

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Notice of Filing Redacted Deposition Transcripts of Gary Petti, Robert Horton, Minas Floros, Richard Gunning, and Sam Ghoubrial</p>
---	--

Pursuant to the Court's order of July 3, 2019, Plaintiffs hereby give notice of filing with the Court the redacted deposition transcripts of Gary Petti (**Exhibit 1**), Robert Horton (**Exhibit 2**), Minas Floros (**Exhibit 3**), Richard Gunning (**Exhibit 4**), and Sam Ghoubrial (**Exhibit 5**), reflecting specific confidentiality designations relating to these transcripts.

Respectfully submitted,

/s/ Rachel Hazelet

Peter Pattakos (0082884)
 Rachel Hazelet (0097855)
 THE PATTAKOS LAW FIRM LLC
 101 Ghent Road
 Fairlawn, Ohio 44333
 Phone: 330.836.8533
 Fax: 330.836.8536
 peter@pattakoslaw.com
 rhazelet@pattakoslaw.com

Joshua R. Cohen (0032368)
 Ellen Kramer (0055552)
 COHEN ROSENTHAL & KRAMER LLP
 The Hoyt Block Building, Suite 400
 Cleveland, Ohio 44113
 Phone: 216.781.7956
 Fax: 216.781.8061
 jcohen@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on August 28, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Rachel Hazlet
Attorney for Plaintiffs

1

1 IN THE COURT OF COMMON PLEAS
 2 SUMMIT COUNTY, OHIO
 3 MEMBER WILLIAMS, et al.,
 4 Plaintiffs,
 5 -vs- CASE NO. CV-2016-09-3928
 6 VOLUME II
 7 KISLING, NESTICO
 & REDICK, LLC, et al.,
 8 Defendants.
 9 - - - -
 10
 11 Videotaped deposition of GARY PETTI, taken as if
 12 upon examination before Brian A. Kuebler, a
 13 Notary Public within and for the State of Ohio,
 14 at the Pattakos Law Firm, 101 Ghent Road,
 15 Fairlawn, Ohio, at 9:33 a.m. on Friday, March 1,
 16 2019, pursuant to notice and/or stipulations of
 17 counsel, on behalf of the Plaintiffs.
 18 - - - -
 19 JK COURT REPORTING
 55 PUBLIC SQUARE
 SUITE 1332
 CLEVELAND, OHIO 44113
 (216) 664-0541
 20
 21 www.jarkub.com
 22
 23
 24
 25

3

1 ALSO PRESENT :
 2 John J. Reagan, Esq.
 Randy Andrews - videographer
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

EXHIBIT 1

2

1 APPEARANCES :
 2 Peter Pattakos, Esq.
 Rachel Hazelet, Esq.
 3 101 Ghent Road
 Akron, Ohio 44333
 4 (330) 836-8533
 peter@pattakoslaw.com
 5 On behalf of the Plaintiffs;
 6 Thomas P. Mannion, Esq.
 Lewis Brisbois
 7 1375 East 9th Street, Suite 2250
 Cleveland, Ohio 44114
 8 (216) 344-9467
 tom.mannion@lewisbrisbois.com
 9 and
 10 James M. Popson, Esq.
 Sutter, O'Connell
 11 3600 Erieview Tower
 1301 East 9th Street
 12 Cleveland, Ohio 44114
 (216) 928-2200
 13 jpopson@sutter-law.com
 14 On behalf of the Defendants,
 Kisling, Nestico & Redick, LLC;
 15 Shaun H. Kedir, Esq.
 Feagan Law
 16 101 West Prospect Avenue, Suite 1600
 Cleveland, Ohio 44115
 17 (216) 937-2222
 Skedir@feaganlaw.com
 18 On behalf of the Defendant,
 Dr. Minas Floros, DC;
 19 Ryan Rubin, Esq.
 Lewis Brisbois
 20 1375 East 9th Street, Suite 2250
 Cleveland, Ohio 44114
 21 (216) 344-9467
 Ryan.rubin@lewisbrisbois.com
 22 On behalf of the Defendants,
 Sam N. Ghoubril, MD;
 23
 24
 25

