors in Ohio, do
15 you?

16 MR. MANNION: Objection. Go
17 ahead.

18 A. Double negatives. There is no shortage of any --
19 there is no --I don't think that there -- there
20 is enough competent chiropractors in the State of
21 Ohio; how is that?

22 Q. You do believe that there are enough --

23 A. I believe that there are.

24 Q. Do you believe that it's hard for your clients
25 who want to be treated to find doctors or

1 chiropractors to treat them?

2 MR. MANNION: Objection.

3 A. Yes.

4 Q. And why is that?

5 A. You first -- which one? Because you have asked
6 chiropractors, medical doctor.

7 Q. We could go through them one at a time.

8 A. The higher you go up the food chain, the more
9 difficult it is.

10 Q. And why is that?

11 A. Doctors don't want to be involved in these cases.
12 Chiropractors, not every chiropractor handles
13 motor vehicle accident cases. Not every medical
14 doctor. And even less medical doctors want to be
15 involved in it. Then you go up the chain to
16 neurosurgeon, it's even less than that.

17 Q. Is it your testimony that more often than not
18 doctors refuse to treat car accident victims?

19 MR. MANNION: Objection.

20 A. Medical doctors?

21 Q. Let's say medical doctors.

22 A. Yes.

23 Q. Why is that?

24 A. They don't want to be involved in motor vehicle
25 accident cases.

1 Q. And why is that?

2 A. They don't want to have to give testimony. They
3 don't want to -- you know, they just don't want
4 to be involved in MVAs. I'm sure they all have
5 their own reason. You'd have to ask them, but --

6 Q. And what are the facts that you're basing this
7 belief on?

8 A. Experience.

9 Q. Okay.

10 A. I've been doing this for 20 years.

11 Q. And having clients tell you that their doctor
12 won't treat them?

13 A. Right.

14 Q. How many clients over the years have told you
15 that?

16 A. A lot.

17 Q. Hundreds?

18 A. Hundreds, thousands.

19 Q. Thousands. So, if I'm in a car accident, I
20 suffer injuries, I go to my primary care
21 physician, tell her I'm in severe pain, you think
22 it's more likely than not that she is going to
23 say, I'm sorry -- I'm sorry, tough luck, because
24 that pain resulted from a car accident, I am not
25 going to treat you?

1 MR. MANNION: Objection. Improper
2 hypothetical. And who are you referring
3 to? Which physician?

4 MR. PATTAKOS: I'm just referring
5 to any.

6 MR. MANNION: You said your --

7 MR. PATTAKOS: The average person
8 in Ohio.

9 MR. MANNION: You said your
10 physician.

11 MR. PATTAKOS: I'm not talking
12 about my physician. I'm just talking about
13 --

14 MR. MANNION: Well, don't roll
15 your eyes, please.

16 Q. The average person in Ohio has this experience,
17 that's -- that is your testimony that this is
18 more likely than not to happen?

19 MR. MANNION: I'm going to object.

20 A. Yes.

21 Q. Okay.

22 A. Your hypothetical doesn't make sense. And I
23 could tell you why.

24 Q. Tell me.

25 A. You said they're in the office. They won't even

1 schedule the appointment, because when they call
2 to schedule the appointment, the receptionist
3 will ask them, what are you calling about? And I
4 was involved in a motor vehicle accident, doctor
5 so and so will not see motor vehicle accidents.
6 So they're not even sitting with the doctor.

7 Q. And, in your experience, this applies to more
8 doctors than not?

9 A. Absolutely.

10 Q. Okay. What percentage of your clients do you
11 estimate have their own primary care physician?

12 MR. MANNION: Objection.

13 A. There is no way of telling that, Peter, even if I
14 tried.

15 Q. Okay. So you use letters of protection with your
16 clients, correct?

17 A. We have.

18 Q. You regularly do, correct?

19 A. Generally.

20 Q. On most of the cases you do, correct?

21 A. It's fair, generally.

22 Q. Okay. And here is an example of an LOP that the
23 firm uses.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 19 was marked

1 for purposes of identification.)

2 - - - -

3 Q. This is just three examples that Naomi Wright was
4 asked to execute. These look like accurate
5 copies of LOP's that the firm uses?

6 A. The firm doesn't use --

7 Q. The firm's doctor?

8 MR. MANNION: Objection.

9 A. They're not the firm's doctors, either. Akron
10 Square uses it, yes.

11 Q. Akron Square and Dr. Ghoubrial?

12 A. Oh, sorry.

13 Q. Correct? On the last page, Clearwater?

14 A. Yes.

15 Q. And the effect of these are both the same,
16 correct, of each form whereby executing this
17 form, the client slash patient authorizes you,
18 the attorney, to pay the doctor whatever is due
19 for the medical services rendered as a result of
20 the accident at issue, correct?

21 A. I do have one thing that should be marked. This
22 is a different client.

23 Q. Right. It's Naomi's daughter.

24 A. Okay. I see.

25 Q. But that's the impact of -- that is the --

1 A. Sorry. I apologize. I was looking at that. I
2 wasn't paying attention to what you were reading.

3 What part are you reading?

4 Q. Well, let's look at this first page.

5 A. Okay.

6 Q. The second full paragraph, I hereby authorize and
7 direct you my attorney/adjuster to pay directly
8 to said doctor such sums as may be due and owing
9 him/her for medical services rendered, both by
10 reason of this accident and any -- and reason of
11 any other bills that are due his or her office
12 and to withhold such sums from any settlement,
13 judgement, or verdict as may be necessary to
14 adequately protect said doctor against any and
15 all proceeds of any settlement, judgment, or
16 verdict, which may be paid to my attorney or
17 myself as a result of the injuries for which I
18 have been treated or injury on connection there
19 with, which is a typo, the on connection is a
20 typo?

21 A. Uh-huh.

22 Q. In layman's that means that the client is
23 authorizing the KNR Firm to pay medical bills to
24 this doctor, in this case, Dr. Floros, out of the
25 settlement proceeds, correct?

1 A. Or the adjuster.

2 Q. The attorney or the adjuster to pay the medical
3 provider, correct?

4 A. Correct.

5 Q. Okay. And that's the same effect as the second
6 paragraph -- actually, the first and second
7 paragraph of the let -- Dr. Ghoubrial's letter of
8 protection or it's called a medical lien.

9 Do you agree that a medical lien and letter
10 of protection are the same thing?

11 A. There is much debate about that --

12 Q. Okay.

13 A. -- in the plaintiff's community as to if there is
14 a difference or distinction between a medical
15 lien or letter of protection. I would say they
16 are pretty much the same.

17 Q. Okay. And the point is that just as with the
18 document we just -- the first page we just looked
19 at, by executing this document, the
20 patient/client is directing, authorizing the law
21 firm to pay the doctor from the proceeds of the
22 settlement, whatever amounts are owed to the
23 doctor, correct?

24 A. So this one is a little bit different.

25 Q. How so?

1 A. If you look, so this -- what the lawyer is
2 signing are -- is that last paragraph. You see
3 that?

4 Q. Uh-huh. Yes.

5 A. Where it says the undersigned being attorney of
6 record for the above patient does hereby agree to
7 observe all terms of the above and agrees to
8 withhold such sums from the net proceeds of any
9 settlement claim, judgement, verdict, oral word,
10 as may be necessary to adequately protect
11 Clearwater, Billing Services, LLC, provided that
12 said lien is subordinate to attorney's lien
13 herein.

14 So what we're essentially saying is we are
15 agreeing to the terms that the patient has
16 already agreed to.

17 Q. How is that different from the Floras?

18 A. Dr. Floros doesn't have that same language in
19 there.

20 Q. What is the practical effect?

21 A. No, it could be argued if the lawyer doesn't sign
22 this, we got nothing against the lawyer, this
23 one, you could go against the lawyer.

24 Q. Okay.

25 A. Make sense?

1 Q. Yes. And by both of these letters, both forms,
2 the client also expressly acknowledges that even
3 if the amounts recovered in the settlement are
4 not adequate to compensate the doctor, the doctor
5 is still entitled to collect whatever is owed
6 from the client, correct?

7 MR. MANNION: I'm going to object
8 to the form, but go ahead.

9 A. Yes. Do you mind if I get a drink? One second,
10 Mr. --

11 Q. Go ahead.

12 Mr. Nestico, isn't it better for the client
13 if their own health insurance pays the doctor
14 bills, instead of executing an LOP?

15 MR. MANNION: Objection.

16 A. No.

17 Q. Why not?

18 A. Why would it be?

19 Q. Don't doctors who contract with insurance
20 companies typically have to treat their patients
21 pursuant to reduced rates?

22 A. No. We -- I'm actually looking for the letter,
23 but some providers, even though they have health
24 insurance, they -- if you call the provider,
25 they'll say the health insurance is going to

1 reject any care, because it's due to a motor
2 vehicle accident. I don't agree, but that's what
3 they are being told.

4 Q. How often does this happen?

5 A. Quite a bit.

6 Q. Is this a new phenomenon?

7 A. No.

8 Q. How long has this been happening?

9 A. I could tell you when I handled cases directly,
10 auto accident cases, so 2005, 2006, and heard it
11 ever since.

12 Q. Do you think it's legitimate for insurance
13 companies to take that position?

14 MR. MANNION: Objection. Go
15 ahead.

16 A. You would have to look at the contract. I don't
17 think so.

18 Q. Okay.

19 A. But anything a doctor could do not to be involved
20 in a motor vehicle accident, they'll do.

21 Q. Is it hard to find providers who are willing to
22 work on an LOP?

23 A. Yes.

24 Q. Why would that be? Same reasons?

25 MR. MANNION: Wait. Same reasons

1 as what?

2 MR. PATTAKOS: Same reasons, it's
3 hard to find doctors to work on car
4 accident cases?

5 MR. MANNION: I am going to
6 object. Go ahead.

7 A. I think the letter of protection is good for the
8 client, if they'll accept it, but you're asking a
9 provider to wait to get paid, sometimes years.

10 Q. So unless the client is covered by Medicaid or
11 Medicare, Dr. Ghoubrial and Dr. Floros typically
12 do not accept the client's health insurance?

13 MR. MANNION: Well, I'm going to
14 object. You can't speak for them.

15 A. I was going to say, you just mixed two things.
16 You mixed Dr. Ghoubrial, Dr. Floros, Medicaid,
17 Medicare. They don't bill Medicaid, Medicare.
18 They are not approved providers.

19 Q. Okay.

20 A. What you're seeing on those settlement memos
21 would be other care that they received.

22 Q. But to your knowledge, when Dr. Floros and Dr.
23 Ghoubrial treat your firm's clients, you know
24 that they do not accept the client's health
25 insurance when they treat them, correct?

1 MR. MANNION: Objection.

2 MR. BARMEN: Objection.

3 MR. KEDIR: Objection.

4 A. I don't know a hundred percent, but I believe so.

5 Q. Do you know why?

6 A. No.

7 Q. Have you ever asked?

8 A. I haven't. You remember -- never mind.

9 Q. You're sure?

10 A. Yeah, I'm sure.

11 Q. Has a client ever told you that they would prefer
12 to have their health insurance company billed?

13 A. Okay. So now you'll get the answer.

14 Q. Thank you.

15 A. You have to ask the lawyers. I don't handle
16 those cases.

17 Q. Okay.

18 A. That was the answer that was coming before, too,
19 by the way.

20 MR. PATTAKOS: Just mark these two
21 at a time. Do this one first and then this
22 one.

23 - - - -

24 (Thereupon, Plaintiff's Exhibit 20 and 21 was
25 marked for purposes of identification.)

1

— — — —

2

Q. I just have one question. You don't have any reason to doubt that this is a true and accurate copy of KNR's website content as it appears today, do you?

6

A. Do you want me to read it or --

7

Q. Yeah, if you want to read it. I just want you to confirm that you have no reason to believe that this isn't an accurate printout from your web page?

10

11

A. Okay. I don't have any reason to believe that it's not.

12

13

Q. And you say on the page that says, our awards. We help our clients and their families receive necessary medical care and achieve financial security for peace of mind.

14

15

16

17

A. Sure.

18

Q. And you do that by connecting them with doctors who will treat them pursuant to a letter of protection?

19

20

21

MR. MANNION: I'm going to object.

22

A. No, not necessarily. I understand what you're saying, but it's not necessarily accurate.

23

24

Q. How else do you do that?

25

A. Your interpretation is not accurate.

1 Q. Okay. Tell me how it's inaccurate.

2 A. Oh, we deal with the medical doctors. We talk to
3 the medical doctors. There is different ways.
4 We help them, you know, if they need to get
5 referrals. That has nothing to do with the LOP.
6 It says, help our clients and their families
7 receive necessary medical care, it doesn't say
8 LOP.

