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IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs-

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

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

Defendants.

- - - -

Continued videotaped deposition of ALBERTO R. NESTICO, ESQ., taken as if upon examination before Brian A. Kuebler, a Notary Public within and for the State of Ohio, at the Hilton Akron-Fairlawn Hotel and Suites, 3180 W. Market Street, Fairlawn, Ohio, at 9:05 a.m. on Friday, February 8, 2019, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs.

- - - -

JK COURT REPORTING
55 PUBLIC SQUARE
SUITE 1332
CLEVELAND, OHIO 44113
(216) 664-0541

www.jarkub.com

1 APPEARANCES:

2 Peter Pattakos, Esq.
3 Rachel Hazelet, Esq.
4 101 Ghent Road
5 Akron, Ohio 44333
6 (330) 836-8533
7 peter@pattakoslaw.com

8 and

9 Joshua R. Cohen, Esq.
10 Cohen, Rosenthal & Kramer, LLP
11 3208 Clinton Avenue
12 One Clinton Place
13 Cleveland, Ohio 44113
14 (216) 815-9500
15 jcohen@crklaw.com

16 On behalf of the Plaintiffs;

17 Thomas P. Mannion, Esq.
18 Lewis Brisbois
19 1375 East 9th Street, Suite 2250
20 Cleveland, Ohio 44114
21 (216) 344-9467
22 tom.mannion@lewisbrisbois.com

23 and

24 James M. Popson, Esq.
25 Sutter, O'Connell
26 3600 Erieview Tower
27 1301 East 9th Street
28 Cleveland, Ohio 44114
29 (216) 928-2200
30 jpopson@sutter-law.com

31 On behalf of the Defendants,
32 Kisling, Nestico & Redick, LLC;

33 Shaun H. Kedir, Esq.
34 Feagan Law
35 101 West Prospect Avenue, Suite 1600
36 Cleveland, Ohio 44115
37 (216) 937-2222
38 Skedir@feaganlaw.com

39 On behalf of the Defendant,
40 Dr. Minas Floros, DC;

1 Brad J. Barmen, Esq.
Lewis Brisbois
2 1375 East 9th Street, Suite 2250
Cleveland, Ohio 44114
3 (216) 344-9467
brad.barmen@lewisbrisbois.com
4

5 On behalf of the Defendants,
Sam N. Ghoubrial, MD;

6 David M. Best, Esq.
David M. Best Co., LPA
7 4900 West Bath Road
Akron, Ohio 44333
8 (330) 665-1855
dmbest@dmbestlaw.com
9

10 On behalf of the Defendants,
Kisling Nestico & Redick, LLC
and Ghoubrial, Inc.;

11 George D. Jonson, Esq.
12 Montgomery Rennie Jonson
36 East Seventh Street, Suite 2100
13 Cincinnati, Ohio 45202
(513) 241-4722
14 gjonson@mrjlaw.com

15 ALSO PRESENT:

16 John J. Reagan, Esq.
Peter Graves - videographer
17 Member Williams
Thera Reid
18
19
20
21
22
23
24
25

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I N D E X

CONTINUED EXAMINATION
ALBERTO R. NESTICO, ESQ.
BY MR. PATTAKOS 301

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1 THE VIDEOGRAPHER: We're back on
2 the record. It's the continued deposition
3 of Mr. Nestico. The time is 9:07.

4 - - - -

5 CONTINUED EXAMINATION OF ALBERTO R. NESTICO

6 BY MR. PATTAKOS:

7 Q. Good morning, Mr. Nestico.

8 A. Good morning.

9 Q. You were in the room when I just asked your
10 attorney, David Best, if he would move his chair,
11 who's sitting right behind me, looking over my
12 shoulder at my computer screen --

13 MR. MANNION: No, no --

14 Q. -- and he refused --

15 MR. MANNION: -- no, no, he's
16 not -- nuh-uh. He's not going to sit here
17 and comment about actions of people in the
18 room.

19 MR. PATTAKOS: Well, I'm going to
20 ask on the record for Mr. Best to move his
21 chair to the other side of the room where
22 there's about, I don't know, what is that?
23 50 square feet, at least, that he can fill
24 back there. Is there a reason he needs to
25 sit right behind me?

1 MR. MANNION: Don't answer that.

2 MR. PATTAKOS: So you're refusing?

3 MR. MANNION: I'm not refusing
4 anything. That's between you and David
5 Best.

6 MR. PATTAKOS: Is it really
7 between me and David Best?

8 MR. MANNION: What are you talking
9 about?

10 MR. PATTAKOS: So Mr. Nestico --

11 MR. MANNION: Stop.

12 MR. PATTAKOS: -- to ask his
13 attorney to have some common professional
14 courtesy.

15 MR. MANNION: I didn't say
16 anything about what you can and can't do or
17 what he can or can't do. I'm not the judge
18 here. I'm defending Rob Nestico's
19 deposition, and I'm sitting here and where
20 you all sit is between you all.

21 MR. PATTAKOS: Okay. That's nice.

22 MR. MANNION: I have no power over
23 David Best or anybody else here.

24 MR. PATTAKOS: We're going to move
25 on. The professionalism is demonstrated.

1 Thank you.

2 MR. MANNION: What do you want me
3 to do, Peter, go over there and pick him
4 up?

5 MR. PATTAKOS: I'm not asking you.

6 A. Mr. Pattakos, he can't see your screen.

7 Q. I'm asking -- that's not really the issue.

8 A. That's what you said.

9 Q. That's not really the issue.

10 MR. MANNION: Well, but why would
11 you say it if it's not the issue?

12 MR. BARMEN: He's basically
13 sitting in the same spot as yesterday and
14 it wasn't a problem.

15 MR. PATTAKOS: We were in a much
16 smaller room yesterday.

17 MR. BARMEN: There was another
18 side --

19 MR. MANNION: That would make it
20 even worse then.

21 THE WITNESS: Right. That's okay.

22 MR. MANNION: That's between you
23 guys now.

24 MR. PATTAKOS: Okay. Let's move
25 on.

1 BY MR. PATTAKOS:

2 Q. Mr. Nestico, you recall that I asked you
3 yesterday if there were any documents that you
4 could produce supporting the firm's conclusion
5 that the narrative fees are worth the charge?

6 MR. MANNION: Objection to the
7 firm's conclusion. Go ahead.

8 Q. Do you remember that?

9 MR. MANNION: That's -- go ahead.

10 A. Wait, that there's -- if there's any document
11 that can prove --

12 Q. That support the firm's conclusion that the
13 narrative fees have value and are worth the
14 charge. You recall we talked about that?

15 MR. MANNION: Objection to firm's
16 conclusion again.

17 A. I don't, but I can answer it again. There is no
18 document.

19 Q. Well, I thought that yesterday, if I'm recalling
20 correcting, you said the firm had produced
21 documents in discovery including documents
22 showing requests from insurance companies --

23 A. Oh, yes. Yes.

24 Q. -- that these narratives --

25 A. They didn't -- that's not what you said. So

1 here's what those letters show. This is the
2 letter that is sent from the insurance company
3 requesting records, bills and reports, and they
4 were produced to you.

5 Q. Okay. Well, I'm going to ask you or your
6 attorneys to identify where those are because --

7 MR. PATTAKOS: Let's mark this
8 exhibit. I only have two copies. It's a
9 discovery request.

10 MR. MANNION: I mean, we can do
11 that after the deposition. I have no idea
12 where they would be right now.

13 MR. PATTAKOS: Okay. Well, I'll
14 --

15 MR. POPSON: I can pull up and see
16 the set.

17 MR. PATTAKOS: If you can just
18 find the Bates number, that would be great
19 --

20 MR. POPSON: Go ahead and keep
21 asking questions.

22 MR. PATTAKOS: -- because I would
23 like to ask Mr. Nestico about it. Because
24 I'm looking at the Defendant's Second
25 Amended Responses -- can we mark this as an

1 exhibit, please.

2 - - - -

3 (Thereupon, Plaintiff's Exhibit 43 was marked
4 for purposes of identification.)

5 - - - -

6 A. Do you need me to look at this?

7 Q. Yeah, if you look at No. 28 --

8 MR. MANNION: Wait a minute. I
9 didn't get a copy yet.

10 Q. -- it's on page 10 and 11. You're asked --

11 MR. MANNION: Please -- wait, I
12 just want -- do not hand this witness
13 anything without me being given a copy --

14 MR. PATTAKOS: Okay.

15 MR. MANNION: -- or handing it to
16 me first. I asked that yesterday.

17 THE WITNESS: You don't have a
18 copy?

19 MR. PATTAKOS: You don't have a
20 set of the discovery requests, Tom?

21 MR. MANNION: Well, I didn't bring
22 every document in here with me, Peter. I
23 didn't know what you were going to use.

24 MR. PATTAKOS: Okay.

25 MR. MANNION: What I'm saying is

1 do not hand my witness something without
2 showing me first.

3 MR. PATTAKOS: Okay, Tom.

4 MR. MANNION: Well, I asked
5 yesterday and you're continuing to do it.
6 Okay.

7 BY MR. PATTAKOS:

8 A. Which one?

9 Q. So at No. 28 you're asked to produce all
10 documents reflecting KN&R's basis for believing
11 that narrative reports from chiropractors provide
12 a benefit to their clients in excess of the fee
13 for such reports, correct?

14 A. Yes.

15 Q. And the response is -- and this is after the
16 Court overruled your objections -- the response
17 is Defendants refer Plaintiffs to Plaintiff reads
18 narrative report and ASC records, which are Bates
19 stamped KNR 03193 to 03225. And that's all the
20 documents that were produced in response to this.

21 MR. MANNION: Can I see this, Rob?

22 A. Well --

23 MR. MANNION: Let me see this
24 document a second.

25 MR. POPSON: I know exactly what

1 I'm looking for --

2 MR. PATTAKOS: Okay.

3 MR. POPSON: -- so if you haven't
4 been -- if they haven't been sent to you or
5 you didn't see them, then I'll show you
6 what I --

7 MR. PATTAKOS: And I might have
8 missed them and I apologize for that. I'm
9 just -- I use these as a guide, these
10 written responses. So we're asking, I
11 think, pretty precisely for these
12 documents. And in 29 it says all documents
13 reflecting discussions, communications, or
14 assessments, on the value of narrative
15 reports in pursuing personal injury
16 settlements. It says there are no
17 responsive documents --

18 MR. POPSON: That's true.

19 MR. PATTAKOS: Okay. Well, if you
20 could at some point today direct my
21 attention to this e-mail and give us a
22 Bates number, hopefully before lunch, so we
23 can print it out.

24 MR. KEDIR: Is this an exhibit or
25 -- the discovery, was that an exhibit?

1 MR. MANNION: Yeah, this is an
2 exhibit.

3 MR. KEDIR: What's the number?

4 MR. PATTAKOS: I don't know.

5 THE WITNESS: 43.

6 MR. PATTAKOS: 43.

7 MR. MANNION: And I'm going to
8 object to these continued references to
9 "the firm's conclusion that these had a
10 value." This is per case, Peter, as he's
11 told you over and over. So stop saying the
12 firm made a conclusion as to an individual
13 case.

14 MR. PATTAKOS: Tom, your speaking
15 objection is inappropriate.

16 MR. MANNION: That's not a
17 speaking objection. I want to very clear
18 what I'm objecting to because you keep
19 doing it no matter how much Mr. Nestico
20 tells you or any of us tell you --

21 MR. PATTAKOS: You keep suggesting
22 testimony to your clients on the record --

23 MR. MANNION: There's not even a
24 question pending.

25 MR. PATTAKOS: -- during an

1 examination --

2 MR. MANNION: There's not a
3 question pending. I'm objecting to those
4 repeated references.

5 MR. PATTAKOS: Okay. Let's look
6 at the responses -- again, I only have two
7 copies. So please mark this and hand it to
8 opposing counsel -- in fact, here, you can
9 have that one to look at. You can mark
10 that, and then, Tom, you can hand that back
11 to me when you're done.

12

- - - -

13 (Thereupon, Plaintiff's Exhibit 44 was marked
14 for purposes of identification.)

15

- - - -

16 MR. MANNION: Which number should
17 I look at?

18 MR. PATTAKOS: I'm sorry, look at
19 No. 5, Rog No. 5.

20 MR. MANNION: Fifth -- Plaintiff's
21 fifth set of rogs, seventh set of request
22 for production? Did you say the fifth rogs
23 or --

24 MR. PATTAKOS: Yeah, fifth rog.

25 MR. MANNION: Identify every

1 medical service provider, that one?

2 MR. PATTAKOS: Yes, I think so.

3 MR. MANNION: To whom narrative
4 reports are requested and narrative fees
5 paid automatically.

6 MR. PATTAKOS: That sounds right,
7 yes.

8 MR. MANNION: And are these --
9 because I think we had amended responses,
10 didn't we?

11 MR. PATTAKOS: That one has not
12 been amended yet.

13 MR. MANNION: I thought it was.

14 MR. PATTAKOS: The fifth? I don't
15 think there's been a court order pertaining
16 to the fifth.

17 MR. POPSON: Yeah, that's
18 accurate.

19 MR. MANNION: Okay. Yep, I'm
20 thinking if that other --

21 MR. PATTAKOS: He's got --

22 MR. MANNION: Okay. Got it.

23 BY MR. PATTAKOS:

24 Q. So it says following a request by the assigned
25 attorney or paralegal for an individual file and

1 upon receipt of the narrative report. The
2 narrative fee is paid automatically in the amount
3 negotiated with certain medical service
4 providers. There was no quote "policy" as
5 assumed by the interrogatory. The medical
6 service providers identified in Gobrogge
7 deposition transcript at 292 to 297, et cetera,
8 agreed to provide reports upon request for KNR
9 clients at a flat rate agreed to by the medical
10 care service provider.

11 So what I want to ask about this is, if I'm
12 understanding this interrogatory answer as well
13 as your testimony from yesterday correctly, you
14 are saying that -- are you saying that it's the
15 payment for the report that's automatic once the
16 report is requested, but whether the report is
17 requested is determined by the attorney working
18 on the case on a case-by-case basis, is that your
19 testimony?

20 MR. MANNION: Can you --

21 A. Yeah, you need --

22 MR. MANNION: -- rephrase that?

23 That was a lot.

24 Q. What's automatic? Is it the payment or the
25 request for the report?

1 A. Okay. The payment is automatic once they receive
2 the report.

3 Q. Okay. So the report is not automatically
4 requested?

5 A. The report -- so here's what happens. You have
6 -- as soon as the client is done treating, they
7 will let the paralegal know. The lawyer's
8 evaluating the case throughout the time period,
9 okay? If he doesn't say, don't order a report,
10 the report is requested. It's a form letter that
11 asks for records, bills and a report. Once that
12 report is received, if that provider produces a
13 report and they receive it, they automatically
14 pay that amount that is already -- that they have
15 in their list, the amount is requested, put in a
16 value item in Needles and the check is printed
17 and goes out to the provider.

18 Q. So the lawyer has to say don't order the report
19 otherwise the report will be automatically
20 ordered by the paralegal?

21 A. The lawyer has the right at any point to not ask
22 for a report or they get a report.

23 Q. Okay.

24 A. I'd rather have it as a default than not have it
25 at all.

1 Q. Okay.

2 MR. POPSON: I have it right here.

3 MR. PATTAKOS: Okay. What's the
4 Bates number on that?

5 MR. POPSON: 04026 to 04037. You
6 want me to forward it to you?

7 MR. PATTAKOS: If you could
8 forward it to Rachel and me.

9 MR. POPSON: Okay.

10 BY MR. PATTAKOS:

11 Q. Okay. Let's look at another exhibit.

12 A. Are we done with this one?

13 Q. Yeah, for now I think.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 45 was marked
16 for purposes of identification.)

17 - - - -

18 Q. So it's the first amended responses to the second
19 interrogatories.

20 MR. MANNION: And which one should
21 I look at?

22 MR. PATTAKOS: Let's look at No.
23 29.

24 MR. MANNION: Number what?

25 MR. PATTAKOS: Nine, No. 9.

1 MR. MANNION: Oh.

2 BY MR. PATTAKOS:

3 Q. So --

4 A. Hang on.

5 MR. MANNION: Yeah, one second
6 here. Read both, too. Read the actual
7 request.

8 A. Okay.

9 Q. So this requests the firm to identify every
10 medical service provider with whom any defendant
11 has agreed that the medical service provider may
12 prepare a narrative report and/or charge a
13 narrative fee without first obtaining
14 authorization from the KNR attorney on the case.
15 And the response is: Defendants state that KNR
16 paralegals or attorneys will automatically
17 request narrative reports from ASC with
18 exceptions. Defendants further state the
19 decision not to obtain a narrative report from
20 ASC depends on various factors, including,
21 without limitation, the nature of the injuries
22 involved, the value of the case, whether the
23 injury is to a minor under 12, local court rules,
24 cost of report, and the specific needs and
25 requirements of the adjuster handling the case,

1 correct?

2 A. Okay.

3 Q. So this says that the lawyer will automatically
4 request a report from ASC --

5 MR. MANNION: Objection.

6 Q. -- why just ASC?

7 MR. MANNION: Wait. Objection.

8 You can't give your interpretation and then
9 throw a question on at the end. You can
10 ask him if he agrees with your
11 interpretation, but you can't give your
12 interpretation and then add a question at
13 the end.

14 Q. This does say that the attorneys will
15 automatically request narrative reports from ASC,
16 correct?

17 MR. MANNION: Objection.

18 A. It does say that in the response.

19 Q. Okay. Why just ASC?

20 A. Because his claim is only against ASC.

21 Q. That's not what this interrogatory asks you for,
22 it says identify every medical service provider?

23 A. And I'm telling you that the answer is based off
24 of -- Defendant is ASC.

25 MR. MANNION: What are you smiling

1 at me for like that?

2 Q. So you didn't --

3 THE WITNESS: He can smile all he
4 wants, I don't care.

5 Q. -- so you were asked to identify every medical
6 service provider that gets this kind of
7 treatment. The Court overruled your objection
8 and you are still saying that you gave an
9 incomplete limited response relating just to ASC
10 because you believe that you're entitled to do
11 that because the claim is only against ASC?

12 A. Yes, that's what they did. Now, if you want to
13 know there's other providers, there's an e-mail
14 that has the list of providers.

15 Q. So there are other providers that get this
16 treatment in addition to ASC?

17 MR. MANNION: Objection as to
18 "this treatment." Go ahead.

19 A. That get -- we get narrative reports from, there
20 are other providers, sure there are.

21 Q. That are automatically requested by the
22 attorney --

23 MR. MANNION: Objection.

24 Q. -- with exceptions?

25 A. The individual attorney makes that determination,

1 agree? So the payment it says, for the payment
2 is automatic. But you have an e-mail that has
3 the list of the providers.

4 Q. It says that the request for the reports is
5 automatic. Here, it says KNR paralegals or
6 attorneys will automatically request narrative
7 reports.

8 MR. MANNION: Except.

9 Q. With exceptions.

10 A. Yeah, and --

11 Q. It doesn't say -- it's not referring to the
12 payment there, is it, sir?

13 MR. MANNION: Well, if there's
14 exceptions, it's not on every case, is it
15 then?

16 A. It says that right there.

17 Q. Okay.

18 MR. MANNION: Geez.

19 Q. So in the second part of this where you talk
20 about the factors for the decision not to obtain
21 the report --

22 A. Uh-huh.

23 Q. -- you say that in part that depends on the value
24 of the case?

25 A. Uh-huh.

1 Q. So you're saying if the -- does this mean that on
2 certain cases if the value is smaller, you won't
3 request a report on smaller cases?

4 A. What it means is if they go to that provider and
5 they only go one time, they will not generate a
6 report. If the bill's only going to be \$300,
7 what am I'm going to do with a \$150 expense.

8 Q. And is that why minors under 12 don't get
9 narrative reports on their cases?

10 A. Pretty much. And then those are requested if we
11 file -- because the insurance company wants
12 probate court approval of it. You need a report.
13 And we will request a report. Probate courts
14 want it because they look at permanency or if
15 there's any additional injuries.

16 Q. Okay. You also refer to the cost of the report
17 and I thought that was fixed up front --

18 A. Uh-huh.

19 Q. -- that that was fixed cost for the report that's
20 identified in various e-mails?

21 A. You're saying again if it pertains to a
22 chiropractor. Other medical service providers,
23 they charge a lot more than \$150. You know
24 that --

25 Q. Okay.

1 A. -- that they charge significant amounts.

2 Q. But ASC does not?

3 A. No.

4 Q. And what do local court rules have to do with it?

5 A. Some courts require that you need a report to
6 file. In Cuyahoga County, you need a report. If
7 that's all they had to care was for -- provided
8 by a chiropractor, the courts required in order
9 to establish causation.

10 Q. You need a report just to file the case or to
11 prove the case?

12 A. I think you need both. A court is going to ask
13 you the minute that that case is filed, where is
14 your report?

15 Q. Are you saying that there's a rule that requires
16 a medical report to be filed with a Complaint in
17 a personal injury claim that your complaint is
18 going to be stricken or dismissed because it
19 doesn't have a report attached to it?

20 A. I don't know all of the local rules.

21 Q. Okay. Request for Admission No. 227, the second
22 set, No. 27 --

23 A. Do we get a copy?

24 Q. -- and No. 29. And I can show you a copy. I
25 don't think there's any need to mark this. 227

1 and 229, those are the First Amended Responses to
2 Plaintiff's Second Set of Requests for Admissions
3 which were served on August 27th, 2018.

4 A. 27 and 29? Sorry. Okay.

5 Q. So in RFA22 -- well, you admit both of these
6 requests, correct, sir?

7 MR. MANNION: Objection. There
8 was more than just an admission on there.
9 The answers are the answers. He's not
10 going to give you a blanket admission. The
11 answers are the answers.

12 Q. I'm sorry --

13 A. Twenty --

14 Q. -- let me see the admissions.

15 A. Sure.

16 Q. It says Defendants admit this request for 27.
17 Defendants further state that KNR does not
18 request a narrative report for every KNR client.
19 That's true, correct?

20 A. True.

21 Q. Okay. And for 29 where it says, admit that in
22 some cases in which KNR represents an injured
23 party, the police report and the client's medical
24 records adequately describe the plaintiff's
25 injury and treatment.

1 The response is defendants admit that in some
2 cases the police report and the client's medical
3 records may adequately describe the plaintiff's
4 injury and treatment.

5 That's true, correct?

6 A. True.

7 Q. Okay. And just for the record so it's clear, No.
8 27 asks the firm to admit that a narrative report
9 from a medical services provider is not necessary
10 for every KNR client?

11 A. True.

12 Q. And yet they're requested automatically except
13 for exceptions?

14 A. When they need them.

15 Q. Okay. Okay. You're aware, sir, that Gary
16 Petti's affidavit states that he did not have a
17 choice as to whether to order the narrative
18 report and pay for it out of his client's funds?

19 A. That a lie.

20 Q. That's a lie? He's lying?

21 A. He's lying.

22 Q. Okay. He has testified that his KNR paralegal,
23 Megan Jennings, was dictating to him that he had
24 to order the narrative report. You understand
25 that that's his testimony?

1 A. That's impossible.

2 Q. Well, have you reviewed his affidavit?

3 A. I did.

4 Q. And you think he's lying?

5 A. He is lying.

6 Q. Okay. Why is he lying?

7 A. I have no idea.

8 MR. PATTAKOS: Let's mark the next
9 exhibit.

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 46 was marked
12 for purposes of identification.)

13 - - - -

14 MR. MANNION: Is this 29?

15 THE REPORTER: 46.

16 MR. MANNION: What is it?

17 THE REPORTER: 46.

18 MR. MANNION: Oh, I thought
19 someone said -- I heard a 29.

20 THE REPORTER: Yeah, 46. This was
21 45.

22 MR. MANNION: Okay. Got it.

23 MR. POPSON: Which one was 45?

24 THE WITNESS: This (indicating).

25 MR. POPSON: Okay.

1 BY MR. PATTAKOS:

2 Q. I just want to direct your attention to paragraph
3 three. It says when I began working at KNR, I
4 primarily worked on the cases that I had brought
5 to the firm and when I closed these cases no
6 narrative fee was charged to these clients
7 because I never ordered narrative reports for
8 them.

9 A. Okay.

10 Q. It was always my understanding that the decision
11 as to whether a narrative report is worthwhile in
12 a case is the attorneys to make upon consultation
13 with the client.

14 You agree with that, right?

15 A. If that's the way he chooses to handle it, sure.
16 I don't have a problem with that.

17 MR. MANNION: I think he was
18 asking about the second sentence and you
19 were answering the first, but I might be --

20 BY MR. PATTAKOS:

21 A. It was --

22 Q. I'm asking about --

23 A. This part (indicating)?

24 Q. -- it was Mr. Petti's understanding that the
25 decision as to whether a narrative report is

1 worthwhile in a case is the attorney's to make
2 upon consultation with the client.

3 Do you agree that that's the case?

4 A. That's his understanding.

5 Q. Is that your understanding, too?

6 A. No.

7 Q. What's your understanding?

8 A. I'll request a report on every case, if I can.

9 Q. Okay. And you'll charge your client for it?

10 A. Sure. If it's needed to help advance the case,
11 why not?

12 Q. Well, what happens if you request a report --

13 A. Yes.

14 Q. -- and it turns out that it's not needed?

15 A. Okay. You don't charge the client.

16 Q. Okay. Are there instances where that has
17 happened?

18 A. It's possible. I don't know.

19 Q. You don't recall any instance where that's
20 happened?

21 A. There's -- yeah, I'm sure there has been. If you
22 get a bad report or a report that doesn't help
23 your case, you're not going to use it.

24 Q. Okay. Paragraph six, Mr. Petti says, in
25 approximately mid to late November of 2012 my

1 paralegal, Megan Jennings, began to collect a
2 package of documentation on a case that was to be
3 submitted to the defendant's insurance company
4 including police reports and medical records.
5 When she submitted this package to me for my
6 approval, I noticed the charge for a narrative
7 report in the documents.

8 A. Uh-huh.

9 Q. I immediately expressed my surprise and
10 disapproval that the narrative fee would be
11 included in this package and asked Jennings why
12 this was the case. I also told her that I am the
13 lawyer so I'm the one who gets to advise the
14 client as to whether the narrative report is a
15 justifiable expense.

16 In response Jennings informed me that the
17 narrative fees are paid on every case that comes
18 in from Akron Square Chiropractic and other
19 Plambeck-owned clinics and that the check is made
20 out to the chiropractor personally and sent
21 directly to the chiropractor's house.

22 I then told her that I would not approve of
23 any such fees being charged to my clients without
24 my express approval.

25 Do you believe this is truthful?

1 A. Which part of it?

2 MR. MANNION: Yeah, which part?

3 Q. What part is untruthful, if any?

4 A. This is -- so you're asking me what Gary Petti
5 believes, what Gary Petti wants. And every
6 lawyer has the right and the ability to request,
7 not request. If they get it, I don't want to pay
8 it. They have their own discretion. They're
9 going to use their own professional judgement.
10 In my professional judgement that I believe and a
11 number of other lawyers in the firm believe, they
12 are helpful. So if he chooses, that he doesn't
13 want to, that's his issue.

14 Q. So there's nothing here that you believe is
15 untrue?

16 MR. MANNION: Objection. That's
17 not what he said.

18 MR. PATTAKOS: Well, I'm asking
19 him if there's anything here that's
20 untrue --

21 MR. MANNION: He can't tell you
22 whether it's a lie.

23 MR. PATTAKOS: -- so then you
24 admit that he didn't answer the question?

25 MR. MANNION: Wait. Is he going

1 to go in -- is he mistaken? Is he lying?
2 Do you want him to get in his mind?

3 MR. PATTAKOS: Is he aware that
4 any of this is untrue.

5 MR. MANNION: Point to a specific
6 thing then, Peter.

7 MR. PATTAKOS: I'm asking --
8 A. What we're doing is we're getting --

9 MR. MANNION: Hold on. Is he
10 going to know that in approximately mid to
11 late November he and Megan even talked?
12 How would he know that?

13 MR. PATTAKOS: You want to keep
14 testifying, Tom?

15 MR. MANNION: No, I'm not
16 testifying. You're asking a ridiculous
17 question.

18 A. I asked you the same question, what part of
19 this -- Mr. Pattakos, this is his impressions.
20 This is what he believes. This is what he wants.
21 And he's a lawyer and he's able to handle his
22 case the way he wants.

23 Q. Do you believe anything here is untrue, sir?

24 MR. MANNION: Objection --

25 Q. Any of the statements --

1 MR. MANNION: -- asked and
2 answered.

3 Q. -- any of the statements made in paragraph 6?

4 MR. MANNION: Asked and answered.

5 A. I cannot tell you what he believes.

6 Q. I'm not asking you to tell me what he believes.
7 I'm asking you to tell me what you believe.

8 MR. MANNION: Asked and answered.

9 He's already answered it. He's
10 already answered it.

11 Q. Paragraph seven reads, within a few days, I was
12 working with Jennings on another case that was
13 affiliated with Akron Square. On November 8th,
14 2012, I e-mailed Jennings about this case to
15 instruct her that no narrative fee was to be paid
16 on it. I wrote, remember, no reports from Dr.
17 Floros. Deliberately misspelling his name in an
18 effort to defuse tension with humor. I also
19 wrote as a follow-up to our previous
20 conversation, I've asked a number of adjusters
21 about the importance of those reports and the
22 most common response is nearly uncontrolled
23 laughter. This comment, while hyperbolic,
24 referred to the fact that on the occasions when I
25 attempted to refer to Plambeck narrative reports

1 in negotiating settlements on behalf of KNR
2 clients, the insurance adjusters paid absolutely
3 no regard to these reports.

4 Were you aware of this opinion by Mr. Petti
5 about the narrative reports before this affidavit
6 was filed?

7 MR. MANNION: I'm going to -- to
8 this specific opinion or just his overall
9 opinion towards narrative reports?

10 Q. What he expresses here, this overall opinion
11 about narrative reports and what the adjusters
12 have told him. Did you ever become aware of
13 this?

14 A. I honestly recall a brief discussion that I had
15 with Gary Petti about this.

16 Q. What do you recall?

17 A. That he doesn't -- his opinion -- because I was
18 told while adjusters are, something around the
19 fact of uncontrollable laughter, they didn't buy
20 it. And my response to him at that point was an
21 adjuster -- that's one adjustor's opinion.
22 That's not everybody's opinion. You as the
23 lawyer, if it helps, we use it. That's why we
24 get them, is it helps the case. Just because one
25 adjuster says it, doesn't mean that everybody

1 believes it.

2 My opinion is that they help. My experience
3 in talking to adjusters has been that they help.
4 There's a number of reasons why they help.

5 So he's entitled to his opinion. And if he
6 didn't want to charge the client, that's fine.

7 MR. MANNION: Where did he come
8 from, Phillips?

9 THE WITNESS: Slater & Zurz -- or
10 you mean Petti?

11 MR. MANNION: Or I mean Petti,
12 yeah.

13 THE WITNESS: Slater & Zurz.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 47 was marked
16 for purposes of identification.)

17 - - - -

18 Q. So this was a document produced by KNR. And it
19 reflects Petti's conversation that is referred to
20 in his affidavit. Do you agree?

21 A. Can I read the -- do you want it on the record?

22 Q. You can read it on the record if you want.

23 A. I've asked a number of adjusters about the
24 importance of those reports and the most common
25 response is nearly uncontrollable laughter. And

1 the e-mail is from Gary Petti only to Megan
2 and --

3 Q. The subject line is remember, no reports from Dr.
4 Floros, correct?

5 A. Correct.

6 Q. Okay. Were you aware of this e-mail before we
7 produced it in this lawsuit?

8 A. No.

9 Q. Okay. Petti was fired approximately two weeks
10 after sending this e-mail, correct?

11 MR. MANNION: Excuse me?

12 MR. POPSON: Petti was fired two
13 weeks after.

14 A. What's that have to do with this?

15 Q. I didn't ask you that, I just asked you to
16 confirm, he was terminated, approximately, two
17 weeks after this e-mail was sent, correct?

18 MR. MANNION: I'm going to object,
19 but go ahead, if you know.

20 A. It's possible.

21 Q. It's possible. And your testimony is that this
22 e-mail had nothing to do with him being
23 terminated?

24 A. Absolutely not. You understand that Gary Petti,
25 where he worked, they ordered reports on every

1 single case. His employer. This isn't a new
2 attorney, he's been around a long time.

3 Q. Okay. He also says in his affidavit --

4 MR. MANNION: Paragraph?

5 MR. PATTAKOS: I'm --

6 THE WITNESS: He's looking for it.

7 MR. PATTAKOS: Paragraph two.

8 BY MR. PATTAKOS:

9 Q. He says that this narrative fee was paid as a
10 kickback. He writes in his affidavit -- he
11 states in this affidavit, while I was working for
12 Slater & Zurz, I first learned that KNR paid
13 kickbacks to certain chiropractors in the form
14 of a narrative fee. When I spoke with certain
15 chiropractors from Plambeck-owned clinics, who
16 would occasionally refer me cases, they told me
17 that KNR paid them a narrative report fee every
18 time the chiropractors referred a case to KNR and
19 asked if I would do the same. I told them I
20 would not.

21 Is that true, Mr. Nestico?

22 A. Boldface lie.

23 Q. Okay. If Gary Petti testifies that chiropractors
24 in Columbus said you would go down to Columbus
25 and meet with them to develop business, that

1 would be true, correct?

2 A. I have done that.

3 Q. Okay.

4 A. Again, you understand that Slater & Zurz requests
5 narrative reports on every case where he worked.
6 And what he's saying here, when they referred
7 cases to us. Well, what about when we refer
8 cases to that chiropractor and we get a
9 narrative, where's the kickback?

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 48 was marked
12 for purposes of identification.)

13 - - - -

14 Q. This is a March 1st, 2012 e-mail from Brandy with
15 the subject, narrative report, fees. Copying a
16 number of people including you and Mr. Redick
17 and it looks like a bunch of paralegals, correct?

18 A. Yes, sir.

19 Q. And she writes we are paying narrative fees to
20 the following, and Dr. Floros, Akron Square, is
21 listed here, presumably there's a number of other
22 chiropractors that are also listed here that have
23 been redacted, correct?

24 A. Yes, I believe so.

25 Q. So what is your understanding of this e-mail?

1 A. We are paying narratives fees to the following
2 and it would have been the list of providers.

3 Q. Why would you only be providing the narrative
4 reports -- or paying the narrative report fees to
5 certain chiropractors?

6 A. Because they would have requested them.

7 Q. Why not all of them?

8 A. There is a default letter that they all go out,
9 but not every doctor will do it. It's there.

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 49 was marked
12 for purposes of identification.)

13 - - - -

14 Q. So here's an e-mail from Brandy to pre-lit
15 support, pre-lit attorneys, litigation support,
16 and litigation attorneys. Subject, Plambeck
17 clinics, October 2nd, 2013. She says these are
18 the only narrative fees that get paid in addition
19 to Dr. Alex Frantzis with NorthCoast Rehab, \$200,
20 not Plambeck. And she lists one, two, three,
21 four, five, six, seven -- 13 chiropractors here,
22 and then identifies instructions about how the
23 chiropractors are to be paid these fees, correct?

24 A. Yes, sir.

25 Q. What is your understanding of this e-mail?

1 A. What do you mean?

2 Q. What do you understand this e-mail to mean?

3 A. These are the chiropractor -- if we get report
4 from these chiropractors, they get a narrative
5 fee.

6 Q. And not other chiropractors?

7 A. No, there's other chiropractors.

8 Q. So why would she say these are the only narrative
9 fees that get paid?

10 MR. MANNION: Did you look at the
11 subject line, Peter?

12 A. I mean, you see that it's addressing -- all of
13 these that I'm looking at here, at one time,
14 which is not the case anymore, but at one time --
15 and this was the way the lawyers would refer to
16 -- because Plambeck owns those clinics, he
17 doesn't own all these clinics anymore. So for
18 ease, back in 2013, I assume he still owned them
19 then, they referred to them as Plambeck clinics.
20 These are all Plambeck clinics except Alex
21 Frantzis used to work for a Plambeck clinic --
22 actually he worked at Akron Square and he left
23 and opened up his own clinic. I know there's
24 another e-mail that talks about all the other
25 providers that aren't even Plambeck clinics.

1 Q. That doesn't answer my question of why these are
2 the only narrative fees that get paid.

3 A. It's not just these. If this --

4 Q. Why is she saying it is?

5 MR. MANNION: Well, why are you
6 saying it is? That's not what she's
7 saying.

8 A. It says right here, are we in agreement? She's
9 addressing these Plambeck issues.

10 Q. It says --

11 A. It's not Plambeck because Alex Frantzis used to
12 be part of Plambeck.

13 Q. Why are Plambeck clinics being treated separately
14 here?

15 MR. MANNION: Objection. Another
16 mischaracterization.

17 Q. What's the difference for sending a separate
18 e-mail about Plambeck clinics as opposed to all
19 the chiropractic clinics?

20 A. I don't know why she's isolating Plambeck --
21 maybe that's the purpose of this e-mail. That's
22 all it is. If I had to even guess further is Dr.
23 Alex Frantzis is no longer with the Plambeck
24 clinics.

25 Q. Yeah, it says that here --

1 A. Right.

2 Q. -- which supports the conclusion that she is
3 saying here that these are the only narrative
4 fees that get paid to any chiropractors --

5 MR. MANNION: No.

6 Q. -- that the firm works with.

7 A. No, it doesn't --

8 MR. MANNION: Come on, Peter.

9 A. -- you're making that conclusion, Peter.

10 Q. Well, the inference is there and --

11 MR. MANNION: You've seen the
12 other e-mail that he told you about --

13 MR. PATTAKOS: Tom --

14 MR. MANNION: -- you've seen it.

15 MR. PATTAKOS: -- Tom, you're not
16 testifying today.

17 MR. MANNION: Why are you doing
18 this though? You can't mischaracterize
19 things.

20 MR. PATTAKOS: Tom --

21 MR. MANNION: Intentionally
22 mischaracterize.

23 MR. PATTAKOS: -- I'm asking
24 questions.

25 MR. MANNION: No, you're

1 intentionally mischaracterizing.

2 Mr. Nestico sat there a minute ago
3 and told you there's another e-mail
4 addressing the other chiropractors.

5 A. There are.

6 MR. MANNION: You can grandstand
7 all you want and laugh and smile, but what
8 you're doing right now is untruthful and
9 you know it is.

10 BY MR. PATTAKOS:

11 Q. Mr. Nestico, will you answer the question?

12 A. I did.

13 Q. Okay. And why would the payments be made to some
14 doctors personally?

15 A. That's what they requested.

16 Q. That's what the doctors requested?

17 A. Uh-huh.

18 Q. And you have no idea why?

19 A. A lot of doctors do. Almost every expert that
20 I've used wants the check sent to them
21 personally.

22 Q. But here it says Dr. Patrice Lee-Seyon wants hers
23 to be paid via Med Reports, correct?

24 A. That's her prerogative.

25 Q. Okay. And this says WDs must be faxed to Rebecca

1 at (855)267-9337 and an e-mail sent to the
2 billing ladies.

3 Who's Rebecca?

4 A. I don't know.

5 Q. And a WD is a withdraw, correct?

6 A. Yes, sir.

7 Q. So you want to notify these chiropractors that
8 you're withdrawing from a case if they're
9 treating the patient; that's what this means,
10 correct?

11 A. It would have to do with billing is what it would
12 be, so that the patients aren't getting --
13 racking up bills that they can't pay.

14 Q. And the chiropractor will stop treating them
15 because they know that the firm is not going to
16 be pursuing the attorneys fees anymore, correct?

17 MR. MANNION: Objection as to what
18 a chiropractor would do. Go ahead.

19 A. That's up to the chiropractor, but I can tell you
20 that I know Dr. Floros personally has treated
21 patients for free, but that's their decision.

22 - - - -

23 [REDACTED]

24 [REDACTED]

25 - - - -

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MR. JONSON: I don't know that you intended to give this one.

MR. PATTAKOS: Thanks.

[REDACTED]

MR. MANNION: Wait, whoa, whoa, whoa. He was still answering you and you jumped in on him. Let him finish his answers.

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. So you didn't review this document to

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED]

15 MR. MANNION: Objection.

16 [REDACTED]

17 MR. MANNION: Objection.

18 Misstates evidence, but go ahead.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 MR. MANNION: Objection.

24 [REDACTED] [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED]
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11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q. Okay.

21 - - - -

22 (Thereupon, Plaintiff's Exhibit 51 was marked
23 for purposes of identification.)

24 - - - -

25 Q. Okay. So here on Exhibit 51 it's an e-mail

1 exchange from Brandy's first to the staff,
2 copying Rob Nestico. Until further notice, it
3 reads, no narrative fee checks to any of the
4 Plambeck chiros except Floros and Patrice?

5 A. Yes, sir.

6 Q. She's sending that to the staff. And it looks
7 like, if you look at the next page, she's doing
8 that on your instruction, it looks like an e-mail
9 from you, no fees paid on these narrative reports
10 except Floros and Patrice. She says none to
11 Shane, Maurer, or any others. And then she goes
12 ahead and makes that directive.

13 So why here were narratives fees only getting
14 paid to Floros and Patrice and not to Shane or
15 Maurer or any of the others?

16 MR. MANNION: Any of the others
17 what, Peter?

18 MR. PATTAKOS: That's what it says
19 in the e-mail. I assume any of the other
20 --

21 MR. MANNION: Well, what --

22 MR. PATTAKOS: -- chiropractors --

23 MR. MANNION: Okay.

24 MR. PATTAKOS: -- but if he
25 understands it differently, he should let

1 us know.

2 MR. MANNION: Right, it says

3 Plambeck right there, yeah.

4 A. No narrative fee -- no narrative fee checks to
5 any of the Plambeck chiros accept Floros and
6 Patrice. Okay. I remember what happened here.
7 I got a call from the head office from Plambecks
8 that we cannot send checks -- he didn't want
9 checks to go for narrative fees directly to the
10 doctors. Their contracts -- if I remember
11 correctly, they had different contracts and these
12 two were okay. And they didn't want any payments
13 to go to them personally. And that's their head
14 office.

15 I informed Brandy of that immediately, as you
16 can see that was at 12:31 p.m., at 1:31 p.m. that
17 e-mail goes out. After this I believe there
18 should be another e-mail that's subsequent to it.
19 I assume the doctors had a discussion with head
20 office -- or head office had a discussion with
21 the doctors, then I get a follow-up phone call.
22 It was either me or Brandy with the list of the
23 doctors that they can pay directly and then that
24 e-mail went out.