4

1 I N D E X
 2
 3 EXAMINATION
 GARY M. PETTI 6
 4 BY MR. PATTAKOS
 EXAMINATION
 GARY M. PETTI 184
 5 BY MR. MANNION
 EXAMINATION
 GARY M. PETTI 414
 6 BY MR. RUBIN
 EXAMINATION
 GARY M. PETTI 424
 7 BY MR. KEDIR
 RE-EXAMINATION
 GARY M. PETTI 461
 8 BY MR. PATTAKOS
 RE-EXAMINATION
 GARY M. PETTI 484
 9 BY MR. MANNION
 RE-EXAMINATION
 GARY M. PETTI 523
 10 BY MR. RUBIN
 RE-EXAMINATION
 GARY M. PETTI 525
 11 BY MR. PATTAKOS
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

EXHIBIT INDEX

Gary Petti Plaintiff's Exhibit 1	16
Gary Petti Plaintiff's Exhibit 2	16
Gary Petti Plaintiff's Exhibit 3	28
Gary Petti Plaintiff's Exhibit 4	30
Gary Petti Plaintiff's Exhibit 5	35
Gary Petti Plaintiff's Exhibit 6	45
Gary Petti Plaintiff's Exhibit 7	47
Gary Petti Plaintiff's Exhibit 8	53
Gary Petti Plaintiff's Exhibit 9	60
Gary Petti Plaintiff's Exhibits 10, 1161	
Gary Petti Plaintiff's Exhibits 12, 1371	
Gary Petti Plaintiff's Exhibit 14	78
Gary Petti Plaintiff's Exhibit 15	79
Gary Petti Plaintiff's Exhibit 16	83
Gary Petti Plaintiff's Exhibit 17	84
Gary Petti Plaintiff's Exhibit 18	95
Gary Petti Plaintiff's Exhibit 19	111
Gary Petti Plaintiff's Exhibit 20	116
Gary Petti Plaintiff's Exhibit 21	133

5

1	Gary Petti Plaintiff's Exhibit 22	134
	Gary Petti Plaintiff's Exhibit 23	140
2	Gary Petti Plaintiff's Exhibit 24	143
	Gary Petti Plaintiff's Exhibit 25	144
3	Gary Petti Plaintiff's Exhibit 26	151
	Gary Petti Plaintiff's Exhibit 27	159
4	Gary Petti Plaintiff's Exhibit 28	162
	Gary Petti Plaintiff's Exhibit 29	163
5	Gary Petti Plaintiff's Exhibit 30	165
	Gary Petti Plaintiff's Exhibit 31	171
6	Defendant's Exhibit A	264
	Defendant's Exhibit B	265
7	Defendant's Exhibit C	313
	Defendant's Exhibit D	328
8	Defendant's Exhibit E	334
	Defendant's Exhibit F	346
9	Defendant's Exhibit G	372
	Defendant's Exhibit H	374
10	Defendant's Exhibit I	390
	Defendant's Exhibit J	392
11	Defendant's Exhibit K	401
	Defendant's Exhibit L	406
12	Defendant's Exhibit M	408
	Defendant's Exhibit N	452
13	Defendant's Exhibit O	498
	Defendant's Exhibit P	501
14	Defendant's Exhibit Q	513
	Defendant's Exhibit R	518