9 Q. Okay. If you look back at Exhibit 8, the
10 mailer -- or not the mailer the -- the ad
11 content. And this is what it looks like.

12 A. Yeah. Not anymore, but that was whatever --
13 whoever gave you that.

14 Q. Okay. I'm sorry. What page --

15 MR. PATTAKOS: Rachel, could I
16 have that exhibit? Thank you. We could
17 break shortly, I just --

18 Now is a good time to take a
19 break.

20 MR. MANNION: Okay. Thanks.

21 THE WITNESS: Thank you.

22 THE VIDEOGRAPHER: We are going
23 off the record. The time is 2:41.

24 - - - -

25 (Thereupon, a recess was had.)

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THE VIDEOGRAPHER: We're back on
the record. This is the beginning of media
number 3. The time is 2:52 p.m.

Q. I think we could look back at Exhibit 8, again.
Sorry. So, on the -- on the back one, two,
three, four -- five pages from the back, it's the
opposite side of what I think is the dollar bill,
and there is a heading at the bottom left. It
says, I'm hurt, but I can't afford to go to the
doctor.

A. Yep.

Q. This says, when you're in an accident, it's
important to go to the emergency room or your
family doctor to document your injuries, so the
insurance company can't say, they aren't hurt,
they didn't even see a doctor. If necessary, we
have contacts within the medical field who will
wait to get paid from the settlement.

You agree that's a reference to the LOP,
correct?

MR. MANNION: The second part?

MR. PATTAKOS: Yes.

A. It's -- well, it has two meanings. And I'll
explain it to you. The first one is one that if

1 you have -- we talked about MedPay, right? That
2 is a benefit that we -- because a lot of people
3 don't know they have MedPay, especially if you're
4 a passenger. If you're a passenger in my car,
5 and I have MedPay, you may not know that you have
6 access to MedPay.

7 So we help these clients realize that they're
8 entitled to that MedPay, so we can allow them to
9 go get treatment under MedPay, so that's why I'm
10 saying it has two, and --

11 Q. But what does that have to do -- let me interrupt
12 you --

13 MR. MANNION: No, no you're not
14 going to interrupt him. Finish your
15 answer.

16 A. It's okay. I'm going to finish. You'll get it.
17 So when you're saying here that if necessary we
18 have contacts within the medical field who will
19 wait to get paid from the settlement, so that
20 MedPay, I would have to request the MedPay. So
21 how it works is, they don't send you a check.
22 The client has to go get treatment, we have to
23 get the bill. Once we have the bill, we could
24 submit it to MedPay. MedPay reimburses us, we
25 then pay the doctor. So some of the doctors, you

1 could tell them, instead of a letter of
2 protection, because they won't accept it, well,
3 if you have MedPay, will you accept MedPay, just
4 you have to wait for us to forward. And some
5 providers will do that. So that's why I'm
6 saying, that's what I was getting at, it has two
7 meanings, it has the MedPay, which we get for
8 them, that they normally don't know about, or you
9 do it under a letter of protection.

10 Q. Understood. Thank you.

11 A. Sorry, if I could add one more, I'm just thinking
12 about that. The MedPay could not be used for the
13 narrative report, so -- because the narrative
14 reports are not expenses, when you're talking
15 about getting a narrative report, you said
16 they're between 150 and 200 dollars. That
17 includes copying of records, so insurance
18 companies don't pay for copying of records on the
19 narrative. And they won't pay a narrative, some
20 providers have tried to put the narrative charge
21 in with the bill, and insurance companies don't
22 pay that. So MedPay wouldn't cover that. Make
23 sense?

24 Q. Yes, because it's associated with litigation
25 costs?

1 A. No, it's just the insurance company's view that
2 as an expense that the lawyer should incur or the
3 -- the claimant should incur and not the
4 insurance company.

5 Q. It's not medical care, correct?

6 A. Very good. Yes.

7 MR. PATTAKOS: Let's mark the next
8 exhibit.

9

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 22 was marked
12 for purposes of identification.)

13 - - - -

14 - - - -

15 Q. You agree, Mr. Nestico, there was a time when the
16 law firm was sending out LOP's on its own
17 letterhead?

18 A. I do.

19 Q. And tell me about that.

20 A. If I remember, there was some issue that came up
21 with the Supreme Court regarding a chiropractor
22 that wasn't paid, and that the letter of
23 protection was on our letterhead. And I was
24 advised that it should not be on our letterhead,
25 because that opens the firm up to liability.

1 Q. So for a time it was the firm's regular practice
2 to send the LOPs out on its letterhead?

3 MR. MANNION: Objection.

4 A. Not a reg -- it wasn't regular. It happened.
5 And it led to a complaint and disciplinary.
6 Counsel advised us, you can't have -- if --
7 they're not saying, you can't. If you put a
8 letter of protection on your letterhead, that
9 opens you to liability. You, meaning, the firm.

10 Q. Liability to the doctor?

11 A. Correct.

12 Q. Who complained?

13 A. I don't remember who it was.

14 Q. But it was a bar issue?

15 A. Yes. It could have been anonymous or it could
16 have been a provider. I don't know.

17 Q. Okay. So let's -- this document is Exhibit --
18 I'm sorry.

19 THE REPORTER: 22.

20 Q. 22. Okay. And this is Brandy at the bottom,
21 e-mailing the staff, copying you. Absolutely no
22 LOPs should be sent out of this office on
23 letterhead. Please see me if you have questions.

24 A. Okay.

25 Q. This relates to that incident that you just

1 recalled or you don't know?

2 A. I don't know. It could be.

3 Q. Okay. Nomiki says, is someone going to create a
4 new LOP? The current medical assignment comes up
5 on our letterhead.

6 Does this suggest to you, Mr. Nestico, that
7 the -- all of the LOPs were coming up on the
8 firm's letterhead at this time that Nomiki wrote
9 this e-mail?

10 A. No, because we received other LOPs. Providers
11 have their own LOPs. They are supposed to.

12 Q. Well, what is she referring to when she is
13 referring to the current medical assignment?

14 A. If we needed it, at the time, if we needed it,
15 let's say a provider who doesn't have their own
16 LOP, says, well, send me an LOP. At the time,
17 what they were doing is just generating that
18 letter. Doesn't mean all of the LOPs. Make
19 sense?

20 Q. Okay. Understood. And then she says, above, so
21 you're saying no provider sends them to you,
22 meaning that you should obtain the LOP from the
23 providers, correct?

24 A. Correct.

25 Q. Before you pass them on to the clients, and then

1 Nomiki says, what about for CNS --

2 A. That's actually -- slow down. We don't pass them
3 off to the client. The client does not get
4 treatment, so the provider, when a client goes
5 in, the provider wants the client to sign first.
6 We want the clients to sign first. Then we sign,
7 because we could not bind ourselves to the
8 provider without the client doing it first.

9 Q. But sometimes you don't bind yourself to the
10 provider like in the Floras example that we saw,
11 correct?

12 A. Again, that's -- there is that argument that we
13 are bound by it, because the attorney signed, but
14 there is arguments both ways. I prefer not to
15 have it on our letterhead, because of what
16 happened.

17 Q. With the bar complaint?

18 A. Yes.

19 Q. Okay. So when Nomiki says, what about for CNS
20 and Ohio Sports and Spine, Dr. Dunne, they have
21 us create LOPs.

22 What is CNS?

23 A. The Center for Neuro and Spine.

24 Q. And Ohio Sports & Spine?

25 A. Another place.

1 Q. And where are they located?

2 A. CNS has multiple offices. And I don't know where
3 Ohio Sports & Spine, I don't know who Dr. Dunne
4 is.

5 Q. Then Megan Jennings, that is a paralegal,
6 correct?

7 A. Yes.

8 Q. And she replies, Town & Country also has us send
9 them our LOPs for clients.

10 That's Town & Country, in Columbus, correct?

11 A. Yes.

12 Q. And you reply, send them, but not on letterhead,
13 if you have to, for Town & Country.

14 Why did you say that?

15 A. I meant to say, not on letterhead, even for Town
16 & Country, it should have been. Because they
17 asked here below, see where it says, Town &
18 Country, also?

19 Q. So you're not making an exception for Town &
20 Country here?

21 A. No.

22 Q. Send them, but not on letterhead if you have to
23 for Town & Country. You are saying that is a
24 misprint?

25 A. I'm telling you, my meaning, what I read --

1 sorry, when I would have typed this, I would have
2 said, because she addressed Town & Country, I
3 messed up, and it should have said, not on
4 letterhead, even -- it should have been even for
5 Town & Country. If you have to for Town &
6 Country not to put it on there.

7 Q. Okay.

8 A. That's why you look at the, no provider sends --
9 no, provider sends them to you. We got away from
10 ever having our letterhead on any letters of
11 protection.

12 Q. Brandy provided testimony about a number of
13 documents that show that the firm directs its
14 attorneys to send clients to certain providers at
15 particular times --

16 MR. MANNION: Objection.

17 Mischaracterization.

18 Q. -- and closely manages and tracks these
19 referrals.

20 MR. MANNION: Objection.

21 Mischaracterization.

22 Q. You agree with that?

23 A. No, we don't direct.

24 Q. What do you do?

25 A. Recommend.

1 Q. Recommend. Okay.

2 A. Yes. Or suggest.

3 Q. Okay. You agree that the firm closely tracks its
4 referrals to and from medical providers, correct?

5 A. You say, closely tracks. I wish it was closer,
6 but we try our best.

7 Q. Okay. To track as accurately as possible the
8 referral source of each case?

9 A. Yes.

10 Q. And what's the reason for doing that?

11 A. First of all, it's proprietary, and you're a
12 competitor, so I'm not going to give out
13 information as to why I do certain things. You
14 wouldn't tell me.

15 Q. Brandy testified all about this.

16 A. Okay. I wouldn't have.

17 Q. And, now, you're not going to testify?

18 A. No, I'm not going to.

19 Q. Okay.

20 A. You want general, I'll give you general. I'm not
21 going to tell you what we do.

22 Q. Why don't you give me generally, then.

23 A. Any business wants to track their resources. I'm
24 sure you do.

25 Q. Okay. But the reason you do it, you are going to

1 keep a secret?

2 A. It's for marketing purposes.

3 Q. For marketing purposes. Marketing to who?

4 A. To the public.

5 Q. You track your referrals, so that you could
6 analyze how effective your marketing is?

7 A. That's one of the reasons, sure.

8 Q. What are the other reasons?

9 A. You're getting back to, it's proprietary, and I'm
10 not going to tell you.

11 Q. One of the things Brandy said was that she -- the
12 referrals were tracked, because she was making
13 sure she was spreading them out in an area. She
14 wouldn't want them all to go to one doctor.
15 She'd want to make sure they go to different
16 doctors in that geographical location.

17 A. Fair enough.

18 Q. Is that what you instructed her to do?

19 A. Probably.

20 Q. And why did you do that?

21 A. There is a number of reasons why you do that.

22 Q. What are they?

23 A. Benefits of clients.

24 Q. How?

25 A. Gives them options.

1 Q. But you're directing the clients to go to
2 different chiropractors?

3 MR. MANNION: Objection.

4 A. We're not directing anything.

5 Q. Suggesting?

6 A. No. We give a recommendation. The lawyer, when
7 he talks to the client, gives a recommendation.
8 I could tell you that clients either go or they
9 don't want to go to that provider, they may want
10 to go to another provider, or they have their own
11 provider that they go to.

12 - - - -

13 (Thereupon, Plaintiff's Exhibit 23 was marked
14 for purposes of identification.)

15 - - - -

16 Q. This goes back to the review of the settlement
17 statements and the reductions. Here Brandy
18 writes, on July 31st, 2013 to all attorneys, as
19 you are aware, Rob approves chiropractor
20 reductions.

21 Does this reflect that during this time you
22 were approving all reductions to chiropractor
23 bills?

24 A. No.

25 Q. What does this mean?

1 A. Should we read the whole things, because it will
2 explain it to you?

3 Q. Please explain.

4 A. All right. As you are aware, Rob approves
5 chiropractor reductions. If you ask me if he
6 calls a certain chiropractor or if you do and the
7 answer is, you are responsible for the call, you
8 should still give Rob the break-down to approve
9 prior to contacting the chiropractor.

10 Does that help you? It says, certain. It's
11 clear.

12 Q. What's clear about that?

13 A. Certain chiropractors.

14 Q. She says in the first sentence, Rob approves
15 chiropractor reductions. That certain applies to
16 -- tell me if I'm reading this wrong. It says,
17 if you ask me if he calls a certain chiropractor
18 or if you do, doesn't certain apply to the call
19 that is made to the chiropractor?