25 Q. Any idea why the Plambeck head office didn't want

1

- - - -

2

Q. So this is a response from Mr. Redick to the
3 e-mail that Brandy just sent -- that Brandy sent
4 that we just looked at --

5

A. Uh-huh.

6

Q. -- where Mr. Redick says, including Tassi,
7 interesting, smiley -- and adds a smiley face.

8

Do you have any understanding of what he
9 meant by this?

10

A. No.

11

Q. Okay. And that's Philip Tassi?

12

A. Correct.

13

Q. He's a chiropractor?

14

A. Correct.

15

Q. West Tusc?

16

A. Correct.

17

Q. He's from Canada?

18

A. Correct.

19

Q. And so is Floros?

20

A. Correct. So is Patrice.

21

MR. MANNION: Wow.

22

Q. Okay.

23

A. And so is Alex Frantzis.

24

Q. Okay.

25

MR. MANNION: I think Trudeau is

1 from there, too.

2 THE WITNESS: He is.

3 Father and son.

4 Q. And Tassi doesn't treat KNR clients anymore, does
5 he?

6 A. No, he does.

7 Q. He does?

8 A. Yeah.

9 Q. Is he still working out of West Tusc?

10 A. No, it's called Canton Injury.

11 Q. Canton Injury.

12 A. He'll treat them whenever he comes into town.

13 He's no longer here. Because he's filling in for
14 the doctor that he has working there.

15 Q. So he still owns the clinic?

16 A. I believe so --

17 Q. Okay. And he moved --

18 A. -- but I don't know.

19 Q. -- he moved away, he moved out of town?

20 A. Yes.

21 Q. Moved back to Canada?

22 A. Yes.

23 Q. Toronto?

24 A. Yes.

25 Q. How long have you known Tassi?

1 A. Since I think '04.

2 Q. How did you meet him?

3 A. One of the Slater & Zurz lawyers introduced --
4 actually called Robert Redick and I remember
5 Robert Redick told me about them. We met with
6 them when we were at the Eshelman Legal Group. I
7 met Tassi and Floros. I don't remember the
8 lawyer, he's no longer there, at Slater & Zurz.

9 Q. That's while you were working for the Eshelman
10 firm?

11 A. While -- yes.

12 MR. PATTAKOS: We have just one
13 more exhibit and we can take a break.
14 Finish this line of questioning in about
15 ten minutes. Well, two more exhibits, but
16 they're related.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 53 was marked
19 for purposes of identification.)

20 - - - -

21 Q. I'm going to provide you with a copy of Thera
22 Reid's narrative report that you produced in this
23 litigation.

24 MR. PATTAKOS: Sorry, one's for
25 Tom. Thanks.

1 Thera Reid and Member Williams
2 have just entered the room. There should
3 be another chair -- ah, can we take that
4 chair. No, you can sit at the table,
5 that's fine. Those chairs are available.
6 Have a seat.

7 Thera, perfect timing.

8 MS. REID: Yeah.

9 MR. PATTAKOS: Just got to your
10 narrative report.

11 MS. REID: Oh.

12 BY MR. PATTAKOS:

13 Q. You recognize this as Thera's narrative report,
14 correct?

15 A. Correct.

16 Q. So what I'd like you to do is identify for me the
17 portions of this report that pertain to Thera
18 specifically as opposed to the general public
19 generally.

20 MR. MANNION: Objection. He's not
21 going to do that. That's --

22 MR. PATTAKOS: Why not?

23 MR. MANNION: Why would he do
24 that?

25 MR. PATTAKOS: Well, to establish

1 the value of the report. This is --

2 MR. MANNION: Ask the doctor.

3 MR. PATTAKOS: -- relevant to the
4 value of the report.

5 MR. MANNION: Ask the doctor.

6 MR. PATTAKOS: I'm asking
7 Mr. Nestico. He's the one that orders this
8 report and charges his clients for --

9 MR. MANNION: He didn't order this
10 report.

11 MR. PATTAKOS: -- it. His firm --

12 MR. MANNION: He did not order
13 this report.

14 MR. PATTAKOS: His firm did.

15 MR. MANNION: No, his firm did not
16 order this report.

17 MR. PATTAKOS: There was --

18 MR. MANNION: If you're going to
19 make comments on the record, I will. The
20 lawyer ordered this report.

21 MR. PATTAKOS: The KNR lawyer?

22 MR. MANNION: Yeah. Who evaluated
23 the case and made a decision that it was
24 good for her case.

25 MR. PATTAKOS: Okay.

1 MR. MANNION: Your friend, right?

2 Was it your friend who ordered this?

3 BY MR. PATTAKOS:

4 Q. Mr. Nestico, please go through this report and
5 identify the sub -- the content that you believe
6 provides value as relating specifically to Thera
7 Reid.

8 A. Sure. The whole report.

9 MR. MANNION: Yeah.

10 Q. If you look at the -- I'll call it a paragraph
11 although there are really no line breaks or
12 indents on this report --

13 MR. MANNION: Move to strike.

14 Q. -- starting with the time needed for injured soft
15 tissue to heal, toward the bottom of the page.

16 A. Okay.

17 Q. Do you believe this relates specifically to Thera
18 Reid?

19 MR. MANNION: Objection.

20 Q. This whole paragraph, I would say, one, two,
21 three, four, five, six, seven, eight, nine,
22 ten -- 13 lines is referring to studies, the
23 Quebec Task Force, clinical experience. Do you
24 believe that refers specifically to Thera Reid or
25 is that something that could be cut and pasted

1 and put into any narrative report?

2 MR. MANNION: Objection. He
3 doesn't do narrative reports.

4 A. Obviously, Peter, the doctor feels that it's
5 necessary to be in the report. You're educating
6 an adjuster. You're showing what the basis --
7 what the foundation of his evaluation is, but a
8 doctor prepares this, I don't do this.

9 You know what we're interested in? We're
10 interested in -- I'm interested in that last
11 line, in my opinion -- this is the doctor --
12 based upon reasonable chiropractic probability,
13 the injuries Thera Reid sustained were due to the
14 motor vehicle accident. And the treatment
15 rendered thus far have been necess -- necessity
16 [sic] as a result, proximate cause. But for the
17 accident, she would not have received this
18 treatment.

19 Q. That's what you're really interested in this
20 report?

21 A. I'm interested in that --

22 Q. Okay.

23 A. -- and so is every court.

24 Q. And that's the testimony about causation --

25 A. Correct.

1 Q. -- that's critical --

2 A. That is critical.

3 Q. -- to prove damages?

4 A. It's an opinion --

5 Q. Yes.

6 A. -- medical opinion. That's what we need.

7 Q. What about the rest of this?

8 A. It's all important, Peter.

9 Q. It's just --

10 A. I don't know why you're taking --

11 Q. Is this not -- is this not, sir, basic stuff --

12 A. No, it's not basic --

13 Q. -- that can be pulled by looking simply at the
14 medical reports --

15 A. No --

16 Q. -- at the medical records?

17 A. -- it's not.

18 Q. Show me what's not.

19 A. Everything, the entire --

20 MR. MANNION: Well, are you going
21 to show him the medical records, too? He
22 can't answer that question without seeing
23 the medical records.

24 A. If that were the case, a judge would accept my
25 opinion. Judges don't just accept my opinion.

1 An adjuster doesn't just accept my opinion or the
2 lawyer's opinion. Have you ever negotiated with
3 an adjuster?

4 Q. Answer me this, if I'm a doctor and I'm treating
5 a patient -- I'm a chiropractor, I'm treating a
6 patient, I would certainly record the patient's
7 description of the pain when they come in before
8 I treat them, right?

9 MR. MANNION: Objection.

10 A. I'm not the doctor, Peter.

11 Q. Okay. Well, I would certainly note my diagnoses,
12 maybe I would -- maybe you would -- any doctor
13 would do this --

14 MR. MANNION: Wait. Object.

15 Q. Let me just --

16 MR. MANNION: Stop it, you're not
17 a doctor.

18 Q. -- not talk about me -- you agree, Mr. Nestico,
19 that any doctor would include in their medical
20 records the patient's description of the pain,
21 correct?

22 MR. MANNION: Objection as to what
23 any doctor would do.

24 A. I can't testify to what a doctor will do, Peter.

25 Q. And any doctor --

1 A. You're married to one, she'll tell you.

2 Q. Any doctor would record a diagnosis?

3 MR. MANNION: Objection. He's not
4 going to tell you what any doctor would do.
5 How does he know? He's not a medical
6 expert.

7 A. I said that.

8 Q. You don't know?

9 A. I've said that to you.

10 Q. What have you said?

11 A. I do not know what a doctor would do.

12 Q. Okay. So --

13 A. I'm not going to give an opinion on what doctors
14 do. I'm telling you the value of the report is
15 significant.

16 Q. And the treatment provided by the doctor, that
17 would also be noted in any basic medical records,
18 wouldn't it?

19 MR. MANNION: Objection.

20 Q. Wouldn't the doctor record that?

21 A. Again, I would hope so.

22 Q. Okay. As well as the prognosis?

23 MR. MANNION: Objection.

24 A. Sometimes.

25 Q. Okay. These risk factors --

1 A. If you're going to go through this report, I'm
2 telling you -- I've repeatedly told this to you.

3 - - - -

4 (Thereupon, Plaintiff's Exhibit 54 was marked
5 for purposes of identification.)

6 - - - -

7 Q. Okay. Let's look at Exhibit 54. Let's look at
8 -- let's look at Ms. Norris' report. And we've
9 highlighted portions for you that I want to
10 direct your attention to.

11 A. You've highlighted almost all of it.

12 Q. Yes.

13 MR. MANNION: Look at the second
14 page, is that a health insurance --

15 THE WITNESS: HIPPA form.

16 MR. MANNION: -- form?

17 THE WITNESS: It's a HIPPA form.

18 MR. MANNION: Oh, I thought --

19 MR. PATTAKOS: I don't know why
20 this second page is here. We can remove it
21 from the exhibit. This was an
22 administrative error.

23 MR. MANNION: That's interesting
24 though because it says health insurance.

25 BY MR. PATTAKOS:

1 A. Here you go.

2 Q. Besides the bottom where it says, in my opinion,
3 based upon reasonable chiropractic probability,
4 the injuries Monique Norris sustained were due to
5 the motor vehicle accident and the treatments
6 rendered thus far have been necessity [sic] as a
7 result, which I assume that's a typo.

8 A. Right.

9 MR. MANNION: Yeah, another one.

10 Q. What's the value to you in this report?

11 A. The whole report.

12 Q. The whole report?

13 A. Absolutely.

14 Q. This section on treatment -- let's assume that
15 these first two sentences, treatment for Monique
16 Norris included, treatment goals included,
17 assuming that those aren't the same for every
18 patient, how is anything that follows those two
19 sentences specific to Monique Norris and not
20 something that could be cut and paste?

21 A. Ask the doctor.

22 MR. MANNION: Well --

23 Q. -- into every report?

24 MR. MANNION: -- objection. Ask
25 the doctor, Peter.

1 A. Ask the doctor.

2 MR. MANNION: Come on.

3 A. You know that.

4 Q. What here besides the causation opinion isn't
5 either boilerplate from scientific studies or
6 information that could be readily pulled from the
7 medical records --

8 MR. MANNION: Objection.

9 Q. -- even probably automatically pulled with a
10 computer?

11 MR. MANNION: Objection.

12 Q. Any part of this?

13 A. This whole report is specific to Monique Norris.

14 Q. Okay. That's your testimony.

15 Has Floros ever provided you or the firm, to
16 your knowledge, with an opinion that your client
17 -- that the injuries that your client or the
18 firm's client was treating with him for were not
19 caused by the car accident at issue?

20 A. There may have been, yeah.

21 Q. There may have been?

22 A. Yes.

23 Q. But you're not sure?

24 A. I don't handle all these cases. You'd have to
25 ask the lawyers, but that -- I would assume there

1 are.

2 Q. But you're not aware of any specific instance?

3 A. I said I would assume there are and you'd have to
4 ask the lawyers.

5 Q. What's your assumption based on?

6 A. Because I heard them talk to some of the lawyers
7 saying that these injuries were preexisting.

8 Q. You heard him say that?

9 A. Yeah.

10 Q. And he put that in a report?

11 A. I don't know if he did or didn't.

12 Q. When did you hear him say that?

13 A. It's over the years.

14 Q. How many times have you heard him say something
15 like that?

16 A. I don't know.

17 Q. You don't know?

18 A. No.

19 Q. A dozen? More than a dozen? Less than a dozen?
20 Half a dozen?

21 A. Again, I don't know. You asked me if I heard it,
22 I did.

23 MR. BARMEN: Peter, how about that
24 break?

25 MR. MANNION: Yeah.

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MR. PATTAKOS: Okay.

THE VIDEOGRAPHER: We're going off
the record. The time is 10:17.

- - - -

(Thereupon, a recess was had.)

- - - -

THE VIDEOGRAPHER: We're back on
the record. The time is 11:29 -- or 10:29,
sorry.

- - - -

[REDACTED]

- - - -

BY MR. PATTAKOS:

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 MR. MANNION: Objection. As to

11 saying it's special treatment. Where does

12 it say that, Peter? Stop doing that. Ask

13 questions.

14 Q. Sir?

15 MR. MANNION: No, you can't ask a

16 question that assumes something that hasn't

17 been established.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

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[REDACTED]

MR. MANNION: I'll object to the tone and the emphasis on certain words but go ahead.

MR. PATTAKOS: Well, Tom, you'll note that these words are in capital letters that I emphasized.

[REDACTED]

[REDACTED]

MR. MANNION: So? Are you the person who drafted this?

[REDACTED]

[REDACTED]

MR. MANNION: I think the rules of court are pretty clear, when you read something like that, you have to read it without emphasizing words.

Q. Am I read this correctly, sir?

A. Yeah.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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13	[REDACTED] [REDACTED]
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3 [REDACTED] [REDACTED]

4 [REDACTED]

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6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

THE REPORTER: "No"?

15 [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. You agree that Floros and Town & Country handle
 24 more of your firm's cases than anyone else, any
 25 other chiro?

1 A. I don't know that to be true. It's possible.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. MANNION: Objection.

7 [REDACTED] [REDACTED]

8 Q. But you don't know?

9 A. No. They run a report and you can -- I can
10 answer that for you.

11 Q. Are the clients, the firm's clients that treat
12 with Dr. Floros and Town & Country, more
13 important to the firm than other clients?

14 A. No.

15 Q. Okay.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 56 was marked
18 for purposes of identification.)

19 - - - -

20 Q. This is an e-mail from Brandy to pre-lit
21 attorneys, pre-lit support, copying you and Jenna
22 Wiley, correct?

23 A. Yep.

24 Q. September 4th, 2014?

25 A. Yes.

1 Q. It says, when there is an insurance issue or even
2 a possibility of an insurance issue on ASC cases,
3 please send an e-mail to akron2@csgonline.net and
4 katie@managedservicesforyou.com with the
5 information. This must be done. Must is in all
6 caps. Thank you.

7 Am I reading that correctly?

8 A. Yes.

9 Q. What do you understand the purpose of this e-mail
10 to be -- strike that.

11 Why would an insurance issue with ASC cases
12 be different from an insurance issue on another
13 case?

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

15 A. It wouldn't.

16 Q. Okay.

17 MR. MANNION: Where does it say
18 that, Peter?

19 Q. Okay. Do you know why this was sent?

20 A. Again, like I testified earlier, I would assume
21 so that the clients don't get stuck with the
22 bill, but I don't know why she sent it.

23 Q. What kind of insurance issues would there be?

24 A. The coverage.

25 Q. Coverage by whom?

1 A. By the insurance company.

2 Q. The defendant's insurance company?

3 A. Or med pay.

4 Q. Or med pay. But you understand that Dr. Floros
5 did not accept the client's health insurance to
6 cover his bills, correct?

7 MR. MANNION: Objection as to what
8 he does.

9 A. I don't know that to be true, but on auto
10 accident cases.

11 Q. It's likely that that's true, correct?

12 MR. MANNION: Objection.

13 A. Well, actually now that I think about it, I know,
14 I believe he has work comp, he does work comp
15 cases --

16 Q. Uh-huh.

17 A. -- the Bureau.

18 Q. But I'm talking about auto accident cases.

19 A. I don't know that to be 100 percent certain.

20 Q. Okay. But you're pretty sure?

21 MR. MANNION: Objection.

22 A. I said I don't know that to be 100 percent
23 certain.

24 Q. Okay. You're aware -- you became aware in or
25 around the beginning of 2012 about a series of

1 lawsuits by insurance companies against Plambeck,
2 the owner of the Plambeck clinics, correct?

3 A. Yes.

4 Q. What can you tell me about that?

5 A. No.

6 Q. Pardon?

7 A. No. I don't know.

8 Q. What can you tell me about that?

9 A. I know it had to deal with x-rays. Because I
10 actually -- John and I flew down to Dallas to
11 watch the -- part of the trial.

12 Q. Why did you do that?

13 A. Because it was important to me.

14 Q. Why was it important?

15 A. Well, they're involved in a lawsuit. And it
16 didn't involve Dr. Floros specifically, that I'm
17 aware of. We watched him testify.

18 Q. You watched Dr. Floros testify?

19 A. Yes.

20 Q. Why did Dr. Floros testify in that case?

21 A. For the treatment of patients.

22 Q. Was he called by the plaintiff's or the
23 defendants?

24 A. I don't remember.

25 Q. What do you remember the allegations of the case

1 to involve?

2 A. I don't remember. I told you, I remember it had
3 to do with x-rays.

4 Q. It was a fraud case, right?

5 A. It was a civil fraud, yes.

6 Q. And it was by Allstate and Grange, correct?

7 A. No, I think it was just Allstate.

8 Q. Just Allstate. Okay. And the insurance company
9 alleged that the Plambeck chiropractors were
10 conspiring to fraudulently overbill on personal
11 injury cases, correct?

12 MR. MANNION: I'm going to object
13 as to which clinics, but go ahead.

14 A. Are you saying all Plambeck clinics?

15 Q. Some significant amount of them.

16 A. Okay.

17 Q. Okay. What did you learn when you flew down
18 there with John and attended the trial?

19 A. That this incident involved x-rays. Especially
20 -- I remember distinctly they were discussing
21 x-rays that were taken by a doctor in Texas.

22 Q. But this involved more than just that one doctor,
23 correct? It involved law firms as well, did it
24 not?

25 A. I think it involved a law firm that was

1 eventually dismissed from the case.

2 Q. So there was only one doctor found to be
3 responsible in the case?

4 MR. MANNION: Objection.

5 A. I don't know.

6 Q. You know that the jury found in Allstate's favor
7 and found against the Plambeck defendants,
8 correct?

9 A. For x-rays --

10 MR. MANNION: Wait, wait. You
11 said defendants and before you said one.

12 A. For x-rays.

13 Q. Okay. Did you change your policies at all at the
14 firm or practices --

15 A. I don't believe so.

16 Q. -- in response to these lawsuits and what
17 happened down in Texas?

18 A. I don't believe so.

19 Q. Is it possible that you did?

20 A. I don't know. I don't think so.

21 Q. Who would know?

22 A. Nobody.

23 Q. Okay.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 57 was marked

1 for purposes of identification.)

2 - - - -

3 Q. Let's look at a document. So the exchange starts
4 on the second page and I'm sorry, it's cut off
5 here --

6 A. That's okay.

7 Q. -- but it's an e-mail from Mr. Horton on
8 Thursday, May 30th. This all happens on
9 Thursday, May 30th, it looks like within the span
10 of 26 minutes, 27 minutes, from 12:34 p.m. to
11 1:01 p.m., several e-mails are sent.

12 First Horton e-mails at 12:34 p.m. to all KNR
13 attorneys, new Allstate request. And he writes,
14 David Stephas --

15 A. Uh-huh.

16 Q. -- from Allstate just requested consent for
17 deposition of doctor, all x-ray films and all
18 paperwork signed by the client from the chiro on
19 a third-party claim. Said it is their new
20 pre-lit procedure. It is an Akron Square case.
21 Regards.

22 What is your understanding of why Mr. Horton
23 sent that e-mail?

24 A. It says right there, the adjuster requested -- is
25 requesting a deposition of doctor -- which I

1 don't know why it would send it to Horton, Horton
2 was not a litigator, and there it is, all x-ray
3 films, and all paperwork signed by the client
4 from the chiro on a third-party claim.

5 This is -- what he's reporting that this
6 adjuster, I assume, said it's their new pre-lit
7 -- said this is their new pre-lit procedure.

8 Q. And he wants to inform his colleagues at the firm
9 of this new procedure that Allstate just informed
10 him of, correct?

11 A. Okay. I don't know why he sent it, but...

12 Q. And these are new requirements that require more
13 work from the attorneys, correct?

14 A. Not really.

15 Q. Okay. Well, Angelotta, Joshua Angelotta
16 responds --

17 A. Uh-huh.

18 Q. -- six minutes later --

19 A. Yep.

20 Q. -- and says, I'm getting unusually low Allstate
21 offers on Plambeck cases.

22 A. Okay.

23 Q. Allstate has obviously always made lousy offers
24 with MIST claims --

25 A. Uh-huh.

1 Q. -- these new offers are really bad even on
2 moderate-heavy impact collision.

3 What's a MIST claim?

4 A. That's All -- one of Allstate's programs.

5 Q. What does that stand for?

6 A. I have no idea. I know it's --

7 Q. Soft tissue?

8 A. I have no idea.

9 Q. You don't know if "ST" stands for soft tissue
10 there?

11 A. No.

12 Q. Okay. Is it your understanding that this --
13 these changes that are being reported were a
14 result of the fraud lawsuits --

15 MR. MANNION: Objection.

16 Q. -- down in Texas?

17 MR. MANNION: Objection.

18 A. I don't know that. No one knows that.

19 Q. Did you draw that inference?

20 A. No.

21 Q. Okay. Ken then responds four minutes later, me
22 too. They have tightened the screws even more.
23 I just got a pair of \$1,500 offers on ER Plambeck
24 claims. Both having approximately 7K in bills.

25 A. Uh-huh.

1 Q. So it's typical for the insurance companies to at
2 least pay the medical bills, correct?

3 A. Oh, no. I wish.

4 Q. Well, when it's ER bills?

5 A. Oh, even ER bills. They're questioning Akron
6 General bills, they're questioning diagnostics at
7 Akron General, at City, especially Cleveland
8 Clinic.

9 Q. But here they were tightening the screws,
10 correct?

11 A. That's what he says.

12 Q. You don't believe that was true?

13 A. They all do, all insurance companies do.

14 Q. Okay.

15 A. It's not unusual.

16 Q. Angelotta then responds another four minutes
17 later, I think a lot of us made a deal with the
18 devil by allowing them to have recorded
19 statements because the result would usually be a
20 workable offer.

21 A. Uh-huh.

22 Q. I'm inclined to stop doing this because now we're
23 wasting our time along with the client's time in
24 delaying the inevitable, which is filing suit on
25 all these claims.

1 A. Perfect.

2 Q. Perfect?

3 A. Yeah.

4 Q. You said, I agree -- you responded, I agree, we
5 need to file all these Allstate files. Please
6 send John and I a list of your Allstate-Plambeck
7 cases.

8 A. Perfect. You understand the deal with the devil
9 is the insurance company.

10 Q. The insurance company is the devil?

11 A. That's what he's referring to here.

12 Q. Sure.

13 A. Why, because we've agreed to give them recorded
14 statements and it hasn't helped.

15 Q. Did you find or understand that what your
16 attorneys were reporting --

17 MR. MANNION: Whoa, whoa, lower
18 your -- wait, wait, wait. Lower your voice
19 a little, Peter.

20 Q. -- that they were getting unusually low offers on
21 Plambeck cases?

22 THE WITNESS: Sorry, can you read
23 that back?

24 Q. I'll read it back.

25 A. All right.

1 Q. Did you ever find or understand that what your
2 attorneys were reporting in this e-mail thread
3 was true, that they were, in fact, getting
4 unusually low offers on Plambeck cases?

5 A. I wouldn't call it unusually low.

6 Q. So you disagree with what's being reported by
7 your lawyers here?

8 A. I said I didn't find it to be unusual.

9 Q. So you disagree then?

10 A. I don't know how to explain this to you. That's
11 his opinion. And they're not unusually low.
12 They're always low.

13 Q. So you disagree that these offers were unusually
14 low. Okay. Understood.

15 So you could have simply stopped referring
16 your clients to Plambeck chiropractors, correct?

17 A. Because --

18 MR. MANNION: Objection.

19 A. -- because of an insurance company's position, is
20 that what you're telling me?

21 Q. Yes.

22 A. Why? You want me to listen to an insurance
23 company?

24 Q. Well, what is your understanding of why your
25 attorneys were reporting these unusually low

1 offers?

2 A. I have no idea. But I'm not going to sit here
3 and listen to an insurance company. If you know
4 anything about handling an auto accident case,
5 you don't listen to the insurance company. If
6 you're a plaintiff's lawyer. No offense.

7 MR. MANNION: I understand.

8 Sometimes we don't listen either.

9 Q. So you didn't consider at all why Plambeck -- I'm
10 sorry, you didn't consider at all why Allstate
11 was giving unusually low offers as reported by
12 your attorneys. Your position was this is an
13 insurance company saying and doing this, so
14 forget them, I'm going to just file all these
15 cases, correct?

16 A. If that's what we have to do, that's what we're
17 going to do. Have you ever gone on a website and
18 taken a look at what Allsnake.com stands for?
19 Why they have everything about Allstate. No one
20 likes Allstate. Judges don't like Allstate.
21 That's their position. You thought what, I don't
22 care what they do. My position is to represent
23 the client. So if the insurance companies aren't
24 happy, too bad for them. But they have it, like
25 I said earlier to you, they have a job to do, let

1 them do their job and we have to do ours.

2 Q. So you didn't even consider stopping the practice
3 of referring your clients to Plambeck
4 chiropractors, correct?

5 A. Not at all.

6 Q. Okay. Instead you decided to put your clients
7 through litigation on cases that would otherwise
8 settle --

9 A. Oh, my God.

10 MR. MANNION: Objection.

11 Q. -- because you think --

12 MR. MANNION: Objection.

13 Q. -- it's so important that they treat with
14 Plambeck chiropractors as opposed to any other
15 chiropractors who might otherwise treat them?

16 MR. MANNION: Objection. So,
17 Peter, you're saying Allstate gets to
18 determine where our clients treat? That's
19 outrageous.

20 MR. PATTAKOS: Are you testifying
21 today, Tom?

22 MR. MANNION: No. This is
23 ridiculous.

24 MR. PATTAKOS: It sounds like
25 you're testifying.

1 MR. MANNION: Do you --
2 unbelievable.

3 A. I said to you they don't tell me what to do. You
4 don't listen to the insurance company. Did I not
5 say that?

6 MR. MANNION: He hasn't listened
7 to your answers.

8 A. Do you understand they still settle cases, even
9 today, so now we're talking years after, they
10 still give offers on cases -- it doesn't matter
11 who the provider is, they will slam down every
12 provider that you have. It doesn't matter who it
13 is. And as you start doing more plaintiff auto
14 accident cases, you will find the same thing. It
15 doesn't matter who it is. Their job is to put
16 down all treatment.

17 Q. Did you ever advise your clients of these
18 developments reflected in this e-mail?

19 A. Again, I haven't talked to clients unless there's
20 a problem.

21 Q. Did you instruct your attorneys to advise the
22 clients of these developments that's reflected in
23 this e-mail?

24 A. No, I haven't because I don't care about it. And
25 neither do judges, by the way. Whenever we've

1 had any Plambeck case, they don't even let that
2 in. There's no relevance.

3 Q. Did any of your other attorneys ever come to you
4 with similar concerns?

5 MR. MANNION: Yeah, object to
6 form.

7 A. I don't recall, Peter. It's possible.

8 Q. Do you recall any KNR attorneys ever suggesting
9 or actually doing, engaging in the practice of
10 advising the clients in writing that the
11 insurance companies -- certain insurance
12 companies were taking positions like this against
13 certain chiropractors?

14 MR. MANNION: Objection.

15 A. They would have to do it for every doctor, not
16 just chiropractor.

17 Q. So you're saying that just because they're
18 talking about Plambeck lawyers in this --
19 Plambeck chiropractors in this thread --

20 A. Uh-huh.

21 Q. -- that this could apply to any chiropractor and
22 it has nothing really to do with Plambeck?

23 A. It can apply to any medical provider. They do it
24 all the time, you understand that? I don't know
25 if I'm making it clear.

1 Q. But why would your attorneys be referring only to
2 Plambeck cases in this thread then?

3 A. That's the topic of their conversation. I'm sure
4 if you would have asked them about any other
5 provider, they'd do the same thing.

6 Q. Let's look at another document.

7 A. Uh-huh.

8 - - - -

9 (Thereupon, Plaintiff's Exhibit 58 was marked
10 for purposes of identification.)

11 - - - -

12 Q. Do you recognize this exchange from January 22nd,
13 2014?

14 A. I really -- I don't.

15 Q. You have no memory of this? It's Michelle
16 Forrest.

17 A. I don't even know who she is.

18 Q. She's got a KNR e-mail address. She writes,
19 gentlemen, we were given a verdict of \$950 in
20 this case and I finally received the check.

21 A. Okay.

22 Q. Below is the settlement memo (also attached).

23 A. Please let me know how you wish to handle this
24 disbursement. Additional the \$666 to -- that's
25 the client's name I think. I don't know what

1 that is -- is for the trial transcript that Rob
2 requested I order. Thank you.

3 And I responded, please send me the
4 transcript by e-mail to myself and John. And
5 then she responds attached is the transcript. I
6 also sent to Chris to save on -- I don't know
7 what that is -- per your instruction.

8 Q. A \$950 verdict that couldn't have been a good
9 result, correct?

10 A. No.

11 Q. It was a bad result, correct?

12 A. Correct.

13 Q. You wouldn't have gone to trial if you thought
14 that \$950 was the most that you could have gotten
15 from this case, correct?

16 A. I can tell you this, Michael Maillis is an
17 unbelievable trial lawyer. And if he decided to
18 take the case to trial, that's his decision and
19 I'm fine with it.

20 Q. Do you recall this was a State Farm case?

21 A. I do not, Peter.

22 Q. What's redacted here?

23 A. I don't know. Where?

24 MR. POPSON: Is that a client
25 name?

1 MR. MANNION: Yeah, it looks like
2 a client name.

3 MR. PATTAKOS: It might not be a
4 client name.

5 THE WITNESS: Okay.

6 MR. PATTAKOS: Well, how am I
7 suppose to know?

8 MR. MANNION: Well, it says case
9 after it, Peter.

10 MR. POPSON: And then it's saying
11 for trial transcript, so I assume it's --
12 it looks like it was the case name, but we
13 can find out if you want us to.

14 THE WITNESS: Yeah, I don't know.

15 MR. MANNION: Just find out so he
16 doesn't make some nefarious inference.

17 Q. Do you believe this is another example of the
18 insurance companies tightening the screws?

19 A. Peter, this is a little ridiculous. Do you
20 understand that they pay, insurance companies,
21 depending on the adjuster, depending on the
22 injury, depending on the treatment, depending on
23 the -- how the accident happened, pay differently
24 on every case. Verdicts are different. We've
25 had cases where we're very successful with Akron

1 Square's treating physician. Just it's different
2 is what I'm trying to get at.

3 Q. You stated in your discovery responses that
4 Dr. Ghoubrial has treated approximately 4,000 to
5 4,500 KNR clients between 2010, I believe January
6 2010 to June of 2016. Does that sound accurate
7 to you?

8 A. Yes.

9 Q. Assuming this is accurate --

10 A. Uh-huh.

11 Q. -- you don't have any reason to believe that that
12 rate lessened in 2017 and 2018, do you?

13 A. No.

14 MR. BARMEN: Objection.

15 Q. It says in your discovery responses that you
16 determined this number by determining the number
17 of times between January 1st and June 1st that
18 KNR requested a check to Clearwater Billing to
19 obtain records.

20 A. Sorry, January 1st of 2010?

21 Q. Yes. Sorry.

22 A. And what?

23 Q. June 1st of 2016.

24 A. Okay.

25 Q. Does that to you seem like an accurate way to

1 determine how many clients have been treated by
2 Ghoubrial?

3 A. You're not 100 percent accurate because when you
4 run that report, a client could have more than
5 one auto accident.

6 Q. How did you run this report?

7 A. On Needles.

8 Q. And how specifically did you do it?

9 A. By provider.

10 Q. So you could just search a form by provider and
11 it gives you a number?

12 A. No, you have to count them. It will give a
13 printout, you have to count them. It doesn't
14 give you a number, it doesn't summarize it for
15 you.

16 Q. It says that you pulled it up by check request?

17 A. When -- correct. In the -- so in Needles when
18 you're running it, it will have the value screen.
19 The value screen is by the check request. Do you
20 understand what I'm saying? So then once you
21 highlight that, now it comes up. It just runs
22 that report and then you've got to count them.

23 Q. So someone went through and counted for you --

24 A. Yes.

25 Q. -- 4,000 -- well -- okay. Who did that?

1 A. I think I did it and John did it.

2 Q. Mr. Reagan?

3 A. Yes.

4 Q. Is it possible that the information wasn't
5 properly entered in Needles in the first place --

6 A. No.

7 Q. -- in terms of the check requests, for example?

8 A. No, because they would have had to pay it.

9 Q. This would have come out of the cost account,
10 these checks?

11 A. Yes -- if you ran it, the check request that I
12 think we did, was the value -- the records that
13 were requested, the \$50, then, yes --

14 Q. Okay.

15 A. -- that would come out of the cost account. The
16 payment comes out of IOLTA.

17 Q. In your response to this interrogatory -- in your
18 response to a later interrogatory --

19 A. Uh-huh.

20 Q. -- no, it's this same one about how you
21 determined this number, you said, there is no
22 means to determine the price number -- precise
23 number of clients who have had payment for such
24 treatment deducted from any settlement without
25 reviewing each and every client file and

1 settlement memorandum?

2 A. Correct.

3 Q. But that's not true because you could also review
4 the bank records, correct?

5 MR. MANNION: Objection.

6 A. What do you mean?

7 Q. You can review the cost account and see how many
8 checks were cut?

9 A. To the providers.

10 Q. Yes.

11 A. Okay. That has nothing to do though with what
12 was deducted and retained. Because if -- even if
13 we request the record, right? If we withdraw
14 from the case later or we don't get a recovery,
15 that number is not accurate anymore.

16 Q. I understand what you're saying. But the checks
17 in the cost account will show -- the records of
18 the cost account will show what client each
19 expenditure was made on behalf of, correct?

20 A. Yes. You'd have a case number, it wouldn't show
21 the client's name.

22 Q. Okay. We looked at an exhibit before with an
23 updated narrative and WD procedure --

24 A. Which one?

25 Q. Not sure of the number, but it's the one that

1 looks like this. I think it was one of the first
2 exhibits we looked at today.

3 A. 55.

4 MR. PATTAKOS: No. I'm sorry,
5 that's not the one. I think it's an
6 e-mail. Ah, I think that's the one. Thank
7 you, Shaun.

8 MR. MANNION: What's the number?

9 MR. PATTAKOS: 50. It's KNR03278.

10 A. It's not an e-mail, it's from the handbook.

11 Q. Right.

12 A. Okay.

13 MR. PATTAKOS: Which exhibit is
14 this?

15 MR. KEDIR: 50.

16 A. 50.

17 Q. Okay. I just want to make sure. So it says here
18 under "Withdraw's" at the bottom, any doctor that
19 we regularly work with or have a lien on file
20 with --

21 A. Uh-huh.

22 Q. -- must be notified when we withdraw and note the
23 file with a fax confirmation or copy of the
24 e-mail. Letters must be saved to the client
25 folder. And you list Dr. Ghoubrial, Dr. Bhaiji,

1 Dr. Markarian and Dr. Chonko, et cetera.

2 Were there any other doctors that you can
3 remember that would be doctors that you regularly
4 work with?

5 MR. MANNION: I'm just going to
6 object. You didn't read everybody in that
7 list.

8 THE WITNESS: No, he did.

9 MR. MANNION: He didn't say
10 Comprehensive Pain Management --

11 THE WITNESS: He said Dr.
12 Markarian.

13 MR. MANNION: -- or did he say
14 Markarian?

15 THE WITNESS: Yeah.

16 MR. MANNION: Okay.

17 MR. POPSON: He got them all.

18 THE WITNESS: It says et cetera,
19 so...

20 BY MR. PATTAKOS:

21 Q. Any other doctors that you can think of that the
22 firm regularly works with as noted here?

23 A. There's --

24 MR. MANNION: I'm going to object
25 as to timeframe, but go ahead.

1 THE WITNESS: It's like you guys
2 are in my mind.

3 A. It depends on -- there was -- there's a lot of
4 doctors. There's -- Dr. Soni was one of them,
5 Perkowski was another one, there was someone up
6 in Cleveland I don't have memorized.

7 Q. How many doctors do you believe the firm
8 regularly works with, MDs?

9 MR. MANNION: Objection to
10 timeframe. Go ahead.

11 Q. If it's changed over the years, then please let
12 us know.

13 A. There's a lot. Not -- let me back up. Not that
14 many MDs. As you go up that food chain of
15 doctors, there's less and less.

16 Q. But there's a lot?

17 A. I don't know if you want to call it regularly,
18 but, you know, the lawyers, if they ever have a
19 need for a doctor, they'll send an mail in the
20 office, an interoffice e-mail and ask do they
21 know a doctor, I don't know, Westlake, do they
22 know a doctor on the east side of Cleveland, and
23 then the lawyers will respond.

24 Q. And you make your recommendations -- the firm
25 makes its recommendations of doctors based on

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what's best for the client, correct?

A. I would hope so.

- - - -

[Redacted]

MR. MANNION: Objection.

Q. Does that make sense?

MR. MANNION: Objection.

[Redacted]

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[REDACTED]

Q. Okay. Why is Ghoubrial the only one listed under record invoices paid?

A. Maybe they treated -- you'd have to see if they treated with Ghoubrial.

Q. Well, but you look under narrative paid and there's only four --

A. Yeah, Peter, I don't know.

Q. -- there's four different chiropractors listed and one of them is in Cincinnati, one is in

1 Youngstown, so it couldn't be that one client
2 treated with all of those?

3 A. No, you're right.

4 Q. Do you know who made this?

5 A. No, I don't. And I can tell you with 100 percent
6 certainty I've never seen this form until today.

7 Q. So you have no idea why only four --

8 MR. MANNION: Please lower your
9 voice.

10 Q. -- chiropractic clinics in -- chiropractic
11 clinics would be listed under narrative paid?

12 A. I said I don't know.

13 Q. You don't think that could have been the only
14 four clinics that were getting narrative fees at
15 that time?

16 A. No way.

17 Q. No way?

18 A. No way.

19 Q. Okay. Who's the paralegal that signed this, can
20 you recognize that signature?

21 A. No.

22 Q. M-a-d it looks like or M-a --

23 A. I don't even know who LT is on the top.

24 Q. LT?

25 A. See where it says the Paralegal and LP?

1 Q. I see a BL at the top right as well. Okay.
2 Mystery document.

3 MR. MANNION: Objection. Move to
4 strike.

5 A. I'm sure someone will be able to identify it for
6 you.

7 - - - -
8 (Thereupon, Plaintiff's Exhibit 60 was marked
9 for purposes of identification.)

10 - - - -

11 Q. This is Brandy e-mailing staff on November 14th,
12 2014 saying several -- high importance --

13 A. Of course.

14 Q. -- several months ago I met with Dr. Hochman. He
15 is an MD and does PT in his office. He is
16 located in Bedford. If you have someone that
17 doesn't want chiropractic treatment, please send
18 there. Keep in mind Ghoubrial is now working
19 with Shaker Square though so that is always the
20 first option.

21 Why is Ghoubrial always the first option?

22 MR. MANNION: You mean why did she
23 say that?

24 A. Yeah, I have no clue.

25 Q. You have no clue?

1 A. Nuh-uh. I guess if these -- here it says, keep
2 in mind Ghoubrial is now working with Shaker
3 Square. So what would happen if it was before he
4 was working with Shaker Square? Who would they
5 use? You understand what I'm saying?

6 Q. What does that mean, working with Shaker Square?

7 A. It says here, is now working with Shaker Square.

8 Q. Shaker Square is a chiropractic clinic?

9 A. Yes. So Ghoubrial is now working with Shaker
10 Square.

11 Q. So you're going to send -- the firm is going to
12 send its clients or recommend Ghoubrial to its
13 clients because he's working with Shaker Square?

14 MR. MANNION: Objection --

15 MR. BARMEN: Objection.

16 MR. MANNION: -- that's not what
17 it says.

18 A. Yeah, it doesn't say that.

19 Q. Ghoubrial is based out of Wadsworth, correct?

20 A. He's had multiple offices.

21 Q. Where have those offices been?

22 A. Where Monique Norris treated was Brown Street.
23 Then he had one at I think it was Waterloo and
24 then the office in Wadsworth.

25 Q. Okay. But those Brown Street and Waterloo

1 facilities are just spaces that he rents,
2 correct? He doesn't run his family practice out
3 of there, does he?

4 A. I don't know. He may have seen people from his
5 family practice there.

6 Q. He may have?

7 A. He may have.

8 Q. You don't know for sure?

9 A. No, I do not.

10 Q. But you understand that his family practice is
11 based out of Wadsworth, correct?

12 A. If you want to call it head office or something,
13 I assume it's -- Wadsworth is the -- that's where
14 I go.

15 Q. He has a big office there, correct --

16 A. He does.

17 Q. -- in Wadsworth?

18 A. He does.

19 Q. It's about 30 people, correct?

20 A. I don't know. He's my family doctor.

21 Q. So you've been there?

22 A. Oh, yeah.

23 Q. There's a lot of space there, correct?

24 A. There is.

25 Q. He has about 30 people working there, correct?

1 A. I don't know --

2 Q. Okay --

3 A. -- Peter.

4 Q. -- Dr. Gunning I believe testified --

5 MR. MANNION: Hey, stop talking
6 over him.

7 A. I just -- I told you I don't know.

8 Q. Okay. So were there other -- there were no other
9 doctors up in Cleveland that you would send -- up
10 in the Cleveland area that you would send -- the
11 firm would send clients to besides Hochman and
12 Ghoubrial at this time?

13 A. That's not true.

14 MR. MANNION: Objection.

15 A. At least let me tell you when I had it, I would
16 send an e-mail and ask who's around there.
17 There's a -- there were two orthopedics up there,
18 Fumich is another doctor that's up there. Mars
19 was another doctor that was up there.