6

1 GARY M. PETTI, of lawful age, called by the
2 Plaintiffs for the purpose of examination, as
3 provided by the Rules of Civil Procedure, being
4 by me first duly sworn, as hereinafter certified,
5 deposed and said as follows:
6 EXAMINATION OF GARY M. PETTI
7 BY MR. PATTAKOS:
8 Q. Good morning, Mr. Petti.
9 A. Good morning.
10 Q. Please state your name for the record.
11 A. I am Gary M. Petti.
12 Q. And what's your date of birth?
13 A. July 24, 1968.
14 Q. And what's your address?
15 A. 7760 Katie, K-a-t-i-e, Drive, in Wadsworth.
16 Q. And we've met before?
17 A. We have.
18 Q. In connection with this lawsuit, correct?
19 A. Correct.
20 Q. Have you ingested any substances this morning or
21 any time recently that would impair your ability
22 to testify truthfully today?
23 A. Absolutely not.
24 Q. Is there any other reason that you would be
25 unable to remember events accurately or testify

7

1 truthfully today?
2 A. No specific reason.
3 Q. Where did you go to law school?
4 A. The University of Akron.
5 Q. What year did you graduate?
6 A. 1995.
7 Q. What was your fist job out of law school?
8 A. My first job out of law school was probably in
9 construction.
10 Q. What was that?
11 A. I continued to work for my father for a short
12 period of time while I tried to put my law degree
13 to use.
14 Q. And your father had a construction company?
15 A. Right.
16 Q. What's that called?
17 A. It's a sole proprietorship. Just Gary Petti
18 Construction.
19 Q. What kind of construction work?
20 A. Principally residential exteriors. Lots of
21 siding, decks, roofs, stuff like that.
22 Q. What was your first law job?
23 A. My first law job was very brief. I worked for a
24 little firm that I don't think exists anymore on
25 the east side of Cleveland, Kramer and

8

1 Niermann --
2 Q. Uh-huh.
3 A. -- but it was -- they weren't really paying me.
4 You know, it was they were going to give me some
5 cases.
6 Q. What kind of cases?
7 A. Mostly, I understood, to be employment law.
8 Q. Dennis Niermann?
9 A. Yep.
10 Q. How long were you there?
11 A. A very short time. I can't even really remember
12 because I was able to find a position that paid
13 me a salary at a law firm in Oakwood called
14 McDonald & Frank.
15 Q. Oakwood, Ohio?
16 A. Correct. Oakwood Village.
17 Q. What kind of work did you do there?
18 A. Principally defensive real estate title claims.
19 Q. How long were you there?
20 A. About nine months.
21 Q. Then what happened?
22 A. Mr. Frank and I had a really good relationship.
23 When I started there, the expressed intention, I
24 think of everyone involved, would be that I would
25 be able to develop a general practice, but it

9

1 wasn't working out that way. I was just doing
 2 title stuff, which I really didn't enjoy. So he
 3 helped me -- tried to help me find a job
 4 elsewhere where I'd be able to do a broader-based
 5 practice without real estate and I ended up
 6 getting a job at Slater & Zurz.
 7 Q. Out of the Akron office?
 8 A. Correct.
 9 Q. And what year was that?
 10 A. 1997.
 11 Q. What kind of practice did you have there?
 12 A. It was very diverse, but a focus on personal
 13 injury, both defense and plaintiffs.
 14 Q. When you say it was diverse, how so?
 15 A. I did criminal, divorce, workers' comp, some
 16 general business stuff, collections, bankruptcy,
 17 child custody. All, you know, that made up maybe
 18 probably less than ten percent of what I did and
 19 then the balance would have been personal injury
 20 of some sort. Like I said, either defending
 21 insurance claims through insurance carriers or
 22 representing plaintiffs in injury claims.
 23 Q. How long were you there?
 24 A. Almost exactly 15 years I think.
 25 Q. Did you become a partner there?