20 A. Certain chiropractors. It says right there,
21 certain.

22 Q. Okay. Which ones?

23 A. If I have any of them that are friends, it
24 changed from time-to-time.

25 Q. So that certain, you are saying goes in the first

1 sentence? As you are aware, Rob approves
2 certain --

3 A. Yeah.

4 Q. -- chiropractor reductions? That's your
5 testimony?

6 A. That's my testimony.

7 Q. Okay, sir.

8 A. That's who it applies to.

9 Q. Okay. Thank you.

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 24 was marked
12 for purposes of identification.)

13 - - - -

14 Q. So this e-mail from Brandy, please make sure you
15 are using the chiro boards, she writes. When I
16 left on Wednesday, I switched Akron to Akron
17 Injury, and you sent zero cases there and four to
18 ASC. I also added True Health and removed Shaker
19 Square, and you sent three cases to Shaker Square
20 and zero to True Health. Coy was removed as
21 well, and you sent a case there. And she uses an
22 exclamation mark on that last sentence.

23 Why is she so adamant about this, if it's
24 just a suggestion?

25 MR. MANNION: Objection to her

1 state of mind.

2 A. Well, this is the problem of being a lawyer, how
3 do I know what she is thinking?

4 Q. She sent this of her own accord or this is
5 something that you instructed her to send?

6 A. I didn't instruct her to send this.

7 Q. Okay.

8 A. I'm not even copied on this.

9 Q. And you have no idea why she would send this?

10 A. It sounds like she's spreading the cases around.

11 - - - -

12 (Thereupon, Plaintiff's Exhibit 25 was marked
13 for purposes of identification.)

14 - - - -

15 Q. Okay. This is another e-mail from Brandy, on
16 Monday, June 23 to pre-lit attorneys. She
17 writes, I have sent this e-mail several times.
18 She sends this with high importance. Please pay
19 attention to the chiro referral e-mails Sara or I
20 send out and also the board. Referrals are not
21 up for negotiation. I spend a lot of time
22 tracking referrals and working with doctors.

23 So, why are referrals not up for negotiation?

24 MR. MANNION: Objection. Go

25 ahead.

1 A. First of all, I wasn't copied on this e-mail.

2 We'll start there.

3 Q. You don't receive the pre-lit --

4 A. No.

5 Q. -- attorney e-mails?

6 A. No. I was not copied on this e-mail, so I didn't
7 know she sent the e-mail. Second, you said she
8 sent it with high importance, and I chuckled,
9 because there was some running joke that she
10 would push high importance almost on every e-mail
11 she would send, so it doesn't mean anything to
12 me.

13 The referrals are not up for negotiations if
14 they're working -- they are not spreading it
15 around, that's what she means. But I could tell
16 you this, with 100 percent certainty, if any
17 lawyer had any problem with this, they would have
18 gone to talk to her. And if they didn't like the
19 response or they believed differently, they would
20 have brought it to my attention. And no one
21 brought any of this to my attention.

22 We don't -- you understand that what happens
23 is, it's all done geographically first, then it's
24 communicated between the client, the -- or the
25 time, if they decide to be a client and the

1 lawyer. They decide where they're going to
2 treat. So it doesn't matter what anybody writes,
3 they're going to do what they want.

4 Q. Why send this e-mail in the first place, if
5 that's the case?

6 A. You had her for two days. Why didn't you ask
7 her?

8 Q. I did. She said to ask you.

9 A. Really? Why -- she told you to ask me why she
10 sent this e-mail?

11 Q. Maybe not on this e-mail.

12 A. Well, that's what you just intimated, and that's
13 not what happened. You had her there. You could
14 have asked her about this e-mail and you didn't.
15 Or if you did, you didn't like the answer.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 26 was marked
18 for purposes of identification.)

19 - - - -

20 Q. What's funny about this?

21 A. High importance, again.

22 Q. So Brandy is saying, I have spent -- this is an
23 e-mail. You're copied on this one?

24 A. Yes, sir.

25 Q. Pre-lit attorneys, Holly Tusco, intake. Brandy

1 writes, I have spent a significant amount of my
2 day fixing referral mistakes. Please make sure
3 the information that you give and receive is
4 listed on the intake sheet. Just this month
5 alone, there were 13 mistakes made by you --
6 your, I assume that's a typo --

7 A. Yes.

8 Q. -- regarding the referred to. This cannot
9 happen. I work hard to maintain a close
10 relationship with chiropractors and I am in
11 contact with most of them every -- several times
12 a day.

13 A. Yes. You're going to finish it, right?

14 Q. I'm not going to finish reading this. I want to
15 ask you --

16 A. Well, I am.

17 Q. -- do you agree? You could keep reading.

18 A. Yeah.

19 Q. Sure.

20 A. Okay.

21 Q. You agree that Brandy did work hard to maintain a
22 close relationship with chiropractors and was in
23 contact with most of them several times a day?

24 MR. MANNION: Objection. Go
25 ahead.

1 A. Probably.

2 Q. And she did that, because you wanted her to,
3 correct?

4 A. No. She did it, because she wanted to.

5 Q. She wanted to?

6 A. Yeah.

7 Q. And why did she want to do that?

8 A. These are people who we do business with. Good
9 business.

10 Q. So you didn't direct her to work hard to maintain
11 a close relationship with chiropractors?

12 A. No.

13 Q. No one else, none of the other partners at the
14 firm, directed her to do that?

15 A. No.

16 Q. She did it on her own?

17 A. Yeah.

18 Q. Okay.

19 A. Nothing wrong with that.

20 Q. I don't have an opinion on that. You agree, Mr.
21 Nestico, that there were a number of e-mails that
22 Brandy reviewed at her deposition and testified
23 about, which showed that the number of referrals
24 a provider had made to KNR was an explicit
25 consideration in KNR's decision to refer cases to

1 that chiropractor?

2 MR. MANNION: Objection.

3 A. No.

4 Q. So you disagree with that?

5 A. I do.

6 MR. PATTAKOS: Let's mark these
7 all at once.

8 - - - -

9 (Thereupon, Plaintiff's Exhibit 27, 28, 29
10 and 30 were marked for purposes of
11 identification.)

12 - - - -

13 Q. All right. I'm going to go through these four
14 exhibits. What number are we at? 30 --

15 A. 27.

16 Q. 27, 28, 29, and 30. Here Brandy says, on the
17 October 17th, 2017 e-mail, please make sure you
18 refer intakes there, referring to Shaker Square
19 in the subject line. I just noticed that we've
20 sent two cases to A Plus Accident Injury Center,
21 when these cases could have gone to Shaker, who
22 sends us way more cases.

23 A. Uh-huh.

24 Q. So you're denying that --

25 A. Finish reading it.

1 Q. I've sent this e-mail three times now. Please
2 note this, so next time you're on a Cleveland
3 intake, you remember this. Thanks.

4 So here she is explicitly saying to send
5 cases to one chiro, as opposed to another,
6 because the chiro, Shaker, sends way more cases.

7 You agree with that?

8 MR. MANNION: Objection to form.

9 Go ahead.

10 A. Okay. So let's start again from the top. Brandy
11 is sending the e-mail. I'm not copied on the
12 e-mail. Agree?

13 Q. Yes, sir. I don't know if you're copied on the
14 pre-lit attorney or not.

15 A. Let's assume that I'm not, because I'm not. And
16 I'm telling you that I'm not.

17 Q. Okay. Brandy, I believe said that you were, but
18 --

19 A. I doubt that.

20 MR. MANNION: No, she didn't.

21 A. In 2000 --

22 Q. I could be wrong about that, I --

23 A. Well, it's okay. I wasn't, okay? So I'm not
24 copied on this. We talked about the high
25 importance. And everything that I see here, if

1 this came to me, the only thing that I'd look at
2 is she is spreading the cases around, which is
3 good.

4 If they choose to work with one doctor more
5 than another, who sends us business, I don't have
6 a problem with that. Fair?

7 Q. So, this next e-mail --

8 A. Yes.

9 Q. -- A Plus Injury, August 21st, 2013 --

10 A. Uh-huh.

11 Q. -- please do not send any more clients there this
12 month. We are six to one on referrals. You're
13 saying that's a sug -- that's a recommendation
14 and not -- not a directive?

15 A. Yeah, they -- they -- Peter, again I'm going to
16 tell you, the lawyers do what they want. I could
17 assure you that if you went at this time of this
18 month, that they sent more -- they still
19 continued to send cases. That's what they do,
20 they do what they want.

21 She could recommend all she wants. And,
22 again, what she is saying, we are six to one on
23 referrals. That doctor has seven. It doesn't
24 matter if it's six or one the other way. It just
25 doesn't matter. Spread it around, that's -- so

1 that theme is constantly, probably, in the back
2 of her mind.

3 Q. So you're saying that what this means is that --

4 A. I don't know what it means. I didn't write it.
5 Brandy wrote it.

6 Q. Okay. So you're saying this doesn't mean that
7 you have sent them six referrals and they've only
8 sent you one?

9 MR. MANNION: I'm going to object.
10 Go ahead.

11 A. We are six to one. From this e-mail, Peter, you
12 can't tell that.

13 Q. What do you think this means?

14 A. We have seven cases with this doctor; does that
15 make sense?

16 Q. But what does six to one mean?

17 A. I'm telling you, again, I don't know exactly what
18 it means. It could mean, that we've sent them
19 six, they sent us one. It could also mean they
20 sent us six, we sent them one. Fair or not? I
21 don't know. It doesn't have enough information
22 in this e-mail. It's one line.

23 Q. How would it make sense for her to say not to
24 send any more clients there --

25 A. Here you go --

1 Q. -- this month if they -- if they had sent you six
2 and you had only sent them one?

3 A. No, let's --

4 MR. MANNION: Wait. Objection.

5 That's not what she said.

6 A. Sorry, let's -- let's read it back again. Please
7 don't send any more clients there this month.
8 Yeah, see you can't tell if -- at first glance
9 when you look at it, Peter, it looks like we've
10 sent them six, they've sent us one.

11 Q. Okay.

12 A. Okay. But it could also be read that we are six
13 to one, so they sent us six, we sent them one.
14 This is not clear, is all I'm telling you.
15 Doesn't matter to me.

16 MR. MANNION: You mean, which way?

17 THE WITNESS: Yeah, it doesn't --

18 I don't care.

19 Q. Okay. So let's look at the next one. Please
20 make sure you are paying attention to your
21 referral board in your office. This is Brandy to
22 pre-lit attorneys?

23 A. Yes, sir.

24 Q. We've sent five cases to Warrensville Physical
25 Medicine last week. We need to get some to A

1 Plus injury, since they sent us ten cases last
2 month and Warrensville Physical Medicine hasn't
3 sent us any cases in 2013, exclamation mark,
4 exclamation mark, exclamation mark, exclamation
5 mark.

6 A. Did you say it four times? One has no -- are you
7 trying to tie these two together?

8 Q. Well, Mr. Nestico --

9 A. They don't --

10 Q. -- I'm going to ask you again --

11 A. -- because one is August 21st of '13, and this is
12 April.

13 Q. Okay.

14 A. This is before.

15 Q. Okay. But let's look at just this April 8th
16 e-mail.

17 A. Okay.

18 Q. Brandy is recommending, I'll use your terminology
19 --

20 A. Uh-huh.

21 Q. -- that attorneys should not send Warrensville
22 Medicine any cases, they should be sent to A Plus
23 Injury instead, because A Plus Injury sent ten
24 cases and Warrensville hasn't sent any.

25 A. Okay.

1 Q. You agree?

2 A. Yeah. Nothing wrong with that.

3 Q. There is nothing wrong with that?

4 A. Zero.

5 Q. Why is that?

6 A. What do you mean, "why is that"?

7 Q. Well, you understand that it's prohibited for law
8 firms to trade referrals with providers --

9 MR. MANNION: Wait. Objection.

10 Q. -- correct?

11 MR. MANNION: Whoa, whoa, whoa.

12 Wait a minute. Wait a minute. Stop.

13 Don't answer that question. Are you asking
14 a ethical question right now, in violation
15 of the Court's order?

16 MR. PATTAKOS: No, I'm not.

17 Q. Do you believe it's proper, Mr. Nestico --

18 MR. MANNION: Wait a minute. Wait
19 a minute. Do you mean, is it ethical?

20 What are you asking?

21 Q. I'm asking, do you believe that it's proper for a
22 law firm to trade referrals with a chiropractor?

23 A. They are not trading referrals.

24 Q. What's going on here, then?

25 A. They are doing business.

1 MR. MANNION: Please note the
2 intentional violation of the Court's order
3 by Mr. Pattakos.

4 Q. And the same is July -- with this July 12th
5 e-mail where the attorney, who is Horton, he
6 redacted his name from this, he's sending --

7 A. How do -- how do we know that?

8 Q. Well, you could look in your files and confirm.

9 A. Okay.

10 Q. I know, because --

11 A. That's fine.

12 Q. -- Horton gave me the e-mail.

13 A. Okay.

14 Q. It says -- presumably a client's name is in the
15 subject line or two -- more than one client, it
16 says, web referrals, they live 20 minutes from
17 Cain Chiro, Ken's friend.