20 Q. Were these good doctors?

21 A. Yeah.

22 Q. Why is Ghoubrial the first option?

23 A. Again --

24 MR. MANNION: Objection.

25 A. Again, I don't know and -- at that timeframe.

1 But if they're not treating at Shaker Square,
2 they don't go to Ghoubrial.

3 Q. What's the connection between Ghoubrial and
4 Shaker Square?

5 MR. BARMEN: Objection.

6 A. He sees their patients.

7 Q. That are your clients?

8 MR. MANNION: Objection.

9 A. Some are.

10 Q. So you're willing to defer to Shaker Square's
11 recommendation of Dr. Ghoubrial at that point; is
12 that what you're saying?

13 MR. MANNION: Excuse me, I'm
14 sorry, say that again.

15 A. What they do is between the patient and the
16 doctor, Peter. We don't get involved in that.

17 MR. MANNION: Criticizes you if
18 you do and criticizes you if you don't.

19 Q. So you don't spread out referrals among the
20 doctors, correct?

21 MR. MANNION: Objection.

22 A. That's not true either.

23 Q. Well, yesterday when we went over all of the
24 e-mails about the chiropractic referrals --

25 A. Uh-huh.

1 Q. -- where Brandy would say things, we are six to
2 one, we need to get a case here, we need to get a
3 case there, you testified that that was part of
4 an effort to spread out referrals evenly to the
5 chiropractors, correct?

6 A. Not evenly, I never said evenly.

7 MR. MANNION: He tried that with
8 Brandy, too.

9 Q. Just to spread them out.

10 A. Yes, sir, correct.

11 Q. In some particular way?

12 A. No particular way.

13 Q. Just to spread them out?

14 A. Yes, sir.

15 Q. Okay. Why isn't that done with the doctors as
16 well?

17 MR. MANNION: Objection.

18 A. I don't know that it's not done.

19 Q. Doesn't this reflect that when Ghoubrial is the
20 first option --

21 MR. MANNION: Peter, you're
22 missing a step.

23 Q. But that's -- you're not spreading referrals out,
24 here you're saying Ghoubrial is the first option,
25 always.

1 A. I'm not saying anything, first of all.

2 Q. Well, Brandy is.

3 MR. MANNION: Peter, your question
4 is assuming that KNR referred to Ghoubrial.
5 He's told you that again and again.

6 MR. PATTAKOS: Tom, stop
7 testifying for your client.

8 MR. MANNION: I'm not testifying.
9 You're not listening to his answers.

10 A. We're going around in circles here.

11 Q. You're going to rely on your attorney's answer
12 there?

13 MR. MANNION: Stop it. You're not
14 listening to his answers, Peter.

15 A. I'm relying on the answer I gave you.

16 Q. Okay.

17 MR. PATTAKOS: He needs to change
18 the tape, so let's take just one minute.

19 MR. MANNION: No, we're going to
20 take a regular one.

21 THE VIDEOGRAPHER: We're going off
22 the record at 11:18.

23 - - - -

24 (Thereupon, a recess was had.)

25 - - - -

1 MR. MANNION: Peter, are you
2 providing dates for Member Williams and
3 Thera Reid?

4 MR. PATTAKOS: You guys can put
5 whatever nonsense you want on the record --

6 MR. MANNION: Just that we get
7 proposed dates and we can ask the Court
8 whether they go forward.

9 MR. PATTAKOS: Tom, just send me
10 an e-mail and we can talk about it.

11 MR. MANNION: I sent you many --
12 like a dozen e-mails and you won't provide
13 me any dates.

14 MR. PATTAKOS: Then you can use
15 those. Take your break. Sir, please
16 change the tape.

17 MR. BEST: Well, Tom, why don't
18 you put on the record what you just
19 attempted to do?

20 MR. MANNION: Yeah. What I
21 attempted to do with all counsel in the
22 room is to get some proposed dates for the
23 depositions of Thera Reid and Member
24 Williams. We've sent probably a dozen
25 e-mails asking for that as well. I wanted

1 the dates. I know Mr. Patrice is going to
2 object to the depositions, but we want to
3 at least get the dates so we have them in
4 place for when the Court rules and whether
5 they go forward. We have all the attorneys
6 here and those individual plaintiffs here
7 so I thought we could at least get some
8 dates on the record.

9 MR. PATTAKOS: That's nice, Tom.
10 We can talk about this later. I don't want
11 to address it now.

12 MR. MANNION: Well, you've told me
13 you refuse to provide dates.

14 MR. PATTAKOS: I didn't say that.
15 You're misrepresenting my --

16 MR. MANNION: Whoa, wait a minute
17 --

18 MR. PATTAKOS: You can talk to
19 yourself on the record all you want --

20 MR. MANNION: Are you literally
21 going to say on the record that you didn't
22 say you wouldn't provide dates? You just
23 said it earlier.

24 MR. PATTAKOS: No, I told you --
25 Member Williams' deposition is finished --

1 MR. MANNION: No, it's not.

2 MR. PATTAKOS: -- okay? Thera
3 Reid we offered would come back, we'll
4 figure it out, okay?

5 MR. MANNION: Okay.

6 MR. PATTAKOS: She'll come back
7 for two hours.

8 MR. MANNION: I want dates for
9 both of them today.

10 MR. PATTAKOS: She would come back
11 for two hours. We're not going to give you
12 dates for Member Williams, Tom.

13 MR. MANNION: Give me a date then
14 we'll talk to the Court about whether it
15 goes forward.

16 MR. PATTAKOS: Member testified
17 all day, you asked every question that you
18 wanted to ask her and he was finished, told
19 her to go home.

20 MR. MANNION: Well, we can fight
21 that with the Court, but get a proposed
22 date.

23 MR. BEST: Thanks.

24 MR. POPSON: I guess you're off
25 the record since all the attorneys left the

1 room.

2 - - - -

3 (Thereupon, a recess was had.)

4 - - - -

5 MR. POPSON: When we were outside
6 one of Mr. Pattakos' clients made the
7 statement that we were keeping her
8 deposition open because he must -- Tom
9 Mannion must like her and wants to, you
10 know, drill her at a deposition one more
11 time.

12 Mr. Pattakos responded that
13 Mr. Mannion just likes to abuse women, in
14 earshot of all of us.

15 MR. MANNION: Why would you say
16 something like that?

17 MR. PATTAKOS: You guys done?

18 MR. MANNION: You're not going to
19 apologize for that statement, Mr. Pattakos?

20 Q. Mr. Nestico --

21 MR. MANNION: Are you going to
22 apologize for that statement?

23 Q. -- why did you hire Kelly Phillips?

24 MR. MANNION: We're not on the
25 record -- we're not on video.

1 MR. PATTAKOS: Let's go on video.

2 MR. MANNION: You're not going to
3 apologize?

4 MR. PATTAKOS: Please go on video.

5 THE VIDEOGRAPHER: Stand by,
6 please.

7 We're back on the record. This is
8 the beginning of Tape No. 5. The time is
9 11:36.

10 BY MR. PATTAKOS:

11 Q. Why did you hire Kelly Phillips, Mr. Nestico?

12 A. He was -- had experience. He worked for -- I
13 can't remember if it was Safe Auto or State Auto
14 in their SIU department.

15 Q. What's SIU?

16 A. Special Investigative Unit.

17 Q. He ran their litigation department as well,
18 didn't he?

19 A. I don't know. I don't remember.

20 Q. He was a pretty high-level executive in the legal
21 department there, wasn't he?

22 A. I don't know if you want to call it "high level."
23 SIU is just a whole different department.

24 Q. You were glad to bring him on board, weren't you?

25 A. Yeah.

1 Q. You were touting him as an industry -- insurance
2 industry insider?

3 A. He would have inside information, sure.

4 Q. And you were advertising that to --

5 A. First of all, you don't have to yell, just relax.

6 Q. You were advertising that to people in the
7 Columbus area that we hired this Kelly Phillips
8 and he's going to be a great addition for us, et
9 cetera, et cetera?

10 A. It wouldn't surprise me.

11 Q. How long did he last at the firm?

12 A. I don't know the exact, you know, start and end
13 dates. I think it was eight months. We can get
14 the start and end dates.

15 Q. Why did he get fired?

16 A. I didn't work -- or he didn't work directly with
17 me. He worked down in the Columbus office. My
18 understanding was there were -- there were
19 performance issues. There was issues with
20 timing, his arrival to and from work. Disappear
21 at times. This is reports that I was just
22 getting from Columbus, but I don't have specifics
23 for you.

24 Q. Issues with timing?

25 A. Yeah.

1 Q. What type of timing issues?

2 A. Getting to work on time.

3 Q. And he was a pre-lit lawyer or --

4 A. Yeah.

5 Q. -- do you not have that distinction --

6 A. No, no --

7 Q. -- in the Columbus office?

8 A. -- no, we do have them in the Columbus office.

9 Q. So he was pre-lit?

10 A. I believe so, yes.

11 Q. And you expect him to be in the office at certain
12 times?

13 A. Yes.

14 Q. Like 8:15 to 5:15 like you testified yesterday?

15 A. I believe that was the time.

16 Q. And he wasn't making it into the office during
17 those hours?

18 A. That's what I was told.

19 Q. You were told by whom?

20 A. I think it was the office manager that was down
21 there.

22 Q. Who's that?

23 A. I don't remember her last name. Trisha.

24 Q. Trisha who? Oh, you don't remember her last
25 name. Okay.

1 A. You've got to relax. You don't have to yell,
2 Peter.

3 Q. Did Paul Steele know anything about these
4 performance issues?

5 A. Probably, yes.

6 Q. Did you talk with Paul about it?

7 A. He may have.

8 Q. It was ultimately your decision to terminate
9 Kelly, correct?

10 A. I would have consulted with Paul because he was
11 the main guy down in Columbus.

12 Q. So Paul would know the most about why Kelly was
13 terminated?

14 A. Probably, yeah.

15 Q. And all you can remember is timing issues, he
16 wasn't getting into the office on time?

17 A. There was issues -- some issues with performance
18 in settling and resolving cases. See, the
19 problem that you always have with defense lawyers
20 when they come over to the plaintiff's side, is
21 our clients want their cases resolved as soon as
22 possible. That's a big push. The insurance
23 company, I don't know if they had that kind of
24 push. And especially in the SIU they don't push
25 them.

1 Q. So he wasn't pushing to get cases fast enough?

2 A. He wasn't working on the cases effectively.

3 Q. In what way?

4 A. Again, it's the defense mentality. He's not a
5 bad guy and he's not a bad lawyer.

6 Q. Are these performance issues documented?

7 MR. MANNION: This isn't an
8 employment case.

9 Q. You don't know?

10 A. I don't know.

11 Q. Were you shown any documents that you relied on
12 in approving his termination?

13 A. I don't remember.

14 Q. Is there a file on these performance issues
15 somewhere?

16 A. There may be in HR, HR might have something.

17 Q. Let's look at a document.

18 A. Okay.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 61 was marked
21 for purposes of identification.)

22 - - - -

23 Q. This reflects an e-mail exchange between you and
24 Mr. Phillips on October 16th, 2014, correct?

25 A. Yes, sir.

1 Q. What do you recall about this exchange?

2 A. So Kelly had sent an e-mail regarding his
3 interaction with, he says, five Nationwide cases,
4 I assume five Nationwide adjusters, and relating
5 to Clearwater. And he says, in my experience,
6 and he talks about his experience of incidences
7 in the past that involved --

8 Q. Mr. Nestico, I'm not asking you to read the
9 document --

10 MR. MANNION: Hey don't --

11 Q. -- at this point --

12 MR. MANNION: -- stop, stop, stop,
13 he's in the middle of answering.

14 Q. You're not going to --

15 MR. MANNION: Stop.

16 MR. PATTAKOS: I'm going to strike
17 my question.

18 MR. MANNION: No, it doesn't
19 matter --

20 MR. PATTAKOS: I'm striking my
21 question then.

22 MR. MANNION: -- he gets to finish
23 --

24 MR. PATTAKOS: I'm striking my
25 question then.

1 MR. MANNION: No, he gets to
2 finish.

3 MR. PATTAKOS: Strike my question.

4 MR. MANNION: No --

5 Q. Mr. Nestico, I'm not asking you --

6 MR. MANNION: -- stop.

7 Q. -- to read the document --

8 MR. MANNION: Peter.

9 Q. -- I'm asking you --

10 MR. MANNION: Gees.

11 Q. -- I'm asking you to just tell me what you recall
12 of this interaction?

13 MR. MANNION: You can't stop
14 somebody from answering.

15 MR. PATTAKOS: I don't want him to
16 look at the document. I want him to
17 testify from his memory.

18 A. Oh, you didn't say that. Sorry.

19 Q. Well, please. Thank you.

20 A. You handed me the exhibit.

21 Q. I understand. And now that you've seen what
22 exhibit I'm talking about, tell me what you
23 recall about this exchange with Mr. Phillips?

24 A. Without reading the exhibit?

25 Q. Please.

1 A. So like I was saying, he had a concern that he
2 voiced his opinion on what could possibly happen
3 and I gave him my thoughts on it.

4 Q. Do you have any more specific memory than that?

5 A. I don't know if the next time I was down in
6 Columbus we had a discussion about it.

7 Q. How did that discussion go?

8 A. Fine.

9 Q. Well, he says in this exchange, if you recall,
10 that he suggests that the firm is breaching its
11 fiduciary duties to its clients by continuing to
12 send them to Dr. Ghoubrial. Doesn't he do that?

13 MR. MANNION: Object. Where?

14 MR. BARMEN: Objection.

15 A. No.

16 Q. Oh, that's not your understanding of this e-mail?

17 A. No.

18 MR. MANNION: Where is that,

19 Peter? Peter, where is that?

20 Q. He suggests that --

21 A. Are we going to read it to --

22 Q. Well, we'll get --

23 MR. MANNION: Wait a minute,

24 wait --

25 Q. -- to it.

1 MR. MANNION: -- you're testifying
2 what you think he suggested?

3 Q. So you don't have any memory of that?

4 A. Mr. Pattakos, if we're going to talk about the
5 e-mail, let's read it and just discuss it.

6 Q. Well, do you recall that Mr. Phillips raised
7 concerns about insurance companies disregarding
8 Dr. Ghoubrial's treatment and refusing to
9 compensate the firm's clients for that treatment?

10 MR. MANNION: Objection as to
11 companies.

12 A. This involved he said five adjusters from
13 Nationwide. It's not every insurance company.

14 Q. Five in a row, correct?

15 A. I don't remember.

16 Q. Okay. This just wasn't a big concern for you,
17 this e-mail?

18 A. Again, like I said before, insurance companies
19 are always going to do it. What's interesting to
20 me is how come after these five, we have never
21 had that issue again --

22 Q. Okay.

23 A. -- with a Nationwide adjuster, that I'm aware of.

24 Q. On October 16th, 2014 Mr. Phillips writes that on
25 five cases in a row, he says, I am now five --

1 MR. MANNION: Wait. Whoa, whoa,
2 whoa.

3 Q. -- I am now five for my last five with Nationwide
4 cases where they are flat out refusing to
5 consider anything related to Clearwater.

6 A. Okay.

7 Q. He's referring here to Dr. Ghoubrial and his
8 practice, correct?

9 MR. MANNION: Objection --

10 A. It doesn't matter --

11 MR. MANNION: -- as to whether
12 that's Ghoubrial.

13 A. -- if it's Ghoubrial. I actually responded to
14 him that you don't treat them any different.
15 Clearwater is treated no differently than any
16 other provider we deal with that has an LOP.
17 They did this with Soni, they did this with every
18 doctor you can think of. That's their job is to
19 question the care.

20 Q. But he's telling you here that they're giving
21 special -- especially harsh treatment to
22 Ghoubrial; is he not?

23 A. In his opinion.

24 Q. In his opinion. That's just his opinion, but you
25 don't agree with that opinion?

1 A. No.

2 Q. They do it with every provider is what I told
3 you.

4 MR. MANNION: Peter, again, I'm
5 going to object. If you're going to read
6 from this, read from it, but where does he
7 say as compared to other treaters?

8 Q. So Mr. Phillips goes on, at least when
9 Progressive refuses they offset with generosity
10 in the general damages, Nationwide is not.

11 A. So you see the insurance -- he's saying insurance
12 companies treat them differently. They're
13 treating Ghoubrial's care differently. They do
14 that with every provider.

15 Q. Well, he's saying these insurance companies,
16 Nationwide in particular, is refusing to
17 compensate your clients for treatments provided
18 by Ghoubrial --

19 MR. MANNION: Wait, I'm going to
20 --

21 Q. -- does he not?

22 MR. MANNION: -- object. Where
23 does he say these insurance companies?

24 MR. PATTAKOS: Nationwide.

25 A. Nationwide, this is five cases that he says are

1 five cases, but why hasn't it happened since with
2 Nationwide.

3 Q. Do you have any reason to doubt that this was the
4 case that he was accurately representing the way
5 Progressive and Nationwide were treating these
6 cases?

7 A. Progressive, what's Progressive got to do with
8 this?

9 Q. He says at least when Progressive refuses, they
10 offset --

11 A. Where?

12 Q. -- with generosity and the general damages. It's
13 in the first paragraph --

14 A. Okay --

15 Q. -- it's in the second paragraph.

16 A. -- I got it. But at least -- but what does that
17 have to do with it? At least when Progressive
18 refuses, refuses what? They offset with
19 generosity and general damages. So they are
20 considering it. They're just putting it however
21 they want, Peter. Do you understand that these
22 insurance companies are going to say this is what
23 I consider, this is what I don't consider. This
24 is what -- but however here's the number. And it
25 turns out that the end result is the same.

1 Q. But not with Nationwide. He's saying that
2 Nationwide --

3 A. For these --

4 Q. -- is not offsetting the generosity and the
5 general damages, so --

6 A. No, he's not saying that. He doesn't say
7 Nationwide didn't offset with generosity, it
8 doesn't say that.

9 Q. It says at least when --

10 A. Okay. I see, I see, I'm sorry.

11 Q. -- at least when Progressive refuses they offset
12 with generosity and the general damages --

13 A. You're right.

14 Q. -- Nationwide is not.

15 MR. MANNION: Now we're back to
16 the problem of you not letting him read the
17 entire thing before you ask questions.

18 A. Correct, you're right.

19 Q. So again, did you have any reason to doubt that
20 this was the case, that he was accurately
21 representing the way Progressive and Nationwide
22 were treating the firm's clients on these cases?

23 MR. MANNION: Objection as to
24 Progressive, but go ahead.

25 A. No, I'm not calling him a liar. This is what

1 happened. This is what he's -- he's just
2 relaying what happened to him.

3 Q. Okay.

4 A. It says, "This e-mail is for informational
5 purposes only." That's why -- do you want to
6 read the e-mail? Should we go through it?

7 Q. He continues to say this brings out -- this
8 brings about some concern.

9 A. Yes.

10 Q. In some cases it makes settlement a near
11 financial impossibility. At the very least it is
12 taking money out of our client's pocket and ours.
13 I am a bit concerned with the ethical dilemma
14 that this creates. It is not difficult to make
15 an argument that we are treating Clearwater's
16 interests as equal to our clients.

17 Do you agree with that?

18 A. No.

19 Q. Why?

20 A. Because he's making an assumption.

21 Q. What's the assumption?

22 A. He's saying it's not difficult to make an
23 argument. Well, I make an argument that we're
24 not. And you're saying a fiduciary duty to the
25 client, he says and our pocket, ours, too.

1 Q. So what's your argument?

2 A. Well, you saw my response, it came right after
3 that. You can read that.

4 Q. I don't want you to read your response --

5 A. No kidding because --

6 Q. -- I'll ask you about that later.

7 A. -- it doesn't help you. You don't like that
8 response.

9 Q. We'll talk about your response. Whether you -- I
10 just --

11 A. You've just got to slow down.

12 Q. -- summarize -- I don't want you to read your
13 response to me, I want you to summarize what your
14 argument is in --

15 A. Be a lawyer. Be a lawyer. Advocate for your
16 client. Fight.

17 Q. Screw the insurance companies.

18 MR. MANNION: Stop it.

19 A. I didn't say that, you said that.

20 MR. MANNION: Stop it, Peter,
21 please.

22 Q. Okay. Like the insurance companies --

23 A. Fight. Fight. That's it, Peter.

24 Q. You don't care what the insurance companies are
25 doing?

1 A. I don't.

2 Q. That's your response to this argument?

3 MR. MANNION: No --

4 A. Fight.

5 MR. MANNION: -- his response is
6 in writing.

7 A. My response is in detail. That's why I said, you
8 want to read it, Peter.

9 Q. We'll read it, we'll read it.

10 A. Oh, there you go.

11 Q. Whether you agree with Mr. Phillips or not here,
12 do you at least understand the argument that he's
13 making?

14 MR. MANNION: Objection.

15 A. This is his point of view and I'm fine with it.
16 That's why I address his point of view. I did it
17 and he agrees, he responded back. We're fine.

18 Q. What's his understanding? What -- I'm sorry,
19 what's your understanding of the argument that
20 he's making?

21 A. He's saying that this -- whoever these five, on
22 these five cases, I don't know what or who, are
23 flat out refusing to consider anything related to
24 Clearwater. So the treatment of a provider.
25 They're questioning the treatment of a provider.

1 And it says I am a bit -- later on he goes
2 through all this -- I'm a bit concerned with the
3 ethical dilemma -- I don't know what ethical
4 dilemma exists?

5 Q. Do you need to read the document to be able to
6 summarize what he is saying here about why he
7 believes the firm is breaching its fiduciary
8 duty?

9 A. I do in this case, you have to, Peter.

10 Q. Okay.

11 MR. MANNION: That's unbelievable.

12 Q. So leaving aside whether you believe that the
13 reasons for Mr. Phillips' opinion that the firm
14 may be breaching its fiduciary duty to its
15 clients --

16 MR. MANNION: Objection.

17 A. He's not saying that.

18 MR. MANNION: He didn't say that,
19 Peter. Stop doing that.

20 A. He didn't say that.

21 Q. He's saying it's not difficult to make an
22 argument that we are treating Clearwater's
23 interests as equal to our clients.

24 A. He is -- this, again, I don't see where -- that
25 we're breaching a fiduciary duty.

1 Q. So you believe that you don't have a duty to
2 avoid treating a doctor's interest who is not
3 your client?

4 A. We don't. And I say it right here, Peter. It
5 says, flat out Clearwater is treated no
6 differently than any other provider we deal with
7 that has an LOP.

8 Q. By the insurance company?

9 A. No.

10 Q. Now, you're saying that that is --

11 A. No, no, no --

12 Q. -- treated by the firm?

13 A. -- I'm talking -- the firm --

14 Q. Okay.

15 A. -- doesn't treat Clearwater any differently.

16 Q. That's different from what you said before.

17 A. No.

18 MR. MANNION: What?

19 Q. Well, you testified before that the insurance
20 companies treat all of the doctors treatment in
21 the same way. Isn't that what you said before?

22 A. You're mixing one with the other.

23 Q. I think you're the one --

24 A. I'm responding to --

25 Q. -- I think you're the one who's mixing one with

1 the other, sir. You testified just five minutes
2 ago that they treat -- the insurance companies
3 treat all the doctors the same, and you said --

4 A. No, I said --

5 Q. -- I said it right here --

6 MR. MANNION: Give it in context,
7 Peter. Now stop this, seriously.

8 A. I said they question all providers.

9 MR. MANNION: God, this is
10 ridiculous.

11 Q. Mr. Phillips doesn't explain in this e-mail --
12 let me back up. Strike that.

13 Leaving aside whether you believe that Mr.
14 Phillips' reasons for believing that it's not
15 difficult that you're treating Clearwater's
16 interests as equal to your clients is legitimate
17 or not, do you not agree that it creates an issue
18 for your clients when insurance companies are
19 refusing to pay for a doctor that you're sending
20 them to treat with?

21 MR. MANNION: Objection to form.

22 A. And again, I'm going to tell you, there's a
23 common occurrence with insurance companies,
24 Peter. Is that better for you?

25 Q. But isn't Mr. Phillips referring to something

1 uncommon here which is why he's e-mailing you?

2 A. No, he'll tell you himself.

3 Q. Okay.

4 A. I'm certain he'll testify to that.

5 Q. Why are you certain of that?

6 A. He does plaintiff's work. I can guarantee they
7 give him the same lines. He's had cases, by the
8 way, with Ghoubrial as the treating physician
9 after he left my firm.

10 Q. So Mr. Phillips doesn't explain in his e-mail
11 about why the insurance companies were
12 disregarding Ghoubrial's treatment in this way.
13 So what's your understanding of their reasons for
14 this?

15 A. I don't know. I --

16 Q. You have no idea why the insurance companies are
17 treating Dr. Ghoubrial's treatment this way?

18 A. I said that they treat the physicians, any
19 doctor, any chiropractor, they all question their
20 care.

21 Q. He then goes on to say, if we get a savvy client
22 we can find ourselves in some trouble. We are
23 playing awful close to the fire. This is
24 especially true when you factor in what Grange is
25 trying to accomplish.

1 A. Where do you -- sorry, where do you see that?

2 Q. It's in the large --

3 A. Okay. I got it.

4 Q. -- paragraph.

5 A. Yep, I got it. Savvy client?

6 Q. What's a savvy client?

7 A. I don't know.

8 Q. What is he referring to regarding what Grange is
9 trying to accomplish?

10 A. I don't know.

11 Q. You have no idea?

12 A. No. I don't know what Grange is trying to
13 accomplish.

14 Q. Didn't Grange have some lawsuits against
15 providers and --

16 A. I don't know.

17 Q. -- some providers and law firms --

18 A. They do.

19 Q. -- for conspiring to inflate bills or conducting
20 an investigation?

21 A. They do.

22 Q. You never became aware of an investigation that
23 Grange was conducting?

24 A. On who?

25 Q. About these practices, generally.

1 MR. MANNION: What practices?

2 Q. Of law firms sending their clients to doctors in
3 mass numbers.

4 A. No.

5 Q. Okay. So you have no idea what he's talking
6 about?

7 A. No idea.

8 Q. Okay. Don't make the mistake of assuming that
9 Nationwide and Grange are not in a coordinated
10 effort or at least having discussions regarding
11 their individual approaches, he writes.

12 A. That's his -- he's got some inside knowledge,
13 obviously.

14 Q. Okay. He writes, on the insurance side, I was
15 intimately involved in a coordinated effort to
16 take down a large Kentucky chiropractic operation
17 and the firms that were heavily involved with
18 said operation. FYI, Attorney Rob Roby played a
19 bit of a role as well.

20 A. Okay. What does that have to do with KNR?

21 Q. You tell me, he's writing you about it.

22 A. I don't know. You tell me. It has nothing to do
23 with KNR.

24 Q. He obviously thinks this is very important
25 because he says at the beginning, please know

1 that I am not questioning what is going on here
2 nor am --

3 A. Right.

4 Q. -- I trying to overstep my bounds --

5 A. Thank you.

6 MR. MANNION: Objection.

7 Q. -- I fully understand --

8 THE WITNESS: Hang on.

9 Q. -- my place in the organization. So he's --

10 MR. MANNION: Move to strike.

11 Q. -- he knows that he's being very deferential in
12 sending this because --

13 MR. MANNION: Move to strike.

14 Q. -- he knows it's not going to be taken well,
15 correct?

16 A. You know, he knows that we don't do anything at
17 KNR that has a problem, that's what he knows.
18 Please know that I am not questioning. He's not
19 questioning because KNR doesn't do any of that.
20 He would have reported it to someone, Peter.

21 Q. Why would he be bringing up Rob Roby to you in
22 this e-mail?

23 A. He's a defense lawyer.

24 Q. Are you familiar with him?

25 A. I met him once.

1 Q. In what context?

2 A. I was defending a deposition -- no, sorry. One
3 of our lawyers was taking a deposition. I went
4 back to defense there.

5 Q. What do you remember about that case?

6 A. I don't remember much about that. It was years
7 ago. And I was at his office for a mediation.
8 And if anything was going on, Peter, Kelly
9 Phillips would have reported it. Rob Roby would
10 have reported it.

11 Q. Reported it to whom?

12 A. Disciplinary counsel, of course.

13 Q. Mr. Phillips goes on to say, when you are running
14 an organization that continues to grow at
15 unprecedented rates, you must regularly stop and
16 take stock in what is happening around you. I am
17 not suggesting --

18 A. I appreciate that.

19 Q. -- that you are not, I am simply saying that
20 given my experience, I'm seeing some things that
21 are bringing about concern.

22 A. I'm not suggesting that you are not. That's
23 right, I appreciate it. That part of it -- I
24 don't disagree with his whole e-mail. I
25 appreciate parts of it. It his opinion, it's

1 great.

2 Q. You agree that your organization was growing at
3 unprecedented rates at that time?

4 MR. MANNION: Objection.

5 A. I don't know about unprecedented rates. This is
6 now 2014.

7 Q. It was growing fast?

8 A. No, it wasn't.

9 Q. Okay. Where did he get that impression?

10 A. Ask him.

11 Q. Okay. But you agree with his advice on the
12 importance on taking stock of what is going on
13 around you, correct?

14 A. Taking stock would mean just considering, but
15 again, wait until you go to my answer.

16 Q. We're getting there. He says he was trying to
17 protect you. Do you agree with that?

18 A. I appreciate --

19 MR. MANNION: Wait. Where at?

20 MR. POPSON: Right here

21 (indicating).

22 Q. Do you agree with that?

23 MR. MANNION: He misstates a lot

24 so --

25 MR. POPSON: I know.

1 A. Are you talking about after that statement?

2 Q. It says at the bottom --

3 A. Yeah.

4 Q. -- let me make myself clear, I am a member of
5 your team, I am simply trying to protect you.

6 A. That's what I'm looking at. Okay. He's saying
7 that. That's okay.

8 MR. PATTAKOS: How did I misstate
9 that, Tom? I'm sorry, where --

10 MR. MANNION: I told Jim why I
11 asked where it's at because you've
12 misstated other things that are in here.

13 MR. PATTAKOS: Okay.

14 BY MR. PATTAKOS:

15 A. I don't know why he's protecting me. You know,
16 and you think about it, he's the lawyer on the
17 case, he can protect himself.

18 Q. Well, it's your firm, right?

19 A. It's his license.

20 Q. Do you have any reason to doubt that he was
21 trying to protect you here?

22 A. There's nothing to protect.

23 Q. Do you believe that he had any ulterior motive in
24 sending this e-mail?

25 A. I don't think so.

1 Q. Okay. You respond, I appreciate the concern, but
2 we have considered this issue. Who's "we"?

3 A. Me and the partners.

4 Q. Who are the partners that you considered this
5 issue with?

6 A. At the time it would have had to been -- I don't
7 know if '14 -- no. '14, John and Josh and Nomiki
8 and Tom Vasvari, were partners at that time, but
9 in the past it could have been referring to when
10 Robert and Gary and I were partners. This is not
11 a -- something new.

12 Q. What prompted you to consider this issue before?

13 A. It's insurance companies, this is what they do.

14 Q. No specific incident that you're referring to?

15 A. No. They did it when Dr. Soni was around.

16 Q. Who's Dr. Soni?

17 A. He's an orthopedic surgeon -- was an orthopedic
18 surgeon.

19 Q. How do you spell "Soni"?

20 A. S-o-n-i.

21 Q. And what was he doing that the insurance
22 companies were making an issue with?

23 A. Just giving care.

24 Q. Giving orthopedic surgeries?

25 A. No -- well, they questioned that, too.

1 Q. You say, I am glad you are thinking about these
2 issues however, that is all the defense
3 perspective. Are we not considering our client's
4 interest when they have signed an LOP and could
5 get sued by Clearwater or Dryfuss or any other
6 doctor the insurance company does not agree with
7 their bill?

8 A. Uh-huh.

9 Q. Okay. What's Dryfuss?

10 A. Dryfuss & Williams is a collection agency for a
11 number of providers throughout the state,
12 hospitals.

13 Q. And they have LOPs?

14 A. They get them, yeah.

15 Q. Okay.

16 A. But here it says the client's interest, when
17 they, the clients, have signed an LOP. Are we
18 not negotiating with every, stress --

19 Q. So Ghoubrial --

20 A. -- provider not just Clearwater to help the
21 client and us get paid.

22 Q. So Dryfuss is a company that buys the rights to
23 LOPs from doctors; is that fair?

24 A. No, it's not fair.

25 Q. Well, what are they? You said they're a

1 collection agency. Collection agencies
2 typically --

3 A. They collect for providers.

4 Q. They collect for providers?

5 A. Correct.

6 Q. So they get some percentage of what they collect?

7 A. I don't know. I assume so. That's...

8 Q. Okay. Now you say you're protecting your
9 client's interests because they've signed an
10 LOP --

11 A. Uh-huh.

12 Q. -- and could get sued by Clearwater or Dryfuss,
13 but had they not signed an LOP they couldn't get
14 sued?

15 A. No, they can get sued.

16 Q. For unpaid bills regardless of whether there's an
17 LOP?

18 A. A lot of clients do.

19 Q. So what does the LOP have to do with them getting
20 sued here?

21 A. It's one of the reasons why. They now sign --
22 and don't forget, also the lawyers sign that LOP.
23 Then it says if it wasn't for MDs willing to do
24 this work, who would care for these victims,
25 question mark. The insurance company would just

1 find some other excuse not to pay bills and
2 increase their bottom line.

3 Q. I can read your response, Mr. Nestico, I want to
4 ask you about this --

5 A. Okay.

6 Q. -- line where you say Clearwater is treated no
7 differently than any other provider we deal with
8 that has an LOP?

9 A. Correct.

10 MR. MANNION: But read the whole
11 paragraph, Peter. You can't take one
12 sentence out. They're in context. Read
13 the --

14 MR. PATTAKOS: Tom, I know you
15 don't like my questions, but --

16 MR. MANNION: No --

17 MR. PATTAKOS: -- please stop
18 interrupting.

19 MR. MANNION: -- no, because
20 you're cheating.

21 MR. PATTAKOS: I'm not cheating,
22 we'll see.

23 MR. MANNION: Read the sentence
24 before to put it in context. That's what
25 he's trying to do.

1 MR. PATTAKOS: Tom, I know you're
2 going to make your arguments, but you can
3 save them for the Court --

4 MR. MANNION: Oh, my God.

5 MR. PATTAKOS: -- it's not
6 appropriate for you to continue to
7 interject.

8 MR. MANNION: It's not appropriate
9 for you to ask a question when you do not
10 have a good basis --

11 MR. PATTAKOS: I am asking what he
12 means when he writes, Clearwater is treated
13 no differently than any other provider we
14 deal with --

15 A. Uh-huh. Because...

16 MR. PATTAKOS: -- that has an LOP.

17 BY MR. PATTAKOS:

18 Q. So you are referring to treatment by the firm or
19 by the insurance companies?

20 A. What? What do you mean by treatment by the firm?

21 MR. MANNION: Read the paragraph,
22 Rob.

23 Q. When you write Clearwater is treated no
24 differently --

25 MR. MANNION: Wait a minute, whoa,

1 whoa, wait a minute. You have a question,
2 I want him to read the paragraph.

3 MR. PATTAKOS: I'm going to strike
4 the question and ask a different question
5 so there's --

6 MR. MANNION: Okay. Well, he
7 asked you what you meant, read it, please.

8 BY MR. PATTAKOS:

9 Q. When you write Clearwater is treated no
10 differently than any other provider we deal
11 with --

12 A. Uh-huh.

13 Q. -- treated differ -- treated no differently by
14 whom?

15 A. Oh, I see what you're saying. We don't treat
16 Clearwater any different than any other provider.
17 It says, are we not negotiating with every,
18 right, provider not just Clearwater, to help the
19 client and us get paid. Clearwater is treated no
20 differently than any other provider we deal with
21 that has an LOP. We're negotiating.

22 Q. Phillips' e-mail is about how the insurance
23 companies are treating the doctor?

24 MR. MANNION: Objection.

25 A. I'm going through the whole scenario with him.

1 I'm responding to the whole scenario.

2 Q. Well, I guess I want to know --

3 A. This gives my interpretation of what he wrote.

4 Q. How is it responsive when Phillips is expressing
5 a concern about how the insurance companies are
6 treating the doctor and his treatment --

7 A. Uh-huh.

8 Q. -- you say they are treated no differently by the
9 firm --

10 A. Right.

11 Q. -- isn't he saying precisely that the firm should
12 treat him differently?

13 MR. MANNION: No.

14 A. Why would you --

15 MR. PATTAKOS: Tom --

16 MR. MANNION: Stop it.

17 MR. PATTAKOS: -- thanks for the
18 answer.

19 MR. MANNION: No, stop it, you're
20 making these things -- you're making stuff
21 up, Peter.

22 A. Why would we treat Clearwater any differently?

23 Q. Because Kelly Phillips is telling you that the
24 insurance --

25 A. Oh --

1 Q. -- companies think his treatment is bogus.

2 A. -- so that's what I've got to do, what the
3 insurance company says? Come on. If you keep
4 reading, in fact, ask yourself why -- ask
5 yourself why all these companies have paid the
6 doctor either directly his full bill, when there
7 is no lawyer or a med pay has paid us -- has paid
8 us his bill and others in full, but yet on a
9 third-party case they raise this BS. Do you
10 understand that?

11 Q. Mr. Nestico, you write here right below the
12 redacted portion --

13 A. Yes, sir.

14 Q. -- two paragraphs below --

15 A. Uh-huh.

16 Q. -- any discussion of not considering a doctor's
17 bill will result in litigation even if that means
18 every Nationwide case. These are my directives.

19 A. Perfect. Actually let's read the whole
20 paragraph --

21 Q. Well, I'm not asking you about the whole
22 paragraph, I want to ask you --

23 A. Oh -- go ahead.

24 Q. Are you saying here that you're going to put your
25 clients through litigation on cases that would

1 otherwise settle because you think it's that
2 important that they treat with Ghoubrial as
3 opposed to any other doctor who might otherwise
4 treat them?

5 MR. MANNION: Objection.

6 A. You just drew a whole bunch of conclusions that
7 have nothing to do with that, zero. Let's --
8 you're getting -- I'm going to answer you now.
9 You need to argue the necessity of the treatment
10 and the doctor's credentials, the facts of your
11 case. You were hired to be an advocate, not a
12 puppet for the insurance company. Any dis --
13 now, we're going to go to your part -- any
14 discussion is not considered -- of not
15 considering a doctor's bill, will result in
16 litigation even if that means every Nationwide
17 case. These are my directives.

18 That means the insurance company is forcing
19 us to go into litigation. They're forcing my
20 clients to have to go through litigation because
21 they're not considering the care that's
22 reasonable and necessary due to the accident. So
23 the insurance company is forcing us, Peter. We
24 don't force our clients. In fact, we give the
25 choice to our clients, they decide if we want to

1 go to litigation or not.

2 Q. You don't believe that if you sent your clients
3 to another doctor -- if your clients treated with
4 another doctor who the insurance companies had a
5 little more respect for or at least not so much
6 antipathy for, that your clients would be better
7 off; is that your testimony?

8 A. You're giving an unfair hypothetical because I
9 don't know what the insurance companies are
10 thinking, but I do know --

11 Q. You know they're not paying --

12 MR. MANNION: Let him finish his
13 answer.

14 Q. Go ahead.

15 A. No, go ahead.

16 Q. What were you going to say? You go ahead,
17 please.

18 A. No, no. Go ahead, Peter.

19 Q. You know they're not paying anything on
20 Ghoubrial's cases?

21 A. That's a bunch of BS.

22 MR. MANNION: Objection.

23 Q. It's a bunch of BS. So now you do disagree with
24 what Kelly wrote in his e-mail?

25 A. I disagree with what you're saying because I know

1 that they do.

2 Q. Okay.

3 A. Again, I gave you the example, it's actually in
4 the letter. So let's just go back to the letter.
5 When it is a first-party claim -- do you know
6 what that is? Just so we can -- I can continue.

7 Q. Continue.

8 A. Perfect. It's a first-party claim or in med pay,
9 they pay his bill in full, Nationwide, too, so
10 does Grange in full, but yet when it's a
11 third-party claim, wow, then his care is not
12 reasonable or necessary or whatever excuse they
13 can come up with. Why? What's that got to do
14 with it? It's the same insurance company,
15 different adjuster.

16 Q. Mr. Nestico, is there a shortage of doctors in
17 the Columbus, Ohio area?

18 A. That will do auto accident cases, yes, there are.

19 Q. There's fewer of them in Columbus than there are
20 in Cleveland?

21 A. It's the same everywhere.

22 Q. You said there were a lot of them in Cleveland.
23 There's not a lot of them in Columbus?

24 A. That I know, no. Dr. Bhaiji, in fact, from
25 Cleveland, went down to Columbus.

1 Q. And that's another one you regularly work with,
2 correct?

3 A. Have.

4 Q. Yeah. So how many doctors in the Columbus area
5 do you work with, does the firm work with?

6 A. Medical doctors?

7 Q. Yes.

8 A. I don't know, you would have to -- the only way
9 to determine that is if they send an e-mail out,
10 I'm sure some of the lawyers down in Columbus
11 will tell you.

12 Q. And you can't recall any off the top of your
13 head? Okay.

14 A. There's not that many. I think we got -- there's
15 one neurosurgeon I know that's down there.

16 Q. And you think you're doing what's best for the
17 firm's clients even despite acknowledging that
18 your clients want you to resolve matters as
19 quickly as possible?

20 MR. MANNION: What?

21 A. I just said that.

22 Q. And you fired Kelly Phillips because you said he
23 wasn't setting cases --

24 A. I --

25 Q. -- quickly enough?

1 MR. MANNION: Objection.

2 A. His performance was in question, but the biggest
3 issue that I remember that sticks out -- and you
4 can ask Paul, you're going to depose him -- was
5 the time, him getting to work on time. You can
6 ask him.

7 Q. Well, you talked about the importance to your
8 clients of resolving cases quickly --

9 A. As quickly as possible.

10 Q. -- but you're going to drag them through
11 litigation --

12 MR. MANNION: Objection.

13 Q. -- on every single one of these cases involving
14 Ghoubrial, and I'm trying to understand why?

15 MR. MANNION: Objection to the
16 characterization of he's dragging them
17 through. He's already testified who's
18 causing this.

19 Q. He is saying any discussion of not considering a
20 doctor's bill will result in litigation even if
21 that means every Nationwide case --

22 A. Uh-huh.

23 Q. -- these are my directives --

24 MR. MANNION: Yeah, you can't --

25 Q. -- I would say he's the one --

1 MR. MANNION: And you can't fear
2 them and any time they want to bring
3 litigation my way, I'll be happy to take
4 that task on and he just told you a minute
5 ago that it was the insurance company
6 dragging it through. He just said that.
7 You're not listening and then you
8 mischaracterize and misstatement his
9 testimony and it's not right.

10 MR. PATTAKOS: Are you though
11 testifying, Tom?

12 MR. MANNION: Are you through
13 mischaracterizing his testimony?

14 Q. Do you have anything more to say on this --

15 MR. MANNION: We'll go back and
16 look at what his testimony was.

17 Q. -- Mr. Nestico?

18 A. Everything that you said was not accurate.

19 Q. You will fight tooth and nail against the
20 insurance companies to protect your relationship
21 with Ghoubrial regardless of the impact on your
22 clients, correct?

23 A. No. Do you understand that we don't decide when
24 a case goes to litigation? I would sit down --
25 first of all, let's take a step back. Each

1 individual lawyer, the litigating lawyer, will
2 discuss this with the client. It's different in
3 every case. They'll sit down with the client,
4 they'll explain to them what's going on. If they
5 want to go into trial, if the client says yes,
6 now the case proceeds. I'm not protecting -- in
7 fact, I say don't treat them any -- here, it's
8 right there, Clearwater is treated no
9 differently.

10 Q. And you never advise your clients about this
11 treatment that the insurance companies are giving
12 to Ghoubrial's cases, correct?

13 A. I don't advise the client. The lawyer -- you'd
14 have to ask the lawyer.

15 Q. And you don't instruct the lawyers to do so --
16 you didn't tell Kelly Phillips --

17 A. I don't tell them --

18 Q. -- in response to --

19 A. -- how to practice law.

20 Q. -- you didn't tell them you need to tell our
21 clients about this and that maybe they should --

22 A. Mr. Pattakos --

23 Q. -- treat with another doctor, correct?

24 A. -- Mr. Pattakos, he's a lawyer, he is licensed.

25 Do you understand, he has an obligation, he has a

1 duty to these clients? He would tell them. If
2 he felt it was necessary, he would tell them.

3 Q. And you never advised him to do that, instructed
4 him to do that?

5 A. I don't tell a lawyer how to practice law.

6 Q. You never -- as with the Plambeck lawsuits, you
7 never became aware of any effort by your
8 attorneys to advise their clients of insurance
9 companies tightening the screws against
10 particular health care providers, correct, sir?

11 MR. MANNION: Objection to form.

12 A. Ask them.

13 Q. You're not aware of anything?

14 A. Ask them.

15 Q. I will ask them, but I'm asking you --

16 A. Okay.

17 Q. -- now.

18 A. I've never told them.

19 Q. And you're not aware of anyone at your firm ever
20 having done so, correct?

21 A. Again, I don't know, I haven't told them.

22 Q. I want to go back to the top of your e-mail where
23 one of the first things you say to Kelly is that
24 you're protecting the client by fighting to get
25 Ghoubrial's bills paid because otherwise

1 Ghoubrial could sue the client --

2 MR. MANNION: Where did he say
3 that?

4 THE WITNESS: It's at the top of
5 my e-mail -- it's actually at the bottom of
6 the page.

7 MR. MANNION: Yeah, but that's not
8 -- Ghoubrial's name is not even in here.
9 It says Clearwater. You're paraphrasing?

10 Q. Ghoubrial is Clearwater, correct?

11 MR. MANNION: No. What? There
12 could be Gunning --

13 THE WITNESS: Correct.

14 Q. All doctors --

15 MR. MANNION: -- he has other
16 doctors.

17 Q. Ghoubrial -- Clearwater is only Ghoubrial and
18 doctors that are employed by Ghoubrial, correct?

19 MR. MANNION: Okay. But you're
20 saying -- doesn't the letter say this and
21 you're not reading it, you're interpreting
22 it and you're paraphrasing.

23 Q. But this is what you're saying to Kelly, correct,
24 Mr. Nestico, that you are protecting the client
25 by fighting to get Ghoubrial's bills paid because

1 otherwise Ghoubrial could sue the client because
2 they signed an LOP, correct?

3 MR. MANNION: Object to the
4 form --

5 A. Or Dryfuss --

6 MR. MANNION: -- Go ahead.

7 A. -- or Dryfuss --

8 Q. Or Dryfuss.

9 A. -- or other doctors, yeah.

10 Q. Dryfuss is one of these collection companies?

11 A. Or any other doctors.

12 Q. So why isn't the solution here instead of taking
13 the position that you're going to go to
14 litigation on every case involving Ghoubrial and
15 these insurance companies, to make sure that
16 Ghoubrial gets paid --

17 A. No.

18 Q. -- to instead use that energy --

19 A. It --

20 Q. -- and that effort on developing relationships
21 with doctors who will accept your client's health
22 insurance payments instead of insisting on
23 working on an LOP?

24 MR. MANNION: Okay. Objection.

25 First of all, you made it an either/or.

1 He's never said that. He never said that
2 was his position. You've misstated it
3 again. Completely improper question. Go
4 ahead.

5 A. You had five questions in there and you made a
6 bunch of statements. I'm looking for the
7 question mark. Just give me the question. I
8 don't put his interest -- and no one in the firm
9 has ever put the doctor's interest before our
10 clients, never have, never will. Because we're
11 fighting the insurance company to pay a medical
12 bill? You made that statement. Are you kidding
13 me? Then you make a statement that wouldn't it
14 better to send them because they accept health
15 insurance. What does that have to do with it?
16 Are you familiar with Robinson versus Bates? Any
17 clue?

18 Q. How does Robinson versus Bates figure --

19 A. What do you mean?

20 Q. -- into this? Why don't you tell me.

21 A. Oh, sure, I'll tell you. Robinson versus Bates
22 allows the defense lawyers to introduce into
23 evidence the amount of the bill that was actually
24 paid versus the amount that was billed. Where we
25 get to introduce evidence of the amount of the

1 bill that was actually billed because that's the
2 reasonable charge of the bill. It has effect
3 don't you think? And as you do more plaintiff
4 work, you will see that.

5 Q. Have you tried to find doctors and work hard at
6 finding doctors that will treat your clients
7 based on their own insurance and their own health
8 insurance?

9 MR. MANNION: Objection. Go
10 ahead.

11 Q. Have you made any efforts in this regard?

12 MR. MANNION: Objection.

13 A. We've made every effort to find doctors who would
14 treat our patients, period. They don't -- you
15 heard your own clients testify that their own
16 PCPs don't get involved. Their own.

17 Q. What efforts has the firm made to try to find
18 providers to treat its clients and get billed by
19 -- and bill the client's own health insurance?

20 MR. MANNION: Object.

21 A. And again, it has nothing to do with it. You
22 keep going back to this health insurance. You
23 saw the own settlement memorandums had health
24 insurance in there. Some of them have Medicaid.
25 Doctors won't accept Medicaid, Doctors won't bill

1 Medicaid because it's an auto accident. They
2 give you all kind of reasons. You've seen that.
3 Do you think that there's this big thing of it's
4 better if they go -- bill the health insurance.
5 Really? I'd like you to tell that to every
6 plaintiff's bar.

7 Q. When you write, when have these bills not been
8 awarded by jurors --

9 A. Right. Question: When have they -- you tell me,
10 Mr. Phillips, when these bills have not been
11 awarded by a jury.

12 Q. But why does that matter when only a tiny
13 percentage of your cases go to trial?

14 A. It still matters. It matters to the insurance
15 company, don't you think? Because if it doesn't
16 get resolved, we're going to go to litigation,
17 we're going to go to trial, a jury is going to
18 give you those bills.

19 Q. You write, rest assured you are not the first
20 person to come from the insurance defense side --

21 A. Yes, sir. Including myself.

22 Q. -- including myself and John Reagan --

23 A. And many others.

24 Q. -- to mention a few. As discussed in our
25 interview, you can either make the mental shift

1 or you can't and that is left to be seen.

2 A. Correct.

3 Q. I and plenty of others have made the shift and
4 realize how poorly insurance companies, as a
5 whole, treat people. Anything to increase their
6 bottom line they will say.

7 A. Okay.

8 Q. What is the mental shift?

9 A. Defending plaintiffs and not insurance companies.

10 Q. To come to the belief that insurance companies
11 are constantly acting in bad faith and will say
12 anything to make a profit?

13 MR. MANNION: Objection.

14 A. If they're acting in bad faith, I'll bring that
15 lawsuit.

16 Q. Isn't that what you're saying?

17 A. No.

18 MR. MANNION: Wait, wait --

19 A. You don't see the words, bad faith in there.

20 MR. MANNION: -- we have

21 third-party bad faith in Ohio?

22 A. You don't see bad faith in there, do you?

23 Q. How poorly insurance companies --

24 A. Does it say "bad faith"?

25 Q. -- as a whole treat people --

1 A. Does it say "bad faith"?

2 Q. -- anything to increase their bottom line they
3 will say.

4 A. You don't even know what bad faith is, do you?
5 When you're dealing with an insurance company,
6 you don't know what bad faith is.

7 MR. MANNION: There's no
8 third-party bad faith in Ohio, Peter.

9 Q. You believe that insurance companies will --

10 A. Peter, come on.

11 Q. -- as a whole do anything to increase their
12 bottom line?

13 A. Peter, come on.

14 Q. That's what you write here, sir.

15 A. Peter, that is a factor, but let's talk about bad
16 faith because you throw that out there --

17 Q. No, I don't want to talk about bad faith.

18 A. Oh, I see. Okay.

19 Q. So you believe that as a whole insurance
20 companies are bad and it's mainly because they
21 want to make a profit?

22 MR. MANNION: Objection.

23 A. They're in business -- I told you, I don't blame
24 them, they're in business to make a profit. I --

25 Q. But you're blaming them here. You're saying he

1 needs to make a mental --

2 MR. MANNION: Hey, stop cutting
3 him off --

4 A. I said, I don't blame them --

5 MR. MANNION: -- and yelling at
6 him.

7 A. -- for what they do. That's their business.
8 They're entitled to make money, right? What, are
9 they going to be in business to not make money?
10 We're not going to have insurance, are we?

11 THE WITNESS: Are we breaking for
12 lunch?

13 MR. PATTAKOS: No, we're not.

14 MR. MANNION: Yes, we are.

15 MR. PATTAKOS: We have about --

16 THE WITNESS: I said soon.

17 MR. PATTAKOS: I have about ten,
18 15 minutes.

19 THE WITNESS: That's okay, that's
20 fine. I didn't say now.

21 BY MR. PATTAKOS:

22 Q. You write a bigger question you should ask
23 yourself is are these people all lying?

24 A. Right.

25 Q. Are the ER doctors lying --

1 A. Right.

2 Q. -- chiros lying, medical doctors lying, and are
3 we lying.

4 A. Right.

5 Q. If your answer to any of these question is yes,
6 then you need to reconsider your choice of
7 employment.

8 A. Perfect.

9 Q. Don't you think it's fair to read Mr. Phillips'
10 e-mail as already telling you that his answer to
11 some of these questions was yes?

12 MR. MANNION: Objection.

13 A. No, no, no, no.

14 MR. MANNION: Please.

15 Q. Why not?

16 A. You're drawing your own assumptions, your own
17 conclusion. The whole point of -- see, I give it
18 as an example, so ask yourself these questions,
19 and ask any -- ask any of the litigators -- which
20 you didn't mention -- in your office in Columbus
21 when have these bills not been answered by
22 jurors, agree? If your case is good on facts,
23 example, impact, ER, chiro, and MD, with a good
24 witness, then we litigate the cases, right? Does
25 it say that? I'm reading --

1 Q. You can read your e-mail, I understand.

2 A. Okay. And now you're talking that my point to
3 him is when these people get into an accident,
4 they go to the ER, they document the injury,
5 right? Is the ER doctor lying? Are they lying
6 to the ER doctor? Are your plaintiffs, which is
7 more interesting to me, that you sit here saying
8 you represent plaintiffs in this case, did they
9 all lie when they went to the emergency room?
10 Did they all lie when they went to the doctor?
11 Did they all lie when they went to the
12 chiropractor? Did they all lie to Dr. Ghoubrial?
13 Is that what you're saying, your own clients
14 lied? That's my point, they're not lying,
15 they're hurt.

16 Q. Isn't he precisely saying that Ghoubrial is lying
17 and that his treatment is fraudulent?

18 MR. MANNION: Where? Where?

19 A. Where?

20 Q. Nationwide is not paying for this treatment, why
21 are they not paying for it because they think
22 that --

23 A. They don't think it's --

24 Q. -- it's worthless?

25 A. -- have you ever heard of the term reasonable

1 and --

2 Q. They think it's fraudulent.

3 A. -- necessary?

4 Q. We'll get to that --

5 A. Come on, Peter.

6 Q. -- we'll get to that.

7 MR. MANNION: Where does it say
8 that, Peter?

9 MR. BARMEN: Objection. Move to
10 strike.

11 MR. MANNION: I want to know what
12 your --

13 BY MR. PATTAKOS:

14 Q. Mr. Nestico, you write -- you write you have
15 taken down Nationwide before?

16 A. Yes, sir.

17 Q. And that was the VanHorn case?

18 A. Yes, sir.

19 Q. And what was the VanHorn case about?

20 A. It dealt with -- it dealt with the ability for
21 rental car coverage, that they were yanking the
22 rental car coverage prior to the time that they
23 had to. And they were taking advantage of the
24 clients on their property damage.

25 Q. Okay. What's redacted here?

1 MR. MANNION: What page?

2 THE WITNESS: Right here.

3 MR. MANNION: Oh, I see. Yeah.

4 A. There's information that's privileged. Dr.
5 Ghoubrial has consulted with me about this and
6 that's because he asked me about my Nationwide
7 case. So there's privileged information in there
8 that I asked to be redacted.

9 Q. What is privileged about this?

10 A. I told you there's privileged information there
11 that I asked to be redacted. I consulted with my
12 lawyers and they agreed that it should be
13 redacted and they did.

14 Q. Who's the -- what's the basis of the privilege?

15 A. And again, he consulted with me, to me I looked
16 at it as an attorney/client privilege.

17 Q. Ghoubrial consulted with you --

18 A. Yes.

19 Q. -- as his attorney?

20 A. Yes.

21 Q. About whatever you wrote here?

22 A. Yes. And my lawyers considered it and said
23 that's appropriate.

24 Q. Well, we'll file a motion on that.

25 A. Okay. If the Judge doesn't think so, that's

1 fine. That's -- I'm okay with that. I've got an
2 ethics lawyer sitting right there, why don't you
3 ask him?

4

- - - -

5 (Thereupon, Plaintiff's Exhibit 62 was marked
6 for purposes of identification.)

7

- - - -

8 Q. So what's this e-mail on the second page, Kelly
9 Phillips sending you and Paul Steele settlement
10 figures for approval?

11 A. Uh-huh.

12 Q. Presumably the client's name is redacted.

13 Referred by Town & Country.

14 A. Uh-huh.

15 Q. American Family only crediting 300 of Clearwater
16 bills citing duplication of billing, and usual
17 and customary.

18 A. There's the language.

19 Q. What's the purpose of him sending this e-mail?

20 A. It's getting approval to see if we can get these
21 reduced.

22 Q. And he's getting your approval, correct?

23 A. He's asking me to call and get the approvals.

24 Q. From?

25 A. Clearwater and Town & Country.

1 Q. Okay. So you're the one who calls to get those
2 reductions?

3 A. Sometimes I do.

4 Q. Okay. You say get something in writing from them
5 regarding Clearwater.

6 A. Perfect.

7 Q. Because that will make it easier for you to deal
8 with these providers in negotiating the
9 reduction, correct?

10 A. No, no, no, no.

11 Q. So why do you want something --

12 A. Get something in writing from them -- oh, I'm
13 sorry. Get something in writing from them, from
14 the insurance company --

15 Q. Yeah.

16 A. -- regarding this position. Is there any med
17 pay?

18 Q. Yep. So he sends to you then in response, client
19 does not have med pay. Here is the response from
20 American Family regarding reductions.

21 A. Okay.

22 Q. So it's -- he quotes a Jane Pedersen who's a
23 claim adjuster, it says Dear Attorney Phillips,
24 we have had a chance to review and evaluate the
25 demand package for your client --

1 A. Right.

2 Q. -- with the assistance of our Medical Services
3 Department. The frequency and length of care
4 submitted by Town & Country is excessive for this
5 type of soft tissue back injury. They explain
6 why. Then --

7 A. Well, they gave -- look at that, they gave the
8 same thing that Floros gives when he talks about
9 the backup for the care that he gave. This
10 adjuster did the same thing here. It has nothing
11 to do with the client, right?

12 Q. So in addition, Dr. Ghoubrial's office charge for
13 \$350 has been deducted since this is already
14 included in the global procedure/surgery charge
15 (injections). In addition the charges for
16 injections have been reduced for usual and
17 customary.

18 What is your understanding of those last two
19 lines?

20 A. So let's talk a little bit about this. When you
21 said that the insurance companies are not
22 considering any of Ghoubrial's charge. Well,
23 this proves you to be wrong because they do. And
24 it says Dr. Ghoubrial -- so they criticize the
25 chiropractic care, so let's go back. Where did

1 this person treat? Oh, just the chiropractor and
2 Ghoubrial. So they've now questioned both
3 Ghoubrial and the chiropractor, right?

4 Q. I understand that.

5 A. Okay. Perfect. So you want me to start here,
6 this last line, in addition Dr. Ghoubrial's
7 office charge for \$350 has been deducted since
8 this is already included in a global
9 procedure/surgery charge (injections). Have no
10 idea what they mean. They're using this Medical
11 Service Department that they referred to up top.
12 They're -- how do I know they're doctors? No
13 idea.

14 In addition the charges for injections have
15 been reduced. First they say they've already
16 included and now they're reducing for usual and
17 customary. Do you realize what they're doing?
18 They're challenging everything that was
19 performed, period. Like I said earlier, that's
20 what insurance companies do. Fine.

21 Q. What does usual and customary mean?

22 A. The industry, what is usual in the industry and
23 customarily charged.

24 Q. So they're saying these --

25 A. It's set by the medical community.

1 Q. -- this what Ghoubrial is charging is not usual
2 and customary --

3 A. That's their --

4 Q. -- so we're not going to pay it, correct?

5 MR. BARMEN: Objection.

6 A. That's their position.

7 Q. Okay. The upshot here is that you submitted
8 5,400 in medical bills for compensation and
9 they're only willing to pay \$2,005 for it,
10 correct?

11 MR. MANNION: Objection.

12 A. We are offering to settle this claim for 3,805.
13 Please convey this offer to your client and
14 contact me, which we're suppose to do. So guess
15 what we're going to do with this? Do you know
16 what we're going to do with this?

17 Q. Go to trial.

18 A. No. You know what we're going to do with this,
19 Peter?

20 Q. What are you going to do, sir?

21 A. If we have to argue with Dr. Ghoubrial, hey, Dr.
22 Ghoubrial, we can't pay you this much because
23 look it, here's the basis. Hey, Town & Country,
24 we can't pay you that much because here's the
25 basis from the insurance company. So it helps

1 the client, helps the case.

2 I've satisfied now two things, I've got them
3 in writing that if there has to be a lawsuit,
4 that they're using nonmedical providers to
5 evaluate medical doctors. And now I've got it if
6 I needed the provider to reduce, I've got
7 something in writing for the insurance company's
8 position.

9 Q. Did you share this correspondence with the
10 client?

11 A. It's not my client.

12 MR. MANNION: Him?

13 Q. Did the firm?

14 A. The firm -- it's not the firm's client.

15 Q. Did you instruct Mr. Phillips who sought your
16 approval here?

17 A. He's a lawyer. I told you this before, if he
18 wanted to, he could have.

19 Q. Okay.

20 A. Can we have lunch?

21 Q. We have a few more minutes. It hasn't been even
22 an hour --

23 A. Oh, sorry.

24 Q. And Tom took 20 minutes to do his issue on what
25 should have been a two-minute break --

1 A. I'm sorry.

2 Q. -- so please.

3 A. Uh-huh.

4 Q. I just want to finish up --

5 A. No, that's okay.

6 Q. -- this area of questioning.

7 A. That's okay.

8 Q. You reviewed Dr. Gunning's testimony?

9 MR. MANNION: Is that a question?

10 Q. Didn't you, sir, that he gave in this case?

11 A. When you put it online, I did.

12 Q. You didn't review the transcript once it was
13 ordered by your counsel?

14 A. No.

15 Q. Is there anything in Dr. Gunning's testimony that
16 you believe is inaccurate or false?

17 MR. MANNION: Objection.

18 MR. BARMEN: Objection.

19 A. I don't remember.

20 Q. Nothing sticks out in your mind?

21 MR. MANNION: Objection.

22 A. I didn't read it that way.

23 Q. You saw where Dr. Gunning testified that he was
24 at your house for a social event?

25 A. Which I can't believe he even remembered that.

1 Q. Why?

2 A. Why? It was so long ago until I read the facts
3 that I even remembered him being at my house. It
4 was one time six years ago.

5 Q. The only time he was ever at your house?

6 A. Yes.

7 Q. And he remembered that your sister had just been
8 in an auto accident and Ghoubrial and his former
9 employee, Frank Lazarini, were talking to you
10 about how they were going to give her injections
11 and a back brace?

12 A. They weren't talking --

13 MR. MANNION: Wait a minute, wait
14 a minute --

15 Q. That's what Gunning testified.

16 MR. MANNION: Wait --

17 Q. Look at -- it's transcript 45 --

18 MR. MANNION: -- Peter, I'm just
19 asking, what's the question?

20 Q. -- 45 10 to 18.

21 MR. PATTAKOS: Well, does he
22 recall this.

23 A. No.

24 MR. MANNION: Does he recall this
25 happening --

1 MR. PATTAKOS: Yes.

2 MR. MANNION: -- or that he gave
3 that testimony.

4 BY MR. PATTAKOS:

5 Q. Is your memory the same as Dr. Gunning's, that
6 there was a conversation --

7 A. That's what I understood it to be.

8 Q. -- that there was a conversation about your
9 sister and Ghoubrial and Lazarini were telling
10 you that they were going to give her injections
11 and a back brace?

12 A. No, I can tell you this, what I do remember is
13 they gave her a back brace and they ordered an
14 MRI.

15 Q. Who's "they"?

16 A. It was, I think Ghoubrial did.

17 Q. Dr. Gunning said she did not treat with Dr.
18 Ghoubrial's office?

19 A. He saw her at my house, that was it, the only
20 time he saw her.

21 Q. Well, he gave her a back brace at the house?

22 A. No, no, no. Someone from his office then --
23 either she picked it up, we got a back brace for
24 my sister.

25 Q. Do you remember anything else about this

1 conversation?

2 A. I don't.

3 Q. Do you remember who your sister treated with?

4 A. She was here from Italy. Peter, she was here a
5 short period of time. They saw her because she
6 was in pain. They stopped by the house. No
7 other reason. He said get an MRI.

8 Q. Did they give her injections?

9 A. No. I don't think so.

10 Q. You know that Julie Ghoubrial had her deposition
11 taken recently in the divorce case between her
12 and Sam, correct?

13 A. I heard.

14 Q. And you know she testified about the allegations
15 in the Complaint in this case, correct?

16 MR. MANNION: Objection.

17 A. Okay.

18 Q. Do you know that to be true?

19 MR. MANNION: Objection.

20 A. What I know is what my lawyers have told me.

21 Q. Do you know that to be true, sir?

22 MR. MANNION: Objection. He just
23 told you it came from lawyers so you can't
24 ask that question.

25 MR. PATTAKOS: I can ask what he

1 knows. I don't --

2 MR. MANNION: No, no --

3 MR. PATTAKOS: -- care where it
4 came from, his lawyers --

5 MR. MANNION: No --

6 MR. PATTAKOS: -- I can ask him:

7 Do you know what Julie --

8 Q. Do you know that Julie --

9 MR. MANNION: You cannot ask that.

10 Q. -- testified about the allegations in the
11 Complaint?

12 MR. MANNION: When he tells you
13 anything came from his lawyers, you can't
14 further ask about that.

15 MR. PATTAKOS: No, Tom, that's
16 just a complete perversion of how the
17 attorney/client privilege works. I can ask
18 him --

19 MR. BARMEN: That's not what you
20 told us when we were deposing your clients.

21 MR. MANNION: Yeah. You won't
22 even answer and tell us what your facts are
23 to support these claims.

24 BY MR. PATTAKOS:

25 Q. Do you know, Mr. Nestico, that Julie testified

1 about the allegations in the Complaint in this
2 case?

3 MR. MANNION: Objection.

4 MR. BARMEN: I'd also like to note
5 there is an order on record in that divorce
6 case about that transcript, marking it
7 "confidential".

8 MR. MANNION: And I'm instructing
9 you anything regarding our discussions is
10 obviously attorney/client privilege.

11 A. So how can I answer?

12 Q. I'm just asking what you know.

13 MR. MANNION: You can't.

14 Q. I'm asking what you know.

15 A. So how do I answer that question?

16 MR. MANNION: You can ask him what
17 he knows outside of conversations with
18 counsel.

19 MR. PATTAKOS: I can ask him what
20 he knows and he has to tell me.

21 MR. BARMEN: No, you can't.

22 MR. MANNION: No, you can't.

23 MR. JONSON: No.

24 MR. MANNION: You're outrageous.

25 We're done. We're going to lunch.

1 You can certify this question.
2 We're not answering this question unless
3 you want to ask him what he knows outside
4 of what he was told from counsel
5 representing him. If you want to ask that
6 question, he'll answer it. Do you want to
7 ask that question so at least you know that
8 or do you just want to smile with a smug
9 little grin? Are you going to ask the
10 question or not?

11 BY MR. PATTAKOS:

12 Q. Are you refusing to answer my question, Mr.
13 Nestico, about what you know about --

14 A. I told you what I do know I learned from my
15 lawyers.

16 Q. So you know something about Julie's deposition
17 transcript, but you're not going to say what you
18 know?

19 MR. MANNION: Yeah, I don't know
20 that it's --

21 THE WITNESS: What do I do? I've
22 got an ethics lawyer sitting right here.

23 MR. MANNION: You're not going to
24 answer it.

25 MR. JONSON: If the only source of

1 your information is what your lawyer told
2 you, you don't have any information that
3 you can disclose, period.

4 MR. BEST: True dat.

5 MR. MANNION: Okay. Let's go to
6 lunch.

7 MR. PATTAKOS: I have another
8 related question --

9 MR. MANNION: It doesn't matter,
10 it doesn't matter.

11 MR. BEST: Too bad. There's no
12 question on the table. We're going to
13 lunch. Have a nice day.

14 THE VIDEOGRAPHER: We're going off
15 the record. The time is 12:36.

16 - - - -

17 (Thereupon, a recess was had.)

18 - - - -

19 THE VIDEOGRAPHER: We're back on
20 the record. The time is 1:39.

21 BY MR. PATTAKOS:

22 Q. There are some cases, Mr. Nestico, that your firm
23 handles that go straight to the litigation
24 department, correct? As opposed to the
25 pre-litigation department?

1 A. Very few.

2 Q. Very few. But there are some say, for example,
3 if the case involves an extremely serious injury
4 or extremely high damages, for example?

5 A. No. Because even if it does, you still want as
6 much care as they can get for their injuries.

7 The only time that it will go straight into
8 litigation is if a statute is running.

9 Q. Okay. Understood. So you wouldn't have someone
10 like Mr. Reagan get involved early on in a case
11 where there was bigger damages at issue,
12 extremely high damages or an extremely serious
13 injury, you wouldn't have one of your most senior
14 experienced trial lawyers get involved at the
15 very earliest phase?

16 A. It happens. John originally was -- gets more
17 involved in the trucking cases.

18 Q. Okay. And those don't go to pre-litigation?

19 A. Some do initially, but again, it's not all.

20 Q. You brought up the Robinson v. Bates case when we
21 were talking about the Kelly Phillips e-mail
22 before lunch.

23 A. Yes, sir.

24 Q. When I asked you why the firm didn't work harder
25 at the developing relationships with MDs who

1 would accept the client's health insurance, part
2 of your answer was to bring up Robinson v. Bates,
3 correct?

4 MR. MANNION: Objection.

5 Mischaracterization.

6 A. The Robinson v. Bates deals with the health
7 insurance. Because most of our clients, as you
8 know, or may not know, do not even have health
9 insurance --

10 Q. And why is that?

11 A. -- the majority. Because we're representing a
12 lot of people that other firms don't want to
13 represent. The lower socioeconomic. They don't
14 have health insurance, can't afford it.

15 Q. The majority of your clients don't have health
16 insurance?

17 A. Correct.

18 Q. They come from lower socioeconomic backgrounds?

19 A. Correct.

20 Q. Historically disadvantaged --

21 A. I don't know, Peter.

22 Q. -- ethnic groups --

23 MR. MANNION: Come on.

24 Q. -- minority groups?

25 MR. MANNION: Stop, he didn't say

1 that.

2 A. I didn't -- just they couldn't -- they can't
3 afford health insurance is my point.

4 Q. Okay. Even though the law requires everyone to
5 have health insurance?

6 MR. BARMEN: Objection.

7 A. Okay.

8 Q. Well, you understand that generally, one of the
9 big provisions of --

10 MR. MANNION: Well, what year?

11 Q. -- Obama Care was -- that requiring everyone to
12 have health insurance by law, correct?

13 MR. BEST: Is this a case now
14 against people who don't have insurance?

15 MR. MANNION: Right. And what
16 year?

17 MR. PATTAKOS: David, do you have
18 any more testimony you want to add there,
19 sir?

20 MR. BEST: Get out of there. This
21 is ridiculous. I've been trying to bite my
22 tongue, but you really are over the top.

23 MR. PATTAKOS: Do you have any
24 more thoughts that you want to share for
25 the record, sir?

1 MR. MANNION: We might be till
2 5:00 if he does.

3 MR. PATTAKOS: Tom, you have
4 anything you want to add?

5 MR. MANNION: I'm still waiting
6 for the apology for what you said to your
7 client about me.

8 MR. PATTAKOS: Anyone else?

9 MR. MANNION: Do you deny saying
10 that, Peter?

11 MR. PATTAKOS: Anyone else have
12 anything --

13 MR. MANNION: Do you deny saying
14 that? Did you get --

15 MR. BARMEN: Not right now, but
16 believe me I'm sure before the end of the
17 day I'll have something.

18 MR. MANNION: Did you get with
19 your clients to get dates like you said you
20 would?

21 BY MR. PATTAKOS:

22 Q. Okay. But this was part of your answer when I
23 asked you that question, you brought up Robinson
24 v. Bates --

25 MR. MANNION: Object.

1 Q. -- when I asked you why the firm didn't work
2 harder at developing relationships with MDs who
3 would accept the client's health insurance?

4 MR. MANNION: Objection. The
5 transcript will speak for itself.

6 Q. You don't deny that, do you, sir?

7 MR. MANNION: Objection.

8 A. The smartest thing to do is read back in the
9 transcript.

10 Q. We can move on. Correct me if my notes aren't
11 accurate here, but I believe you said Robinson v.
12 Bates allows defense lawyers to introduce at
13 trial the amount that was actually paid by the
14 insurance company versus the amount that was
15 billed by the doctor --

16 MR. MANNION: Objection. Not
17 versus. Go ahead.

18 Q. -- whereas plaintiffs only get to introduce the
19 amount that was actually paid?

20 A. They -- not only, they get to introduce the
21 amount that was paid.

22 MR. MANNION: Billed.

23 A. Or sorry, billed, that the doctor billed.

24 MR. MANNION: Your notes were
25 wrong, Peter. You can compare to the

1 transcript.

2 Q. Explain this again, sir. What's the difference
3 between what defendants and plaintiffs are
4 permitted to introduce?

5 A. Defendant's --

6 MR. MANNION: Objection.

7 A. -- the defendant's insurance company, they're
8 going to introduce the amount that the provider
9 accepted from the health insurance company.

10 The plaintiffs are going to introduce
11 evidence of the reasonableness of the bill and
12 the amount that was billed.

13 Q. Okay. So --

14 A. So it's a battle -- it has an affect.

15 Q. What affect does it have?

16 A. Well, every case is different. Because some
17 jurors may look at that and say, okay, he has
18 \$500 of subrogation -- do you need me to explain
19 that?

20 Q. No, go ahead.

21 A. So \$500 of subrogation, you know, award the
22 damages based off of \$500 of subrogation. Where
23 if they don't have health insurance, the jury is
24 going to look -- could, can't say it's always the
25 same, they're going to look and say their bills

1 are 5,000 so we're going to give our award based
2 off of the amount of the bills outstanding.

3 Q. But if you're going to trial, you're typically
4 talking about a number that's much higher than
5 \$500, correct?

6 MR. MANNION: Objection.

7 A. We've actually had cases where we didn't even
8 introduce the bills.

9 Q. Why's that?

10 A. Because you want to just go off of the care and
11 you don't want to have this argument.

12 Q. Okay. Well, at trial, in a small percentage of
13 the cases that do go to trial, the jury would
14 still hear both numbers, correct?

15 A. It depends on the judge. Not every judge is
16 following Robinson.

17 Q. Assuming the judge follows Robinson?

18 A. They'll hear both.

19 Q. And the jury would understand that that's simply
20 how health insurance works, correct? Defendant's
21 health insurance companies -- that health
22 insurance companies typically take a reduced
23 rate -- typically pay a reduced rate to the
24 doctors, right?

25 A. They typically pay -- it will be -- you mean then

1 what the amount was billed?

2 Q. Sure.

3 A. Yes.

4 Q. And juries can understand that that's how health
5 insurance works, correct?

6 A. Listen, what juries do you and I both know we
7 don't know what they do or how they interpret it.
8 They could.

9 Q. I find juries to be very reasonable myself.

10 MR. MANNION: Wait, he didn't say

11 --

12 A. I never said --

13 MR. MANNION: -- anything to the
14 contrary.

15 A. -- they're not reasonable. What I said is --

16 Q. I expect the jury to be reasonable myself. Do
17 you not expect the jury to be reasonable?

18 A. I hope so.

19 Q. Do you expect it?

20 A. Again, I hope so.

21 Q. And if your client suffers damage --

22 A. Uh-huh.

23 Q. -- that's what matters the most, correct?

24 MR. MANNION: Objection. To whom?

25 A. Well, that's what matters, do you mean to the

1 jury?

2 Q. Yes. That's what should matter the most to the
3 jury, correct?

4 MR. MANNION: Objection.

5 A. That's one of the components that should matter,
6 correct.

7 Q. It's a component that should matter the most,
8 correct?

9 MR. MANNION: Objection.

10 A. There's nothing that's the most, you know that.
11 If could be that they're looking at -- when
12 you're saying damages, are they looking at the
13 pain and suffering, are they looking at the
14 amount of the bills, are they looking at how long
15 they treated, are they looking at how many times
16 they treated.

17 Q. That's all an element -- those are all elements
18 of damage, correct?

19 A. Correct.

20 Q. In the end --

21 A. There's nothing in the most. There's nothing --

22 Q. -- the damage itself is the most important thing
23 for the jury to understand in a personal injury
24 trial. Don't you agree with that?

25 MR. MANNION: Objection.

1 A. If you're doing an analysis of negligence, the
2 last component is damages, right? You can prove
3 causation, then damages.

4 Q. Right. And that's what most of these trials are
5 about, correct, proving damages?

6 MR. MANNION: Objection.

7 Q. I understand there are some cases where you have
8 to prove liability, too.

9 MR. MANNION: Oh, some cases?

10 A. This is what I was getting at, so you're proving
11 negligence. That you owe a duty, the duty was
12 breached, that you have causation. These are all
13 serious -- you can't have a negligence claim
14 without establishing all these elements, Peter.

15 Q. And in the end --

16 A. You can't walk into court and say, I'm here for a
17 negligence case, here are my damages.

18 Q. And in the end, sir, the number that the jury
19 ultimately comes back with is determined by their
20 evaluation of the damage that was suffered,
21 correct?

22 MR. MANNION: Objection.

23 A. That is a component. Because what happens if
24 they don't consider causation? If they say that
25 either they're proximately caused or there's a

1 share in damage, there's contributory negligence,
2 now what happens? The damages are reduced.

3 Q. Against one particular defendant, but to the
4 plaintiff, the plaintiff still ends up getting
5 the same amount, correct?

6 MR. MANNION: Objection.

7 A. No.

8 Q. Being entitled to collect the same amount.

9 A. What if they say that the plaintiff is partially
10 at fault?

11 Q. Okay.

12 A. That's all I'm getting at.

13 Q. Understood. Okay. That's fair.

14 So the point is a good case is a good case
15 regardless of the difference between these two
16 numbers between what an insurance company pays
17 and what the doctor bills, correct?

18 MR. MANNION: I'm going to object
19 by what you mean by "good case," but go
20 ahead.

21 A. Okay. So -- and sorry for the -- that threw me
22 off. We're talking about determining the value
23 of a case? What is a good case?

24 Q. No.

25 A. What are we talking about?

1 Q. A meritorious case that you're going to win at
2 trial --

3 A. Right.

4 Q. -- and take to trial and do your best for your
5 client, I'm trying to understand why it matters
6 so much if the jury would see two different
7 numbers in terms of what a health insurance
8 company would pay versus what the doctor bills --

9 MR. MANNION: Wait. I'm going to
10 object to so much. That's not what he
11 said, but go ahead.

12 A. Peter, that is the -- has been the affect. If
13 you look at Elisor for all plaintiffs, that has
14 been the debate for years since the decision.
15 How the Robinson versus Bates has affected the
16 insurance companies in negotiating cases, then
17 juries, if cases go to trial, how judges are
18 reacting to Robinson versus Bates, it's a huge
19 part.

20 Q. How do you understand that debate?

21 A. We just -- I gave it to you.

22 Q. You just said there is a debate about how it
23 works, but you didn't tell me what the sides of
24 the debate are.

25 A. I did. I did.

1 MR. MANNION: Look at it.

2 MR. PATTAKOS: I'm asking

3 Mr. Nestico to --

4 A. No, I did.

5 MR. PATTAKOS: -- explain to me

6 how this is relevant to his answer.

7 MR. MANNION: Yeah, but then

8 you're going to ask for more time when

9 you're asking questions that have zero to
10 do with class cert or any issue around

11 that.

12 A. But I did answer your question.

13 Q. Okay. You deny of course that there is any quid
14 pro quo relationship between you and Dr. Floros,
15 correct?

16 A. Quid pro quo means an agreement. I don't have
17 any agreement with Dr. Floros, so, yes.

18 Q. And the same with Dr. Ghoubrial --

19 A. Yes.

20 Q. -- that's your position?

21 A. Yes, sir.

22 Q. And you deny that any kickbacks have gone back
23 and forth between you and Dr. Floros and between
24 you and Dr. Ghoubrial?

25 A. Between anybody.

1 Q. Okay. And whether the kickback is in the form of
2 a cash payment or a narrative fee or any other --
3 may -- exchange of referrals, et cetera, nothing
4 like that is going on, correct? That's your
5 position?

6 A. Wait, you just threw a whole bunch of things in
7 there. There is nothing that is viewed -- the
8 narrative fees we've reviewed and there's a value
9 to these narrative fees. The referrals -- I've
10 never negated or ever hid that chiropractors
11 refer to us, we refer to them, there's nothing
12 wrong with that. We don't have any agreement.
13 The basis of your quid pro quo is that there's
14 an agreement, we don't have any agreement with
15 anybody, never have.

16 Q. Well, you understand --

17 A. And you said that it was about the lending
18 company, it was the same thing.

19 Q. You understand that the allegations in this case
20 are that the firm sends cases to certain
21 providers in return for benefits from the
22 providers either in the form of referrals --

23 A. No, you -- that's the allegation are you saying?

24 Q. You understand that's the allegation?

25 A. Yes. Sorry.

1 MR. POPSON: Objection.

2 Q. Do you and Dr. Floros have any joint investments
3 in other businesses --

4 A. No.

5 Q. -- that are unrelated to your law practice or his
6 chiropractic practice?

7 A. No, sir.

8 Q. You're not partners with Floros in any business
9 ventures?

10 A. Zero. Never have been.

11 Q. What is Panatha Holdings?

12 A. I don't know what that is.

13 Q. What about Giovant Properties?

14 A. That's my company.

15 Q. Okay. Is there an explanation for why Giovant
16 would be listed on Panatha's corporate documents?

17 A. No.

18 MR. POPSON: Is there a spelling
19 for Panatha?

20 MR. PATTAKOS: P-a-n-a-t-h-a.

21 Q. So what is Giovant?

22 A. It's a real estate holding company.

23 Q. Okay. Who owns it, you?

24 A. Me and my wife.

25 Q. Who's Saverio?

1 A. My brother.

2 Q. Where does he live?

3 A. Canada. He's a judge.

4 Q. Toronto?

5 A. Yes, sir.

6 - - - -

7 (Thereupon, Plaintiff's Exhibit 63 was marked
8 for purposes of identification.)

9 - - - -

10 Q. What court is your brother a judge in?

11 A. He goes to all courts.

12 Q. All courts?

13 A. Yeah. They move them around.

14 Q. He's a visiting --

15 A. They don't assign -- it's not like here. They
16 don't assign them to a specific court.

17 Q. Are there three levels of courts like here, trial
18 court, appeals court, and then final appeals
19 court?

20 A. I believe so --

21 Q. And is he --

22 A. -- similar.

23 Q. -- a court for the Province of Ontario?

24 A. Yes.

25 Q. So he goes all around the Province?

1 A. They keep them within a certain district.

2 Q. Region.

3 A. Or region.

4 Q. What's his district?

5 A. I don't know.

6 Q. You don't know?

7 A. It's Toronto.

8 Q. Toronto. Okay. It's a state trial court?

9 A. They don't have states. They have Provinces.

10 Q. Province trial court. Is he a trial court judge
11 or an appeals judge?

12 A. No, he's not an appeals judge.

13 Q. He's a trial court judge?

14 A. I don't know if they consider it a general
15 division. It's everything up to a felony.

16 Q. Okay. He does criminal cases only?

17 A. No.

18 Q. Okay. So we see the first exhibit is documents
19 that we found on the Secretary of State's
20 website.

21 A. Yep.

22 Q. This is for Giovant. It lists Saverio. What's
23 4490 Litchfield?

24 A. That's where I used to live.

25 Q. What's your address now?

1 A. 3403 Crestwood.

2 MR. POPSON: Before we go on, I
3 don't see Bates marks on these. These
4 haven't been produced before today, right?

5 MR. PATTAKOS: No.

6 MR. POPSON: That's -- my
7 statement is correct?

8 MR. PATTAKOS: Your statement is
9 correct.

10 MR. MANNION: Well, if you're
11 trying to say these support one of your
12 claims, they certainly should have been
13 produced a long time ago. Because you
14 represented to me multiple times that we
15 had all the documents. You told me that in
16 writing.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 64 was marked
19 for purposes of identification.)