18 I assume that's Ken Zerrusen?

19 A. Yes.

20 Q. And 30 minutes from ASC or West Tusc. Holly
21 indicated they should go to ASC; is that correct,
22 or do we want to send them to somebody else
23 closer to them?

24 Brandy responds, ASC, if you can. I already
25 told Minas, who is Dr. Floros, plus Cain doesn't

1 send us shit.

2 Am I reading that correctly?

3 A. Unfortunately, yes.

4 Q. And this is Brandy directing a referral or a
5 recommendation be made to a chiropractor, based
6 on how many cases the chiropractor sends to the
7 firm; is it not?

8 MR. MANNION: Objection.

9 A. No, it does not. Where does it says that?

10 Q. What does she mean, then?

11 A. Send it to Akron Square.

12 Q. Why?

13 A. She already talked to Dr. Floros.

14 Q. Plus, Cain doesn't send us shit.

15 A. That's obviously her upset at something for some
16 reason. I don't -- I don't have a comment to
17 that, other than it's disappointing.

18 Q. So, Brandy testified at her deposition that given
19 the option of two different clinics that are in
20 the same area, the preference would be to send to
21 the doctor we work with the most and who sends us
22 cases, it would be up to the attorney to consider
23 the client's needs.

24 Do you want to look at the transcript to
25 confirm that?

1 MR. MANNION: No.

2 MR. PATTAKOS: Okay.

3 MR. MANNION: But there is
4 obviously a lot more to it than that, but
5 go ahead.

6 Q. I want to ask about this section. And I could
7 give you a copy of the transcript. Do you want
8 to look at it?

9 A. Yeah.

10 MR. MANNION: Anybody have her
11 deposition?

12 MR. POPSON: I didn't bring a
13 copy.

14 THE WITNESS: He has it.

15 MR. PATTAKOS: I just have one
16 copy, unfortunately.

17 THE WITNESS: Okay.

18 MR. POPSON: Is it going to be
19 marked as an exhibit?

20 MR. PATTAKOS: No. It's on the
21 record already. It's filed. I'm going to
22 direct you -- and you all can -- I'll
23 direct you guys to the page number. It's
24 page 258-24 to 259-3, Tom.

25 MR. MANNION: Thanks.

1 MR. PATTAKOS: 258-23 to 259-3, as
2 well as 261 3 to 9, Brandy says, given the
3 option of two different clinics that are in
4 the same area, the preference would be to
5 send to the doctor we work with most and
6 who sends us cases. It would be up to the
7 attorney to consider the clients' needs.

8 That is her testimony, correct?

9 THE WITNESS: Whatever the client
10 wants.

11 MR. PATTAKOS: Tom?

12 MR. MANNION: I'm sorry.

13 MR. PATTAKOS: Is that --

14 MR. MANNION: Oh, I was reading
15 this when you were -- I wasn't comparing
16 what you were saying to this. Say it,
17 again.

18 MR. PATTAKOS: She says, given the
19 option of two different clinics that are in
20 the same area, the preference would be to
21 send to the doctor we work with most and
22 who sends us cases. It would be up to the
23 attorney to consider the clients' needs.

24 MR. MANNION: Well, she goes down.
25 She keeps talking.

1 MR. PATTAKOS: What else does she
2 say?

3 MR. MANNION: I read it as we
4 were. We already sent one chiropractic
5 clinic cases --

6 MR. PATTAKOS: Okay. Tom, I'm not
7 interested --

8 MR. MANNION: -- let's get some
9 over to the other.

10 MR. PATTAKOS: I'm not interested
11 in hearing about that. I want to ask Mr.
12 Nestico about this statement where she
13 says, given the option of two different
14 clinics that are in the same area, the
15 preference would be to send to the doctor
16 we work with most and who sends us cases.

17 MR. MANNION: Okay.

18 Q. You agree that this is inconsistent that in -- in
19 this way, that the firm either working to spread
20 its referrals out or it has a preference of
21 sending to the doctor the firm works with most
22 and who sends the firm cases, but it can't be
23 both --

24 MR. MANNION: Objection.

25 Q. -- correct?

1 A. What it does tell me is, they are not swapping
2 referrals. They don't say, you give me one, I
3 give you one, you give me two, I'll give you two.
4 They are not doing that.

5 Q. Well, how is it consistent? Is the firm
6 spreading referrals out or is it sending to the
7 doctor the firm works with most and who sends the
8 firm cases?

9 MR. MANNION: Objection. You are
10 assuming it's an either/or. Improper
11 question. Go ahead.

12 A. They're spreading the cases out. It doesn't
13 matter about referrals. Referrals have nothing
14 to do with it, Peter. Do you understand?

15 So let's go back, again, to the original
16 statement. When you're looking at, a client
17 calls, the very first thing they do is they look
18 at it geographically, where they're calling from?
19 Where do they want to treat? The lawyers are
20 discussing this with the client. The two of them
21 will decide where they go.

22 I don't care what e-mail comes out. I don't
23 care and the lawyers don't care what e-mail comes
24 up. She's asking them, at least look at the
25 whiteboard, look at the recommendation. If they

1 don't have someone.

2 So then the client will decide, I will want
3 to go -- I live on the east side of Cleveland,
4 all right, if at that point, they look at their
5 board and it says Shaker Square, Shaker Square it
6 is. The client says, that's too far for me. All
7 right. The lawyer knows to go to a second
8 chiropractor. That's how it works.

9 Q. Is that all you have to say about that --

10 A. Yes.

11 Q. -- testimony?

12 A. Yes.

13 MR. PATTAKOS: Let's mark the next
14 exhibit. 31?

15 THE REPORTER: Correct.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 31 was marked
18 for purposes of identification.)

19 - - - -

20 Q. This is an e-mail from you on November 15, 2012
21 that Brandy forwarded to staff on that same day,
22 where you say, please make sure to refer all
23 Akron cases to ASC this month. We are 30 0.

24 Also, anytime you refer a patient to any
25 chiro, have your assistant follow-up and make

1 sure they go on, obviously, cases that are signed
2 up outside of chiro office.

3 Am I reading that correctly?

4 A. Yes.

5 Q. And ASC refers to Akron Square Chiro, correct?

6 A. Yes, sir.

7 Q. What is your statement, we are 30 0 mean?

8 A. Well, we are going to start again from the top.
9 Brandy sent this to the staff, I didn't send it
10 to the staff. I sent it to Brandy. Agree?

11 Q. Looks that way.

12 A. Okay. I sent it to her, because at that time,
13 and this is November 15th of 2012, we are halfway
14 through the month, okay? So we're already
15 halfway through. There is two weeks.

16 What's alarming to me, and I know you like
17 this, because you used it in the media to try to
18 do whatever you wanted to do to make it seem like
19 things are nefarious. The zero in this sentence
20 -- when you say we are -- or sorry, I say, we are
21 3 and 1 -- sorry, 3 and 0, right? I say, we are
22 --

23 MR. MANNION: 30.

24 A. Sorry, 30. I apologize. 30 and 0, what I am
25 referring to and, really that is a red flag to me

1 is that 0. It could have said 20. It could have
2 said 10, I don't care.

3 And here is why it's alarming to me, the 0
4 indicates that in Akron we have gotten 0 cases in
5 the month of November, when the weather is bad,
6 and we advertise and spend a lot of money in
7 Akron.

8 So we should not -- that is telling me that
9 either there is a problem with the marketing or
10 they're not spreading these cases around, because
11 at the time, we only had two doctors we were
12 working with, two doctors that we would refer
13 cases to.

14 Q. Two chiros?

15 A. Yes. So something -- that's why I sent it only
16 to Brandy. I didn't send it to all the lawyers.

17 Q. Who were the two chiros?

18 A. I believe at the time was Rolling Acres.

19 Q. Auck?

20 A. Yes.

21 Q. So because no cases had gone to Floros that
22 month, you are assuming from this that that meant
23 every other case went to Auck that month?

24 A. It's possible, that's the only -- or, like I
25 said, the second problem, we're not getting any

1 cases, which is impossible, or something is wrong
2 with our marketing.

3 It happens where if something is wrong at the
4 time, it would be TV, if Yellow Pages at that
5 point, did the book not come out? What happened?
6 Something happened. That's why I'm sending it
7 only to Brandy.

8 Q. And she wasn't supposed to send it to the staff?

9 A. I don't think so.

10 Q. Why did she do it? You don't know?

11 A. I don't know.

12 Q. Okay. If something was wrong with the marketing,
13 why would that tell you to send cases to Dr.
14 Floros?

15 A. No --

16 MR. MANNION: Objection.

17 A. -- that addresses the other concern that they're
18 not spreading it around. If we did have cases,
19 that means they're sending them all to one
20 doctor.

21 Q. What does this mean, anytime -- anytime you refer
22 a patient to any chiro, have your assistant
23 follow-up and make sure they go on, obviously,
24 cases that are signed up outside of chiro office?

25 A. Right.

1 Q. What does that mean?

2 A. Make sure they are getting the treatment they
3 need.

4 Q. Are you saying that the clients should be --

5 A. That the assistants should mark it down.

6 Q. And it was common for the firm to sign cases up
7 outside the chiro's office?

8 A. Sure.

9 Q. And that's what the investigator that goes and
10 meets the client at the chiro's office?

11 A. Sometimes.

12 Q. Or the chiro has the firm's engagement agreement
13 at his office?

14 A. Nice try.

15 Q. No?

16 A. No, they don't have our letter of engagement
17 there.

18 Q. Okay.

19 A. Never.

20 Q. So how else would a client sign up at a chiro's
21 office if it weren't for an investigator meeting
22 them?

23 A. Say that again.

24 Q. How else would a client sign up outside the
25 chiro's office, if it weren't an investigator --

1 A. Oh --

2 Q. -- meeting them?

3 A. -- okay. A lawyer would go meet with them at
4 their home or they'd come into the office.

5 Q. Well, I want to understand what the problem is
6 that you're trying to avoid here with this second
7 sentence. What is the point of this instruction?

8 MR. MANNION: He already testified
9 to that. Go ahead, again.

10 A. I did. I-- it is what it says right there,
11 Peter. There's - - you're not going to read
12 anything into it, I'm telling you.

13 Q. Was it happening that -- that the attorneys or
14 the intake staff at your firm was sending pa --
15 referring patients to chiro's that were different
16 from chiro's where they had signed up at the
17 offices? Is that what was happening?

18 MR. MANNION: Wait. I'm going to
19 object to you saying, intake sending them,
20 but go ahead.

21 A. Mr. Pattakos, let's read this together. Also,
22 anytime you refer a patient, that would be a
23 lawyer that's referring the patient, to any
24 chiro, have your assistant, so it's obviously now
25 he's instructing the assistant, follow-up, and

1 make sure they go. Should have been maybe a
2 period. Obviously, cases that are signed outside
3 of the chiro office.

4 MR. MANNION: In other words, if
5 they're already at the chiro, you don't
6 have to check to see if they did it?

7 THE WITNESS: Right. They are
8 there getting the treatment.

9 Q. So you're saying a period is missing from this
10 sentence?

11 A. No. Follow-up and make sure they go -- go,
12 period. On obviously cases that are signed up
13 outside of chiro office, because if they are at
14 the chiro they are getting the treatment, right?

15 Q. Okay. Why were you only referring to two chiros
16 in Akron at this time?

17 A. That's all we knew. That's what I believe, by
18 the way.

19 Q. You agree, Mr. Nestico, that the firm would, as a
20 matter of policy, call the chiropractor's office
21 for the clients and schedule the appointments for
22 them --

23 A. There --

24 MR. MANNION: Objection.

25 Q. -- whenever there was an intake?

1 MR. MANNION: Objection.

2 A. Could we stop with the policy? It wasn't a
3 policy.

4 Q. As a matter of routine practice that was
5 instructed to the firm by firm management, how
6 about that?

7 A. Wrong.

8 MR. MANNION: Objection.

9 Q. Okay. Let's look at some documents.

10 A. All right.

11 MR. BARMEN: Peter, whenever is a
12 good time for our afternoon break, I would
13 appreciate it.

14 MR. PATTAKOS: Ten minutes or so.
15 I just want to get through a few documents
16 here. I have -- don't think it would take
17 long. It's 3:43 now. Hopefully, 10, 15
18 minutes at most.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 32 was marked
21 for purposes of identification.)

22 - - - -

23 Q. So Brandy writes to pre-lit attorneys copying
24 you, please make sure you are calling the chiro
25 and scheduling the appointment. This has been

1 discussed before. And this is going to pre-lit
2 attorneys.

3 What do you make of this?

4 A. There is the high importance, again. She says
5 "please" in all capitals, make sure you are
6 calling the chiro and scheduling the appointment.
7 This has been discussed before.

8 So something must have happened that they
9 didn't make sure that the client is going to get
10 the care that they need. She says, please, in
11 big capitals. Again, this would -- it tells me,
12 they weren't listening to her. They're doing
13 what they want --

14 Q. Well, you just --

15 A. -- right?

16 Q. You just testified that it wasn't -- that the
17 firm's management did not instruct the attorneys
18 to make the appointments for the chiros?

19 A. You make it sound like this is what they have to
20 do. They don't have to do anything. They,
21 obviously -- she's saying right here, read it,
22 this has been discussed before. But then she
23 starts with, please, like she's begging, because
24 they're not listening. Why? Because they do
25 what they want. They use their own independent

1 judgment, Mr. Pattakos.

2 Q. So it's not an imperative -- it's not an
3 imperative that they do this? This is not --
4 this is not an order, it is a suggestion, and the
5 attorneys are free to do what they want; that's
6 your testimony?

7 A. Listen, it depends on -- yes, when they're
8 handling their cases is what I'm getting at, I'm
9 trying to explain this to you, when a lawyer is
10 handling the case, they do what they want. I do
11 not get involved in the handling of their cases.

12 - - - -

13 (Thereupon, Plaintiff's Exhibit 33 was marked
14 for purposes of identification.)

15 - - - -

16 Q. Here is another e-mail where Brandy is e-mailing
17 attorneys in pre-lit support, copying you,
18 Mr. Redick, and Holly Tusco, with the subject
19 line, chiropractor referrals. Again, high
20 importance. I know that many of you already do
21 this, this is November 19, 2015, but for those
22 that do not, please put the intake on hold and
23 call the chiropractor's office and set up the
24 appointment for the client, and then let the
25 client know the time they need to be there. It

1 is imperative, in all caps, that this gets done.

2 A. Paralegals, when you do your first phone call
3 with the client after the case gets open, make
4 sure the client went to see the chiropractor.

5 Yeah. There she is, again, begging.

6 Q. And set up the appointment?

7 A. She's begging, again, right? Please is in all
8 caps.

9 Q. But she is saying it's an imperative.

10 A. Okay.

11 Q. That's an order, isn't it?

12 MR. MANNION: Objection.

13 A. It's not an order. She is asking them --

14 Q. What's your understanding --

15 A. -- they don't want to listen.

16 Q. What is your understanding of what the word
17 "imperative" means?

18 A. It's important.

19 Q. Okay. Just a couple more real quick --

20 A. Sure.

21 Q. -- and then we could take that break.

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 34 was marked
24 for purposes of identification.)

25 - - - -

1 MR. PATTAKOS: What number are we
2 on now?

3 THE REPORTER: 34.

4 Q. Here is Brandy e-mailing attorneys. Are you on
5 this e-mail?

6 A. No.

7 Q. You don't get the attorneys e-mails?

8 A. No.

9 Q. Subject line, intakes, importance, high. Brandy
10 says, if you do an intake and the person already
11 has an appointment with a chiropractor we do not
12 work with, either pull it and send it to one of
13 our doctors or call the chiropractor directly.

14 You must do this on all intakes otherwise the
15 chiropractor will pull and send to one of their
16 attorneys.

17 A. Exclamation point.

18 Q. She's telling the attorneys what to do here,
19 isn't she?

20 MR. MANNION: Objection. Go
21 ahead.

22 A. No.

23 Q. She's saying, you must do this on all intakes, is
24 that --

25 A. Peter, she's not a lawyer.

1 Q. That's just hot air, then?

2 MR. MANNION: Stop it.

3 A. Peter, she is not a lawyer. Lawyers do what they
4 want. I have said this time and time, again.

5 You know, if they -- if they have a problem with
6 anything that she does, they will discuss it with
7 her or they'll come and talk to me.

8 Q. And did anyone ever talk to you about this?

9 A. I don't remember this being an issue. Again, I
10 wasn't on this. This is back in 2013.

11 Q. What does it mean to say, pull the chiropractor
12 -- or pull the client from the chiropractor?

13 A. They would -- the lawyer would discuss it with
14 the client and let them know that maybe this is
15 not a doctor that we've worked with in the past.
16 We haven't vetted them. We don't know if they
17 are going to work with us. You just don't know,
18 that's why it says, or call the chiropractor
19 directly, and hopefully the lawyer gets on the
20 phone and makes that call.

21 Q. What's the reason to pull a client from a
22 chiropractor that they're already treating with?

23 A. Maybe that chiropractor isn't good for auto
24 accident cases.

25 Q. She doesn't say that, does she?

1 A. She doesn't say a lot of things in here that you
2 assume, and I'm telling you that that's the only
3 reason why.

4 Q. The only reason she lists here is that it should
5 get pulled if it's a chiropractor we do not work
6 with?

7 A. Right. That means they haven't been vetted by
8 us. We don't know what they do.

9 MR. MANNION: And I'm going to
10 object. That's not what she said, Peter.
11 You left out the "or".

12 Q. So --

13 MR. MANNION: It an either/or.
14 Don't misquote it.

15 Q. Or call the chiropractor directly?

16 THE WITNESS: I said the "or"
17 part.

18 MR. MANNION: I know you did.

19 Q. So -- so at that point, which chiropractor did
20 the firm work with?

21 A. You understand we work with over 200 providers.

22 Q. But only two in Akron?

23 A. Yes, at that point.

24 Q. Okay. The firm is based in Akron?

25 A. Yes, sir.

1 Q. 200 providers?

2 A. Around the state.

3 Q. But only two in Akron?

4 A. At that time. And the 200 is now.

5 MR. MANNION: Yeah, two chiro's
6 you are referring to --

7 THE WITNESS: Right.

8 MR. MANNION: -- Peter, right?

9 THE WITNESS: Yes, there is
10 medical doctors, too.

11 MR. PATTAKOS: Okay. I think just
12 one more document.

13 - - - -

14 (Thereupon, Plaintiff's Exhibit 35 was marked
15 for purposes of identification.)

16 - - - -

17 Q. This is an e-mail from Brandy to pre-lit
18 attorneys where she copies you. She says, this
19 happens frequently, so we wanted to address this
20 with all of you. When doing an intake, just
21 because they tell you they are treating with PCP,
22 doesn't mean you shouldn't refer to a chiro.
23 Always refer to a chiro especially, because they
24 could do both. This is especially an issue in
25 Youngstown.

1 When she said "we", who is she referring to
2 here?

3 A. The firm.

4 Q. You? This is something you wanted to address
5 with the pre-lit attorneys?

6 A. No.

7 Q. No. But you're copied here?

8 A. Uh-huh.

9 Q. But "we" does not refer to you?

10 A. Do you understand that a lot of times e-mails go
11 out at KNR and they'll put me on there to try to
12 demonstrate that this is what we want done. It
13 doesn't go by me. But I don't have any problem
14 with any of this, so --

15 Q. Okay. Why is it so important to send the clients
16 or recommend the clients to a chiro even when
17 they already told you they were treating with a
18 PCP?

19 A. A PCP only is -- does certain things. They don't
20 do the adjustments, the manipulations. A PCP, a
21 lot of times, what they'll do is go in, see them,
22 and they'll prescribe medication, they will do
23 other things, what a chiropractor doesn't do.

24 Chiropractors, what they do, they don't do
25 what medical doctors do. So that's why she is

1 saying they could do both. Therapy is
2 appropriate. If they go to their PCP and they
3 say, chiropractic care is not appropriate, then
4 they tell them to stop, and they stop.

5 Q. Wouldn't the client's primary care physician be
6 in a better position to know whether the client
7 would benefit from chiropractic care?

8 A. Wouldn't you have to ask the primary care doctor?

9 Q. Why -- why are the attorneys telling the clients
10 to do something even when they already know the
11 clients are treating with a PCP medical-wise?

12 A. No. Understand this. Again, I am going to tell
13 you all they do is if they're treating with their
14 PCP, right, they could go get physical therapy,
15 which is a form of chiropractic or the
16 chiropractic treatment, right? So when they go
17 to their PCP and they tell them, I'm treating
18 with the chiropractor, if the PCP says, you
19 shouldn't be treating with a chiropractor, okay,
20 they don't.

21 I have never yet seen, by the way, where the
22 PCP says, don't do chiropractic care. They love
23 it, because they are getting the care they need
24 and they're not using narcotics.

25 Q. But the PCP rarely treats your clients to begin

1 with, right, because they don't want to --

2 A. If it --

3 Q. -- treat car accident victims?

4 A. Yes, sir. And if it happens, this is what we're
5 dealing with.

6 Q. But it happens frequently?

7 A. No. That's not what she is referring to as
8 frequently.

9 Q. What is she referring to?

10 A. That they are not sending them to the
11 chiropractor. So here is what happens, here is
12 the bigger problem that occurs, the PCP, to get
13 into your family care doctor, do you think they'd
14 get you in today because you called? No. Well,
15 you might, because you're married to a doctor, so
16 they will let you in. So, you needed to know
17 that, you know I know that. And they'll get you
18 in that same day.

19 Not everybody has that. So what happens is,
20 they call in, they say, you can't get in for two
21 weeks, to you, you think that is right? It's not
22 right.

23 Q. I believe people should have access to health
24 care.

25 A. The same day?

1 Q. Whenever they want it.

2 A. I - - God bless you.

3 Q. Bless you, too, sir.

4 MR. PATTAKOS: Let's take a break.

5 MR. MANNION: Wow.

6 THE VIDEOGRAPHER: We are going
7 off the record. The time is 3:55 p.m.

8 - - - -

9 (Thereupon, a recess was had.)

10 - - - -

11 THE VIDEOGRAPHER: We are now back
12 on the record. The time is 4:06 p.m.

13 Q. Brandy testified at her deposition that the
14 red-bag referrals referred to advertising
15 material that goes inside a red bag and instead
16 of being mailed to a client it is hand-delivered;
17 is that correct?

18 A. Red bag, yes.

19 Q. And those are also called sometimes delivery
20 referrals, as well?

21 A. Yeah.

22 Q. Okay.

23 A. That's the only one that's being delivered.

24 Q. I think we should mark -- we should mark this
25 advertising material as an exhibit as well, which

1 is just what we copied, but this is sort of the
2 format that it was in.

3 A. Does it matter when?

4 Q. Well, it does, and that's -- you know, I think we
5 are just going to have to sort that out, because
6 I am unsure myself, but I will tell you what I
7 can figure out is there is the Super Lawyers
8 notations again that we saw in Exhibit 8, where
9 one goes up to 2012 and the other one goes up to
10 2015. So obviously --

11 MR. MANNION: Which plaintiff saw
12 this?

13 MR. PATTAKOS: Which plaintiff saw
14 this?

15 MR. MANNION: Yeah.

16 MR. PATTAKOS: This was not
17 provided by a plaintiff. This was provided
18 by Mr. Horton.

19 MR. MANNION: No, no. I'm saying,
20 which plaintiff read and relied on this?

21 MR. PATTAKOS: You would have to
22 ask them. I'm not aware of that right now,
23 so --

24 A. Peter, those are two separate --

25 Q. Yeah, this is two separate -- yes.

1 A. They are not in the same mailing.

2 Q. No, I understand that, because it is two
3 different years, but I think that -- is this
4 maybe three separate. Yes. This is three
5 separate letters that went in, because they say
6 dear sir or madam, no fee guarantee, no fee
7 guarantee, they're duplicative in these ways.

8 A. They're totally different.

9 MR. MANNION: I can't tell from
10 this distance.

11 MR. PATTAKOS: Well, let's just
12 entered this as an exhibit. And I don't
13 know what happens to the original.

14 MR. MANNION: Well, I'm not --

15 MR. PATTAKOS: I can't make a copy
16 of this; do you understand?

17 MR. MANNION: I don't have a
18 problem with that. I just don't know how
19 to identify it.

20 MR. PATTAKOS: So I could show you
21 and you could review this and see that this
22 is exactly what's in that Exhibit 8.

23 MR. MANNION: Okay.

24 MR. PATTAKOS: All of -- every
25 piece of context --

1 MR. MANNION: Now I've got you.

2 Now I've got you.

3 MR. PATTAKOS: Okay. So mark it
4 as an exhibit.

5 THE WITNESS: You understand it's
6 from different periods?

7 MR. MANNION: Right. I do. Yes.

8 MR. PATTAKOS: Take a look, and I
9 want you to just take a look and confirm
10 before it goes into the record.

11 THE WITNESS: Sure.

12 MR. MANNION: And you want him to
13 confirm it's essentially the same as
14 Exhibit 8?

15 MR. PATTAKOS: Yes.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 36 was marked
18 for purposes of identification.)