20 - - - -

21 BY MR. PATTAKOS:

22 Q. What is -- so you'll see that the second document
23 is --

24 A. Yeah.

25 Q. -- documents from the Florida Secretary of State

1 for Panatha Holdings and you'll see a Peachmont
2 Avenue address, 7834 Peachmont, North Canton,
3 Ohio. Do you recognize that address?

4 A. Where do you see that, Peter?

5 Q. Well, it's on the --

6 A. Oh, the second page. I got it --

7 Q. -- it's on the second, third, and it's on the
8 third page.

9 A. -- I got it.

10 Q. That's Dr. Floros' address?

11 A. I think so, yeah.

12 Q. And his name is on the third page here under
13 Article V, correct?

14 A. Yep.

15 Q. And --

16 A. And that's his lawyer by the way.

17 Q. Who's his lawyer?

18 A. Chad Brenner.

19 Q. Okay. And then here's another document on the
20 fourth page that has this Peachmont Avenue
21 address and says Panatha's new principal place of
22 business is 3412 West Market Street, Akron, Ohio
23 44333. That's your law firm's address, correct?

24 A. Yes, sir.

25 Q. And it says that the managing member is Giovant

1 Properties, 3412 West Market Street, correct?

2 A. Where does it say that?

3 MR. POPSON: First page.

4 Q. On the last page, on the last page they're -- it
5 looks like they're changing the principal place
6 of business from the North Canton address to the
7 KNR address. And then Giovant Properties is
8 listed at the bottom of the page as a managing
9 member. Is that accurate?

10 A. I see it. Yeah, I have no idea why that is.
11 You'd have to ask Chad Brenner. I can tell you
12 that in looking at all these documents, this
13 Panatha was a business that Floros wanted to
14 start and hired Chad Brenner because I told him I
15 can't do it. So it has nothing -- they really
16 have nothing and own nothing --

17 Q. Now you remember what it is?

18 A. Yeah. Chad can answer that.

19 Q. How many privately held corporations do you have
20 an ownership interest in, sir?

21 MR. MANNION: Objection. What
22 basis does that have in this case?

23 MR. PATTAKOS: I think we just saw
24 in these last two documents that it's
25 relevant.

1 MR. MANNION: I don't think so.

2 MR. PATTAKOS: It's becoming
3 increasing relevant.

4 MR. MANNION: If you thought it
5 was relevant, why didn't you produce those
6 in discovery?

7 MR. PATTAKOS: Public records?

8 MR. MANNION: Yeah. Did you have
9 an objection that identified them and said
10 go get them yourself, they're public
11 records? No.

12 MR. PATTAKOS: The Judge held that
13 public records aren't subject to production
14 in discovery.

15 MR. POPSON: I don't remember
16 that, but...

17 MR. MANNION: Yeah, I don't
18 remember that either.

19 BY MR. PATTAKOS:

20 Q. You're not going to answer the question of how
21 many privately-held corporations you hold an
22 interest in?

23 A. I don't know.

24 Q. You don't know the answer?

25 A. No.

1 Q. Is it 20?

2 MR. BEST: You don't have to
3 guess. It's none of his business what you
4 own.

5 Q. It's about 20?

6 A. No, I don't think so. It's less than 20.

7 Q. Twelve, about a dozen? Somewhere between a dozen
8 and 20; is that fair?

9 A. No, I think it's less than a dozen.

10 Q. Between five and ten?

11 MR. MANNION: He's told you he
12 doesn't know.

13 A. Five and 12.

14 Q. Do you share an interest in any of these
15 corporations with KNR employees or other
16 providers or contractors with whom the firm
17 works?

18 MR. MANNION: Objection.

19 A. Do I share --

20 Q. Do you have any co-owners in any of these
21 businesses that you own that are either KNR
22 employees, KNR attorneys, or doctors, or other
23 contractors, that the firm works with?

24 A. There was only -- first of all, currently, no.

25 Q. Okay. What about in the past?

1 A. Okay. There was one -- there was one -- I don't
2 even call it an investment because it's not, it's
3 the rights to use a plane. My neighbor is a
4 pilot and he put together a group of seven of us
5 to buy into this -- into a plane, that only
6 allows you to have the rights to use the plane.
7 And I was a member of it, I had shares to it, and
8 other -- there was no lawyers, and Dr. Ghoubrial
9 had a percentage of it. That's the only thing.

10 Q. And that's TPI Airways, correct?

11 A. Yes.

12 Q. And that's the plane that Dr. Ghoubrial would use
13 to travel to treat patients at personal injury
14 clinics in Columbus --

15 MR. MANNION: Objection.

16 Q. -- or other parts of Ohio, correct?

17 MR. MANNION: Objection.

18 MR. BARMEN: Objection.

19 A. It's not always -- it wasn't always that plane.

20 Q. It wasn't always that plane --

21 A. No.

22 Q. -- sometimes he would use another plane?

23 A. Yeah.

24 Q. But he would use the TPI Airways plane as well?

25 A. It wasn't TPI's airway -- plane. You want me to

1 explain --

2 Q. Ghoubrial didn't --

3 A. -- it to you?

4 Q. Yeah, please.

5 A. Okay. Everybody -- there was seven people that
6 had ownership interest into a plane. That plane
7 is put into a bunch of other planes that other
8 owners get to use. All that gave him was the
9 right that if he used that plane, he had to pay
10 whatever the reserve was, engine time, pilots, he
11 had to pay for that.

12 Now, if let's say Chad has a plane, Chad
13 Brenner has a plane, which he does, if he says,
14 hey, my plane is being used, can I use yours?
15 They'll allow him to do that. And they just pay,
16 it just gives him the right to use it at cost.
17 That's it.

18 Q. Okay. Who is Chad Brenner?

19 A. The lawyer.

20 Q. How do you know him?

21 A. He's a nursing home -- I don't know what you want
22 to call it. He does a lot of paperwork, a lot of
23 transactional work.

24 Q. For nursing homes?

25 A. Yeah. And other businesses.

1 Q. And Ghoubrial works in nursing homes, too,
2 correct?

3 A. He does.

4 Q. Does a lot of work with nursing homes, right?

5 A. But I didn't meet him from Ghoubrial.

6 MR. MANNION: You mean treats
7 patients at nursing homes; is that what you
8 mean, Peter?

9 Q. How did you meet him?

10 A. From Danny, my neighbor.

11 Q. Any other companies that you --

12 A. No.

13 Q. -- can remember that you share an interest in
14 with any KNR employees or contractors or
15 providers?

16 A. Well, KNR employees. Now, Redick, I used to be
17 in partners with him.

18 Q. On what?

19 A. The firm.

20 Q. Besides the firm?

21 A. You said companies.

22 Q. I'm sorry. What about Effin Good Company?

23 A. It's not mine.

24 Q. Whose is it?

25 A. That was -- who did that? Ethan Whitaker.

1 Q. And who else?

2 A. I don't remember.

3 Q. You helped him set it up?

4 A. I may have set up the LLC, yeah.

5 Q. You sure?

6 A. No, I'm not sure.

7 Q. You don't remember?

8 A. I said I may. No.

9 Q. What else do you remember about Effin Good?

10 A. I don't even remember what it was for.

11 Q. About what year was this?

12 A. I don't remember.

13 Q. Do you know what the company does?

14 A. It doesn't do anything.

15 Q. How do you know?

16 A. Because it was Ethan. He never utilized it.

17 Q. How do you know that?

18 A. I've never seen it.

19 Q. What did he tell you he was going to utilize it
20 for?

21 A. I do not remember, Peter.

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 65 was marked
24 for purposes of identification.)

25 - - - -

1 Q. Does this refresh your memory, sir?

2 A. Not really.

3 Q. Refreshes your memory as to who else was
4 involved, doesn't it?

5 A. Sure.

6 Q. And who's that?

7 A. Aaron Czetli.

8 Q. Do you remember -- does that help you remember
9 what they were doing?

10 A. It really doesn't.

11 Q. Aaron Czetli is the KNR investigator, correct?

12 MR. MANNION: Objection.

13 A. Aaron Czetli is one of the investigators,
14 correct.

15 Q. AMC Investigations, correct?

16 A. That's correct.

17 Q. So you agree that -- well, you have no reason to
18 doubt that this is a document pulled from the
19 State of Ohio Secretary of State's public files
20 on this company, Effin Good Company, that was
21 incorporated in July of 2011? And lists as
22 directors and authorized representatives all
23 three of you, you, Alberto Nestico, Aaron Czetli,
24 the AMC Investigations investigator, and Ethan
25 Whitaker who handles KNR's IT.

1 MR. MANNION: I'm going to object.
2 You said identifies them as -- okay. Never
3 mind, withdraw it.

4 Q. Directors and authorized representatives?

5 A. Where do you see directors?

6 Q. I see it at the top of page 3.

7 MR. MANNION: Where it says

8 "initial directors". It's at the top.

9 A. Okay.

10 Q. So you're a director of this company and that
11 doesn't refresh your memory at all?

12 A. Zero.

13 Q. What is Canada, Inc?

14 A. I don't know.

15 Q. You don't know?

16 A. No.

17 Q. A company in Canada?

18 A. I have no idea.

19 Q. That you own?

20 A. I own?

21 Q. What's 22 Richgrove Drive?

22 A. I have no idea.

23 Q. Is there another Alberto Nestico that lives in
24 Toronto?

25 A. I don't know. It's not me.

1 Q. You don't know?

2 A. No, I don't know, Peter.

3 - - - -

4 (Thereupon, Plaintiff's Exhibit 66 was marked
5 for purposes of identification.)

6 - - - -

7 Q. You were not aware of another Alberto Nestico --

8 MR. MANNION: Objection.

9 Q. -- is that fair to say, to your memory?

10 A. You know how many millions of people are in
11 Canada?

12 Q. I do, I have an idea.

13 A. Okay.

14 MR. MANNION: Quit rolling your
15 eyes at the witness, Peter.

16 A. This is beautiful.

17 MR. MANNION: Bizapedia.

18 A. Never -- don't even know what Richgrove is,
19 Peter. One year, three months. No idea.

20 Q. How did you meet Ciro Cerrato?

21 A. He called.

22 Q. When?

23 A. You mean what year? Because I can probably only
24 give you a year. Like in 2012.

25 Q. What did he call for?

1 A. He was starting a company that does lending,
2 lending company.

3 Q. Did he know you?

4 A. No.

5 Q. How did he know to call you?

6 A. I don't know if some providers would have told
7 him to call me.

8 Q. Healthcare providers?

9 A. Yeah.

10 Q. Who? You have no idea?

11 A. I don't remember. It happens all the time.

12 Q. What did he say when he called you?

13 A. Exactly?

14 Q. Not exactly, what you can remember.

15 A. Just that he has this company, if we have a need
16 for lending, who do we use. Just brief
17 discussions.

18 Q. How long -- brief discussions. How many brief
19 discussions did you have with him?

20 A. I don't remember. Not many.

21 Q. Five minutes apiece?

22 A. I don't remember, Peter.

23 Q. What did he tell you on these discussions?

24 A. I just told you.

25 Q. Started a loan company?

1 A. Right. And if we have any need for it. We had
2 some discussion of who we recommend, who are the
3 companies that we recommend. Trying to think
4 what else. I think I told him we used Preferred
5 Capital and Oasis. At least I know OAJ promoted
6 Preferred Capital.

7 Q. Did he tell you he'd give you better rates than
8 Preferred Capital? Give your clients better
9 rates?

10 A. I had -- I believe I told him that if he was
11 going to do business, this is the -- Preferred
12 Capital is the one that everyone uses, do that or
13 better.

14 Q. Do you remember anything else about these
15 conversations?

16 A. No.

17 Q. Do you remember any -- so you eventually started
18 recommending Liberty Capital to the firm's
19 clients, correct?

20 MR. MANNION: Objection.

21 A. The lawyers did.

22 Q. You instructed your lawyers to do that, correct?

23 A. I told them for a period of time that I wanted to
24 try this company.

25 Q. Over the course of approximately two years,

1 correct?

2 A. No. During those two years they used Preferred
3 and Oasis, Buckeye, Peachtree. There's -- the
4 list goes on.

5 Q. They were different points in time over those two
6 years -- I don't know if they were different
7 points in time, but there were at least some
8 periods of time over those two years where you
9 instructed KNR lawyers to only use Liberty
10 Capital, only recommend Liberty Capital to the
11 clients for cash advances. That's correct,
12 right?

13 A. Is there an e-mail that you're referring to?
14 That's possible.

15 Q. You don't remember?

16 A. There's an e-mail regarding that where I said
17 only use -- I think it was me -- it was me or
18 Brandy -- only use Liberty Capital.

19 Q. And why did you send that e-mail?

20 A. To test it out.

21 Q. To test out only using it?

22 A. Yeah. Like everything else.

23 MR. MANNION: No, I think he said
24 to test out only using it.

25 THE WITNESS: I don't know what

1 that means.

2 Q. Why did you -- I guess if you wanted to test out
3 Liberty Capital --

4 A. Sure.

5 Q. -- let me back up. When you say you wanted to
6 test it out, you wanted to see if it would be
7 good for your clients?

8 A. If they -- you know what's good for the clients,
9 if they get the money, that's what's good --

10 Q. So what were you testing?

11 A. -- they get the money that they need. Service.
12 If the guy is responsive.

13 Q. What else? What else do you want out of a loan
14 company for your clients?

15 A. Will they negotiate at the end. You test them
16 out, the level of underwriting.

17 Q. What's the level of underwriting?

18 A. Preferred Capital, for example, if you have a
19 client that's having -- needs to have surgery,
20 can't afford it, Preferred Capital has the means
21 and works with medical providers, and they'll
22 fund the surgery. Oasis may or may not. Buckeye
23 didn't. Liberty didn't. Peachtree didn't.

24 Q. Oasis may or may not you said?

25 A. Yeah.

1 Q. Did you determine whether Ciro did or not at the
2 beginning?

3 MR. MANNION: Did what?

4 Q. Had the means to engage in the level of
5 underwriting.

6 MR. MANNION: To do what?

7 MR. PATTAKOS: To do what Rob
8 wanted him to do. To have --

9 A. Not what Rob wanted him to do. Peter, what the
10 clients needed.

11 Q. Right.

12 A. It has...

13 Q. What you wanted for your clients?

14 A. No, what the client --

15 MR. MANNION: Objection.

16 A. -- wanted.

17 Q. Okay. What else were you testing Ciro on?

18 A. I told you, responsiveness, that's it, that's all
19 they do.

20 Q. Responsiveness, willingness to negotiate --

21 A. Uh-huh.

22 Q. -- ability to underwrite at a high level.
23 Anything else?

24 A. That I can think of, these loans helped these
25 clients.

1 Q. Preferred Capital was around then, too, right?

2 A. Yeah.

3 Q. So what was better about Liberty Capital?

4 A. What was better --

5 Q. Yeah.

6 A. -- about Liberty Capital? I don't know if they
7 were any better.

8 Q. Do you know if they were any worse?

9 A. There were -- in the beginning there were some
10 complaints about Liberty Capital, but then that
11 all got ironed out.

12 Q. Why was it necessary to exclusively recommend
13 Liberty Capital in order to test them?

14 MR. MANNION: Objection to
15 "necessary." Go ahead.

16 A. You know, just like anything else that you do.
17 We talked yesterday about Redick Bags. Just like
18 anything, you want to just focus on one, see if
19 they work. See if they provide good service. It
20 turns out, Peter, that it was a good thing that I
21 did that.

22 Q. Why?

23 A. Because at one point I found out that Preferred
24 Capital and Oasis had bought my staff gifts and
25 that drove me nuts, so I stopped -- immediately

1 all business stopped with Preferred Capital and
2 Oasis. And they would tell you, if you called
3 them the owners would tell you, I stopped with
4 both of them immediately. No more recommending
5 those two loan companies because of the
6 appearance that it would -- be giving those gifts
7 and they shifted to Liberty until that was ironed
8 out.

9 Q. Did you get reported for the gifts from Preferred
10 Capital and Oasis, was there a Bar complaint?

11 A. No.

12 Q. A client complaint?

13 A. No.

14 Q. An attorney complaint?

15 A. No.

16 Q. You just found out?

17 A. Yeah.

18 Q. What were the gifts?

19 A. I don't know. I think one was a little Coach
20 purse that they gave to one of my -- one of the
21 paralegals.

22 Q. Expensive?

23 A. No. Like 50 bucks you can get a little -- this
24 big (indicating).

25 Q. Fifty bucks?

1 A. Yeah.

2 Q. What other gifts?

3 A. I don't recall what else there was.

4 Q. How many people got gifts from Preferred Capital?

5 A. All I needed was one.

6 Q. Okay.

7 A. And I don't know if it was Preferred or it was
8 Oasis who did it.

9 Q. But it was one of the two or was it both?

10 A. It may have been both that did it.

11 Q. Do you have documents showing this, reflecting
12 this happened?

13 A. No, probably not. Brandy knew about it because
14 she's the one who called them. Brian Garelli
15 knew about it. He's the owner of Preferred.

16 Q. This has never come up in any of your discovery
17 responses, your written discovery responses,
18 about why you used Liberty Capital --

19 MR. MANNION: Objection.

20 Q. -- and why you recommended Liberty Capital.

21 MR. MANNION: If you want to show
22 him a certain response, fine.

23 A. I don't know what you're talking -- you mean --

24 Q. Well, you executed all of your --

25 A. Yeah, but you're talking about the -- this issue

1 with Preferred and Oasis?

2 Q. Mr. Nestico, you reviewed all of the discovery
3 responses that KNR and the KNR defendants have
4 submitted in this lawsuit, correct?

5 A. Yeah.

6 Q. And you approved them, correct?

7 A. Yes.

8 Q. And you verified all of the interrogatories,
9 correct?

10 A. Correct.

11 Q. Is there any reason why this -- this -- what
12 should I call it? Instance about the gifts --

13 A. Uh-huh.

14 Q. -- would not appear in the discovery responses?

15 MR. MANNION: If you want to show
16 him a discovery request that you think it
17 was responsive to, show it to him and he
18 can answer, but you're asking just
19 generally speaking without identifying any
20 specific discovery request.

21 A. So my answer is there was nothing that was --
22 that I was asked about that.

23 Q. Okay.

24 MR. MANNION: If you have one that
25 you think does, show us, Peter. That's

1 what I thought.

2 A. No need to get upset. Sorry.

3 Q. How many times a week would you say in around
4 2012 were your attorneys recommending loan
5 companies to the firm's clients?

6 MR. MANNION: Objection.

7 A. Wow, Peter, there's -- I don't mean to be
8 disrespectful, there's no way of telling that.

9 Q. Well, I mean you could go through a bunch of
10 documents and probably tell, but I understand
11 what you're saying -- I understand what your
12 testimony is I should say.

13 MR. MANNION: Move to strike.

14 A. Can we say that it would be very difficult to do
15 that.

16 Q. Well, you advertise in the firm's advertising
17 copy, we will help you get a cash advance.

18 A. Yes, sir.

19 Q. So is it fair to say this happened, that any
20 pre-litigation attorney would be doing this
21 several times a week --

22 MR. MANNION: Objection.

23 Q. -- helping clients get a cash advance?

24 A. Are you asking me is it possible that they do it?

25 Q. Does that sound right? Does that sound like a

1 good range?

2 MR. MANNION: Objection.

3 A. A couple times -- are you saying a couple --

4 Q. A couple, a few times a weeks with one --

5 A. What is a couple, few? Two?

6 Q. Two to five I think a couple, few means.

7 A. Two, it's possible.

8 Q. Okay. So to test it, you would just go right to
9 using it completely as opposed to any of these
10 other two companies?

11 MR. MANNION: Objection.

12 A. You know what, even when they did that I can tell
13 you that they used other companies. They still
14 used Preferred, they still used Oasis. And when
15 I say "used," I just want to make sure it's clear
16 that they provide the name and the number to the
17 clients. Lawyers would do whatever they wanted.
18 In fact, there's -- you have clients that used
19 Oasis and you have clients that used Liberty.

20 MR. MANNION: From the same
21 accident.

22 Q. So you're saying that your --

23 A. But hang on --

24 Q. -- attorneys didn't follow your instructions,
25 basically --

1 A. Some.

2 Q. -- when you instructed them to refer their
3 clients only to Liberty Capital, they wouldn't
4 listen to you?

5 A. At times wouldn't listen to me.

6 Q. Do you remember any specific instance where that
7 happened?

8 A. If we were using -- on Monique Norris if we were
9 just using Liberty, she was given two names, she
10 was given Oasis and Liberty. Then when she got
11 into her second accident, she was given
12 Preferred. So is that listening?

13 - - - -

14 (Thereupon, Plaintiff's Exhibit 67 was marked
15 for purposes of identification.)

16 - - - -

17 Q. So on this first page I see a May 9th, 2012
18 e-mail from Ciro Cerrato at lcfunding1@gmail.com.

19 A. That's the first page?

20 Q. Yeah.

21 A. Yeah.

22 Q. Let me ask you first: Had Ciro had any
23 experience in this industry before he began
24 servicing your clients?

25 A. I don't know.

1 Q. You didn't do anything to check?

2 A. No, sir.

3 Q. You have no idea what his experience was before
4 your firm started?

5 A. No.

6 Q. Okay. Ciro writes, Rob, thanks for giving
7 Liberty Capital Funding the opportunity to offer
8 your clients pre-settlement funding. Our
9 settlement funding process is quick and we can
10 get your clients their pre-settlement advance
11 within 24 hours in most cases. Attached is the
12 LCF client data sheet. Please feel free to
13 contact me if you have any questions or need
14 anything else.

15 A. I don't know what the LCF client data sheet is.

16 Q. You then forwarded this to all attorneys and you
17 said for any Plambeck patients only, please use
18 the below company for cash advances. Thanks.

19 A. Okay.

20 Q. Did you send this e-mail?

21 A. I did.

22 Q. And you intended to forward Ciro's e-mail below
23 to -- so that your attorneys could see it and see
24 his contact information and everything else,
25 correct?

1 A. No. That's not correct. This is -- it has to
2 be, Peter, two separate things. If I'm
3 forwarding it, it would have FW.

4 Q. What is it then? You said, please use the below
5 company.

6 A. Okay. Then I don't know what -- you're right. I
7 didn't see a forwarding, so I was wondering how
8 that happened. I don't know how that happens.
9 It should have forward.

10 Q. Why only on Plambeck patients?

11 A. Again, same -- same concept as Redick Bags, I'm
12 trying to keep it focused, but then I know this,
13 all of a sudden creates -- to my elementary way
14 of doing things -- then all of a sudden there's a
15 response which is not here. The lawyers started
16 asking how do we know of the clinics, the names
17 of the clinics. I saw that it was causing more
18 confusion, I turned around, well, that obviously
19 is not going to work because to build that type
20 of, you know, calculations and figuring out if
21 they're going to be good, it says, sorry, applies
22 to all cases, not just Plambeck.

23 This ties perfectly in hand with making
24 reference to Plambeck because it's a closed
25 group, is that fair to say --

1 Q. It's something else you track in Needles,
2 Plambeck, you can do a drop-down menu for
3 Plambeck?

4 A. We don't.

5 Q. So then why would you track this way?

6 A. That's what I thought I was going to do. Look at
7 the times, Peter.

8 Q. Yeah. Okay. Sir, so let's --

9 A. Really quick, let's just look, it happened on May
10 10th at 7:46 p.m. is when I sent it. The second
11 one -- so a day later -- not even a day later,
12 May 11th at 9:34 a.m. changed.

13 Q. Did you get e-mails from attorneys about this?

14 A. I did.

15 Q. Where are those e-mails?

16 A. They're here, you have them.

17 Q. About complaining that they don't know which
18 Plambeck clinics --

19 MR. MANNION: Objection.

20 Q. -- are Plambecks and it was hard for them to
21 identify?

22 A. Yeah, it's there, you have it. There is an
23 e-mail about it.

24 Q. Okay. Liberty Capital -- did you ever become
25 aware of any other employee of Liberty Capital

1 besides Ciro?

2 A. There -- I thought there was a Brian. There was
3 someone else.

4 Q. One other person?

5 A. I don't know if there was one or two.

6 Q. Liberty Capital was not a one-man shop?

7 A. I don't know.

8 Q. You don't know?

9 A. No.

10 Q. Was it Brian -- are you thinking of Brian Moonin
11 from Preferred Capital?

12 A. Brian Moonin is not at Preferred Capital, he's at
13 Oasis.

14 Q. Oasis. Sorry.

15 A. Yeah.

16 Q. Were you thinking of him? There was another
17 Brian that worked at Liberty Capital?

18 A. There was Brian Garelli who owned Preferred
19 Capital and there was someone else at Liberty.

20 Q. You're sure of that now?

21 A. Yeah, I know there was someone else.

22 Q. I asked if it was a one-man shop before and you
23 said I don't know, but now you're sure?

24 A. No, I said I know there was someone else.

25 Q. Okay. But you don't remember who it is. What

1 did that person do?

2 THE VIDEOGRAPHER: Excuse me, your
3 microphone.

4 THE WITNESS: Sorry, mine? Yours.

5 MR. PATTAKOS: Oh, did it fall
6 off.

7 Q. Why did you tell him? Come on, man. That was a
8 joke?

9 A. What did he do?

10 Q. Well, how do you remember for sure that he
11 existed?

12 A. Because I saw his name somewhere in the e-mails.

13 Q. In the e-mails that you reviewed in preparing for
14 your deposition --

15 MR. MANNION: Objection.

16 Q. -- or just in this lawsuit?

17 A. Just in this lawsuit.

18 Q. Okay. Well, maybe we'll see it.

19 Ciro was the owner of Liberty Capital though,
20 wasn't he?

21 A. That's what he told me.

22 Q. The sole owner?

23 A. That's what he told me.

24 Q. And he's the only one that had control over
25 Liberty Capital, correct?

1 MR. MANNION: Objection.

2 Q. As far as you know?

3 A. As far as I know, fair.

4 Q. And how would you have tracked the effectiveness
5 of Liberty Capital based on sending them just to
6 Plambeck cases?

7 A. It didn't happen.

8 Q. How would you have done it?

9 A. Probably applying the same principle again as
10 those Redick Bags. That they'd create a
11 pull-down so that they would be able to say this
12 person got a loan and these are the groups of
13 places.

14 You've got to understand, Liberty Capital
15 worked with other law firms. They worked with
16 Slater & Zurz, Slater & Zurz referred to them.
17 They had -- there was even lawyers out of state.
18 You saw the e-mails about that. And it benefited
19 the clients. You understand that it benefited
20 Matt Johnson. My understanding is he didn't even
21 pay them back.

22 Q. Why did you stop referring clients to Liberty
23 Capital?

24 A. We didn't.

25 Q. You didn't?

1 A. No.

2 Q. You still refer clients to Liberty Capital today?

3 MR. MANNION: Objection.

4 A. No.

5 Q. So Liberty Capital closed at some point?

6 A. Yes.

7 Q. They stopped doing business?

8 A. I believe so.

9 Q. Do you know why?

10 A. I don't know why.

11 Q. Any ideas?

12 A. I don't know why.

13 Q. Did you get any questions about why you wanted to
14 use Liberty Capital when you sent this e-mail?

15 A. There was one question.

16 Q. From?

17 A. Gary Kisling.

18 Q. That's in the e-mail that was produced in this
19 lawsuit, correct?

20 A. Correct.

21 Q. Nobody else asked you a question that wasn't in
22 an e-mail?

23 A. No, not that I remember.

24 Q. What did Gary ask you?

25 A. Why are we using Liberty Capital.

1 Q. And what was your response?

2 A. I didn't respond to it.

3 Q. But you got his question?

4 A. Yeah.

5 Q. Why didn't you respond to him?

6 A. I think Brandy responded to him.

7 Q. She talked to you first, right?

8 A. What?

9 Q. You let Brandy -- Brandy -- I'm sorry. Brandy
10 responded to a question that he asked you, do you
11 think she did that without conferring with you,
12 is that what you're saying?

13 A. She didn't confer with me on every e-mail.

14 MR. MANNION: Show him the e-mail
15 and ask him.

16 A. The answer was right.

17 Q. What was the answer?

18 A. And she said that I wanted to try out a new
19 company.

20 Q. Did you ever have a talk with Gary about it
21 afterwards?

22 A. No.

23 Q. Gary's e-mail -- well, we might as well look at
24 it.

25 - - - -

1 (Thereupon, Plaintiff's Exhibit 68 was marked
2 for purposes of identification.)

3 - - - -

4 Q. Well, let me ask you first --

5 A. Sure.

6 Q. -- this e-mail that Ciro sends at the bottom --

7 A. Yeah.

8 Q. -- that you ended up forwarding, you helped him
9 draft that, correct?

10 A. No.

11 Q. You gave him feedback on it, correct?

12 MR. MANNION: On the e-mail?

13 MR. PATTAKOS: On the e-mail that
14 Ciro sent to Rob.

15 A. I don't know if I gave him feedback. I had asked
16 him to send an introductory e-mail so I could
17 forward it to the lawyers.

18 Q. And he checked with you to see if that was okay,
19 if the e-mail was okay before he sent it to you,
20 correct?

21 A. I don't know if he checked with me.

22 Q. Well, we'll see. Okay.

23 MR. PATTAKOS: Tom, if you would
24 just keep your commentary --

25 MR. MANNION: What?

1 MR. PATTAKOS: -- to yourself
2 instead of talking about the documents with
3 your co-counsel and within earshot of your
4 witness --

5 MR. MANNION: I didn't.

6 MR. PATTAKOS: -- that's about the
7 tenth time or 20th time --

8 MR. MANNION: Oh -- first of all,
9 that's completely untrue. That's a
10 bald-face lie, absolute lie.

11 Did you hear anything I said --

12 THE WITNESS: Huh?

13 MR. MANNION: -- to Jim right
14 there?

15 THE WITNESS: No, I was reading
16 your -- this e-mail.

17 MR. MANNION: You know, do you
18 think -- do you want to rephrase the
19 question you just asked because you
20 completely misrepresented a few ago and you
21 know what it is, don't you?

22 BY MR. PATTAKOS:

23 Q. So, Mr. Nestico, this is the e-mail or it's a
24 separate e-mail -- it's an e-mail for a few days
25 later -- from a few days later, May 14th --

1 A. Yep.

2 Q. -- so it's three days after you said, sorry,
3 applies to all cases, not just Plambeck.

4 A. Okay.

5 Q. Brandy send out to all staff, for today or until
6 further notice, please use Preferred Capital
7 instead of new company. We are ironing out some
8 glitches. And then Gary responds, why are we
9 using the new firm rather than Preferred Capital?
10 Brian is excellent at getting reductions on his
11 loans to get cases settled.

12 A. Okay.

13 Q. And then Brandy says, Rob wants to try this new
14 company.

15 A. She was -- okay. She responds -- let me see
16 this. Brandy sent it to the staff --

17 Q. Yes.

18 A. -- which Gary was on that --

19 Q. But you weren't?

20 A. No, I wasn't.

21 Q. Why is Gary on it and not you?

22 A. Gary likes e-mails. I don't like getting
23 e-mails.

24 Q. Okay.

25 A. And then Gary responds to Brandy and tells her

1 what I said he responded to her about.

2 Q. Anything else you remember about this?

3 A. That was it, Peter.

4 Q. When -- I'm sorry, I want to go back. When you
5 first said Plambeck only, you say that you got
6 e-mails --

7 A. I did.

8 Q. -- saying -- okay. And those were produced.

9 Do you remember any other conversations that
10 anyone had?

11 A. You know, actually, if it will be easier to find,
12 I know Nomiki who asked that.

13 Q. Okay. Anyone else -- anything else you remember?

14 A. No.

15 Q. Okay. So there were some glitches?

16 MR. MANNION: Go ahead, answer
17 that.

18 THE WITNESS: No, I'm going to
19 answer.

20 MR. MANNION: We're going to take
21 a break after a couple more.

22 A. That's what Brandy said, there were some
23 glitches. I don't know what she meant by there
24 were some glitches and was it high importance
25 too.

1 Q. We are ironing out some glitches.

2 A. Yeah. No high importance.

3 MR. MANNION: You good if he goes
4 another five or so --

5 Q. Do you remember --

6 MR. MANNION: I'm sorry.

7 THE WITNESS: No, I'm fine.

8 Q. Do you remember what the glitches are?

9 A. No.

10 Q. Just real quick. Okay.

11 A. Are we going to take a break now?

12 MR. PATTAKOS: Here, let's mark
13 that exhibit real quick.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 69 was marked
16 for purposes of identification.)

17 - - - -

18 A. Do we want to talk about it before the break?

19 Q. Real briefly.

20 A. That's fine.

21 MR. POPSON: 69?

22 Q. Tomorrow there will be a lunch -- this is Sarah
23 Rucker e-mailing pre-litigation attorneys,
24 copying you and Brandy.

25 A. Yes, sir.

- 1 Q. There will be a lunch with Ciro Cerrato from
2 Liberty Capital Funding at 12. Rob would like
3 each pre-litigation attorney to attend. If you
4 are unable to attend, please have your paralegal
5 attend in your place.
- 6 A. Thanks.
- 7 Q. Why did you want them --
- 8 A. Thanks.
- 9 Q. Pardon?
- 10 A. Thanks.
- 11 Q. Thanks. Thanks. The e-mail says "thanks."
12 Thank you.
- 13 Why did you want them to attend this lunch?
- 14 A. So they could hear what Ciro has to offer.
- 15 Q. Did Ciro pay for the lunch?
- 16 A. Yeah. Preferred's done that, Oasis has done
17 that.
- 18 Q. What did you talk about at the lunch?
- 19 A. I wasn't there.
- 20 Q. Do you know what was discussed at the lunch?
- 21 A. No.
- 22 Q. Why did you want everyone to attend it?
- 23 A. Again, to see what Ciro had to offer.
- 24 Q. Do you know what was served for lunch?
- 25 A. No.

1 Q. Okay.

2 A. I don't remember.

3 Q. Any gifts handed out at lunch?

4 A. No.

5 Q. You sure?

6 A. Positive. Peter, come on.

7 Q. How do you know?

8 A. They would have told me. Come on.

9 MR. PATTAKOS: Okay. We can take
10 our break.

11 THE VIDEOGRAPHER: We're going off
12 the record. This is the end of Tape No. 5.
13 It's 2:37.

14 - - - -

15 (Thereupon, a recess was had.)

16 - - - -

17 THE VIDEOGRAPHER: We're back on
18 the record. This is the beginning of Media
19 No. 6. The time is 2:47.

20 BY MR. PATTAKOS:

21 Q. Okay. Mr. Nestico, on the break you mentioned
22 that the Canada, Inc. exhibit that we looked at,
23 about that was, you told me that corporations in
24 Canada can be registered as a number --

25 A. Yes, sir.

1 Q. -- correct?

2 A. Yes.

3 Q. And that's what you believe this is, that it's
4 not -- that this Bizapedia entry is for the
5 company name being 10505021 and that it's a
6 Canada, Incorporate?

7 A. Here, it explains it better for you, look up top.

8 Q. Okay.

9 A. See that?

10 Q. Yes.

11 A. That's the company.

12 Q. What are you pointing to?

13 A. Right there (indicating).

14 Q. So that number, the 10505021. Okay.

15 A. Yes.

16 Q. Does that refresh your recollection about what
17 this company is?

18 A. Does not.

19 Q. Have you ever registered a corporation in Canada
20 in the name of a number?

21 A. When I was younger, yes.

22 Q. What was it?

23 A. It was a number.

24 Q. What did you register --

25 A. You know, it's like --

1 Q. -- what did you register the company? What was
2 the company?

3 A. I owned a lot of companies in Canada when I was
4 growing up.

5 Q. But you don't own them now?

6 A. No.

7 Q. You don't own any companies in Canada now?

8 A. I'm a member of one company.

9 Q. What's that?

10 A. S-A-M.

11 Q. S-A-M?

12 A. Yes.

13 Q. What is that?

14 A. A real estate company.

15 Q. Who owns that company?

16 A. Me, my brother, my sister.

17 Q. What does S-A-M stand for?

18 A. Saverio, Alberto and Maria.

19 Q. What does that company own?

20 A. Houses.

21 Q. How many?

22 MR. MANNION: Objection.

23 MR. BEST: You don't have to

24 disclose your personal financial stuff to

25 him --

1 MR. MANNION: Yeah, you have no
2 right to that.

3 MR. BEST: He's out of his mind.
4 There's no judge that's going to order
5 that.

6 BY MR. PATTAKOS:

7 A. They're houses.

8 Q. Mr. Nestico, what is Twin Crown Properties?

9 A. Real estate company.

10 Q. You own Twin Crown Properties, correct?

11 A. I do now.

12 Q. You do now?

13 A. Yeah.

14 Q. Who owned it before?

15 A. I was partners.

16 Q. With Dr. Ghoubrial?

17 A. No. Danny Karam.

18 Q. With Danny Karam. What's Dr. Ghoubrial's
19 involvement in Twin Crown Properties?

20 MR. BARMEN: Objection.

21 A. What do you mean? He's not involved with Twin
22 Crown Properties.

23 Q. At all?

24 A. At all.

25 Q. It's a real estate holding company as well?

1 A. No, it owns one apartment complex.

2 Q. Twin Crown?

3 A. Yeah.

4 Q. When did you get into that company?

5 MR. BEST: Objection. Your
6 personal financial information is
7 proprietary. If you don't want to tell
8 him, you don't have to. If you want to, go
9 ahead, but you don't have to disclose this
10 stuff to him.

11 BY MR. PATTAKOS:

12 Q. If I have a witness that tells me that
13 Dr. Ghoubrial is a part owner in Twin Crown
14 Properties --

15 MR. BEST: He just said --

16 MR. MANNION: He didn't say that.

17 Q. -- what would you say?

18 MR. BARMEN: Objection.

19 A. He doesn't own Twin Crown Properties.

20 MR. MANNION: It must be another
21 person who's not disclosed to us in
22 discovery, Mr. Pattakos.

23 MR. BARMEN: And where's the Ohio
24 Secretary of State printout on that one if
25 you're so sure?

1 MR. PATTAKOS: We have it, there's
2 only one name on it and it's not Mr.
3 Nestico's.

4 MR. MANNION: Okay.

5 BY MR. PATTAKOS:

6 Q. Do you remember who set it up for you, Twin
7 Crown? A lawyer in Uniontown, does that ring a
8 bell?

9 A. Yeah. The name is there.

10 Q. Eric?

11 A. No, I said the name is on there I'm sure. I
12 forget his name.

13 Q. David P. Weimer?

14 A. Yes, sir.

15 Q. You do a lot of business with him?

16 A. No.

17 Q. Why did you have him incorporate this company?

18 A. Danny did actually.

19 Q. Danny did?

20 A. Yeah.

21 Q. Why didn't Danny ask you to do it?

22 MR. BEST: Objection.

23 Q. Well, you do this a lot, don't you?

24 A. Do what?

25 Q. Incorporate corporations --

1 A. I have in the past.

2 Q. -- for people. Okay. Did you pay him to do it,
3 Weimer?

4 MR. MANNION: Objection. I
5 thought --

6 Q. Danny paid. Okay. Have you ever paid Mr. Weimer
7 to do anything else in connection with Twin Crown
8 Properties?

9 MR. MANNION: Well, you said
10 anything else.

11 A. That's what I'm trying to think of.

12 Q. Anything at all?

13 A. I don't think so.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 70 was marked
16 for purposes of identification.)

17 - - - -

18 Q. Okay. January 7, 2014 you are e-mailing -- it's
19 hard to tell who you're e-mailing. This was a
20 document that you produced. It says, everyone
21 please use Liberty only, in caps, for loans. Any
22 question, come see me.

23 A. Okay.

24 Q. Brandy responds -- and this is on Tuesday,
25 January 7, 2014, Brandy responds, need to have a

1 talk with Ciro about customer service then. He
2 only has one guy and he doesn't get back to us
3 right away.

4 A. There you go.

5 Q. You respond and you say there is a reason and
6 this will only be temporary. What are you
7 referring to there?

8 A. There's a reason and this will only be temporary,
9 I think that he was -- he may have called he was
10 going to hire more people.

11 Q. Are you sure that's the case or are you just
12 guessing?

13 A. I'm guessing.

14 Q. You don't have any memory?

15 A. No.

16 - - - -

17 (Thereupon, Plaintiff's Exhibit 71 was marked
18 for purposes of identification.)

19 - - - -

20 Q. This is the e-mail that Ciro sent to you on May
21 3rd, 2012, correct, at 12:19 p.m.?

22 A. Yeah.

23 - - - -

24 (Thereupon, Plaintiff's Exhibit 72 was marked
25 for purposes of identification.)

1

- - - -

2

Q. And then here's another document. Ciro writes you, it looks like two minutes later after he sends you the e-mail, he says, Rob, was the e-mail sufficient? Can you send me a copy of the monthly reports they provide you guys?

3

4

5

6

7

A. Uh-huh.

8

Q. Do you know why he was sending this?

9

A. No.

10

Q. It's asking for your approval for the message, if you needed him to do anything else in the message, does that make sense?

11

12

13

A. No, he could be asking me if that was okay that he sent that e-mail. Knowing me, I didn't respond to this.

14

15

16

MR. PATTAKOS: Let's look at the

17

next document.

18

- - - -

19

(Thereupon, Plaintiff's Exhibit 73 was marked for purposes of identification.)

20

21

- - - -

22

Q. It looks like you did respond. He said you should be hearing from my lawyer soon and then he said, okay, thanks, Rob.

23

24

25

A. Okay. So I didn't answer his question.

1 Q. Well, you basically by not answering the
2 question --

3 A. Well, you're going to assume, so...

4 Q. Well, it's safe to assume that the e-mail was
5 sufficient, correct?

6 A. Nothing is safe to assume -- well, yeah, I
7 forwarded it, it was fine.

8 Q. Okay. That's all I'm asking.

9 A. Okay.

10 Q. You don't recall asking Ciro to draft an e-mail
11 that you could send to your clients?

12 A. I told him send -- get -- prepare an e-mail to
13 send to the lawyers.

14 Q. Okay.

15 A. I testified to that before.

16 Q. Okay.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 74 was marked
19 for purposes of identification.)

20 - - - -

21 MR. PATTAKOS: Something is
22 redacted here it looks like. It doesn't
23 say -- well, on May 3rd, 2012, 10:57 a.m.
24 there's a space here, someone wrote, please
25 tell me what you want from me with this

1 e-mail, but it's not marked as redacted.