19 - - - -

20 MR. PATTAKOS: And then I want to
21 ask him if that's maybe the kind of
22 material that goes in a red-bag.

23 THE WITNESS: Well, your
24 Exhibit 8, you copied this and made it as
25 Exhibit 8?

1 MR. PATTAKOS: Correct.

2 THE WITNESS: So everything that
3 is in there --

4 MR. PATTAKOS: Everything that is
5 in there is in Exhibit 8, to the best of my
6 and Rachel's knowledge.

7 THE WITNESS: I got you.

8 MR. PATTAKOS: We had some fits
9 and starts, but I think we got everything
10 after a few tries.

11 THE WITNESS: So I guess the
12 easiest way would be to just -- do you need
13 me to do this?

14 MR. PATTAKOS: You could do it.
15 Your attorneys could do it. You could have
16 one of your attorneys do it while we --
17 while we proceed, if that would be better.

18 MR. POPSON: Doesn't matter.
19 Whatever you want. You could check it
20 yourself.

21 MR. PATTAKOS: I could, you know,
22 see that there's no surprises in there.

23 THE WITNESS: This picture is not
24 in there.

25 MR. PATTAKOS: It's on the back.

1 THE WITNESS: Oh, you are right.

2 I don't know my own mail. I know that.

3 This one, that's one. Yep.

4 MR. PATTAKOS: Okay. And you

5 know, you could hand it off to Jim or

6 another one of your attorneys and they

7 could confirm, just want that to be in the

8 record.

9 Q. Does that envelope-type -- what do you even want
10 to call it?

11 A. Mailer.

12 Q. The mailer, is that the sort of thing that would
13 go in a red bag?

14 A. I believe so.

15 Q. Okay. And if we could look at Exhibit 8 or you
16 could look at the mailer itself. Exhibit 8, I'm
17 sorry.

18 MR. POPSON: Here is 8.

19 Q. I want to go real quick over the fine print on
20 one, two, three, four, on the fourth page. There
21 is a bunch of fine print here. It's right where
22 it says, free magnet, call now for a free
23 consultation, right above that on the fourth page
24 of the document?

25 A. Yes.

1 Q. At the bottom of the fine print, in all capital
2 letters, it says, the Supreme Court of Ohio,
3 which governs the conduct of lawyers in the State
4 of Ohio neither promotes nor prohibits the direct
5 solicitation of personal injury victims. The
6 Court does require if such a solicitation is
7 made, it must include the above disclosure.

8 MR. MANNION: I didn't see that on
9 your Facebook post, Peter.

10 Q. So you agree this is a direct solicitation?

11 MR. MANNION: Objection.

12 A. It's a direct mail.

13 Q. And what makes it direct?

14 A. We obtain the information from the police report,
15 and we send it to that person that's identified
16 in the police report.

17 Q. You send it directly to the person?

18 A. Correct.

19 Q. Okay. So that's what makes it a direct
20 solicitation, correct?

21 MR. MANNION: Objection. Go
22 ahead.

23 A. Yeah, I don't know by definition. I have ethics
24 lawyers who would look at this. I under -- this
25 is what this means to me. This whole section is

1 required by the rules if you are sending out a
2 mailer.

3 Q. Okay. Or any kind of direct -- any kind of
4 direct written communication?

5 MR. MANNION: Again, now you're
6 asking --

7 Q. It could be a hand delivery as well, it's not
8 necessarily something that goes in the mail, but
9 if you are going to directly solicit a specific
10 person in writing, you have to put this
11 disclaimer, correct?

12 MR. MANNION: Well, I'm going to
13 -- that's a direct ethical question --

14 THE WITNESS: I know.

15 MR. MANNION: -- which the Court
16 said he's not allowed to --

17 THE WITNESS: I know that.

18 MR. MANNION: So don't answer
19 that.

20 A. You have an ethics expert right there.

21 Q. That's fine. I just want to make clear that this
22 -- the red bags are direct solicitation?

23 MR. MANNION: Objection.

24 Q. And you understand the difference between that
25 and, say, a TV ad or an Internet ad where you

1 don't have to put all of this fine print on an
2 Internet ad or a TV ad, correct?

3 MR. MANNION: Objection.

4 MR. JONSON: That's an ethical
5 question.

6 MR. MANNION: That's, again, an
7 ethical question. The Court said no
8 questions on the rules of ethics.

9 MR. PATTAKOS: Oh, okay.

10 THE WITNESS: George --

11 MR. PATTAKOS: I mean, it's not
12 really --

13 THE WITNESS: George answered it
14 for me.

15 MR. PATTAKOS: George answered it
16 for me. What did he say?

17 MR. JONSON: I said it's an
18 ethical question.

19 MR. PATTAKOS: Okay. Thanks,
20 George.

21 MR. MANNION: Send him a bill.

22 THE WITNESS: He is -- he is the
23 ethics guy.

24 Q. So Brandy testified about a number of e-mails
25 where she stated that red-bag referrals in a

1 particular area get sent to certain
2 chiropractors, based on the fact that it's a
3 red-bag referral. But she said repeatedly that
4 she didn't know why that was the case.

5 Why is that the case?

6 A. Because that's what I wanted.

7 Q. And why did you want that?

8 A. Without getting into too much proprietary
9 information, I'll give you a general. It's
10 evaluating the effectiveness of a mailer. It's
11 my elementary way of doing it.

12 Q. So if all of the mailers go to -- if all of the
13 clients who come to the firm pursuant to one of
14 these mailers, and you send them all to the same
15 chiropractor, as a result that helps you evaluate
16 the effectiveness of the advertisement?

17 MR. MANNION: I will object to
18 "send to". Go ahead.

19 A. Okay. So I'm going to try to explain it to you.

20 Q. Please.

21 A. And you're missing, again, the basic step. So if
22 someone calls in, right, and they live in Akron,
23 and they need to go to a chiropractor, they are
24 going to discuss that with the lawyer, okay?

25 If the client and the lawyer decide that they

1 need a chiropractor, in Akron, and it just so
2 happens to be a red bag, they should recommend
3 them to go to Akron Square for the business side
4 of things.

5 The lawyers are acting in the best interest
6 of the client at all times, just like I am. So
7 they are going to turn around and they are going
8 to say, okay, this is what you want, Mr. so and
9 so, you need a chiropractor, so go to Akron
10 Square.

11 They're going to look at their board and it
12 is going to say, Akron Square red bag. And
13 they're going to send it there. So that is the
14 part of the communication, which is going to be
15 different, as you know, in every case with every
16 client. The communication will be always
17 different.

18 Then you turn around and you look at it and
19 say, well, why are you going to send it to Akron
20 Square? It's a red bag. I have to evaluate now
21 the effectiveness of the red bags. So that, go
22 look, run a report, show me red bags. Now I know
23 if the red bags are effective.

24 What you have to do is you have to look at it
25 in a small window and see how good is this? It's

1 very expensive to do that. It's a very expensive
2 task. So the business side of things is looking
3 at how effective they are. The lawyers who are
4 handling it are looking at the best interest of
5 the client. Together, it works well.

6 So now when we're looking at the red bags,
7 you are -- I could assure you that even when
8 whatever you call that e-mail was out there,
9 plenty of people in Akron didn't go to Akron
10 Square. They had their own doctor that they went
11 to. Even if it was a red bag, it didn't matter.
12 They don't say, oh, it's a red bag, you have to
13 go here. They don't do that.

14 Q. But the firm would recommend this chiropractor,
15 particular chiropractor, based on the red bag,
16 regardless of whether the client ultimately went
17 there or not, right?

18 MR. MANNION: What do you mean
19 "regardless"? Go ahead.

20 A. No. They would recommend them. Do you
21 understand? You have to -- when you're analyzing
22 a market, you have to determine that there is
23 some margin of error, so you have to account for
24 that. I don't know if I'm explaining it well
25 enough to you.

1 Q. How does sending -- recommending --

2 A. Uh-huh.

3 Q. -- a particular chiropractor to all of the
4 red-bag referrals in an area help you evaluate
5 the effectiveness of the red-bags, that's what I
6 would like to understand?

7 A. Easy to run a report and identify if it's
8 effective.

9 Q. Run a report based on the chiro?

10 A. No. Based on the red bag. So I'm following the
11 bag; do you understand? If there's -- if I got
12 all of a sudden -- all I have to do is look at
13 Akron Square, right, and I got 15 red bags in
14 that timeframe. Look at my cost. Is it
15 effective?

16 Q. Why couldn't you just look at the red bags no
17 matter what chiropractor it went to?

18 A. It's a choice that I made. It doesn't -- it
19 doesn't matter. There is no rhyme or reason to
20 who.

21 Q. I just still am not understanding what the -- how
22 it makes it any easier for you to track the
23 effectiveness of red bags by sending the red-bag
24 referrals to par -- to a particular chiropractor?

25 MR. MANNION: Objection. Asked

1 and answered. Go ahead.

2 A. I answered that. I answered the best that I can
3 and, I'm sorry, if you don't understand. It's
4 just easy access to determine. It's a quick
5 referral to it, that's it. It's not hard.

6 Q. But you could have the same easy access to just
7 tracking the red-bag referrals?

8 A. (Nodding).

9 Q. Why not?

10 A. No, because you're identifying. And I know to go
11 look at Akron red bag, that's it. So Cleveland
12 would be another one. Columbus would be another
13 one. You test them. It's done. It's quick.
14 I'm not blowing a lot of money.

15 Q. How is it any quicker? You're not explaining why
16 or how it's any quicker.

17 MR. MANNION: Objection. You mean
18 you don't understand. I don't think it's
19 fair to say he's not explaining.

20 MR. PATTAKOS: I do, but our --
21 your opinion and my opinion doesn't matter
22 at this point. I'm asking him --

23 THE WITNESS: Peter, I just talked
24 --

25 MR. PATTAKOS: -- to explain how --

1 THE WITNESS: -- to you for five
2 minutes and explained it to you. You typed
3 away the answer.

4 MR. PATTAKOS: Talking and
5 explaining are two different things. I
6 know you understand that, sir.

7 THE WITNESS: I answered it.

8 Q. Okay. You track the referral sources in Needles,
9 correct, the firm does?

10 A. As -- as best you can, yeah.

11 Q. As best you can?

12 A. Sure.

13 Q. And red bags are a referral source, correct?

14 A. It's not just red bag. It will say the area and
15 red bag.

16 Q. The area and a red bag?

17 A. It's -- you understand that Needles is just
18 whatever you create it to be.

19 Q. Well, of course, and you could create Needles to
20 track all Akron red bags, all Columbus red bags,
21 all Cleveland red bags, correct?

22 MR. MANNION: Objection. I'm not
23 sure he's a Needles expert, but go ahead.

24 A. No, so let me explain it to you. It, again, does
25 a whole -- it will do a big area. So it will say

1 Akron red bags, and they will do it -- you can't
2 have it, so that it's narrowed down to one. It
3 just covers a big area.

4 So for me to do it on a report, I focus on to
5 one area, Akron. Akron, it's easy. I go under
6 that category and look at Akron Square, Akron
7 Square red bag, boom, I got my number. I know
8 how many red bags we got.

9 Again, with a margin of error explained in
10 between there, because some red bags went to
11 other providers. So what do you do -- if you
12 follow your theory, then what do you do? How do
13 you know it's effective?

14 MR. PATTAKOS: Let's take a look
15 at another exhibit.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 37 was marked
18 for purposes of identification.)

19 - - - -

20 Q. This is an e-mail from Holly Tusco to intake and
21 attorneys, copying Brandy and you, high
22 importance. I cannot, in all capitals, express
23 enough the importance of making sure that the
24 referred-bys are correct, regardless if it's
25 chiros, directs, et cetera. I have been having

1 to chase these down daily and correct a lot of
2 them. A lot, in all caps.

3 A. Uh-huh.

4 Q. If they received a direct mail, you must ask, in
5 all caps, and underlined, if they received a red
6 bag on their door or if they received a mailer in
7 their mailbox. They all have DVDs, magnets, et
8 cetera, so you must specify red bag or in the
9 mailbox. There is a difference. Thanks.

10 A. Uh-huh.

11 Q. Do you remember receiving this e-mail?

12 A. No.

13 Q. But you did receive it?

14 A. That's what it says, I did.

15 Q. Okay.

16 A. Yeah.

17 Q. And you agree that this is Holly instructing
18 intake and attorneys to make sure that where a
19 client comes in by a red bag that this is noted
20 in Needles, correct?