2 You guys produced --

3 A. It's me, it's got the signature block right there
4 (indicating).

5 Q. Who are you writing to?

6 A. Please tell me what you want from me with this
7 e-mail.

8 Q. There's two different time notations, there's on
9 May 3rd at 10:57 a.m. someone wrote, please tell
10 me what you want from me with this e-mail. On
11 May 3rd at 8:55 a.m. it looks like you wrote
12 nothing and just forwarded an e-mail from Jenna.

13 What's redacted there?

14 A. Where, here (indicating) it says --

15 Q. Okay.

16 A. -- well, I'm responding to Jenna -- so let's
17 follow it. Jenna is sending me an e-mail,
18 Liberty Capital, and this is what all PCF sends,
19 this is Preferred Capital Funding. Can you
20 please send more info at your earliest
21 convenience. Thanks.

22 So she must have sent this to somebody,
23 whoever it was, copied it and it's being
24 forwarded to me.

25 Q. At one point you asked KNR lawyers or staff to

1 send you copies of the documents that the loan
2 companies used, correct?

3 A. It's a -- yeah, it's like an initial sheet.

4 Q. And you forwarded that to Ciro, correct? Because
5 he asked you to, correct?

6 A. It's possible.

7 Q. Well --

8 A. I don't remember, but it's possible.

9 Q. And then he also asked you to send reports at one
10 point.

11 A. Right.

12 Q. That you send a copy of the monthly reports and
13 that's in this next e-mail.

14 A. Okay. I think it was in this one, too. It was
15 in the one before.

16 Q. Well, you can take a look.

17 A. Okay.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 75 was marked
20 for purposes of identification.)

21 - - - -

22 Q. You're aware, Mr. Nestico, that Liberty Capital
23 was founded a few weeks before you started
24 recommending it to KNR clients?

25 A. I am now.

1 Q. Because you've reviewed the documents that have
2 been produced in this case, correct?

3 A. Because you said it. You showed the Secretary of
4 State -- the Florida Secretary of State in one of
5 your responses.

6 Q. So this is just asking -- Ciro asking you for a
7 copy of the monthly reports that the lending
8 companies send to KNR, right?

9 A. Yeah.

10 Q. And did you ever provide those to him?

11 A. No.

12 Q. Why?

13 A. I don't think I did.

14 Q. Why not?

15 A. I didn't.

16 Q. Someone -- did someone?

17 A. I don't know.

18 Q. Okay.

19 A. They all did that, Preferred Capital, Oasis.

20 Q. It's true, Mr. Nestico, that you were constantly
21 bargaining with Ciro about whether he would take
22 a write-off on the amounts owed to him on any
23 given case?

24 MR. MANNION: Objection to form.

25 A. Not constantly.

1 Q. Frequently?

2 A. Not frequently.

3 Q. Regularly?

4 A. Not even regularly.

5 Q. Rarely?

6 MR. MANNION: Objection.

7 A. It happened.

8 Q. Okay. On some cases he would take a bigger fee
9 and on others he would give a bigger write-off,
10 correct?

11 MR. MANNION: Objection as to
12 bigger fee, but go ahead.

13 A. You mean the pay back?

14 Q. Yeah. If you want to call it a "pay back,"
15 that's fine.

16 A. Yeah, whatever the clients owed them.

17 Q. He would take a larger amount -- on some cases he
18 would take a larger percentage of what was owed
19 to him and on other cases he would write down
20 more, correct?

21 MR. MANNION: Objection to form,
22 but go ahead.

23 A. That's -- he would take bigger reductions at
24 times and less at other times, depending on the
25 case.

1 Q. Okay.

2

- - - -

3

(Thereupon, Plaintiff's Exhibit 76 was marked
4 for purposes of identification.)

5

- - - -

6

MR. MANNION: He must have taken

7

too many.

8

Q. So here's an e-mail from Josh Angelotta to Rob

9

Nestico --

10

A. Well, start at the bottom.

11

Q. I'll start at the bottom. You say, if anyone has

12

been having problems with them, meaning Liberty

13

Capital in the subject line, please e-mail me

14

what has happened and be as specific as possible.

15

A. Thank you.

16

Q. Why did you send that?

17

A. I think this is probably around the time --

18

someone had to complain or someone had to say

19

they're not good.

20

Q. Who was it?

21

A. I don't remember.

22

Q. This is on October 30th of 2012.

23

A. So what is it, a month after using them?

24

Q. You don't remember what the specific complaint

25

was?

1 A. No. So I circulated that and Josh was one who
2 responded to me.

3 Q. Okay. So Brian at Lib Cap, that's the person --

4 A. There you go.

5 Q. -- that you were referring to?

6 A. That's a third Brian now.

7 Q. She needed 700 and was told by Brian at Lib Cap
8 that we said that she should be approved for no
9 more than 500. What does that mean?

10 A. And then in says in parenthesis, no one here
11 spoke to Brian about the loan request.

12 Q. So he's misrepresenting the firm's
13 communications?

14 A. Who is?

15 Q. Brian.

16 A. No, this is what the client -- she needed 700, so
17 I assume that Josh is talking about the client,
18 and was told by Brian, that's what she said.

19 Q. When Ciro would agree to take a write-off or not,
20 what was that determination based on?

21 A. No idea. Sometimes you obviously want to tell
22 him that there's not enough money.

23 Q. There wasn't enough money in the settlement and
24 you just --

25 A. Right.

1 Q. -- you and the client wanted to resolve the case
2 so you go to Ciro and ask him, hey, can you take
3 a write-off on this so we can get this case done?

4 A. Not me.

5 Q. The firm, the lawyer?

6 A. Not the firm, the lawyer.

7 MR. MANNION: Much like with
8 Monique.

9 THE WITNESS: That's correct.

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 77 was marked
12 for purposes of identification.)

13 - - - -

14 Q. So here's a case where Paul Steele is trying to
15 settle it at the bottom --

16 A. Hang on.

17 Q. It says case with child support lien. Issue,
18 client had cash advance, Liberty Capital for 250,
19 owing 398.

20 So she -- the client got an advance of 250,
21 she owes 398 now because of the interest. It
22 says we are paying everyone in full on this,
23 hospitals and all. I do not want to bring up
24 child -- to child support the cash advance and
25 screw up the deal with us getting our fee and

1 bills being paid. Should I tell Ciro, tough
2 luck, add child support liens to your
3 questionnaire. Should I pay him the principal,
4 250, from our fee from business account, since we
5 are taking full fee? Could we cut Ghoub 250 --
6 that means Ghoubrial, correct?

7 A. Uh-huh, yes.

8 Q. And pay Ciro indirectly. Not sure how to handle
9 it. You respond, is T&C paid in full? Paul
10 says, yes, T&C -- that's Town & Country, correct?

11 A. Correct.

12 Q. In full. You said who is paying cash advance?
13 Paul says that is what I am trying to figure out,
14 should we just tell Ciro he has to write it off
15 as a loss? And you said, no --

16 A. Now, hang on, hang on, let me finish reading.
17 Child support down here in Franklin County is
18 horrible to deal with.

19 Q. Yes. And you said, no, reduce chiro and us to
20 cover original -- loan original amount, no
21 interest tell Ciro, correct?

22 A. Yes.

23 Q. So you were telling Ciro that he had to take a
24 write-off on this case?

25 A. No, I'm telling Paul to tell Ciro.

1 Q. Okay. And Ciro took the write-off. You have no
2 reason to believe he didn't, right?

3 A. I have no idea. And you realize that we're
4 reducing our fee.

5

- - - -

6 (Thereupon, Plaintiff's Exhibit 78 was marked
7 for purposes of identification.)

8

- - - -

9 Q. This is Ciro e-mailing Hillary Kornas, I received
10 check for -- presumably a client's name -- from
11 KNR, \$800. Hillary asks him, okay, that was the
12 right amount, correct? Ciro says, no, amount due
13 was 1,585. His advance was over a year old.
14 Anyway, you guys can send 150 to close the case.
15 That is him asking to send another 150 to satisfy
16 this loan?

17 A. That's what it sounds like.

18 Q. And Hillary writes to Mr. Redick, there's a
19 reduction to 800 shown in the value screen, but
20 Ciro wants 950. And Redick writes, I spoke to
21 him about this, these were MR. PATTAKOS: Cut ups
22 and withdraw. He is likely he got anything at
23 all.

24 A. Lucky.

25 Q. Right.

1 A. You said "likely", sorry.

2 Q. Likely I said. I'm sorry.

3 A. Fine. Okay.

4 Q. The e-mail says he is lucky he got anything at
5 all, that's what Redick writes.

6 A. Call him and refresh his memory.

7 Q. Okay. Does this look like a typical exchange to
8 you in terms of the firm's dealings with Ciro?

9 MR. MANNION: Objection as to
10 "typical".

11 A. I don't know.

12 Q. You don't know?

13 A. No.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 79 was marked
16 for purposes of identification.)

17 - - - -

18 Q. You know what, we can skip this one.

19 A. Because it has Oasis all over it?

20 - - - -

21 (Thereupon, Plaintiff's Exhibit 80 was marked
22 for purposes of identification.)

23 - - - -

24 Q. This is Brian Zaber. That's an attorney at the
25 firm, correct?

1 A. Yes, sir. Was.

2 Q. E-mailing Ciro and you. If you look at the
3 second page he writes -- and I assume the
4 client's name is redacted here --

5 A. Yes.

6 Q. -- Rob, on this one that you just reviewed, you
7 cut Ciro from 300 to 496. Can I just pay him --

8 MR. MANNION: Excuse me, you said
9 from 300.

10 Q. To 300 from --

11 MR. PATTAKOS: Thank you, Tom.

12 Q. -- to 300 from 496.

13 A. Uh-huh.

14 Q. Can I just pay him and note the file that you
15 approved or do I need to e-mail him and CC you
16 saying that is what you suggested due to the
17 settlement. Thanks. You respond, yes, send us
18 both an e-mail. Is that correct?

19 A. Yes.

20 Q. And you sent that e-mail?

21 A. Yeah.

22 Q. Then Brian writes to Ciro, copying you, basically
23 communicating your proposal, correct?

24 A. Let's read it. Marti e-mailed you for a payoff
25 on this case a few days ago. It was 496. The

1 top offer in this case is 1,087 because there's
2 no damage to the vehicle and the insurance
3 company doesn't believe our client sustained
4 injury. I have given this case to Rob for review
5 due to these circumstances. He has proposed that
6 you take \$300. Both medical providers are taking
7 significant reductions and we have almost cut our
8 fee in half. Please advise so that I may proceed
9 to attempt to resolve this matter. Thank you.
10 Brain Zaber.

11 Q. Okay. And he's just communicating your
12 instruction -- Brian is doing what you told him
13 to do, correct?

14 A. What I suggested to do, yes.

15 - - - -

16 (Thereupon, Plaintiff's Exhibit 81 was marked
17 for purposes of identification.)

18 - - - -

19 Q. Okay. And this is a February 3rd, 2014 e-mail
20 where you e-mail Ciro -- again, presumably the
21 client's name is redacted -- Ciro, can we get
22 this client an advance of \$250 more. Please let
23 me know. Don't want to lose this client.

24 A. Uh-huh.

25 Q. Ciro says. K. Thanks Rob. And it was sent to

1 Brian Zaber -- you forward it to Brian Zaber, he
2 responds, signed it, sorry to have to involve
3 you.

4 A. So it's one of Brian's clients. He wanted me to
5 send an e-mail to Ciro.

6 Q. To see if Ciro would help you not lose the case,
7 correct?

8 A. Lend the client more money because obviously the
9 client wants more money or they'll fire us.

10 Q. So you're using the cash advance to keep the
11 client engaged with the firm, correct?

12 MR. MANNION: Objection.

13 A. No, it's what the client wanted.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 82 was marked
16 for purposes of identification.)

17 - - - -

18 Q. There's a lot redacted in this e-mail, but we'll
19 do our best.

20 A. Sure.

21 Q. Start at the bottom Brian Zaber is e-mailing, hi
22 Ciro, I am still confirming on -- presumably a
23 client name -- on another note -- presumably
24 another client --

25 A. Uh-huh.

1 Q. -- is one of the four I told you about when I
2 asked you about blank. Can you confirm his
3 payoff and if you can shave anything off of it.
4 Thanks.

5 Ciro says, I am taking a bath on all of your
6 deals. \$800, \$560. And there's a repeated
7 negotiation back and forth on this.

8 Brian then forwards it to you --

9 A. It starts at the top of the second page.

10 Q. You -- no, it's at the top of the first page.

11 A. Second.

12 Q. Well, bottom of the second, top of the first.

13 A. Oh -- no, it's right here (indicating).

14 MR. MANNION: He's talking about
15 the "from," if you look at the --

16 Q. Yeah, the from is on the first page. And then
17 ultimately you say at the top on the first page,
18 pay him same on each 568, correct?

19 A. That's meaning offer him 568.

20 Q. Okay. Was Ciro, in fact, taking a bath on all
21 his deals?

22 A. Well, this one here, so the client borrowed \$500
23 and his payment was 568. So it's -- there's \$68.
24 And whether Ciro was taking a bath on Brian's
25 deals, I don't know --

1 Q. Is he talking about --

2 A. -- that's what he said.

3 Q. -- Brian alone? Do you think he's referring just
4 to Brian or is he talking about the firm as a
5 whole?

6 A. I don't know.

7 Q. Okay.

8 - - - -

9 (Thereupon, Plaintiff's Exhibit 83 was marked
10 for purposes of identification.)

11 - - - -

12 Q. When was the last time you talked to Ciro?

13 A. Years.

14 Q. When was the last time you wrote to him?

15 A. Years.

16 Q. Send him an e-mail? Send him a message?

17 Communicated through attorneys?

18 MR. MANNION: Objection as to

19 communicated through attorneys.

20 A. Yeah, I can't answer that.

21 Q. Okay.

22 A. What do you want me to do with this?

23 Q. Pardon me. So, on the last page here Angelotta
24 asks Ciro to confirm that a balance has been paid
25 in full. Ciro responds and asks Julie, can you

1 confirm KNR has paid off.

2 Who's Julie McAtee?

3 A. She was a bookkeeper.

4 Q. At KNR?

5 A. Yeah.

6 Q. He then asks, please send the most current client
7 payoff list in a separate e-mail. This is June
8 3rd, 2014.

9 A. Who said that? Hang on.

10 Q. Ciro in the second e-mail from the bottom.

11 A. So we're going to start -- please confirm the
12 balance has been paid in full. Julie, can you
13 confirm KNR has paid off. I believe it is check
14 blank, date. Josh and I would like to confirm
15 this payment has occurred. Also please send the
16 most current client payoff list in a separate
17 e-mail. Okay. You want me to keep reading?

18 Q. And then Julie says --

19 A. Julie looks like --

20 Q. -- in the next e-mail, I'm not sure about the
21 current client payoff list and wanted to check
22 with you prior to sending anything.

23 A. Yeah, and I sent Ciro a copy of the cleared check
24 --

25 Q. I don't -- I just want you to focus, sir, on the

1 text that I'm asking you about.

2 A. I've got to read the whole thing.

3 MR. MANNION: He gets to read the
4 whole thing.

5 MR. PATTAKOS: He gets to, but I'm
6 representing it's not important.

7 A. To you.

8 MR. MANNION: Well, you can
9 represent all that.

10 MR. PATTAKOS: Well, you can read
11 it as the lawyer --

12 MR. MANNION: He has a right to
13 read this.

14 A. It's okay, Peter, it takes a second.

15 MR. PATTAKOS: I want to keep
16 moving --

17 MR. MANNION: So do we, but you
18 can't --

19 MR. PATTAKOS: -- we have a lot to
20 cover.

21 MR. MANNION: -- pick and choose
22 from an exhibit without letting him have a
23 chance to read it.

24 MR. PATTAKOS: You guys can object
25 --

1 MR. MANNION: No, no, you can't do
2 that, Peter. It's not just an objection.
3 You're not permitted to do that.

4 A. Okay. Julie --

5 Q. So here on the first page --

6 A. -- so Julie -- you want to know what Julie said?

7 Q. Julie said -- I know what Julie said, I can read
8 it. She said, I'm not sure about the current
9 payoff list and wanted to check with you prior to
10 sending anything --

11 A. Uh-huh.

12 Q. -- and you respond on the first page, don't send
13 him anything?

14 A. No, I said see me tomorrow.

15 Q. Look at the first page, sir. In the middle you
16 write, don't send him anything, correct?

17 A. There were two responses, but that's one, yes.

18 Q. And then Rob -- and then she said that's what I
19 figured. Thanks.

20 A. Uh-huh.

21 Q. And then you say, he asks again, tell him he
22 needs to discuss with me and I'm out of town
23 until Monday.

24 A. Uh-huh.

25 Q. And she says, sounds good. Thanks. Correct?

1 A. Yes, sir.

2 Q. So why didn't you want to send him the client
3 payoff list?

4 A. First of all, because when you send those lists,
5 you're not suppose to send client names. That's
6 all I wanted to make sure, that confidential
7 information didn't go out. They usually take
8 that out, the spreadsheet.

9 Q. Why couldn't you just e-mail Julie and say take
10 the client names out and then go ahead and send
11 it?

12 A. I don't know, Peter.

13 Q. Okay.

14

- - - -

15 (Thereupon, Plaintiff's Exhibit 84 was marked
16 for purposes of identification.)

17

- - - -

18 Q. Do you remember this?

19 A. Yes.

20 Q. What do you remember about it?

21 A. That they're trying to ask Ciro for a favor and
22 get him to waive it so that they didn't have to
23 pay for the loans. They're asking Ciro for this
24 favor because they messed up.

25 Q. Ken and Gary?

1 A. Yes, sir.

2 Q. Ken Zurrusen and Gary Petti?

3 A. Gary Petti has closed two cases without paying
4 and Ken one case, so we're responsible.

5 Q. Well, it says Ciro was going to waive at the top
6 so not only -- they weren't asking him for the
7 favor, he had already given them the favor,
8 correct?

9 A. And do you understand that that's at the expense
10 of potentially another client who we -- we needed
11 on -- not because of the lawyer messing up.

12 Q. That's at the expense of another client?

13 A. Yeah. That's the way I see it.

14 Q. So Brandy is telling you that Gary and Ken closed
15 cases and distributed settlement funds to the
16 client without paying what was owed to Liberty
17 Capital, correct?

18 A. Uh-huh, yes.

19 Q. And they couldn't go back to the client and ask
20 them for the money because the case was already
21 closed, correct?

22 A. Correct.

23 MR. MANNION: Objection as to
24 couldn't, but go ahead.

25 Q. Well, didn't want to maybe, right? Couldn't or

1 didn't want to.

2 A. Yeah, and if we didn't pay them, these clients
3 could get sued for our mistake.

4 Q. And the clients could sue you then because you
5 were the one that made the mistake, right?

6 A. So what do you need all that for?

7 Q. Right, of course.

8 MR. MANNION: Well, if they owe
9 the money, they have no basis to sue, so
10 let's --

11 Q. So you ordered Gary and Ken to pay Ciro out of
12 their own pocket, correct?

13 A. Yeah.

14 Q. And then Brandy says I discussed this with Robert
15 and we decided to make attorneys pay because at
16 some point we will need a favor from Ciro and
17 need him to waive.

18 A. Right.

19 Q. Do you agree with that?

20 A. Yeah.

21 Q. I told Ciro the next time they call and ask him
22 that he needs to let me know. We will also
23 address at meetings. It's not up to the
24 attorneys. It's up to you and Robert. Is that
25 correct?

1 A. That's what she said.

2 Q. Do you agree with that?

3 A. I don't know if it's up to me and Robert.

4 Q. Who's it up to?

5 A. I don't know. I think it would be probably safe
6 to say that back in 2012.

7 Q. It's you and Mr. Redick that should be dictating
8 the terms of the relationship with Ciro, not
9 lower-level attorneys at the firm, correct?

10 MR. MANNION: Objection.

11 A. That's not true.

12 MR. MANNION: Objection. That's
13 not what he said.

14 A. I didn't say that.

15 Q. Well, why else was it up to you and Mr. Redick as
16 opposed to anyone else?

17 A. Our names were on the door.

18 Q. Okay. So you acknowledge that, you know, when
19 you say at some point -- when Brandy says at some
20 point you'll need a favor from Ciro, this is
21 because if Ciro gives a bigger write-off on some
22 cases, he would want --

23 A. You just went --

24 Q. -- a bigger payoff --

25 A. -- you just went --

1 Q. -- on other cases?

2 A. -- you just went sideways. No. It has nothing
3 to do with a bigger payoff.

4 Q. Well, you wanted to get him the bigger payoffs
5 when you could --

6 A. No, no.

7 MR. MANNION: No.

8 Q. -- so that he would retain his flexibility in
9 giving you --

10 A. I didn't say that, Peter.

11 Q. -- in giving you bigger write-offs when you
12 needed them to get the case settled, correct?

13 A. No, not correct.

14 Q. How is that wrong?

15 A. The whole thing is wrong.

16 Q. How?

17 A. Because what we're looking for is in the event
18 they need a favor for a client because there is
19 no settlement, because there's -- they didn't
20 consider -- they didn't consider certain care,
21 whatever the reason that we needed to help a
22 client out, we needed not asking for a favor
23 because one of our lawyers messed up, that's not
24 right. You're trying to use one client against
25 another. You can't do that.

1 Q. Well, you're sending clients to this company for
2 high interest loans --

3 MR. MANNION: Objection.

4 A. No.

5 MR. MANNION: Objection.

6 Q. -- and his decision to take a write-off --

7 MR. MANNION: Move to strike.

8 Q. -- is going to be based on whether he was able to
9 get a larger payment from another one of your
10 firm's clients --

11 MR. MANNION: I'm going to move to
12 strike --

13 Q. -- isn't that correct?

14 MR. MANNION: -- the first part of
15 that.

16 A. No.

17 Q. Well, that's why Brandy made Gary and Ken pay him
18 because she knew you'd need a, quote, favor from
19 him at some point --

20 MR. MANNION: Objection.

21 Q. -- and this trading of favors was simply a
22 routine aspect of the relationship?

23 MR. MANNION: Objection.

24 A. Absolutely not. Absolutely not. You don't have
25 to huff and puff, Peter. You asked the question,

1 I said it's not.

2 Q. By engaging in this type of bargaining with Ciro,
3 are you not, essentially, bargaining your own
4 clients against each other to preserve --

5 A. Absolutely not.

6 Q. -- to preserve your own interests and the benefit
7 of your relationship with Ciro?

8 A. Absolutely not.

9 Q. He gets exclusive access to your clients to sell
10 them high-interest loans --

11 A. No, he doesn't.

12 Q. -- and in exchange for that exclusive access, you
13 get a high degree of control over him in terms of
14 which clients get big write-offs and which
15 clients don't, correct?

16 A. False.

17 MR. MANNION: Objection.

18 Q. How is that false?

19 A. The whole thing is false.

20 Q. How?

21 A. He doesn't have any exclusivity of anything and
22 we don't direct people to get high-interest rate
23 loans. We actually counsel them against
24 high-interest rate loans.

25 Q. But you advertise, we can help you get a cash

1 advance and then you say, everybody please use
2 Liberty Capital on all cash advances, but you're
3 not --

4 MR. MANNION: Objection.

5 Q. -- how does that make sense?

6 MR. MANNION: Objection. That's
7 -- if you don't understand it, that's fine,
8 but he doesn't have to explain to you so
9 you make sense.

10 Q. And your clients have no idea that their
11 interests are being bargained for between you and
12 --

13 MR. MANNION: Objection.

14 Q. -- Ciro in this way, do they?

15 MR. MANNION: That's ridiculous.

16 A. There is no interest being bargained. It is for
17 the -- what in that e-mail, Peter, hurts the
18 client? You know what that e-mail is, protecting
19 the client.

20 Q. It's protecting one --

21 A. The lawyer messed up --

22 MR. MANNION: Hey, don't interrupt
23 him.

24 A. -- the lawyer messed up and they have to pay for
25 it, all right? That's -- I'm protecting the

1 client so the client doesn't get sued. What part
2 of that e-mail don't you understand?

3 Q. If the loan companies you were working with were
4 more independent and were competing with one
5 another as opposed to entering in an exclusive
6 relationship, that would not only benefit your
7 clients in terms of the loan companies wanting to
8 stay competitive against one another by offering
9 competitive rates and competitive write-offs --

10 A. They do.

11 Q. -- but you would also be more incentivized to
12 work for the best possible deal for your clients
13 on every case instead of giving some of them a
14 good deal and balancing that out by giving the
15 loan company a break at your client's expense,
16 correct?

17 MR. MANNION: Do not answer a
18 question like that --

19 THE WITNESS: I'm not.

20 MR. MANNION: -- that had 12
21 questions in it. If you want to break that
22 up --

23 THE WITNESS: I'm not going to
24 answer.

25 MR. MANNION: -- that's fine,

1 that's crazy.

2 Q. You don't agree with that?

3 A. I'm not going to even answer that, Peter.

4 Q. Okay.

5 MR. MANNION: If you want to break
6 it up, he will --

7 A. Yeah.

8 MR. MANNION: -- but I don't know
9 how to answer a question that has 20
10 questions and 15 false --

11 A. It's all false.

12 MR. POPSON: It wasn't a question,
13 it was a speech.

14 MR. MANNION: Yeah, it was a
15 speech.

16 A. That's okay.

17 Q. Don't you think it would be good to have loan
18 companies competing with one another to give your
19 clients better deals?

20 A. They do.

21 Q. How are they completing when you were telling
22 your clients -- when you were telling your
23 attorneys to send all of the clients to Liberty
24 Capital for cash advances?

25 MR. MANNION: Objection. They

1 don't send anybody.

2 Q. Who was competing?

3 A. Mr. Pattakos, they still sent -- I told you this
4 before -- they still sent clients to Preferred
5 Capital and Oasis just like Monique Norris was
6 referred to Oasis and Liberty Capital, it
7 continued that way.

8 Q. So you agree though that it's good to have loan
9 companies competing for the services of your
10 clients, correct?

11 MR. MANNION: Objection. There's
12 a lot in that question.

13 A. You want to ask that -- break it down?

14 MR. MANNION: What do you mean,
15 competing how, Peter? They're suppose to
16 submit three, four loan applications to see
17 what --

18 MR. PATTAKOS: Now, you want me to
19 say more? Before you wanted me to say
20 less --

21 MR. MANNION: No, I'm asking --

22 MR. PATTAKOS: -- so I did and now
23 you want me to say more.

24 MR. MANNION: Well, what do you
25 mean?

1 Q. You agree that it's a good thing to have loan
2 companies competing to provide better service to
3 your clients, correct, Mr. Nestico?

4 MR. MANNION: Objection.

5 Q. Competing with one another.

6 A. They do.

7 Q. You agree that it's good when they do?

8 MR. MANNION: Objection.

9 A. They did.

10 Q. And it was good that they did?

11 A. Sure, it's good.

12 - - - -

13 (Thereupon, Plaintiff's Exhibit 85 was marked
14 for purposes of identification.)

15 - - - -

16 Q. Okay. Here we go with Brandy in a high
17 importance e-mail, February 3rd, 2015, legal
18 funding companies. To all staff, please be sure
19 to offer two different companies --

20 MR. MANNION: Wait, wait, wait.

21 Why are you yelling at --

22 Q. -- to your clients?

23 MR. MANNION: -- him, that's not
24 how it's written.

25 Q. -- only if they request a loan. We will be

1 working with Oasis and Preferred Capital. Our
2 new Oasis' rep's name is Kelly, et cetera. She
3 later sends an e-mail to clarify, that's above,
4 that says just to clarify, we are back to working
5 with both lending companies. For new loans
6 please offer both, and both is in all capital
7 letters. If they already have a loan with one,
8 then have them call that company just as you
9 normally would. On a side note, Preferred
10 Capital charges low ongoing interest on loans.
11 Additionally, please do not contact Brian Moonin.

12 So why go to offering two different
13 companies? Why go back to that?

14 A. You had Brandy here. Ask her. I don't know.

15 Q. You don't know?

16 A. No.

17 Q. Okay. Do you know why she's saying please do not
18 contact Brian Moonin?

19 A. Absolutely not.

20 Q. Do you know why, if she's saying that if the
21 client already has a loan with one company, then
22 have them call that company just as you normally
23 would?

24 A. I do not.

25 Q. Okay. You said before, Mr. Nestico, that your

1 clients, the majority of your clients, did not
2 have health insurance, correct?

3 A. Safe.

4 Q. Because they're from lower socially -- they have
5 lower socially economic status, generally?

6 A. They can't afford it is what I followed up with.

7 - - - -

8 (Thereupon, Plaintiff's Exhibit 86 was marked
9 for purposes of identification.)

10 - - - -

11 Q. This is an e-mail that was produced by Gary Petti
12 in response to the subpoena. Remember he said
13 that he produced it pursuant to the protective
14 order?

15 A. Uh-huh.

16 Q. You see Nomiki, and it looks like she's
17 forwarding a picture, it goes to all attorneys,
18 Brandy Lamtman, and you see the image 6568 jpg at
19 the bottom left corner, and I'm holding the
20 document horizontally.

21 A. Uh-huh.

22 Q. It says, one of our clients sold our gift card to
23 a pawnshop April's friend works at with four
24 exclamation marks, LMAO, four exclamation marks.

25 A. Uh-huh.

1 Q. What does she mean by "our gift card"?

2 A. When a client does an exit interview and they
3 take the time to fill out a review, they're given
4 a gift card to a local restaurant.

5 Q. Why is that?

6 A. For taking the time to fill out the review.

7 Q. How much is the gift card worth?

8 A. It's \$25.

9 Q. \$25?

10 A. Yeah.

11 Q. Is it 35 sometimes? It's always 25?

12 A. Yeah, that's what I believe.

13 Q. You're not sure?

14 A. I'm almost 100 percent certain.

15 Q. Okay. You think it's funny that one of your
16 clients sold a gift card at a pawn shop?

17 A. It's sad.

18 Q. Who's April?

19 A. She's a lawyer.

20 Q. April who?

21 A. Hanlin.

22 Q. April Hanlin, lawyer at KNR?

23 A. Yes.

24 Q. Out of the Youngstown office?

25 A. You know, I don't know if that's the April that

1 she's referring to. I think the receptionist out
2 in Youngstown is April as well.

3 Q. Okay. It is sad, you agree, that your clients
4 are selling the gift cards at pawnshops. Your
5 response was -- this is to all attorneys, copying
6 Brandy and Nomiki -- they don't like Macaroni
7 Grill? Next time get Popeyes Chicken.

8 A. Right.

9 Q. Why did you write that?

10 A. Give them what they want.

11 Q. What do they want?

12 A. The next restaurant that's closest to my office,
13 if you Googled it, you would know, is Popeyes
14 Chicken.

15 Q. In Youngstown?

16 A. In Youngstown.

17 MR. MANNION: What's that facial
18 expression for?

19 Q. Well, you're aware, Mr. Nestico, that there is a
20 stereotype about fried chicken?

21 MR. MANNION: Are you kidding me?

22 A. That's sad --

23 MR. MANNION: Are you kidding me?

24 A. -- Peter.

25 Q. You're not aware? You are aware of it?

1 A. I would retract that if I were you.

2 MR. MANNION: That's outrageous.

3 A. That's sad.

4 MR. MANNION: Do you have that
5 jpg?

6 MR. PATTAKOS: No, I wish I did.

7 MR. MANNION: You don't know if
8 that's a photo or what it is. You don't
9 know.

10 MR. PATTAKOS: Jpgs are typically
11 photos.

12 MR. MANNION: No, it could be all
13 sorts of things.

14 MR. JONSON: It might just be the
15 logo.

16 MR. MANNION: Yeah, it could be
17 their logo, too, yeah.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 87 was marked
20 for purposes of identification.)

21 - - - -

22 MR. MANNION: This is outrageous.

23 Are you serious?

24 A. What is this?

25 Q. It's an article that's published on NPR about the

1 fried chicken stereotype.

2 A. Are you kidding me?

3 Q. It says, "Where did that fried chicken stereotype
4 come from."

5 MR. MANNION: You have got to be
6 kidding me.

7 A. Are you kidding?

8 MR. MANNION: You should be
9 embarrassed, Mr. Pattakos. This is
10 offensive.

11 A. Peter --

12 MR. BEST: -- he is pathetic.

13 MR. MANNION: This is offensive.

14 How could you do this? Do you
15 have something -- are you going to talk
16 about Brad next, he's Jewish. Do you have
17 any articles --

18 BY MR. PATTAKOS:

19 Q. So I'm looking at the --

20 MR. MANNION: -- about their
21 stereotype?

22 Q. -- I'm looking at the second page, it says, "This
23 black-people-and --

24 MR. MANNION: Fricken' outrageous.

25 Q. -- this black-people-and-fried-chicken thing is

1 really old". And they're talking about when
2 Sergio Garcia, the golfer, made the news because
3 he said something about Tiger Woods, who is black
4 said, "we'll have him 'round every night, we will
5 serve fried chicken." It's very controversial --

6 A. Wow --

7 MR. MANNION: Move to strike.

8 Q. -- and the bottom of that second page says, "This
9 black-people-and-fried-chicken thing is really
10 old. It's not even the first time a professional
11 golfer made a joke about fried chicken and Tiger
12 Woods."

13 A. Wow.

14 MR. MANNION: Are you a
15 professional golfer, Mr. Nestico?

16 Q. It says, "What is with this stereotype about
17 black people loving fried chicken" --

18 MR. MANNION: Move to strike.

19 Q. "I asked Claire Schmidt for help. She's a
20 professor at the University of Missouri who
21 studied race and folklore" --

22 MR. MANNION: Move to strike.

23 Q. -- Schmidt said chickens have long been a part of
24 Southern diets, but they had particular utility
25 for slaves. They were cheap, easy to feed and a

1 good source of meat" --

2 MR. MANNION: Move to strike.

3 MR. BEST: Is this ethically
4 appropriate, George?

5 MR. MANNION: This is outrageous.

6 Q. "But then, Schmidt says, came --

7 MR. JONSON: Why don't you just
8 call him a racist and we'll be done with
9 it. And I will take --

10 MR. MANNION: I mean, this is
11 outrageous.

12 Q. -- Birth of a Nation --

13 MR. MANNION: I abuse women
14 apparently and now what, Rob's a racist?

15 Q. -- D.W. Griffith's seminal and supremely racist
16 1915 silent movie about the supposedly heroic
17 founding of the Ku Klux Klan was a huge sensation
18 --

19 MR. MANNION: Oh, my God.

20 Q. -- when it debuted. One scene in the three-hour
21 features a group of actors portraying shiftless
22 black elected officials acting rowdy and crudely
23 in a legislative hall. (The message to the
24 audience: These are the dangers of letting
25 blacks vote.) --

1 MR. MANNION: Objection. Move to
2 strike.

3 Q. -- some of the legislators are shown drinking.
4 Others had their feet kicked up on desks. And
5 one of them was very ostentatiously eating fried
6 chicken --

7 MR. MANNION: Move to strike.

8 Q. -- that image really solidified the way people
9 thought of black people and fried chicken,
10 Schmidt said."

11 MR. MANNION: Move to strike.

12 MR. NESTICO: He's losing it.

13 Q. And later on it said --

14 MR. MANNION: There's no question.

15 Q. -- "it's a food you eat with your hands, and
16 therefore it's dirty." "Table manners are a way
17 of determining who is worthy of respect or not."

18 MR. MANNION: Move to strike.

19 Q. You don't deny that this stereotype exists, do
20 you, Mr. Nestico?

21 MR. MANNION: Objection --

22 MR. JONSON: Don't answer that.

23 MR. MANNION: -- objection.

24 MR. JONSON: Do not answer that.

25 MR. MANNION: That's outrageous,

1 Peter.

2 MR. JONSON: You have gone off the
3 reservation. You need to put that exhibit
4 down and move onto another line of
5 questioning now.

6 MR. PATTAKOS: Why?

7 MR. JONSON: Because you're
8 calling him a racist without basis. It's
9 unprofessional, it's unrelated to this
10 litigation and it's outrageous. So proceed
11 if you want to, but proceed at your peril.

12 I've been doing this for 36 years
13 and I've never seen anything like this.

14 MR. PATTAKOS: Well, why didn't
15 you send me a letter, sir? This was in the
16 pleadings.

17 MR. JONSON: Go ahead.

18 MR. PATTAKOS: You left this in
19 the pleading --

20 MR. JONSON: I didn't read all the
21 pleadings.

22 MR. PATTAKOS: You could have sent
23 me -- you didn't?

24 MR. JONSON: I did not.

25 MR. PATTAKOS: You didn't read the

1 Complaint?

2 MR. JONSON: Go ahead, do what
3 you're going to do.

4 MR. BEST: It's too late, he's
5 done it. He's going to pay the price.

6 MR. MANNION: It was offensive
7 there as well.

8 (Unintelligible)

9 MR. PATTAKOS: You know it was
10 cited in the Complaint and you never said
11 anything to me about it.

12 MR. MANNION: It was offensive
13 there as well.

14 MR. POPSON: I did.

15 MR. PATTAKOS: What did you say,
16 Jim?

17 MR. POPSON: I believe I told you
18 it was inappropriate for you to put that in
19 there.

20 MR. PATTAKOS: Oh, you put it in a
21 brief in a one-off line --

22 MR. MANNION: Oh, sorry.

23 MR. PATTAKOS: -- but you never
24 e-mailed me.

25 MR. BEST: I think this is a good

1 time to take a break.

2 BY MR. PATTAKOS:

3 Q. So you're not going to answer questions about
4 this?

5 MR. BEST: You're going to answer
6 questions about this to the ethics board,
7 that's who's going to answer questions
8 about it.

9 MR. MANNION: You still haven't
10 apologized for you said --

11 MR. PATTAKOS: Are you threatening
12 me with a complaint?

13 MR. MANNION: Hey, Peter --

14 MR. PATTAKOS: To make a bar
15 complaint.

16 MR. BEST: This is going to be
17 known because you are the one who's done
18 all this stuff. You have violated so many
19 ethical standards, you will ultimately pay
20 the price. I told you that two weeks ago
21 and it will happen soon.

22 MR. MANNION: Let's get down to --
23 and why don't you list the evidence you
24 have that I'm abusive to women, that I like
25 to abuse women. Do you have that evidence?

1 Are you going to stand by that? You going
2 to at least be man enough to admit you said
3 it?

4 MR. PATTAKOS: Are you insisting
5 on a break right now?

6 MR. MANNION: We are taking a
7 break.

8 MR. BEST: When you call our
9 client a racist, yes, we're going to take a
10 break.

11 MR. MANNION: Yeah, he's upset and
12 he's going to take a break. You think it's
13 funny? Are you going to be man enough to
14 admit that you told your client I abuse
15 women? Are you? Peter, are you going to
16 admit it?

17 MR. PATTAKOS: Do you want to keep
18 going, Tom?

19 MR. MANNION: I'm asking you.

20 MR. PATTAKOS: Do you have
21 anything more to say, Tom?

22 MR. MANNION: Well, I'm asking why
23 --

24 MR. BARMEN: He certainly hasn't
25 denied it.

1 MR. MANNION: -- you're telling
2 people that I abuse women, that's
3 outrageous.

4 MR. PATTAKOS: You done?

5 MR. MANNION: You've lied to the
6 newspaper, you've lied to this Court and
7 now you're lying to your clients, and I'm
8 sick of it.

9 THE VIDEOGRAPHER: We're going off
10 the record. The time is 3:38.

11 - - - -

12 (Thereupon, a recess was had.)

13 - - - -

14 THE VIDEOGRAPHER: We're going
15 back on the record. The time is 3:47.

16 BY MR. PATTAKOS:

17 Q. What do you think, Mr. Nestico, about the threats
18 that your attorney, Mr. Best, has just made on
19 the record?

20 MR. MANNION: Objection. He's not
21 going to answer that question.

22 Q. Well, Mr. Best told me, and he said it in Richie
23 Harbour's deposition, too, that when this case is
24 over, I'll be the one to pay --

25 MR. MANNION: Don't --

1 Q. -- did he do that at your instruction?

2 A. No.

3 MR. MANNION: Stop it. First of
4 all, you just asked him what he told his
5 lawyer. That's a direct violation. You
6 know you can't ask --

7 Q. Mr. Best said that I would lose my license to
8 practice law as a result of the way I have
9 conducted myself in this case. Do you believe
10 that's the case?

11 MR. MANNION: Objection. Don't
12 answer that question. Don't answer the
13 question.

14 Q. You're not going to answer that question --

15 MR. MANNION: Don't look at him --

16 Q. -- Mr. Nestico?

17 MR. PATTAKOS: Don't look at him?

18 MR. MANNION: -- and ask stuff
19 that he's told his lawyers or vice versa.

20 Q. Mr. Best said that I have fabricated evidence in
21 this case. When I asked him to identify what the
22 evidence was, he only said you will find out.

23 Do you believe that I fabricated evidence in
24 this case?

25 A. Yeah.

1 Q. What evidence have I fabricated that you believe
2 -- what evidence do you believe I fabricated?

3 A. Peter, your -- the clients are repeating simply
4 what you -- what your narrative is. They don't
5 have any facts, so they're getting it from you.
6 That's false. So if they're saying they're
7 getting it from you and it's false, it's false.
8 Is that not fabricating evidence?

9 Q. What piece of evidence is fabricated?

10 MR. MANNION: I'm going to object
11 because you won't provide it to us.

12 A. Again, what the plaintiffs have testified to that
13 is false and they've said that I got it from
14 Peter, from my lawyer. So is that not you
15 fabricating evidence, that's all I'm saying.

16 Q. Anything else?

17 A. No.

18 Q. Okay. Your attorneys wrote in a brief that this
19 case was no more -- no different from Walmart.
20 Do you remember that?