21 MR. MANNION: Objection. You're
22 not limiting it to that, though?

23 MR. PATTAKOS: No.

24 MR. MANNION: Okay.

25 MR. PATTAKOS: But in part that's

1 what she's doing.

2 A. Okay. I am going to back-up. I don't know why
3 she's got attorneys in here. She talks to -- you
4 notice the intakes come first, that's the intake
5 department. They're the ones who gather that
6 information. I guess if the intake didn't when
7 the attorney talks to them, he could or she could
8 do it, but I don't know why that's happening.

9 And all she is asking, what she's trying to
10 accomplish here is, from what I -- sitting here
11 today, reading it, as if I was reading it then,
12 is she's trying to distinguish between people
13 just plugging in saying, mailer, and a direct
14 mail. That's what the big problem is here.
15 That's why she said, these all have DVDs. So a
16 mailer, what you see here goes out in the mail.

17 Q. Yes.

18 A. Through the mail.

19 Q. Okay. And that's has a DVD in it?

20 A. They all have DVDs, magnets, et cetera. So you
21 must -- so she's asking, so that way she could
22 keep track of these, specify in there, red bag.

23 There wasn't -- you didn't have a caption
24 that just said, red bag. You had red bag Akron,
25 red bag Cleveland, red bag Portage, red bag,

1 whatever it was, the area.

2 Q. Yes.

3 A. Okay.

4 Q. And then -- and then that gets specified in
5 Needles?

6 A. If they put it in that way.

7 Q. Yes. And that's what she's telling them to do
8 here, correct?

9 A. They -- so, let me try to explain Needles a
10 little bit. You have whatever you pu -- you
11 create that pull down, so there is a different
12 pull down, that's all she's saying here, right?
13 You go pull down the referred to source, referred
14 by source, and in there it will have that, give
15 you the choices. So she's telling them what
16 choice to -- make sure to select the right one.

17 Q. Which would be red bag Akron, red bag Cleveland,
18 red bag, whatever the red bag would be?

19 A. If that's the way they did it.

20 Q. Okay. I am going to ask this one more time and
21 try to ask it in a way that maybe gets a clearer
22 answer, because I still don't understand.

23 If the attorneys are following this
24 instruction and marking the referred by in
25 Needles as in red-bag, why would you need to take

1 the additional step of sending these red bags to
2 a particular chiropractor to evaluate them or
3 track them?

4 A. If you just put red bag, like I said, it covers
5 the whole area. I need it narrowed down, because
6 we're not -- when you send a red bag, I want to
7 see how effective it is in that specific area.

8 So understanding marketing concept, you take
9 a large area and you say, I can't cover this
10 whole area, so you take it down and you say, here
11 is an area that I've covered. I just try to
12 focus. Again, this is my elementary way of doing
13 it. It's what I decided to do, that's it.

14 Q. But I thought you testified that when you
15 enter -- when the intake folks enter the referred
16 by in the drop down, they could select red bag,
17 and then specify the particular area?

18 A. But it doesn't, again, doesn't hone in for me.
19 We even did it by zip code. You understand, I'm
20 trying to keep it as tight as I can, to see how
21 effective it is.

22 And to -- to give you an example, we don't do
23 it anymore in, like, Cleveland. It wasn't
24 effective. We tried to focus in, in Lorain, in
25 an area that we didn't get a lot of business

1 from, you try to hone in on it, can -- does this
2 work? No, didn't do it. We don't do it anymore.
3 Columbus, same thing.

4 Q. So once someone enters the referred by Akron red
5 bag, you are not able to then just pull up all
6 Akron red bags, using that same field that was
7 entered?

8 A. Whether -- maybe this will help you, whether you
9 can or can't, it didn't matter to me. This is
10 the way I did it. Fair?

11 Q. That's good enough.

12 A. Okay.

13 - - - -

14 (Thereupon, Plaintiff's Exhibit 38 was marked
15 for purposes of identification.)

16 - - - -

17 Q. Here is an e-mail from Brandy to pre-lit
18 attorneys. Subject line, Akron Injury. Today we
19 sent three to ASC. Please get the next Akron
20 case to Dr. Holland, at Akron Injury. Please
21 just make sure it's not a red-bag referral and
22 not a current or former client that treated at
23 ASC.

24 So this is Brandy following your instruction
25 to track the red bags by sending them to ASC,

1 correct?

2 MR. MANNION: Objection. Go
3 ahead.

4 A. So I'm not copied on this, but -- and it doesn't
5 say high importance. I could tell you that she
6 has got a whole bunch of stuff going on in here.
7 She has got, today we sent three to Akron Square.
8 Great. Please get the next Akron case to
9 Dr. Holland at Akron Injury. She's trying to
10 spread it around. Great.

11 I am going to continue, please just make sure
12 it's not a red-bag referral. Should stop,
13 because the red-bag referral, I wanted it, so I
14 could easily, again, that I explained earlier,
15 reference, should have gone to Akron -- Akron
16 Square.

17 And now she continues, and not current or
18 former client that treated at Akron Square.
19 Perfect. That's what you want. If a person
20 treated at Akron Square, who is a current or
21 former client, you want them treating --
22 continuing to treat at the same doctor, right?
23 So she has got all kinds of stuff going on here.

24 Q. Okay. But part of it is to make sure that the
25 next Akron case that goes to Dr. Holland is not a

1 red bag, because all the red bags go to Akron
2 Square, correct?

3 A. If the client wanted. Again, we're making that
4 assumption.

5 Q. Okay.

6 A. Sorry, but you're -- it's a continued assumption
7 that you're making.

8 Q. Okay.

9 A. Excuse me, just one second. Sorry.

10 Q. Did you ever tell Brandy that this is why you
11 were sending the red bags to the chiropractors or
12 recommending the clients go to the chiropractors
13 based on the red bags?

14 A. I don't know.

15 Q. I just want to make sure it is clear that red
16 bags and delivery referrals are the same thing?
17 They are?

18 A. I could tell you.

19 Q. Okay. So when -- I just -- let's look at this
20 exhibit just to make sure we understand what
21 these documents are referring to.

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 39 was marked
24 for purposes of identification.)

25 - - - -

1 Q. Brandy says here on July 24, 2013, under subject,
2 chiro referrals, we need to get one case to
3 Rolling Acres and Summit Injury. Please e-mail
4 me once you send a case to them, so I could
5 update the rest of the attorneys. Please make
6 sure you do not send a delivery referral to them,
7 though. These only go to ASC.

8 So delivery referral is the same as red bag
9 in this e-mail, you agree?

10 A. Yes.

11 Q. Okay. And it's safe to assume that if we see a
12 reference to a delivery referral, it's similar to
13 the red-bag referral?

14 A. If that's the way it's referenced.

15 Q. Okay. And so you tried out the delivery
16 referrals in Lorain, as well?

17 A. Uh-huh.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 40 was marked
20 for purposes of identification.)

21 - - - -

22 Q. And that's what this e-mail refers to, Brandy
23 e-mailing it to all attorneys, high importance,
24 we are trying out red-bag deliveries in Lorain.
25 All chiro referrals go to Xcell Chiropractic?

1 A. Yes.

2 Q. Okay. Please make note of this. Thank you.

3 A. I laugh, because of high importance.

4 Q. And what was it about Xcell Chiropractic that
5 made you want to send the red bags there? Why
6 there and not some other chiropractor in Lorain?

7 A. I think there was only one other chiropractor
8 that we worked -- Lorain County Chiropractic. It
9 was horrible.

10 Q. Lorain County Chiropractic was horrible?

11 A. No, it was -- the red bag.

12 Q. The red bags in Lorain, no good?

13 A. (Nodding).

14 Q. Okay.

15 A. So if you're competing with me, don't go to it.

16 Q. Sir, I have no intention to compete with you, I
17 promise.

18 A. That's all your website says.

19 Q. We could talk about that another time, if you'd
20 like. I would be glad to.

21 A. Not really.

22 Q. So you tried them in Columbus, too, correct?

23 A. Yes, sir.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 41 was marked

1 for purposes of identification.)

2 - - - -

3 Q. And that's what this document is, Brandy sending
4 all intake attorneys and you and Holly,
5 importance high. Any case that has the referral,
6 Franklin red bag, needs to be referred to
7 Columbus Chiropractic West. I'm also working on
8 another referral for you for the rest of the
9 week.

10 Why Columbus Chiropractic West in this case?

11 A. Well, first, we're going to start at the top to
12 identify that Mr. Petti took another document
13 from the firm that was proprietary and
14 confidential.

15 And Brandy marked off, high importance again.
16 And Columbus Chiropractic West, again Columbus is
17 such a big area, that you're trying to minimize
18 it and I don't even know who Columbus
19 Chiropractic West is. It's, you're trying to
20 just hone in on that one area to see how
21 effective it was. And they were not very
22 effective in Columbus either.

23 - - - -

24 (Thereupon, Plaintiff's Exhibit 42 was marked
25 for purposes of identification.)

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Q. So, this looks like an e-mail from you -- start at the bottom, it looks like an e-mail from Horton. The subject line identifies a client, then says, red bag, no referral. Signing with Mike at 3 today, meaning, prob -- presumably Mike Simpson, the investigator; is that fair?

A. Yes.

Q. And Rob says, already set up with Akron Square. You respond, make sure Akron Square does not have it as a referral to us.

Why is that important?

A. First of all, I think there is more to this e-mail chain. There's -- there's other pages to this e-mail.

Q. I don't have those pages.

A. There is more here.

Q. What -- what do you think is there?

A. There is more. There's -- there was a -- I think Brandy had some input to it and Holly. But what you are showing me, so already set up with Akron Square. Okay. And I responded on -- at 1:01 p.m., make sure Akron Square does not have it as a referral to us.

Q. I would like to understand why that matters.

1 A. Then it says, Roger handle. Again, if you're
2 looking at your referrals, for marketing
3 purposes, and evaluating them, I want those
4 numbers as -- because there is already the margin
5 of error. At that time, making sure, hey, make
6 sure you have the referral correct. That's all.

7 MR. BARMEN: This is incomplete.
8 There are two e-mails here, and they're
9 both Re on the subject line, so the initial
10 e-mail is not here.

11 THE WITNESS: That's what I'm
12 saying.

13 MR. PATTAKOS: Okay. Well, I will
14 get it. We'll get it back tomorrow.

15 THE WITNESS: Okay.

16 MR. BARMEN: I thought you didn't
17 have it.

18 MR. PATTAKOS: I don't have it
19 here.

20 MR. BARMEN: Oh, got you.

21 THE WITNESS: But there is nothing
22 to that.

23 Q. So, let's talk about the narrative reports that
24 are at issue in this case. So basically for
25 clients who treat with certain chiropractors, the

1 firm will automatically order a narrative report
2 from those chiropractors summarizing the client's
3 injuries and treatment that's ostensibly to be
4 used in settling the client's claim, correct?

5 MR. MANNION: Objection.

6 A. Okay. So, do we want to go through the whole
7 process?

8 Q. Please. Well, first is that correct?

9 MR. MANNION: Objection.

10 Q. Is anything I say false there? Again, and I will
11 read it again if you would like.

12 A. Yeah. Please.

13 Q. For clients who treat with certain chiropractors,
14 the firm will automatically order a narrative
15 report from that chiropractor summarizing the
16 client's injuries and treatment at the beginning
17 of the case ostensibly to be used in settling the
18 client's claim?

19 A. No.

20 Q. No?

21 A. That's where you're wrong.

22 Q. Okay.

23 A. You don't get a narrative report at the beginning
24 of the case.

25 Q. But it's ordered at the beginning of the case?

1 A. No, it's not.

2 Q. Okay. How does it work?

3 A. Client is done treating, the paralegal will send
4 a letter, a request for records, bills, and a
5 report. The doctor then sends the records, the
6 bills, and the report.

7 Q. Okay.

8 A. When they receive the report, they automatically
9 pay the \$150 or 200, whatever the doctor's fees
10 are. They get the report.

11 Q. Okay. So the check is not cut until the report
12 is received?

13 A. Absolutely.

14 Q. And the report isn't received until after the
15 treatment is complete?

16 A. Because it's a summary of the treatment.

17 Q. Got you. And why is this necessary?

18 A. It benefits the client's case tremendously, in my
19 opinion.

20 Q. What's that opinion based on?

21 A. My experience in dealing with adjusters.

22 Q. Adjusters have told you that these narrative
23 reports really help and it makes it easier for
24 you to give your clients more money?

25 A. You just added a whole bunch of stuff there.

1 Q. Well, tell me.

2 A. The adjusters have told me that this helps them
3 evaluate. Do you understand that a narrative
4 report, the effect of a narrative report?
5 According to -- I could give you even a name of a
6 supervisor that said they are excellent to have.
7 John Vallilo, at Auto Owners says they are good
8 to have and we request them.

9 Insurance companies request them. Most of
10 them even put it in their form letters. So that
11 narrative report has a significance, has an
12 impact on every case.

13 Q. John Vallilo of who?

14 A. Auto Owners. Who is retired now. He was the
15 head of their entire BI unit.

16 Q. How do you spell that, Vallilo?

17 A. V-a-l-l-i-l-o, I believe.

18 Q. Okay. Do you have any documents where the
19 insurance companies are requesting the narrative
20 reports?

21 A. Yeah, we provided them to you.

22 Q. Okay. So, do you have any other evidence or
23 analysis of the -- the effectiveness of these
24 narrative reports besides the anecdotal evidence
25 that you just described?

1 A. What do you mean?

2 MR. MANNION: I am going to object
3 to the form, but go ahead.

4 A. Yeah, how is it anecdotal? I'm hearing it right
5 from the insurance companies. I heard it from
6 SIU adjusters. I've heard it from regular
7 adjusters. All the lawyers have heard it.

8 Q. Have you ever conducted an analysis of whether
9 the fee is worth it?

10 A. There is no way of conducting any analysis of it,
11 impossible.

12 Q. So what --

13 A. So they are going to have a different value for
14 each case. I don't know if it increased it by a
15 thousand dollars, 10,000.

16 I'll give you a perfect example, you could
17 have an offer of \$20,000 on a case. The adjuster
18 says, could you get me a narrative report from
19 the neurosurgeon? Yes, we can. Go get the
20 narrative report. That adjuster is going to
21 increase it. Okay, I'm going to give you an
22 extra \$5,000.

23 Q. I want to make it clear that I'm only asking you
24 about narrative reports from the chiros.

25 A. Okay. No -- no difference.

1 Q. Well, narrative report from a neurosurgeon is
2 going to have more of an impact than a narrative
3 report from a chiropractor; don't you agree?

4 MR. MANNION: Objection.

5 Depending on what injury, Peter. Come on,
6 seriously.

7 Q. Don't you agree, sir?

8 MR. MANNION: Do you know what a
9 bodily injury case is, Peter?

10 A. Okay. So --

11 MR. MANNION: Jesus.

12 A. -- if you're referring to a -- a soft tissue
13 injury case, we wouldn't go get a neurosurgeon to
14 evaluate a soft tissue injury case, right?

15 Q. Of course.

16 A. So the chiropractor, for \$150 is one heck of a
17 deal, to be able to get that report. And if you
18 go back in time, it will explain to you why
19 narratives are good.

20 MR. PATTAKOS: Could you play that
21 testimony back, please?

22 - - - -

23 (Thereupon, the requested portion of
24 the record was read by the reporter.)

25 - - - -

1 Q. How so, going back in time?

2 A. Sure. So narrative reports, when you go back to
3 2005, because every time insurance companies have
4 made changes, but you go back to 2005, and
5 probably all of the way through 2009, they
6 started really ramping up Colossus. Colossus is
7 a program that insurance companies use.

8 The narrative report, when we get them,
9 because the doctor's note are -- you can't even
10 read them three quarters of the time, they didn't
11 have EMR back then, electronic medical records.
12 So you would get these narratives, summarize, it
13 would have all of that information in there, all
14 of the care, and it would include CPT and
15 diagnostic codes in there. Colossus runs off of
16 those codes.

17 You're now making sure that the insurance
18 company is capturing all of the injuries that
19 relate to the auto accident, that are on that
20 report in there. They utilize those codes, put
21 them in. Now they've captured all of the care,
22 which was not in their notes. This is all put in
23 a summary.

24 Q. But doesn't the chiropractor have a duty to
25 provide that information to the clients, just as

1 their treating chiropractor?

2 MR. MANNION: Objection.

3 A. You're asking me now about duties of a
4 chiropractor. I don't know what their duty is,
5 but I could tell you what we utilize them for,
6 that's all.

7 Q. It sounds like what you just described was
8 something that any client would have the right to
9 go to a provider and say, hey, the CPT and
10 diagnostic codes, what were they? I need this
11 information.

12 A. Peter, they are not communicating with the
13 insurance company. Everybody doesn't know how to
14 deal with the insurance company or what they're
15 doing. There is classes. There were CLEs back
16 then that actually helped plaintiffs lawyer do
17 that. There were actual classes on Colossus.

18 Q. So -- so how else is going back in time going to
19 show that this \$150 is a heck of a deal? Is
20 there any other reason besides --

21 A. What do you mean?

22 Q. -- this Colossus explanation?

23 MR. MANNION: And what else he has
24 already testified to, you mean?

25 Q. Do you have anything to add about how going back

1 in time would show the effectiveness and the
2 value in these narrative reports?

3 A. Apart from --

4 Q. What you already said?

5 A. -- the cases that I've handled and hearing it
6 from the insurance companies and adjusters and
7 the fact that they send letters requesting it.

8 The narrative reports, do you understand that
9 what they contain is a caption of all of the
10 treatment that was -- that was done? A caption
11 of the injuries. It captures causation. It
12 captures the doctor's opinion. It captures
13 research. It captures prognosis. It captures
14 permanent or partial impairment sometimes.

15 All reports, and it's different between these
16 doctors, but that's what you're looking for. The
17 lawyers like it. We get it and it's a succinct
18 analysis of the care that was rendered.

19 Those reports, again, are used -- defense
20 counsel will cross-examine these doctors on their
21 narratives. The adjuster will refer to them when
22 talking to the lawyers about the -- the claim.
23 So the list is just endless.

24 Q. Anything else?

25 A. Well, if that benefited the client, guess what,

1 it's in the best interest of the client to obtain
2 a report for \$150, and that also includes the
3 copying fee.

4 Q. Sometimes \$200, correct?

5 A. Sometimes \$200.

6 Q. And you understand that \$200 is significant to
7 your clients, correct?

8 A. Any amount is significant.

9 Q. Of course. Well, you also understand -- well,
10 let me back up. You agree that if a cl --
11 clients have a right to obtain their medical
12 records from their providers, if they pay the
13 statutory fee, correct?

14 A. Okay.

15 Q. Like, if your client tells you, hey, I want to
16 see my medical records, and you say, okay, you
17 have a right to that, you could get them or we
18 could help you get them, right?

19 A. Sure.

20 Q. Do you agree that if the client can't read the
21 doctor's notes that are in the records that that
22 client has a right to ask the doctor what they
23 had written in that note and the doctor should
24 tell them?

25 A. You're asking --

1 MR. MANNION: I'm going to object,
2 again, to the rights of the doctors.

3 A. I was going to say, you're asking me for what a
4 doctor has to do. I'm a lawyer.

5 Q. Well, no, I'm not asking you that. I'm sorry if
6 I'm being unclear. If you -- if your client
7 said, I got these -- I got these records from my
8 doctor and I can't understand what this says,
9 could you ask my doctor for me?

10 MR. MANNION: Wait.

11 A. They could call the doctor.

12 Q. They could call the doctor?

13 MR. MANNION: Are you asking
14 whether the doctor has to do it for free?

15 MR. PATTAKOS: I'm saying would
16 Mr. Nestico tell a client that he should --
17 that the client should accept a separate
18 charge for the doctor to interpret their
19 notes if a patient can't read their
20 handwriting?

21 MR. MANNION: Objection.

22 A. That's not what they are doing. I just gave you
23 the whole list.

24 Q. Okay.

25 A. That's not in the notes. What is in the

1 narrative is not in the notes, not always, and
2 not everything.

3 Q. Okay. Well, you know, you said -- the one thing
4 you said that is salient to me is that the report
5 captures the doctor's opinion on causation.

6 A. Proximate cause, correct.

7 Q. Apart from that, what does -- why does the doctor
8 need to provide a succinct analysis of the care
9 that was rendered when the lawyers could do it?

10 MR. MANNION: Excuse me?

11 MR. PATTAKOS: From the medical
12 records.

13 MR. MANNION: I will object. But
14 go ahead.

15 Q. Say -- well, let me -- let me just rephrase that
16 question. A succinct analysis of the care that
17 was rendered, is one of the things you said as --

18 A. Yes.

19 Q. -- as a reason why the narrative report is a good
20 deal?

21 A. One of.

22 Q. One of them. Sure. It's sort of a lawyer's job
23 to provide a succinct analysis of the medical
24 care that his client received, isn't it,
25 Mr. Nestico?

1 MR. MANNION: Excuse me? You are
2 saying that there is a professional duty
3 that we have to send off a summary of the
4 medical care to the client?

5 Q. Mr. Nestico, isn't that part of the lawyer's job?

6 MR. MANNION: Wait a minute. Is
7 this a legal malpractice case --

8 MR. PATTAKOS: No.

9 MR. MANNION: -- Mr. Pattakos?
10 Okay.

11 MR. PATTAKOS: -- it's not.

12 A. Sorry, too much going on. You -- the lawyer, to
13 explain how the -- what the treatment is, how
14 does the lawyer know what the treatment is?

15 Q. A lawyer could look at the medical records and
16 see what's written in the medical records and
17 then provide a succinct summary of what happened?

18 A. If we could read them.

19 Q. Okay.

20 A. Again, but that's not all that report does.

21 Q. You understand that there is no mandatory need
22 for any expert report on causation until
23 litigation is filed and the court sets a deadline
24 for expert reports?

25 MR. MANNION: Objection. Complete

1 misstatement. Jesus.

2 A. There's no -- say that again. No requirement.

3 No legal requirement?

4 Q. No mandatory need for expert reports on causation
5 unless and until litigation is filed --

6 MR. MANNION: Objection.

7 Mandatory, what are you referring to
8 mandatory --

9 Q. -- and the court sets a deadline for expert
10 reports?

11 MR. MANNION: Wait. What
12 mandatory need are you referring to, Mr.
13 Pattakos?

14 MR. PATTAKOS: The need to prove
15 your client's claim.

16 A. Insurance companies want it. They are not going
17 to pay for it if there is no causation. If you
18 can't establish probable cause, how -- why would
19 they pay you for it?

20 MR. MANNION: And this goes to
21 sufficiency of counsel in a class action
22 case. You don't know how to -- how a BI
23 case works.

24 Q. If another successful personal injury lawyer says
25 they would never order a narrative report on a

1 small soft tissue case, at least until the expert
2 report deadline was looming, what would you say
3 in response to that?

4 A. That may be --

5 MR. BEST: That they are
6 incompetent.

7 A. -- his professional opinion. Sorry.

8 Q. You think that is an illegitimate opinion?

9 A. No, I said that may be their professional
10 opinion.

11 MR. MANNION: Okay. So just wait,
12 I just want -- so you are saying that
13 lawyer, all cases go to litigation, because
14 there is a deadline?

15 Q. Why do the narrative fees and reports only get
16 automatically paid and requested from specific
17 chiros?

18 A. Okay. So we're going to get to that. They
19 automatically request a check. When you receive
20 a bill, I have always been one to make sure you
21 pay your bill right away. These are expenses,
22 right? We're on the hook for it. The lawyers
23 are. The law firm is. Pay them right away.

24 Q. But you understand that Brandy testified about a
25 number of e-mails where she is directing the KNR

1 attorneys and staff that narrative fees only get
2 paid to certain chiropractors.

3 Is that not the case?

4 MR. MANNION: Objection.

5 Mischaracterizes the testimony. Go ahead.

6 A. Okay. So narrative fees, as we discussed a few
7 minutes ago, are provided to sometimes if it's a
8 PCP, a neuro. You narrowed it down to wanting
9 just chiropractors, but we do get them from other
10 doctors.

11 Q. Why would KNR personnel, like Brandy, be sending
12 e-mails to say, narrative fees only get paid to
13 these particular chiropractors?

14 MR. MANNION: Could we see the
15 e-mail?

16 Q. Is there a reason?

17 MR. MANNION: Do not answer
18 questions about an e-mail you haven't seen.

19 Q. Is there a reason for that, Mr. Nestico?

20 MR. MANNION: Objection. Show him
21 the e-mail.

22 Q. Is there a reason for that, Mr. Nestico?

23 MR. MANNION: Objection. Don't
24 answer that question unless you see the
25 e-mail. He's completely mischaracterizing

1 it.

2 A. Do you have it? I'm sure you have the e-mail.

3 Q. You're not going to answer the question until --

4 MR. MANNION: Okay. Answer it, if
5 you can.

6 A. Say it again.

7 - - - -

8 (Thereupon, the requested portion of
9 the record was read by the reporter.)

10 - - - -

11 A. I don't know.

12 MR. PATTAKOS: Okay. We're going
13 to take a break.

14 THE VIDEOGRAPHER: We are going
15 off the record. The time is 4:59.

16 - - - -

17 (Off the record.)

18 - - - -

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