21 MR. MANNION: Objection. Look,
22 you're not going to ask him what we meant
23 by something in a brief.

24 MR. PATTAKOS: I'm asking if he
25 agrees with it.

1 MR. MANNION: That involved -- no.
2 That involves attorney/client
3 communications.

4 Q. Do you know your attorneys --

5 MR. MANNION: Stop.

6 Q. -- are you aware, Mr. Nestico, that your
7 attorneys compared your law firm to Walmart in a
8 brief --

9 MR. MANNION: Stop it.

10 Q. -- that was filed in this case?

11 MR. MANNION: Objection.

12 A. I don't think that was the context of it.

13 Q. Are you aware of what I'm talking about?

14 A. I remember something, Peter, about it. It was in
15 one of the many, many briefs.

16 Q. Do you personally agree with that?

17 A. I don't know what --

18 MR. MANNION: With what?

19 A. Let's read it.

20 Q. Okay.

21 A. What brief was it?

22 MR. MANNION: You're not going to
23 ask him about his communications that he's
24 had with counsel. If you want to show him
25 something.

1 THE WITNESS: That's what I was
2 going to ask.

3 MR. MANNION: Yeah. We've got one
4 hour and ten minutes left so get your
5 questions finished. He ain't coming back.

6 BY MR. PATTAKOS:

7 Q. So when did KNR start using the investigators?

8 A. I think it was late 2009 or -- 2009.

9 Q. How did the whole idea of using investigators
10 start?

11 A. Well, the investigators we had them at Eshelman
12 Legal Group. The only difference is is they had
13 them as employees and billing clients at the same
14 time. That's where Aaron worked before.

15 Q. The investigators were billing hourly?

16 A. No.

17 Q. Billing for discrete tasks?

18 A. No. They were billing the clients for it.

19 Q. Eshelman was billing the clients --

20 A. Yes.

21 Q. -- for work that their employees were doing?

22 A. Yes.

23 Q. They were doing sign-ups?

24 A. Yeah, that was part of it.

25 Q. So that's where you got the idea?

1 MR. MANNION: Objection.

2 You mean idea to use

3 investigators?

4 MR. PATTAKOS: Yes.

5 A. We got -- I think the idea is a good idea. I
6 think it benefits the clients. I think if you do
7 it appropriately and you use them, you get a huge
8 benefit at cheap cost.

9 Q. You heard Monique Norris testify that the MRS
10 investigator told her he couldn't discuss her
11 case until she signed the fee agreement. You
12 believe that's false?

13 A. 100 percent.

14 Q. Do you believe I gave her that?

15 A. I don't know.

16 Q. Okay. So the firm doesn't instruct the
17 investigators to say that, is that your
18 testimony?

19 A. No, no. What they ask the investigators to do
20 that if the client asks for -- or discusses
21 anything legal, they are to get the lawyer back
22 on the phone. They're not to give any legal
23 advice, they're not lawyers.

24 Q. But the client doesn't have to sign the fee
25 agreement before the investigator does that,

1 correct?

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

3 That's an incomplete hypothetical.

4 A. Again, so if a client asks a legal question, they
5 are to get the lawyer back on the phone. They
6 cannot give legal advice, Peter.

7 Q. You agree that the predominant purpose of the
8 investigators was to sign the clients up?

9 MR. MANNION: Objection.

10 A. I don't agree.

11 Q. What was the predominant purpose of the
12 investigators, in your opinion?

13 A. To gather information to help advance the case,
14 Peter.

15 Q. Okay.

16 A. At least we're getting somewhere.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 88 was marked
19 for purposes of identification.)

20 - - - -

21 Q. Here's Brandy e-mailing pre-litigation attorneys
22 copying you on May 6th, 2013, saying we must --
23 must is in all capital letters -- we must send an
24 investigator to sign up clients, exclamation
25 mark, exclamation mark. We cannot refer to chiro

1 and have them sign forms there. This is why we
2 have investigators. We are losing too many cases
3 doing this. And then she has I believe eight or
4 seven exclamation marks there.

5 A. Is it a high importance.

6 Q. It looks like it's not?

7 A. And says if -- are you going to read the rest?

8 Q. Well, I want to ask you about that first
9 statement. What's your understanding of what
10 she's saying there?

11 A. We must send an investigator to sign up client.
12 Well, we prefer to have an investigator sign up
13 the client. We get more bang for the buck there.

14 Q. Why?

15 A. Because they're gathering a whole bunch of
16 information. When they go meet with them, Peter,
17 they get the paperwork signed, they get copies of
18 the client, if they need them, if there are
19 injuries. They get copies of the health
20 insurance card. If there's a Medicaid, that's
21 what I mean by health insurance and Medicaid card
22 or Medicare card. They get pictures of the
23 vehicles. The investigators that are retired --
24 we have seven police officers, retired police
25 officers, they'll interview them thoroughly as to

1 the police report. So, there's just so much more
2 information that you get.

3 Q. What's your understanding of why she wrote, we
4 are losing too many cases doing this? What's
5 your understanding of that -- I'm sorry, what's
6 your understanding of that message from her?

7 A. There's only one reason and that's the insurance
8 companies pull those curbside settlements, if
9 you've ever heard of that. That's what you lose
10 them to. You'll see, you're going to experience
11 that.

12 Q. And this happens a lot?

13 A. Where does it say that?

14 MR. MANNION: I don't know, was
15 that a question?

16 Q. Well, she said we are losing too many cases doing
17 this. Is this something that happens frequently,
18 these curbside settlements?

19 A. They do.

20 Q. Okay.

21 A. Just last week was three.

22 Q. It's your testimony that you're 100 percent that
23 she is not referring to losing the cases to other
24 law firms, but rather to insurance companies?

25 A. Peter, that rarely happens. I think in 20 years

1 that I've been doing it, if we lost a dozen
2 cases, that would be a lot.

3 Q. Did you ever respond to this e-mail?

4 A. I don't know.

5 Q. Did you ever talk to Brandy about it? Do you
6 have any memory of that?

7 A. I don't have any memory. From 2013?

8 Q. So just so I'm clear, you're saying that it
9 happens a lot that the firm would lose a case to
10 a curbside settlement, but it rarely happens that
11 the firm loses a case to another law firm?

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

13 He never said "a lot", but go ahead.

14 A. It happens -- let me put it to you this way: It
15 happens more that an insurance company interferes
16 than a lawyer. Is that fair?

17 Q. It's not always a bad thing when that happens, is
18 it --

19 A. It is.

20 Q. -- Mr. Nestico?

21 A. It is. Unless -- there's an exception. Unless
22 the person is not going to get any treatment, we
23 even advise the client, look, they're going to
24 offer you some money, you're not injured for your
25 inconvenience, take the money, you don't need a

1 lawyer for that. And I think they appreciate
2 that.

3

- - - -

4

(Thereupon, Plaintiff's Exhibit 89 was marked
5 for purposes of identification.)

6

- - - -

7 Q. This is Exhibit 89. Brandy, high importance.
8 Yes, to all attorneys, subject line, intakes.
9 And she says -- I want to focus on a couple
10 statements. Signups must be on the calendar.
11 And then she says, I've also noticed that signups
12 aren't being scheduled for the same day as the
13 intake. Obviously this isn't always possible,
14 but always try your best to make that happen.
15 This is a sure way to not get the case.

16 Is it your testimony that this is also
17 referring to curbside settlements --

18 A. No --

19 Q. -- only?

20 A. -- no, no, no.

21 Q. Okay. So this is referring to just not getting
22 the case?

23 A. No, no, no.

24 Q. What is it referring to, in your understanding,
25 sir?

1 A. The -- my understanding, we want the case signed
2 up the same day, so we can start working on the
3 case as soon as possible. Do you understand that
4 clients, what they'll do is, if you are not
5 available to work on their case immediately,
6 because they may need a rental car -- the
7 insurance companies start investigating claims
8 the minute that it's called into them. So we
9 want to get out there the same day. It benefits
10 the client a lot. Don't huff and puff, Peter.

11 Q. Sir, I'm not huffing and puffing --

12 MR. MANNION: Yes, you are.

13 A. You're doing the --

14 Q. -- I'm just trying to breathe --

15 A. -- into the breathe --

16 Q. -- just trying to take a deep breath. Sorry.

17 A. -- follow the breath.

18 Q. I'm really not intending anything by that.

19 A. I'm just -- I'm explaining something to you.

20 Q. And you're commenting on my breathing, but that's
21 what I was addressing.

22 A. Because it sounds like you're just getting
23 frustrated.

24 MR. MANNION: You've rolled your
25 eyes, you've made faces, you've huffed

1 and --

2 MR. PATTAKOS: Okay. Tom -- okay.

3 MR. MANNION: -- puffed.

4 MR. PATTAKOS: Okay.

5 A. So that's what they, the clients, obviously want.

6 I want it to happen on the same day.

7 Q. What does "not get the case" mean?

8 A. They'll move on. If you're not at their beck and
9 call, especially at the beginning, they're going
10 to move on. Because they need -- like I said,
11 you've got to get -- if they need a rental car,
12 they need to get care. They need to know what to
13 do. They'll move on --

14 Q. And they'll move on --

15 A. -- or they'll settle with the insurance company.

16 Q. Or they'll move on to another law firm, right?

17 A. Well, that could happen.

18 Q. And why is it so important for sign-ups to be on
19 the calendar?

20 A. What do you mean?

21 Q. Well, she writes --

22 A. So that everybody knows --

23 Q. -- signups must be on the calendar?

24 A. Everybody knows, the lawyers know, that's a
25 signup calendar.

1 Q. All the lawyers need to know?

2 A. Yeah, sure they do.

3 Q. Okay. Why?

4 A. They need to know the investigators that are
5 available for them.

6 - - - -

7 (Thereupon, Plaintiff's Exhibit 90 was marked
8 for purposes of identification.)

9 - - - -

10 Q. So the bottom e-mail here is from Holly talking
11 about a client referred to, it looks like a
12 chiropractor, signing there tomorrow. It's been
13 redacted --

14 A. This is one of Horton's.

15 Q. Yes. And you were copied here and Brandy says --
16 sends to I think this is Horton, he redacted his
17 name --

18 A. Hang on, hang on, hang on. I don't know if I was
19 copied. You went all the way to the bottom, I
20 was copied over here (indicating).

21 Q. Yeah, you're copied up top. I just want to ask
22 you about the top.

23 A. Yeah, sure, go ahead.

24 Q. She says we need to send the investigator to sign
25 her up today then. Remember all signups must be

1 same day unless approved. Thanks.

2 A. Uh-huh.

3 Q. You agree that this is the firm's policy for all
4 signups to be the same day, correct?

5 MR. MANNION: Objection.

6 A. It's not policy, this is what I would like to
7 happen.

8 Q. It's a recommendation?

9 A. That I would like to happen.

10 Q. Okay. For the reasons you just discussed,
11 correct?

12 A. Correct.

13 Q. Okay. Unless approved. Under what circumstances
14 would it be approved for the signup to not be the
15 same day?

16 A. The client can't meet.

17 Q. Okay. Who makes those approval decisions?

18 A. Probably Robert.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 91 was marked
21 for purposes of identification.)

22 - - - -

23 Q. So this is an e-mail, looking at the bottom --

24 A. Uh-huh.

25 Q. -- from Brandy to pre-litigation support.

1 Subject, investigator, importance, high. We had
2 two intakes today that were referred to ASC.
3 Akron Square, right?

4 A. Yes, sir.

5 Q. And they are signing forms there. This shouldn't
6 be happening unless the client cannot meet with
7 Mike, Aaron, Chuck -- that's M-R-S-A-M-C,
8 correct?

9 A. Yes, sir.

10 Q. And they can only sign at chiro.

11 A. Okay.

12 Q. The cases today are in Akron. There should be no
13 reason why an investigator cannot sign.

14 A. Okay.

15 Q. You agree with all that?

16 A. Yeah.

17 Q. You said yesterday that the chiros doesn't keep
18 the forms at their office?

19 A. That's correct.

20 Q. So how were these clients signing at chiro?

21 A. They fax the forms over or e-mail the forms.

22 Q. Every time?

23 A. If they're signing there?

24 Q. Yes.

25 A. Yeah.

1 Q. Why wouldn't the chiro just keep a copy instead
2 of having to e-mail separately every time?

3 A. Well, ask the chiro. We don't want the forms
4 there.

5 Q. Why?

6 A. Because you want to make sure that the lawyer
7 reviews the entire fee agreement with the client,
8 that's what they're suppose to do. You don't
9 want these things flying around.

10 Q. So Mike and Aaron -- if a case is going to ASC
11 that means it's an Akron area case and it would
12 be either Mike or Aaron's company -- Chuck is
13 with one of those two companies, right? That's
14 Chuck DeRemer?

15 A. Uh-huh. Yes, sir.

16 Q. So if it's an Akron case, then it will be either
17 Mike or Aaron -- or MRS or AMC that will be
18 assigned to the case as a general matter, right,
19 sir?

20 A. Yes.

21 Q. Okay. That's basically their territory,
22 northeast Ohio?

23 A. It was a lot bigger before.

24 Q. Before you started working with other
25 investigators?

1 A. Yeah.

2

- - - -

3

(Thereupon, Plaintiff's Exhibit 92 was marked
4 for purposes of identification.)

5

- - - -

6 Q. So this is an e-mail from Brandy to all attorneys
7 coping you and Holly, February 13th, 2013. She
8 writes, every time you do an intake, you need to
9 send an e-mail to Rob, Robert, Holly, Sarah and
10 I. Everyone -- in all capital letters -- needs
11 to do this, exclamation mark, exclamation mark.

12 The e-mail should list what the referral is.
13 If you referred out for treatment and how it is
14 getting signed up. No exceptions.

15 A. Exclamation mark.

16 Q. Why did you need to know how a case is getting
17 signed up?

18 A. I don't know.

19 Q. Why would it matter?

20 A. It doesn't. I think this is more for the benefit
21 of Holly.

22 Q. So how is it determined which investigator would
23 do which signup?

24 A. It depends on when they're available or who's
25 available.

1 Q. So each office has its own investigators that the
2 office works with --

3 MR. MANNION: Objection as to --

4 Q. -- is that correct?

5 A. They have various ones. We have four retired
6 police officers in Columbus. You've got one out
7 in Toledo. I think one down in Cincinnati. One
8 in Dayton. So those are the retired police
9 officers. And then there's non-police officers
10 that do -- do the same thing.

11 So if you have a signup -- you know, a signup
12 or they have to go meet a client or they have to go
13 pick up any documents, whatever they've got to
14 do, they're going to get them to that person.

15 - - - -

16 (Thereupon, Plaintiff's Exhibit 93 was marked
17 for purposes of identification.)

18 - - - -

19 Q. This is e-mail from Holly Tusko copying it looks
20 like a bunch of investigators -- I believe Brandy
21 identified these people as investigators -- and
22 copying pre-litigation attorneys, Brandy and you.

23 A. High importance.

24 Q. High importance. This is Holly now --

25 A. Oh.

1 Q. -- she says -- signups is the subject. She says
2 good morning, KNR investigators. In an effort to
3 get everyone on the same page, please and to
4 ensure that we are servicing our clients to be --
5 to the best of our ability, please see the below
6 criteria for doing signups. Please note that if
7 this criteria is not met, you will not be paid.
8 When doing a signup, the following steps need to
9 be taken. And she lists seven different steps
10 here, right?

11 A. Yes, sir.

12 Q. It's fair to say that she's communicating that if
13 the investigators don't do these steps, they will
14 not be paid their signup fee?

15 A. No, that doesn't -- no. These are expectations
16 of the beginning of the entire investigation
17 process. That's -- because I can tell you they
18 don't get all of this information every time,
19 anytime. I think what she wants to probably
20 accomplish is that they at least try.

21 Q. Okay. And if they make a good effort at doing
22 this, then they're going to get their
23 investigation fee, correct?

24 MR. MANNION: Objection.

25 A. Well, like what are you talking about?

1 Q. When does the fee get paid?

2 A. When the case is opened up, generally.

3 Q. Okay. And basically when the case is opened up,
4 you'll have an e-mail from an investigator that
5 has all of these forms identified in subpart two
6 here with the contingency fee agreement, patient
7 authorization, proof of representation forms,
8 then photos of the insurance cards, if any, photo
9 of the client from the chest up, photos of any
10 visible injuries, photos of the vehicle and photo
11 of the police report.

12 A. I don't know why a photo of the client from the
13 chest up, but okay.

14 Q. Okay. So generally if they send that e-mail that
15 has these things or at least a substantial
16 portion of them, then they're going to get their
17 signup fee, correct?

18 MR. MANNION: Objection.

19 A. Well, they're retained at that point and they get
20 paid, but they're on the hook for the duration of
21 the case.

22 Q. Okay. On the hook for what?

23 A. Anything that the lawyer needs on that case.

24 Q. Okay. All the investigators or just Mike and
25 Aaron?

1 A. All.

2 Q. Just AMC and MRS?

3 A. No, no, all.

4 Q. Okay.

5 A. I listed -- I told you there's all these retired
6 police officers, all the same.

7 Q. So you're saying that once the investigator gets
8 retained and gets the signup fee, that if they do
9 another task on the case they're not going to get
10 paid for it?

11 A. They shouldn't.

12 Q. Sometimes they did though, right?

13 A. I can't think of any.

14 Q. Okay. The investigators all had KNR e-mail
15 addresses, correct?

16 A. Not always and, no, not all of them.

17 Q. At some point some of them did, correct?

18 A. They did.

19 Q. And Mike and Aaron have KNR e-mail addresses,
20 correct?

21 A. They do now.

22 Q. Why did the firm create e-mail addresses for the
23 investigators?

24 A. You're going to go into the area of technology
25 and I think it's for ease of purpose of

1 scheduling on the signup calendar is what Ethan
2 told me.

3 Q. Do you have -- do you understand why?

4 A. Nuh-uh.

5 THE REPORTER: "No"?

6 THE WITNESS: Sorry. I only did
7 it twice.

8 Q. The investigators would communicate with the
9 clients from these addresses, correct?

10 A. The investigators, that I don't know.

11 Q. You never instructed them not to, did you?

12 MR. MANNION: Not to what?

13 THE WITNESS: Communicate with --

14 Q. Communicate with clients from their KNR e-mail
15 addresses.

16 A. They wouldn't.

17 Q. Why wouldn't they?

18 A. Probably kids nowadays, adults now, everyone is
19 texting. They're doing it through text. I've
20 never seen an investigator e-mail a client.

21 Q. The investigators also had firm-issued iPads,
22 correct?

23 MR. MANNION: Objection to
24 timeframe.

25 Q. At some point. They do now, right?

1 A. Some.

2 Q. Some. Okay. And at least some of the
3 investigators are expected to be on call to
4 handle these signups, correct?

5 A. I don't know -- if they're available.

6 Q. Okay. They're expected to be available?

7 A. They don't -- they don't report to me. Some of
8 them -- Peter, you understand, some of them go on
9 vacation, some of them do what they want. What
10 they have is the lawyers have a list. They'll
11 start with one, if he's not available, they'll go
12 to the next and if he's not available, they'll go
13 to the next.

14 Q. But typically in Akron it's Mike and Aaron and
15 they're expected to be around because they do a
16 lot of these signups, correct?

17 MR. MANNION: Objection.

18 A. No, there's -- theirs is two other guys that they
19 use on weekends.

20 Q. Chuck?

21 A. He was one, but there's still -- there's another
22 one that they use after hours and on weekends.

23 Q. Okay. Mike and Aaron are frequently around the
24 office, correct?

25 A. They are.

1 MR. MANNION: Objection.

2 Q. And even Ethan Whitaker testified that he was
3 familiar with them --

4 A. Uh-huh.

5 Q. -- that doesn't surprise you, right?

6 A. No.

7 Q. You knew that Mike and Aaron weren't going to be
8 tied up on other cases doing investigative
9 work --

10 MR. MANNION: Excuse me?

11 Q. -- on other cases, they would have availability
12 to handle the signups that needed to be done on
13 the same day every day, correct?

14 MR. MANNION: I'm lost.

15 A. That I don't -- if I understand your question
16 correctly, no, I don't know that to be true.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 94 was marked
19 for purposes of identification.)

20 - - - -

21 Q. You recognize what these documents are? They're
22 all basically the same thing, different versions
23 of the same thing.

24 Brandy called these case intake e-mails.

25 Does that sound right to you?

1 A. I guess, yeah.

2 Q. And it's a summary of the intakes that came in on
3 any given day and shows the referral source for
4 that intake and also shows the investigation fee
5 that is paid for each intake?

6 A. Okay.

7 Q. Does the investigation fee get paid on the same
8 day or at least the check get cut?

9 MR. MANNION: On the same day as
10 what?

11 MR. PATTAKOS: That the signup
12 happens.

13 A. No, that the case gets opened up. I don't know
14 if it's done the same day.

15 Q. Pretty close though at least?

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

17 A. Peter, I don't know if it's done the same day or
18 pretty close. What they do is -- I think that
19 this is done by -- so the intake person inputs
20 the amount, inputs the charge, who's getting
21 paid, and then they produce a list to accounting,
22 and then accounting, I don't know if they do it,
23 you know, once a week or once every two weeks,
24 they print all the checks, they're verified and
25 they get them.

1 Q. Okay. So if we look at page 25, the Bates No.
2 Williams 000025, this is for October 14th and
3 you'll see that date in the column on the
4 spreadsheet on the left-hand side.

5 A. October, yes.

6 Q. This appears to reflect that AMC and MRS, the
7 Akron-based investigators, were paid on a total
8 of 22 cases --

9 A. Combined?

10 Q. -- on that day?

11 MR. MANNION: Combined?

12 Q. Combined.

13 A. Sorry. Yeah.

14 Q. Including cases that came in from a chiropractic
15 clinic in Toledo and Columbus, as well as on
16 cases that came in from Akron, Canton, Shaker
17 Heights, Elyria and Youngstown, as well as other
18 undeterminable locations. Do you agree with
19 that?

20 MR. MANNION: I'm going to object
21 to form on that.

22 A. Do I agree that eventually they were paid on 22
23 cases?

24 Q. Yes, these 22 cases that came in on October 14th.

25 A. Eventually they would have been paid on them,

1 yeah.

2 Q. So how is it that AMC and MRS are being paid on
3 cases coming in from Toledo and Columbus and
4 Akron and Cleveland on the same day?

5 A. So without trying to give you too much of a long
6 explanation, these investigators, they're paid
7 their investigation fee from a bare minimum of
8 work which is there retained and available for
9 their services. And what they have to do,
10 especially MRS and AMC, is they have to obtain
11 and review the police report, verify the
12 information on the reports with intake, produce
13 that information to intake, and they're on the
14 hook for the rest of that case, it doesn't matter
15 where it is.

16 Q. Why are Mike and Aaron getting assigned these
17 cases in these faraway places?

18 A. They -- Mike and Aaron -- you understand that
19 from the beginning when we started using them,
20 these guys were driving to Cincinnati to 740,
21 they're driving everywhere.

22 Q. Why didn't you retain an investigator from --
23 that was closer?

24 A. Eventually I did.

25 Q. Okay. So they didn't go to all of these places

1 in this day, they were assigned responsibility
2 for these cases?

3 A. And they had to obtain and review the police
4 report. They had to pull that police report.
5 They reviewed --

6 Q. From online?

7 MR. MANNION: Let him finish.

8 A. I don't know if they have them online, but I
9 assume that, yes, they're online because we're in
10 '14 you said.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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[REDACTED]

Q. And Mike and Aaron performed other work around the office that had nothing to do with the, what you call investigatory work, right?

MR. MANNION: Objection.

A. Okay. So when you say perform other work --

1 Q. They did things like stuffing envelopes, running
2 errands --

3 A. They've --

4 Q. -- dropping off mailers?

5 A. -- they have helped.

6 Q. And you say they were paid separately when they
7 did that?

8 A. I believe they were.

9

- - - -

10 (Thereupon, Plaintiff's Exhibit 95 was marked
11 for purposes of identification.)

12

- - - -

13 Q. Okay. If we can just look at an exhibit to
14 confirm. This is the third rogs. Yeah, here it
15 is. I only have two copies.

16 I want you to look at No. 6 in this third
17 set. It says identify all work performed by
18 investigators that did not relate to the
19 investigation fee.

20 A. Uh-huh.

21 Q. And your response is certain investigators as
22 independent contractors have previously performed
23 non-investigative work, quote -- parenthesis,
24 such as stuffing envelopes, running errands,
25 dropping off mailers and picking up mail --

1 A. Uh-huh.

2 Q. -- for KNR that was unrelated to a specific
3 client file. They performed this work when they
4 were not acting as investigators on behalf of
5 KNR's clients and were paid separately for these
6 non-investigative activities --

7 A. Uh-huh.

8 Q. -- payments for such activities were not charged
9 to any KNR client.

10 A. Okay.

11 Q. Is that all true?

12 A. Yeah.

13 Q. So these payments from -- for these
14 non-investigative activities, what account were
15 they paid from?

16 A. Business account.

17 Q. Okay. It wouldn't have been the cost account?

18 A. No.

19 Q. And it wouldn't have been the IOLTA account?

20 A. No.

21 Q. Have you maintained all of these accounts at the
22 same bank over the years?

23 A. No.

24 Q. When did you switch banks?

25 A. Actually recently and then we switched back.

1 Q. What bank were you at first?

2 A. Chase.

3 Q. When you started the firm?

4 A. Yeah.

5 Q. And then where -- what year did you switch?

6 A. It was just last year we had done a switch.

7 Q. To where?

8 A. To Fifth-Third.

9 Q. And you switched back?

10 A. Yeah, it wasn't a good fit.

11 Q. Why? Ah, that's fine.

12 MR. MANNION: Yeah, that's a waste
13 of time.

14 A. Do you need this? Or --

15 Q. We're fine.

16 MR. PATTAKOS: We can mark these
17 both at once actually.

18 - - - -

19 (Thereupon, Plaintiff's Exhibits 96, 97 were
20 marked for purposes of identification.)

21 - - - -

22 Q. Okay. So the first one, Exhibit 96, is, looks
23 like Mr. Redick is sending an e-mail to you and
24 Brandy on December 7th, 2012. Subject line,
25 suggested e-mail to the staff. Mr. Redick

1 writes -- the bottom, he says I think we should
2 send this to the staff today. There were only
3 five for Aaron and two for Mike and they have
4 been corrected, but we need to make sure this
5 does not happen anymore going forward.

6 A. Uh-huh.

7 Q. So something happened and corrected. He writes,
8 please be advised -- or he suggests to write,
9 please be advised that if the attorney on the
10 case requests any investigator who is not Mike or
11 Aaron --

12 A. Uh-huh.

13 Q. -- to do something for a case that has already
14 been opened, i.e., pick up records, knock on the
15 door to verify address, they can be paid on a
16 case-by-case basis depending on the task
17 performed, however no checks for anything other
18 than the SU fee, which means signup fee, right?

19 A. Uh-huh. Sorry. Yes.

20 Q. Should ever be requested without getting in
21 writing approval from the handling attorney,
22 myself and/or Brandy. Under no circumstances
23 should any additional checks to MRS or AMC be
24 requested other than at the time the case is set
25 up. Please see me if you have questions.

1 A. That's a whole lot of information there.

2 Q. Right. But that's the e-mail, correct?

3 A. Yes.

4 Q. And Brandy says she agrees that this should be
5 sent -- you're copied and eventually that is
6 precisely the e-mail that was sent as we see on
7 Exhibit 97 --

8 A. From Rob Redick.

9 Q. -- from Robert Redick copying you, sending it to
10 all staff?

11 A. Yes.

12 Q. So you agreed that this e-mail should be sent to
13 the staff, correct?

14 A. I don't know.

15 Q. Well --

16 A. I don't have a problem with it.

17 Q. You didn't veto it, right?

18 A. I don't veto it. Robert wants to do it, that
19 means he's dealing with a problem.

20 Q. But he asked you?

21 A. Yeah, but I didn't say anything.

22 Q. Maybe you called him, is it possible?

23 A. No.

24 Q. So I thought that you said that the
25 investigators, once they got the signup fee, they

1 were on the hook for the whole case --

2 A. Uh-huh.

3 Q. -- so why would they get paid separately for
4 picking up records or knocking on a door to
5 verify an address?

6 A. So, first of all, I think that what they're
7 focusing on -- first is why this all happened was
8 you look at the bottom, there were only five for
9 Aaron and two for Mike. That means they got paid
10 more than once -- Aaron got paid more than once
11 on five cases and Mike got paid more than once on
12 two which is in line with what I told you, a huge
13 no, no. They're only to be paid once.

14 I think what Robert is trying to say is if
15 some of these investigators may have negotiated a
16 different deal, that if they did additional work,
17 that they would get paid. The best part is I
18 have never seen it, any additional payments being
19 made other than I think once or twice a guy had
20 to go back out because of the lawyer's fault,
21 nothing to do with the case, and it was far, and
22 it wasn't Aaron or Mike. Like it was a four-hour
23 roundtrip.

24 Q. So you've never seen that an investigator would
25 get paid a second payment on a case?

1 A. Never.

2 Q. Okay. So why couldn't Aaron and Mike be paid
3 separately and the other investigators could?

4 A. That's not what was negotiated.

5 Q. Negotiated --

6 A. They're negotiated, they only get a flat fee. If
7 you look there's some -- they started at \$25,
8 they negotiated and topped out at 50. Started at
9 25 and went 30, 35, 40, 45, done at 50.

10 Q. Where are these negotiations memorialized?

11 A. They're not, it's just verbal.

12 Q. Okay. You said in a couple of your interrogatory
13 responses that one of the things the
14 investigators did for Member Williams and for
15 Matthew Johnson was that they reviewed a police
16 report?

17 A. They obtained.

18 Q. They obtained and reviewed?

19 A. Yes, sir.

20 Q. What good is it to have an investigator review a
21 police report?

22 A. Again, remember I told you about checks and
23 balances? So they're the first check, they're
24 checking with what intake does. This is why you
25 don't blow a statute of limitations. It has

1 value, Peter.

2 Q. Do these investigators have special expertise in
3 reviewing police reports?

4 A. The seven retired police officers do. And I can
5 tell you that Aaron has been doing it longer than
6 I have been practicing law.

7 Q. But he's not a retired police officer?

8 A. No, he's not.

9 Q. He was never in law enforcement?

10 A. No, he wasn't.

11 Q. What's his expertise?

12 A. Again, he's been doing this, specifically this
13 work, before I've been practicing law. He was
14 working at Eshelman Legal Group doing this. He
15 obviously trusted him.

16 Q. He's a good pool player, isn't he?

17 A. He is. And golfer.

18 Q. How did you meet him?

19 A. At Eshelman Legal Group.

20 Q. How did you meet him? I know at Eshelman Legal
21 Group, but --

22 A. The office.

23 Q. -- how did it happen?

24 A. I don't know --

25 Q. Who introduced you?

1 A. -- it's probably 20 years ago.

2 Q. Who introduced you?

3 A. Dick Eshelman.

4 Q. You're friends with Aaron, right?

5 A. Yeah.

6 Q. And you're friends with Mike?

7 A. I am.

8 Q. How did you meet Mike?

9 A. Through Aaron.

10 Q. Through Aaron?

11 A. Yeah.

12 Q. How are Mike and Aaron connected?

13 A. I don't know. They're friends or I think they're
14 even distant cousins or something.

15 Q. You socialized with Mike and Aaron -- you do
16 socialize with them regularly, correct?

17 MR. MANNION: Objection. Go
18 ahead.

19 A. I don't know what you mean by "regularly".

20 Q. When you met them at the Eshelman firm --

21 A. Yeah.

22 Q. -- you guys became friends, right?

23 A. Yes, sir.

24 Q. And you socialized?

25 A. Yes. I met --

1 Q. Regularly.

2 A. -- I met Aaron at the Eshelman Legal, not Mike.

3 Q. Right.

4 A. Maybe I met Mike in passing.

5 Q. Okay.

6 A. Mike is a golf expert -- pro, by the way.

7 Q. So you also identify in your interrogatory and
8 this is number one, two, the first set No. 2,
9 that MRS obtained the police report from the
10 police station for Member.

11 A. That's what I believe happened.

12 Q. That's what you swore happened?

13 MR. MANNION: Just stop.

14 A. That's fine.

15 Q. You verified the interrogatory response, right?

16 A. Yes, sir.

17 Q. There's no question about that.

18 - - - -

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

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[REDACTED]

A. Where?

Q. -- please send --

A. Hang on, hang on, hang on.

Q. It's on the second page.

A. Hang on.

[REDACTED]

MR. POPSON: Objection.

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. Why don't I have --

18 A. I don't know.

19 Q. Was it ever produced?

20 A. It was.

21 Q. Okay. You did produce it?

22 A. Yes.

23 Q. Okay.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 99 was marked

1 for purposes of identification.)

2 - - - -

3 A. Isn't this it (indicating)?

4 Q. What's the point of going to pick up a police
5 report that can be e-mailed?

6 A. Do you understand that these guys, that the
7 investigators only get their information once.
8 This is all internal. Mike and Aaron aren't
9 being copied on it. So if they would have told
10 him and said, look it, these guys are all
11 confused as to where to get it from, then they
12 finally narrow it down, but by the time they did
13 Mike had already received it.

14 Q. And that's in a Needles' note somewhere?

15 A. It should -- hang on a second. See, look it, it
16 says I have searched Ohio Crash and cannot find a
17 police report. This is now Holly to Krystal,
18 please call the Stow PD in the a.m. Thanks,
19 Krystal.

20 And you have Stow question mark. This
21 happened up on Chapel Hill. This intake said
22 Stow PD. She told me it was Stow PD. It's from
23 Rob Horton now to Holly and paralegals. Falls
24 came and left. I don't know what that means.
25 Called Stow PD and they found the police report.

1 Send an e-mail to intake to request. Thanks.
2 You're the best. Will they e-mail to you or how
3 does this work? Welcome. Megan Jennings sent
4 the request for me...so they will e-mail her --
5 there's more to this. And then all of a sudden
6 you will see there's another note that says we
7 got it -- I mean seconds after.

8 Q. Okay.

9 A. And because they weren't available online, that's
10 why you would send them. So the assumption there
11 is this is what happened, they couldn't find it,
12 then you get it.

13 Q. Okay. So for Mr. Johnson you put in your
14 interrogatory response that one of the things the
15 investigator did for him was obtain medical
16 records from Summa Health?

17 A. Yes.

18 Q. That's a job that the investigators do is obtain
19 the medical records?

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. Why isn't the medical records something that is
24 requested in writing that could just be, you
25 could send a letter, send an e-mail, a lot of the

1 facilities have forms that you can use online --

2 A. Yep, uh-huh.

3 Q. -- why do you need an investigator to do that,
4 why can't your intake department or paralegals do
5 that?

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q. None of the investigators, KNR employees, are
13 actually licensed as investigators, correct?

14 MR. MANNION: Objection.

15 A. I don't know if the retired police officers are.

16 Q. You're not aware though of any of them being
17 actually licensed?

18 Why does the firm call them investigators?

19 A. What am I going to call them?

20 Q. Messengers?

21 MR. MANNION: Objection.

22 A. Information gatherer?

23 Q. Messengers, messenger services.

24 A. They're not messengers. They're not sending
25 messages. The definition of investigation is to

1 gather information, that's what they do, but
2 that's what I call them, Peter. I'm not going to
3 explain it to you.

4 Q. Errand --people that run errands.

5 MR. MANNION: Objection.

6 A. Come on.

7 Q. Well, you know there's a whole industry of
8 messenger services --

9 A. Couriers.

10 Q. Couriers --

11 A. Yeah, couriers.

12 Q. -- how are they anything but couriers?

13 A. Are they going to police stations? Are they
14 going to pick up medical records? Are they going
15 to talk to clients? Are they taking pictures of
16 intersections? They can't send a courier service
17 to go take a picture of an accident scene or go
18 to a scrap yard and get pictures of a car. They
19 don't do that.

20 Q. Can't?

21 A. No.

22 Q. Can you send a paralegal to do that?

23 A. I guess. Everything these guys do is different
24 on every case. Do you understand that? Picking
25 up records, you just focused on one. It's

1 constantly different. You're not going to know
2 unless you look at that, just like I told you in
3 the Needles' notes.

4 Q. Let's go back to the Holly Tusko e-mail.

5 A. Which one?

6 Q. I don't remember the exhibit number, but it looks
7 like this (indicating).

8 A. Yeah. Okay.

9 Q. Can you --

10 MR. MANNION: See you, George.

11 Q. Can you please find this in the stack here? I'm
12 sorry.

13 A. Oh, sure.

14 MR. MANNION: What's the number
15 again?

16 MR. PATTAKOS: I don't know the
17 exhibit number.

18 MS. HAZELET: 93.

19 MR. PATTAKOS: 93 Rachel says. By
20 the way, do you have everyone on the record
21 that's in here, in the room?

22 THE REPORTER: Uh-huh.

23 MR. PATTAKOS: Okay. I know
24 nobody went around -- we didn't go around
25 and identify.

1 THE WITNESS: He went.

2 THE REPORTER: I went around the
3 room.

4 MR. PATTAKOS: Okay. Great.

5 BY MR. PATTAKOS:

6 Q. So all of these tasks on this list --

7 A. Uh-huh.

8 Q. -- you agree that these are basic tasks that any
9 law firm would have to perform to handle a
10 personal injury case adequately, don't you?

11 MR. MANNION: Objection.

12 A. I can't comment on that. That is what we expect.

13 Q. Okay. You agree there's nothing special about
14 any of these tasks that would require someone
15 with special investigative expertise to perform
16 then?

17 MR. MANNION: Objection.

18 A. I don't know if they need special expertise to
19 perform it. They don't. I don't see anything in
20 there that does.

21 Q. So why are they called investigators?

22 MR. MANNION: Objection. Asked
23 and answered.

24 A. That's what I decided to call them.

25 Q. Why?

1 MR. MANNION: Objection. He
2 answered that earlier.

3 A. They gather information.

4 Q. Couldn't any client easily provide this
5 information to the firm themselves, deliver it to
6 firm, e-mail it to the firm?

7 MR. MANNION: Objection.

8 A. Let me ask you something, what about if we need
9 them to testify, they're an independent
10 contractor, it's perfect. What, is the client
11 going to come in to testify to the accident
12 scene?

13 Q. How often does that happen?

14 A. I don't know. We've used them in litigation. I
15 know Chris Van Blargan has.

16 Q. How many times?

17 A. I have no idea.

18 Q. When? After that lawsuit was filed?

19 A. No. I don't react to that.

20 THE WITNESS: I think his tape is
21 finishing.

22 THE VIDEOGRAPHER: Fifteen
23 minutes.

24 Q. So they never actually testified in court --

25 MR. MANNION: Objection.

1 Q. -- the investigators?

2 A. I don't know. I don't think so.

3 Q. You don't think a firm's paralegal is qualified
4 to testify in court?

5 A. They're not independent though.

6 Q. Neither are the investigators really, are they?

7 MR. MANNION: Objection.

8 A. Sure, they are.

9 Q. Are there instances where the client does provide
10 this stuff, this -- these items --

11 MR. MANNION: What are you
12 laughing at?

13 Q. -- and the --

14 MR. PATTAKOS: I'm laughing at my
15 use of the term "stuff." I shouldn't have
16 said stuff. I'm sorry.

17 Q. Are there instances -- strike that.

18 Are you aware of any instances where the
19 client provided all of this information, either
20 delivered it to the firm, e-mailed it,
21 efficiently on the first day of the intake, and
22 wasn't charged a fee because they did all that,
23 has that ever happened?

24 MR. MANNION: Well, wait, there's
25 two parts to that. The first part is did

1 it ever happen, the second part is do they
2 ever get paid -- or not get charged.

3 A. And there are times, yes, that clients haven't
4 been charged for the investigator fee.

5 Q. Why?

6 A. Different circumstances.

7 Q. But are you aware of any --

8 A. You can't --

9 Q. -- example of what I just described, sir?

10 A. But that's what I was telling you before, you
11 can't tell, they're all different.

12 Q. So you're not aware of any specific example of
13 where this happens?

14 MR. MANNION: Where what happens?

15 A. It happens.

16 Q. But it's not an option that's offered to the
17 firm's clients, is it?

18 MR. MANNION: Excuse me, what is?

19 What option?

20 MR. PATTAKOS: To provide all of
21 this signup information that's listed on
22 Holly's e-mail here.

23 A. You'd have to ask each lawyer who's doing that
24 intake, Peter. You're asking me.

25 Q. When the intake department does its work on any

1 particular case in obtaining basic information
2 from a client or sends letters out, obtains
3 police reports, et cetera, it doesn't charge
4 separately for it, correct?

5 A. I don't know what you just asked, I apologize.

6 Q. You don't bill separately --

7 A. You just mixed a whole bunch of stuff.

8 Q. -- you don't bill separately for the work that
9 your employees in the intake department do,
10 correct?

11 A. Correct.

12 Q. So what makes the investigators different that
13 warrants a separate charge?

14 A. Again, the intake people aren't going out and
15 meeting with them. The intake people aren't
16 taking pictures. The intake people aren't
17 picking up photos. Before we had electronic
18 filing, these guys were filing all the
19 complaints. It's different all the time. And
20 the intake is not doing that. Do you understand?
21 You asked me early on when did intake start,
22 intake started what, in '14? In '13?

23 Q. But if you wanted to you could easily have the
24 intake people or you could create your own
25 department and send people out to do this --

1 MR. MANNION: Objection --

2 Q. -- why didn't you do that?

3 MR. MANNION: -- objection.

4 A. (Unintelligible) what are you talking about?

5 This is the way I ran the firm. These are
6 decisions that were made that benefited the
7 client. It worked out, it was cheap, still is.

8 Q. Why wouldn't the firm simply employ someone to
9 handle these basic tasks that need to be
10 performed on thousands of cases per year instead
11 of using an outside company?

12 MR. MANNION: Objection to form
13 and several other bases, but go ahead.

14 A. It's a decision that we made early on that
15 benefits the client and it is good for the case.

16 Q. It would also be good for the case if an employee
17 of the firm did the same thing and it would be
18 even better for the client because the client
19 wouldn't be charged separately for it, correct,
20 sir?

21 MR. MANNION: Objection.

22 A. Again, having them available to do it and
23 retained for that whole period, the entire case,
24 and handling the cases and getting what the
25 clients need and whatever the lawyer wants at any

1 time, no, this is smarter, this is better. It's
2 a better business decision and it's better for
3 the clients. It's both.

4 Q. How is it better for the client?

5 A. What do you mean? They have someone -- can you
6 imagine you have someone available at your office
7 for 50 bucks to do whatever you want?

8 Q. But under the contingency fee they're available
9 for free --

10 A. No, under the --

11 Q. -- the intake department --

12 A. -- no, no, no.

13 Q. -- does all this work --

14 MR. MANNION: What?

15 A. No, no. Under the contingency fee, they are --
16 there's reasonable expenses and this -- you're
17 going to tell me \$50 isn't reasonable?

18 THE WITNESS: Can I get something
19 to drink real quick?

20 MR. PATTAKOS: You want to take a
21 break right now and then I can finish up
22 very briefly and he can change the tape.

23 MR. MANNION: Okay.

24 MR. PATTAKOS: I really will not
25 have more than a half hour.

1 MR. MANNION: Okay.

2 THE VIDEOGRAPHER: We're going off
3 the record. This is the end of Tape No. 6.
4 The time is 4:47.

5 - - - -

6 (Thereupon, a recess was had.)

7 - - - -

8 (Thereupon, Plaintiff's Exhibits 100, 101
9 were marked for purposes of identification.)

10 - - - -

11 BY MR. PATTAKOS:

12 Q. Mr. Nestico, these exhibits, 100 and 101, are the
13 subpoenas -- these are -- I just pulled these
14 right off the docket -- that we served on --
15 these are the subpoenas that we served on MRS and
16 Michael Simpson as well as Aaron Czetli and AMC
17 Investigations.

18 And the Court ordered AMC and Mr. Czetli to
19 respond to this subpoena over Mr. Griffin's
20 objections. The only responsive documents that
21 these parties have represented that they have are
22 their own personal tax returns. They have not
23 produced anything else, but their own personal
24 tax returns. They claim they don't have anything
25 else to produce that's responsive.

1 Is that surprising to you?

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

3 A. I don't know. That's what they have.

4 Q. Did you review these categories on Exhibit -- on
5 Exhibit 1 [sic] we list 24 categories of
6 documents. Are you aware?

7 A. Sorry, he has it.

8 Q. Okay. Are you aware, sir, that -- of any other
9 clients that AMC or MRS have?

10 A. No.

11 Q. Would it surprise you if they didn't have any
12 other clients?

13 A. No.

14 Q. Because they do a lot of work for you, right?

15 A. The lawyers hire them all the time, yeah.

16 Q. Definitely keeps them busy full time to do the
17 work that they do for your law firm, correct?

18 MR. MANNION: Objection, calling
19 it for their law firm, but...

20 A. Okay.

21 Q. You have no doubt about that, do you?

22 A. No.

23 Q. They don't tell you that they're bored or that
24 they're looking for more work or anything like
25 that, do they?

1 A. I don't think so.

2 Q. You've never heard Aaron or Mike complain to you
3 that they can't get business for their
4 investigative companies, correct?

5 MR. MANNION: Objection.

6 A. No.

7 Q. You don't issue any tax forms to them, any 1099s?

8 A. I don't know.

9 Q. Okay. W-2s? W-9s?

10 A. You're talking to the wrong guy when it comes to
11 accounting.

12 Q. Okay. There's no documents whatsoever, no
13 e-mails, no text messages, memorializing your
14 agreement with AMC or MRS or any of the
15 investigators, correct?

16 A. I don't believe so.

17 Q. Okay. When I asked if whether one of the --
18 whether when you testified whether -- about
19 Mr. Van Blargan using one of the investigators
20 in -- what did you say? In a brief?

21 MR. MANNION: Litigation.

22 A. No, in litigation -- he was in litigation and he
23 used them to go out and do surveillance.

24 Q. Did he use their testimony in a court filing?

25 A. You know, I don't know.

1 Q. Okay. And I asked you if that happened after
2 this lawsuit was filed and you said, no, I don't
3 react to that.

4 A. Right.

5 Q. Have you done anything at all in response to --
6 have you changed your business practices at all
7 in response to this lawsuit?

8 MR. MANNION: Objection.

9 A. No.

10 Q. Okay. Have you -- strike that.

11 A. If I change them to hire a courier, it will be a
12 lot more money.

13 MR. MANNION: For the client you
14 mean?

15 THE WITNESS: Yeah.

16 MR. REAGAN: Spend more on legal
17 fees.

18 A. Do you need me to look at this anymore?

19 Q. No, sir.

20 A. Either one?

21 Q. No, sir. Thanks. Is there anything you'd like
22 to say to the named plaintiffs in this case?

23 MR. MANNION: Objection. Don't
24 answer that.

25 THE WITNESS: No, I've never done

1 that.

2 Q. There's not a message you want to communicate?

3 MR. MANNION: Stop it. That's not
4 a question.

5 MR. PATTAKOS: You're instructing
6 him not to answer?

7 MR. MANNION: That's not a
8 question. Ask a question.

9 MR. PATTAKOS: I'm asking him a
10 question.

11 MR. MANNION: No, that's -- come
12 on --

13 MR. BARMEN: Yeah, you asked him,
14 he said no.

15 MR. PATTAKOS: No. Okay.

16 Q. And if any of these clients, former clients of
17 your firm, are telling you -- and you sat there
18 when Monique Norris testified all day last week,
19 telling you that she feels like you're taking
20 advantage of her and her community by your
21 business practice -- by your business practices
22 and she's upset about it, you think her
23 perspective is entirely illegitimate?

24 MR. MANNION: Objection.

25 A. The way she described it, 100 percent.

1 Q. So you don't see at all how someone in her shoes
2 could feel the way she feels, you think she's
3 just completely outrageous?

4 A. Peter, she lied throughout that deposition.

5 Q. What lies did she tell?

6 A. The whole thing about the investigators, she
7 didn't know whether she was going to sign or not,
8 that's a lie. She lied 100 percent about that.
9 And if I look at the transcript I betcha there --
10 because I remember sitting there going, I can't
11 believe that she's saying this. It's ridiculous.

12 Q. Any other lies that you can remember?

13 A. Peter, I just said if I had the transcript, I'm
14 sure I could give you a lot more.

15 Q. Nothing that sticks out?

16 A. Well, about the lending company, she said we only
17 gave her one lending company. What a liar. We
18 just showed her Brian Moonin's e-mail. Where did
19 Brian Moonin get her name from? She had to call.
20 She was given --

21 Q. What if one of the attorneys called?

22 A. No, no, no, no. The e-mail says she called.

23 Q. I'm not sure about that.

24 A. Well, look at the e-mail.

25 Q. What about Member Williams, did she lie at her

1 deposition?

2 MR. MANNION: Don't guess.

3 A. I can't -- that was, you know, what? A year ago,
4 more?

5 Q. You don't remember any lies that Member Williams
6 told?

7 MR. MANNION: Objection.

8 Q. What about Thera Reid, did she lie at her
9 deposition?

10 MR. MANNION: Objection. You
11 don't have to guess.

12 A. Yeah, there were some. Because I remember just
13 the same reaction. Don't ask me what it was
14 because I don't know unless I get the transcript.

15 Q. What about Mr. Harbour, did he lie?

16 A. I wasn't here for his. I didn't even -- I don't
17 even think the transcript, we have it.

18 Q. So you're not aware of any lies that Mr. Harbour
19 told?

20 A. I don't --

21 MR. MANNION: Objection. He said
22 he wasn't there and hasn't read the
23 transcript.

24 Q. Why did you sue Dr. Phone ER?

25 MR. MANNION: Objection. You know

1 there's a confidentiality agreement and you
2 ask that question anyway. That's
3 outrageous.

4 A. You know that I can't answer that.

5 Q. You're not going to answer the question about
6 Mr -- you're not going to answer the question
7 about --

8 A. If you want to look, it's on the docket. I can't
9 talk about it.

10 Q. And you're not going to answer questions about
11 your settlement with Rob Horton either, are you?

12 MR. MANNION: Objection. We have
13 a confidentiality agreement.

14 A. But you can see it online.

15 Q. The settlement?

16 A. No, not the settlement.

17 Q. I want to know what you settled the case for --

18 MR. MANNION: Stop it.

19 Q. -- with Rob Horton.

20 MR. MANNION: I've already told
21 you there's a confidentiality agreement.

22 Q. Well, it's true, Mr. Nestico, that you sued Rob
23 Horton after we filed the second amended
24 complaint because we included those e-mails that
25 were provided to us by Mr. Horton, correct?

1 MR. MANNION: Wait, wait, I'm
2 going to object. If you're asking just if
3 it was after, that's one thing, but if
4 you're asking why he did it, that goes to
5 attorney/client communications.

6 MR. PATTAKOS: You're saying he
7 can't testify to why he made the decision
8 to sue Rob Horton?

9 MR. MANNION: That's what I'm
10 saying.

11 MR. PATTAKOS: You're not allowed
12 to ask my clients why they sued KNR?

13 MR. MANNION: No, no, you can ask
14 what the claims are except we have a
15 confidentiality agreement with Rob Horton
16 now. You can look at the Complaint, you
17 can see what the allegations are. I was
18 asking them, your clients, why they sued,
19 what's the claim. There's no
20 confidentiality agreement, they haven't
21 settled with us. We have a confidentiality
22 agreement, we can't talk about it. You can
23 look at me all you want.

24 BY MR. PATTAKOS:

25 Q. Why did you threaten to sue Paul Steele?

1 MR. MANNION: Objection.

2 A. What?

3 Q. You had your attorney send a letter to Paul
4 Steele, didn't you?

5 MR. MANNION: Objection.

6 Q. You had Mr. Coughlan send Paul Steele a letter,
7 right?

8 A. Yeah, he did, he sent him a lawyer.

9 Q. Why? That letter is not confidential, we have a
10 copy of it.

11 MR. MANNION: Well, it should have
12 been, but go ahead, to the extent you can.

13 MR. BEST: Any communication is
14 confidential --

15 A. It's in the letter.

16 MR. BEST: -- talking to the --

17 MR. MANNION: If there's anything
18 nonconfidential.

19 A. It's in the letter. You have the letter?

20 Q. You have a confidentiality agreement with Paul
21 Steele?

22 A. I do.

23 Q. Why?

24 A. What do you mean, why?

25 Q. Why do you have a confidentiality agreement with

1 him?

2 A. His lawyer asked for it.

3 Q. What does it cover?

4 MR. MANNION: Stop it, it's
5 confidential.

6 Q. What is he --

7 MR. PATTAKOS: What is
8 confidential? What is he not allowed to
9 talk about?

10 MR. MANNION: Well, then we'd be
11 telling you about it.

12 MR. PATTAKOS: Well, describe the
13 subject matter that's confidential.

14 MR. BEST: Why don't you give him
15 the same advise you give everybody else
16 about it, it doesn't apply.

17 A. I can't answer, Peter.

18 Q. Okay.

19 A. If the Judge wants me to answer it at a later
20 date, I'll be happy to do it.

21 Q. Do you think Rob Horton is a liar?

22 MR. MANNION: Objection. Don't
23 answer that question.

24 MR. PATTAKOS: Why?

25 MR. MANNION: Because we have --

1 stop, you're not going to answer that.

2 MR. PATTAKOS: You have a
3 non-disparagement with Rob Horton, too?

4 MR. MANNION: I'm not -- I'm not
5 telling you what our agreement is other
6 than we have a confidentiality agreement,
7 but he's not going to sit here and say
8 whether or not Robert Horton is a liar.

9 If you want to get one statement
10 out and ask him if it's accurate or not,
11 that's fine.

12 Q. You don't believe Kelly Phillips is a liar
13 though, correct?

14 MR. MANNION: Objection. It
15 depends. On what?

16 A. Yeah.

17 Q. What about Amanda Lance, why did you fire Amanda
18 Lance?

19 A. There were a couple reasons why. Peter, it's --
20 and I don't think it's fair to disparage another
21 lawyer like that. That's -- it's just not right.
22 You know --

23 Q. What's not right?

24 A. To disparage another lawyer like that.

25 Q. Who's disparaging a lawyer?

1 A. No, if I tell you everything of why she was
2 terminated.

3 Q. You'll be disparaging a lawyer?

4 A. I'd be disparaging her, correct.

5 Q. Well, I'm asking you on the record, it's
6 confidential, if you want to keep it that way --

7 MR. MANNION: Do you promise to
8 keep it confidential?

9 MR. PATTAKOS: No, I'm not making
10 any promise.

11 MR. MANNION: Well, then so you
12 tell him it's confidential and --

13 MR. PATTAKOS: Then we can argue
14 -- we can take it up with the Court --

15 MR. MANNION: No --

16 MR. PATTAKOS: -- if the Court
17 decides --

18 A. Peter --

19 MR. PATTAKOS: -- it's
20 confidential --

21 A. -- do you really want -- do you really want to do
22 that to another lawyer?

23 Q. I want to know why you terminated --

24 A. You asked --

25 Q. -- Amanda Lance.

1 A. -- you asked Brandy, she told you.

2 Q. You're going to attack Amanda Lance's credibility
3 in this case, I want to know why you fired her.

4 MR. MANNION: How do you know
5 we're going to do that?

6 A. Okay. She was terminated -- there were a number
7 of reasons why she was terminated. We're going
8 to start down the list of performance. She was
9 -- look, she was a good lawyer, she had fire in
10 her belly, but I will tell you that I got a call
11 from an adjuster who was so offended and
12 infuriated at the conduct of Attorney Lance when
13 they were negotiating a case. Told her to put on
14 her big panties or whatever -- put on her big
15 girl panties, told her to do that -- not to --

16 Q. The adjuster told her to do that?

17 A. No, no, Amanda Lance said that to the adjuster --

18 Q. Oh, okay.

19 A. -- and the adjuster is calling me complaining --

20 Q. Okay.

21 A. -- and I get a direct call for this --

22 Q. Okay.

23 A. -- telling her not to get her underwear in knots.
24 She was just -- you know, and I'm sure Amanda was
25 probably joking, I defended her as best I could,

1 but I had to talk to her about that, to just tone
2 it down a little.

3 She called a receptionist a fat pig. This is
4 -- and you heard Brandy testify to it.

5 Q. Who did she say that to? She didn't say it to
6 the receptionist, did she?

7 A. I don't know what the whole circumstances were
8 surrounding that, but I remember that then they
9 had to go to the video, she denied it, the video
10 showed that she did do it.

11 Q. What video?

12 A. There was a video of this whole -- the whole
13 communications between them.

14 Q. Who recorded the video?

15 A. We had a tape down there.

16 Q. A surveillance tape --

17 A. Yes.

18 Q. -- on the office?

19 A. On the office.

20 Q. With audio?

21 A. Yeah.

22 Q. Wow.

23 A. In the lobby area.

24 MR. MANNION: Move to strike

25 "wow".

1 THE WITNESS: What's that?

2 MR. MANNION: I just moved to
3 strike his comment.

4 THE WITNESS: Okay.

5 BY MR. PATTAKOS:

6 Q. Okay. What else? I'm sorry, let me back up. Is
7 the adjuster who was offended that complained to
8 you about Amanda saying to not get her underwear
9 in a knot, is that documented?

10 A. Yeah, the adjuster e-mailed me.

11 Q. Okay. You have that e-mail?

12 A. I don't know if we do.

13 Q. Wouldn't you put it in Amanda's file?

14 A. They should have. This is -- if it was there, if
15 they printed it out, they put it in there. Look,
16 as you're growing, you start to hire more people
17 and you're getting an HR department that's just
18 growing and developing. I never had an HR
19 department.

20 Q. So it gets hard to manage. What else? There was
21 calling a receptionist a fat pig and --

22 A. Isn't that enough?

23 Q. I don't know, you tell me.

24 A. I don't know. To me I've given -- I gave her one
25 -- I'm telling you, I liked this girl, I gave her

1 one opportunity, two opportunities, when I'm
2 getting complaints from other staff members and
3 everyone is telling me that, you know, she's out
4 of control, what are you suppose to do?

5 Q. Who are the people that said that?

6 A. Other employees. And if --

7 Q. Who?

8 A. -- ask Paul Steele, he'll tell you.

9 Q. Who? What other employees complained to you --

10 A. Paul had said it.

11 Q. -- about --

12 A. Paul had said it.

13 Q. Besides Paul?

14 A. I don't know. Peter, you asked me the reasons, I
15 gave them to you.

16 Q. She settled a lot of cases for your firm, didn't
17 she?

18 MR. MANNION: Objection. Go
19 ahead.

20 Q. Her numbers were great, weren't they?

21 A. I'm sure they were.

22 Q. She worked her butt off, didn't she?

23 MR. MANNION: Objection.

24 Q. You don't think she wasn't a hard worker, do you?

25 MR. MANNION: Stop yelling at him.

1 A. Do you want answers or do you want to just keep
2 asking questions?

3 Q. Please answer.

4 A. Start with the first one. You fired two right
5 back to back. Which is the first one?

6 Q. She settled a lot of cases, didn't she?

7 A. If I looked at a report, I would tell you. I
8 don't have any reason to doubt you.

9 Q. Her numbers were really good, weren't they?

10 MR. MANNION: Objection.

11 A. I don't know if you want to say "really good."

12 Q. Okay.

13 A. She did a good job.

14 Q. She worked hard, didn't she?

15 A. For the most part I would say, yes.

16 Q. Why did you sue the plaintiffs in this case?

17 MR. MANNION: Objection. Wait, I
18 thought you said that the -- that we
19 weren't going to get into counterclaims.
20 That's one of the things that you said as
21 to why we couldn't re-depose some of your
22 clients.

23 MR. PATTAKOS: Who said that?

24 MR. MANNION: You did.

25 BY MR. PATTAKOS:

1 Q. Why did you sue the plaintiffs in this case?

2 MR. MANNION: Objection as to any
3 communications. You can -- wait, isn't
4 that voluntarily dismissed?

5 THE WITNESS: Uh-huh.

6 MR. MANNION: Oh, okay. We don't
7 need to answer that then.

8 BY MR. PATTAKOS:

9 Q. Why? Why did you sue the plaintiffs, Mr.
10 Nestico?

11 MR. MANNION: Objection.

12 A. Abuse of process. There's a number of claims.

13 Q. I know what the claims are. What did you hope to
14 accomplish by suing them?

15 A. What did I hope to accomplish --

16 Q. Yes, sir.

17 A. -- so that they know what it's like to get sued.
18 They're the ones who brought this action for no
19 good basis.

20 Q. How did they abuse the process?

21 MR. MANNION: Objection.

22 A. This entire lawsuit is an abuse.

23 Q. How?

24 A. Because it's frivolous.

25 Q. The lawsuit is frivolous?

1 A. Absolutely.

2 Q. And what makes it frivolous?

3 A. Everything about it. Every claim. All the
4 allegations.

5 Q. Every single one?

6 A. I have a problem with all of them.

7 Q. Okay. And you sued them for tortious
8 interference, too, didn't you?

9 A. Okay.

10 Q. What contracts did they interfere with?

11 A. I relied on my lawyers to figure that out and
12 that's what they put in there.

13 Q. But you can't identify a single contract --

14 A. It's the --

15 Q. -- or business relationship that they identified
16 with?

17 A. What do you mean --

18 Q. That they --

19 A. -- contract --

20 MR. MANNION: Let him finish.

21 A. The only contract that we have with the client is
22 a contingency fee agreement.

23 Q. Well, when you sue for tortious interference you
24 have to -- there has to be a contract or a
25 specific business relationship that was

1 interfered with. So what business relationship
2 did you lose or what contract did you lose --

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

4 Q. -- as a result of the lawsuit?

5 MR. MANNION: No, look, if and
6 when these are re-filed, you can ask these
7 questions.

8 MR. PATTAKOS: Why are they going
9 to be re-filed? Are they going to be
10 re-filed now?

11 MR. MANNION: If and when they're
12 re-filed, you can ask Mr. Nestico these
13 questions.

14 Q. Why did you dismiss them?

15 MR. MANNION: I'm not going --
16 stop it.

17 A. You know you can't ask me that.

18 Q. Why?

19 MR. MANNION: Stop it.

20 Q. Why can't I ask you that?

21 MR. POPSON: You don't have to
22 answer.

23 MR. MANNION: Okay.

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

1 MR. MANNION: You're asking him
2 again attorney/client privilege.

3 MR. PATTAKOS: No, it's not. I'm
4 asking him why --

5 MR. MANNION: Oh, my God.

6 MR. PATTAKOS: -- he did
7 something.

8 MR. MANNION: No, the lawyers
9 voluntarily dismissed it.

10 MR. PATTAKOS: He's the plaintiff.
11 He's the plaintiff.

12 Q. Are you saying you did it on advice of your
13 counsel and you have no idea why --

14 MR. MANNION: Stop.

15 MR. POPSON: We're instructing him
16 not to answer.

17 THE WITNESS: It's been a half
18 hour.

19 MR. MANNION: And he's asking
20 questions about a claim that's not in the
21 case right now.

22 BY MR. PATTAKOS:

23 Q. The letter that you had Mr. Coughlan send to Paul
24 Steele said that he violated his confidentiality
25 agreement with the firm by communicating with

1 certain chiropractors, right?

2 A. I believe the list of chiropractors that we do
3 business with is proprietary.

4 Q. What's proprietary about it?

5 A. I believe that it's proprietary.

6 Q. What is proprietary -- why is it proprietary?

7 A. Well, they accept letters of protection, they do
8 all this stuff, it's hard to go find these
9 doctors to do that. So again, I viewed it that
10 way, obviously my lawyer did, he sent the letter.
11 Paul's lawyer responded. Paul's lawyer was, I
12 think was -- raised a good point and it was
13 dropped.

14 Q. What was the good point he raised?

15 A. That it doesn't apply because there was the issue
16 -- that it made reference to the confidentiality
17 agreement, it made reference to our settlement
18 between each other, and he said -- he brought up
19 a good point, that's a good point.

20 Q. About the terms of the settlement, right?

21 A. Yeah.

22 Q. Okay.

23 A. He was right. If a guy is right, he's right.

24 MR. PATTAKOS: Give me one minute
25 here. I think we're almost done, if not

1 done.

2 Q. You sat in Thera Reid's deposition, didn't you?

3 A. Yeah.

4 Q. You heard Mr. Mannion tell Thera that he wasn't
5 being paid for representing you, correct?

6 A. Correct.

7 Q. Is that true?

8 MR. MANNION: Objection.

9 A. You know I can't answer that.

10 Q. Are you getting free representations by Tom
11 Mannion?

12 MR. MANNION: Objection.

13 MR. PATTAKOS: When he re-files
14 his counterclaims --

15 MR. MANNION: Oh, stop it --

16 MR. PATTAKOS: -- and claims
17 attorney fees --

18 MR. MANNION: -- you know it was
19 an offhand comment and you know that.

20 MR. PATTAKOS: Was it? Was it an
21 offhanded -- is that not true then?

22 MR. MANNION: Stop it. You're not
23 going to ask him --

24 A. You just said when you re-file. At that point
25 we'll answer your questions.

1 Q. At that point you'll answer my questions, but now
2 you won't, even though you're telling me you're
3 going to re-file it?

4 MR. MANNION: No, we didn't say
5 that.

6 MR. POPSON: Nobody said that.

7 A. You said if you re-file.

8 Q. Are you getting free representation from Tom
9 Mannion on this case?

10 MR. MANNION: Stop it, stop it.
11 He's not going to talk about how much he's
12 paying for attorneys fees.

13 MR. PATTAKOS: It goes right to
14 his damages. He's claiming this is
15 frivolous, so --

16 MR. MANNION: There's no claim --

17 MR. PATTAKOS: -- he's got one of
18 the best lawyers --

19 MR. MANNION: -- There's no claim.

20 MR. PATTAKOS: What do you mean,
21 there's no claim?

22 MR. MANNION: It was voluntarily
23 dismissed.

24 MR. PATTAKOS: He threatened my
25 clients with legal liability.

1 MR. MANNION: Well --

2 MR. PATTAKOS: He sued my clients.

3 MR. MANNION: -- and I believe
4 they have it, but there's no claim right
5 now. So if and when it's re-filed, you can
6 ask him questions, but there is no claim
7 right now, so you're not going to ask him
8 questions.

9 MR. PATTAKOS: So as soon as you
10 re-file your counterclaims, we can come
11 back for Mr. Nestico's deposition. You're
12 agreeing to that?

13 MR. MANNION: At a mutually
14 convenient time, yes.

15 MR. PATTAKOS: We got a deal, Tom.

16 MR. MANNION: Okay.

17 THE WITNESS: No, you don't.

18 MR. PATTAKOS: Well, let me just
19 -- give me one --

20 MR. MANNION: On the counterclaim.

21 MR. POPSON: Right, on the
22 counterclaim.

23 THE WITNESS: He can ask me about
24 the counterclaim when it comes.

25 MR. MANNION: Yeah.

1 BY MR. PATTAKOS:

2 Q. Who else owned TPI Airways? Who else had the
3 partnership interest in TPI Airways?

4 A. I can get you a list and you can have all the
5 percentages.

6 Q. You don't remember?

7 A. Yeah, I can tell you that Danny Karam was on
8 there --

9 Q. Uh-huh.

10 A. -- what's his name? There was seven build -- I
11 think six builders, if I'm not mistaken.

12 Q. You, Dr. Ghoubrial, Danny Karam --

13 A. Yeah.

14 Q. How do you know Danny Karam?

15 A. It's my neighbor.

16 Q. He's a good friend of yours, right?

17 A. Yeah.

18 Q. You do a lot of business with him, right?

19 A. I have.

20 Q. Real estate business, right?

21 A. Yes, sir.

22 MR. MANNION: We have it.

23 A. You want the list?

24 Q. Ah, thank you.

25 MR. MANNION: You're welcome.

1 102?

2 MR. PATTAKOS: We're going to mark
3 this as an exhibit.

4 THE WITNESS: 102. We're trying
5 to get to the 112 number.

6 MR. PATTAKOS: Ten more to go.

7 - - - -

8 (Thereupon, Plaintiff's Exhibit 102 was
9 marked for purposes of identification.)

10 - - - -

11 THE WITNESS: We only have one
12 copy.

13 BY MR. PATTAKOS:

14 Q. Who is Brian Weber?

15 A. He's a -- I think he's a financial guy.

16 Q. Is he the pilot?

17 A. No.

18 Q. Who's the pilot? Is that person on this list?

19 A. No. Danny Karam is one of the pilots. We had I
20 think three or four?

21 Q. Who is Doug Lohr?

22 A. He's a builder.

23 Q. Who's Jeff Lucier?

24 A. Don't know.

25 Q. Mike Valentine?

1 A. I think he's a builder, too.

2 Q. Blue Streak Flight Group, LLC?

3 A. That's Danny Karam.

4 Q. So the name --

5 A. Or I'm sorry, Blue Streak, that was the main
6 company and everybody had shares of Blue Streak.

7 Q. What's TPI then?

8 A. TPI is Dr. Ghoubrial.

9 Q. That's his share --

10 A. Yeah.

11 Q. -- in Blue Streak?

12 A. Correct, in the plane.

13 Q. So Ghoubrial had a -- created a special
14 corporation just for his share in the Blue
15 Streak --

16 MR. MANNION: Objection.

17 MR. BARMEN: Objection.

18 A. Yeah.

19 Q. -- and he named it TPI Airways?

20 A. Yeah.

21 MR. PATTAKOS: So you're
22 instructing Mr. Nestico not to answer any
23 questions about Fonner and his lawsuit and
24 counterclaim?

25 MR. MANNION: Yeah.

1 MR. PATTAKOS: Is that --

2 MR. MANNION: There's a
3 confidentiality agreement.

4 MR. PATTAKOS: Okay. We can come
5 back for that, too.

6 THE WITNESS: No, we're not.

7 MR. MANNION: I mean, you told Dr.
8 Fawner the confidentiality agreement
9 doesn't apply. If you haven't --

10 MR. PATTAKOS: I don't believe
11 that it does.

12 MR. MANNION: You have read it?

13 MR. PATTAKOS: Would love to.

14 MR. MANNION: Well, then I don't
15 think you should be giving advice on a
16 contract is a confidentiality agreement in
17 any way, shape or form.

18 MR. PATTAKOS: I read the
19 pleadings.

20 MR. MANNION: Okay.

21 MR. PATTAKOS: Let me just check
22 one more thing.

23 - - - -

24 (Thereupon, Plaintiff's Exhibit 103 was
25 marked for purposes of identification.)

1

- - - -

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. And what is this?

5 A. This was on one of the trips I took everybody on.

6 Q. You took everybody on -- this is one of the trips
7 that you took everybody on?

8 A. Yes.

9 Q. And the doctors and the chiros and the lawyers
10 from your firm, right?11 MR. MANNION: Objection as to the
12 form, but go ahead.

13 A. Lawyers, friends, yeah.

14 Q. What was the purpose of these trips?

15 A. Friends going -- usually were golf trips.

16 Q. Build comradery?

17 A. Okay.

18 Q. Do you pay for these trips?

19 A. For the most part, yeah.

20 Q. How many of these trips did you take that you
21 paid for for --

22 A. The firm?

23 Q. -- the folks on this list?

24 MR. MANNION: Objection.

25 A. Oh, this was just one time.

1 Q. This is one time, but say how many times did you
2 pay for a trip with providers like Dr. Ghoubrial
3 or Dr. Floros?

4 A. I want to say two or three times.

5 Q. And where did you go on these trips?

6 A. Contrary to the exotic areas that you said,
7 Tunica, Mississippi.

8 Q. For gold?

9 A. For golf. There's only two casinos and golf
10 courses in Tunica, that's it.

11 Q. It's still fun, isn't it?

12 A. Well, we had fun golfing. New Orleans.

13 Q. That's pretty fun, too, right?

14 MR. MANNION: Not very exotic.

15 MR. PATTAKOS: It feels exotic to
16 me. If I could get to New Orleans, boy...

17 A. Well, New Orleans, Tassi and Floros and any -- if
18 there was anybody else, they were there for --
19 that's their head office.

20 Q. Plambeck is down there?

21 A. Yeah. We golfed and then there was providers
22 with the lawyers, all the lawyers was Cancun.

23 Q. This is Cancun, right? This e-mail is the rooms
24 for Cancun?

25 A. I don't remember. 2013, probably. Yeah, because

1 '14 we went to the Dominican Republic, but no
2 providers.

3 Q. Are there any other providers other than the
4 folks that are on this list that went on these
5 trips that you can remember?

6 A. No, I don't think so.

7 Q. Have you ever talked with Mr. Plambeck about this
8 lawsuit?

9 A. I mentioned it to him.

10 Q. When?

11 A. When it happened.

12 Q. Have you talked to him about it since?

13 A. No.

14 Q. What did he say about it?

15 MR. KEDIR: Objection.

16 A. Not much.

17 Q. What do you remember?

18 A. I don't because it wasn't --

19 Q. Why did you talk with him --

20 A. It just came up --

21 Q. -- about this case?

22 A. It came up in conversation.

23 Q. How often do you talk to him?

24 A. I don't.

25 Q. Why were you talking to him in this instance?

1 A. Again, I told you, I don't remember.

2 Q. Any other benefits that you provide to
3 providers --

4 A. They're not benefits --

5 MR. MANNION: Objection.

6 MR. BARMEN: Objection.

7 A. -- I never -- where did benefits come from?

8 Q. It's not a benefit to be taken on a trip?

9 A. No, these are my friends.

10 MR. MANNION: You about done
11 there?

12 MR. PATTAKOS: Yes, just give me a
13 moment.

14 BY MR. PATTAKOS:

15 Q. Did you ever have an analysis done by an
16 accountant about whether MRS and AMC or Mike or
17 Aaron should be considered employees --

18 MR. MANNION: Objection.

19 Q. -- for tax purposes?

20 MR. MANNION: Objection.

21 A. I'm sure I talked to the accountants.

22 Q. About that? Did they perform an analysis for you
23 of that?

24 A. I don't remember.

25 Q. Which -- who are your accountants?

1 A. Cohen & Company or -- now, but back when we
2 started it was -- I can't -- I can't remember his
3 name.

4 Q. You can't remember?

5 A. This is when we started the firm.

6 Q. Who your accountant was?

7 A. I can find out.

8 Q. So you don't remember anything about any such
9 analysis?

10 A. You know, I don't know if it was the accountant
11 or lawyer.

12 Q. What lawyer?

13 MR. POPSON: Well --

14 A. I can't tell you what he said.

15 MR. POPSON: Right.

16 Q. Mr. Coughlan?

17 A. No.

18 Q. Kegler Brown?

19 A. No.

20 Q. Someone at Kegler Brown?

21 A. If I had, had that discussion with, with John.

22 Q. So what's your analysis?

23 MR. MANNION: Objection.

24 A. What do you mean?

25 Q. What's your understanding of how the firm --

1 A. They don't --

2 Q. -- can lawfully treat Mike and Aaron as
3 independent contractors as opposed to employees?

4 MR. MANNION: Objection.

5 MR. POPSON: Objection.

6 A. Okay. So they don't get benefits at all.
7 They're not on my payroll. They don't -- I don't
8 control them. They come and go as they please.
9 They don't ask me for vacations. These guys do
10 whatever they want, they don't need my
11 permission. Apart from the fact that I remember
12 when we hired Aaron, he specifically did not want
13 to be an employee. He wanted to be an
14 independent contractor because he thought he was
15 taken advantage of over at Eshelman and he'll
16 probably testify to that. He specifically did
17 not.

18 And I think at that point -- now, it's
19 starting to come back -- at that point I
20 discussed it with our ethics lawyer that we had
21 at the time from Roetzel & Andress --

22 Q. Ethics lawyer?

23 THE WITNESS: What's his name?

24 MR. REAGAN: Jackson.

25 A. Yeah, Paul Jackson.

1 Q. Well, but they don't come and go as they please,
2 right?

3 A. They do.

4 Q. They have to go get these clients signed up when
5 your --

6 A. Peter --

7 Q. -- attorneys tell them to --

8 A. -- Peter --

9 MR. MANNION: Objection.

10 A. -- let me --

11 Q. -- or they're going to lose the job, right?

12 MR. MANNION: Objection.

13 A. Hang on. Understand this, so the lawyers, they
14 approve all these expenses, they're the ones who
15 will tell them, go set this up and meet with this
16 client. Then what they do, if the client can't
17 or the investigator can't, they change it at
18 their freewill, they do what they want. And they
19 don't have to show up at work at 8:00.

20 Q. But they have to get the job done?

21 A. As long as they get it.

22 Q. They have to get it done fast, you've got to get
23 those police reports fast, right?

24 MR. MANNION: Objection.

25 A. No, no.

1 Q. It's a safeguard --

2 MR. MANNION: Objection.

3 Q. -- that's why you were testifying how --

4 A. I said --

5 Q. -- important that was before.

6 A. -- no, not getting it fast, that's not -- you
7 can't mischaracterize my testimony.

8 Q. Well, and Holly, you sent that e-mail saying that
9 the investigators had to do these seven things or
10 they would not get paid, so they don't get to do
11 what they want they have to --

12 A. That was --

13 Q. -- do those seven things, right?

14 MR. MANNION: Objection.

15 A. Listen, so here's the example I'm going to give
16 you --

17 Q. Please.

18 A. -- all right? Perfect. If I hire a carpet
19 cleaning guy and I tell the carpet cleaning guy
20 remove this dirt, clean over there, these are my
21 expectations to do it, they do it, does that make
22 the carpet cleaning company my employee?

23 MR. MANNION: And I want it done
24 by Friday.

25 A. Come on. You know they're not, you know full and

1 well, they're not.

2 Q. If they're there every day doing it --

3 A. They're not there every day.

4 Q. -- and they don't -- and they can't do any other
5 work?

6 A. They're not there every day, Peter.

7 Q. Mike and Aaron aren't at -- doing work for your
8 firm every day?

9 MR. MANNION: Different question.

10 A. Yeah. That I don't know, but --

11 Q. They're not doing work for your firm every single
12 day?

13 A. That I don't know.

14 Q. You have no reason to believe that they're not
15 working a full-time job at your firm?

16 A. They're not --

17 MR. MANNION: Objection.

18 A. -- working a full-time job at my firm.

19 Q. For your firm?

20 A. For my firm, correct.

21 Q. They're not?

22 A. They're not working a full-time job for me.
23 They're not my employees.

24 Q. No, but for themselves the work that you provide
25 them -- and if you want to call it a contract,

1 that's fine --

2 A. They're -- Peter, Peter, Peter, they're not my
3 employees.

4 Q. Aaron told you he was taken advantage of at
5 Eshelman?

6 A. That's what he said.

7 Q. How so?

8 A. Ask him.

9 Q. You have no understanding?

10 A. No, I'm not Aaron.

11 Q. Were there any memoranda produced by your lawyers
12 or accountants about the investigator fee issue
13 and the tax treatment?

14 MR. MANNION: Objection.

15 Especially with respect to the lawyer.

16 A. Were there any memorandas produced?

17 Q. Any memoranda or documents --

18 A. I don't know --

19 Q. -- of this --

20 A. -- I don't know --

21 Q. -- analysis?

22 A. -- because I don't think there was any memoranda.

23 Q. Why?

24 A. I don't know.

25 Q. You think it's funny for me to ask that question?

1 A. It's ridiculous, for me.

2 Q. Okay. Why?

3 A. I'm entitled to that. It's my opinion.

4 Q. To laugh?

5 A. No, that I think it's ridiculous because --

6 Q. For me to ask that question?

7 A. Peter, I just finished telling you that this is
8 what I believe, that they are not employees, we
9 went through this. You and I have just danced
10 for the last 15 minutes about that.

11 Q. Okay. Just going through this document. I think
12 we're about done.

13 MR. BEST: How long have we been
14 on the record today?

15 THE VIDEOGRAPHER: Almost six
16 hours and 40 minutes.

17 MR. BEST: Almost seven hours,
18 more than six yesterday. Wrap it up.

19 Q. So I don't have this document with me --

20 A. Okay.

21 Q. -- but there is an e-mail that was produced, it's
22 Williams 418 to 419. It's an exchange on
23 December 18th, 2014, between you and Mr. Nestico,
24 the subject line --

25 A. Wait, wait, wait --

1 Q. -- between you and Mr. Horton. The subject line
2 says "termination". I assume a client name is
3 redacted. You're e-mailing Horton, why didn't
4 you call him yesterday after Minas text you and
5 asked you to call because the guy was hesitant.
6 Horton responds, I didn't think anything of it.
7 My feeling on it is if they are quote, hesitant,
8 but have already signed up, they can't be that
9 hesitant about it. And I do not want to annoy
10 them before they get comfortable. I thought that
11 the conversation I had with him initially was a
12 good conversation, informative, cautionary, et
13 cetera, and we ended it well. And Floros was
14 being overly cautious because the guy was a
15 seemingly educated individual who maybe didn't
16 buy into his normal bullshit.

17 Your response was, no, wrong, he helps talk
18 to them, but they need constant reassurance.
19 Wrong decision.

20 Does that sound right to you?

21 MR. MANNION: What do you mean by
22 does it sound right --

23 A. What part of it?

24 MR. MANNION: -- that you read it
25 correctly you mean?

1 Q. That that would be advice that you would have
2 given to Horton? What did you mean by, "they
3 need constant reassurance"?

4 A. Well, these clients, do you understand when they
5 get into an accident, it turns their life upside
6 down, and the doctor helps them understand we are
7 there to help them. So that's what I mean by,
8 no, wrong. We're -- obviously Attorney Horton --
9 good guy -- Attorney Horton talked to them and he
10 didn't obviously reassure them enough. That's
11 the way I read that.

12 Q. Okay. What's Horton talking about -- what's your
13 understanding of what Horton talks about when he
14 says the guy was a seemingly educated individual
15 who maybe didn't buy into his normal bullshit?

16 A. I have no idea, Peter.

17 Q. You reviewed that document when we produced it,
18 didn't you?

19 A. I'm sure I did.

20 Q. You remember it -- you remember having reviewed
21 it?

22 A. I reviewed all the documents.

23 Q. Okay. And you don't deny that this exchange
24 happened, do you?

25 A. No.

1 Q. Okay. There's another e-mail, KNR 0318 regarding
2 narrative fees, where you write, everyone -- all
3 caps -- please make sure to send narrative fees
4 directly to the doctor and not the clinic under
5 any circumstances. Do not make this mistake
6 again.

7 And then Redick responds, why don't I keep
8 all of the narrative checks like I do Floros and
9 we can just bundle them and send them to ensure
10 they are sent to the right place.

11 Do you have any memory of why you would send
12 this?

13 A. It sounds like checks must have got lost.

14 Q. And why to the doctor directly and not the
15 clinic?

16 A. We asked -- you asked me that question --

17 Q. Yeah.

18 A. -- because that's what they wanted.

19 Q. Because you -- do you remember getting a report
20 that checks were getting lost?

21 A. What do you mean "a report"? You mean that
22 someone told me?

23 Q. Yes.

24 A. Must have. I don't know.

25 Q. Okay. But you produced this e-mail, it's KNR

1 03818.

2 A. Okay.

3 Q. You don't deny that this exchange took place,
4 correct?

5 MR. MANNION: Well, he hasn't seen
6 this -- you're not showing him this e-mail,
7 but --

8 Q. Okay.

9 THE WITNESS: He's getting to 112.

10 Q. I wish I had them here. I wish -- if we were at
11 my office, we could have gotten them.

12 MR. POPSON: Thank God we're not.

13 A. Really, are we done?

14 MR. MANNION: I know.

15 MR. BEST: Yeah, wrap this up.

16 MR. MANNION: You said a half
17 hour, it's well over a half hour.

18 Q. So there's KNR 0754 to 56 on June 14th, 2012,
19 Brandy wants to request narrative checks and
20 sends a list of 68 narratives. Floros says
21 that's a crap load of narratives. Anyway they
22 can be done by Thursday at 11:00 a.m. So this is
23 roughly a week time period for him to get 70 of
24 these done --

25 A. If -- you're assuming --

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

2 A. -- yeah, you're assuming that he hasn't already
3 gotten some done.

4 Q. Okay. Does that seem normal to you to do 70
5 narrative fees in one week?

6 MR. MANNION: Object.

7 A. It's not one week. You're assuming, right?

8 Q. Okay.

9 A. I would not assume.

10 Q. I'm not assuming anything --

11 A. Well, sure you were.

12 Q. Okay.

13 A. We're not going to go through every document we
14 produced, are we?

15 Q. No, sir. I'm almost to the bottom of this list.

16 MR. MANNION: You said that a lot.

17 MR. POPSON: You said that 20
18 minutes ago.

19 MR. PATTAKOS: I appreciate your
20 patience, gentlemen --

21 THE WITNESS: No problem.

22 MR. PATTAKOS: Thank you. I
23 understand.

24 THE WITNESS: He wants that tape
25 to say seven hours. I know he does.

1 MR. PATTAKOS: Thank you. Rachel,
2 do you have anything?

3 MR. BEST: He'll read.

4 THE WITNESS: Thank you.

5 THE VIDEOGRAPHER: This now
6 concludes the deposition --

7 MR. MANNION: Yeah, he'll read.

8 THE VIDEOGRAPHER: -- we're going
9 off the record. The time is 5:56.

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