10

1 A. I did not.
 2 Q. They kept you busy there?
 3 A. Very much so.
 4 Q. How many auto -- or how many cases would you say
 5 you were responsible for at any given time there?
 6 A. 400 to 500.
 7 Q. And the bulk of those were auto accident cases?
 8 A. Car accidents -- at that point when I was at my
 9 personal busiest it was almost exclusively
 10 plaintiffs personal injury from car accident
 11 cases.
 12 Q. And why did you end up leaving Slater & Zurz?
 13 A. Tons of reasons. Primarily I wanted to be able
 14 to spend more time at home. Travel less back and
 15 forth to Columbus. By then I did -- no longer
 16 wanted to be a personal injury lawyer. I was
 17 looking for a way to wind down my practice. And
 18 that pretty much covers it -- oh, there was also
 19 some -- I suppose it affected me in some way,
 20 some restructuring of my compensation -- or there
 21 was a desire to, it never actually happened, but
 22 that -- I supposedly initiated the conversations
 23 I had with them about leaving.
 24 Q. Explain that.
 25 A. My pay -- I had been paid salary plus some

11

1 portion of the fees I generated the entire time I
 2 was there, and I got a couple raises of course
 3 and the percentages changed, but at some point
 4 they came to me and said, look, you know, we're
 5 going to do away with the salary part, we're
 6 going to raise the percentages. And given -- I
 7 hadn't expressed it to them, but given that I was
 8 trying to wind it down and get out, I really
 9 wanted the salary.
 10 So that sort of gave me some inertia to
 11 explore leaving more seriously and more urgently
 12 I guess.
 13 Q. I understand. You said that you were spending a
 14 lot of time in Columbus?
 15 A. That's correct.
 16 Q. But your job was based in Akron?
 17 A. Right.
 18 Q. So why were you spending so much time in
 19 Columbus?
 20 A. I had a couple referral sources, chiropractors,
 21 who referred me cases in Columbus.
 22 Q. And you spent most of your time there?
 23 A. One to four days a week I would go down there.
 24 Q. For court appearances?
 25 A. Sometimes court appearances, sometimes to meet

12

1 new clients, sometimes to hand people checks,
 2 take pictures. Pretty much the whole thing.
 3 Q. And you wanted to spend more time at home?
 4 A. Well, my wife returned to school, and I have
 5 three kids, so her curriculum is very demanding.
 6 She spent all day, sometimes in an operating
 7 room, so she wasn't accessible to the kids. And
 8 if I was in Columbus, I really wasn't either. So
 9 her and I felt like it was important that at
 10 least one of us be available throughout the day.
 11 Q. How old were the kids at the time?
 12 A. Probably 13 to five, something like that.
 13 Q. Three kids you said?
 14 A. Yes, I have three kids.
 15 Q. What was your wife going to school for?
 16 A. Anesthesia. She's a certified registered nurse
 17 -- certified registered nurse anesthetist.
 18 Q. Is she employed?
 19 A. She is.
 20 Q. Where?
 21 A. The Cleveland Clinic Foundation.
 22 Q. And you mention that you didn't want to be a
 23 personal injury lawyer anymore?
 24 A. Right.
 25 Q. And why was that?

13

1 A. Just not satisfying. Just making money. No
 2 personal satisfaction in helping people -- very
 3 little. I shouldn't say no. There were some
 4 cases where I felt like I helped people. Most of
 5 them just questionable whether or not I did them
 6 any good at all.
 7 Q. What do you mean by that?
 8 A. You know, low-impact, soft-tissue-injury case.
 9 Somebody gets hit from behind, insurance company,
 10 in many instances, willing to pay them some
 11 money. I tell them to go to the chiropractor,
 12 they get some treatment. Six months later do
 13 they get any more money? Maybe. Was it worth
 14 going to treatment for six months? Maybe. Not
 15 real sure. Would they have gotten more money on
 16 their own once they factor out the -- or factor
 17 in the legal fees. Like I said, I don't know.
 18 Q. There were other fees too, correct?
 19 A. Sure, sure. The fees and costs associated with
 20 it, absolutely.
 21 Q. Including the medical treatment?
 22 A. Yes.
 23 Q. So where did you go when you left Slater & Zurz?
 24 A. Kisling, Nestico & Redick.
 25 Q. And how did you end up there?

14

1 A. I knew that they had some -- they had more
 2 lawyers and perhaps had the capacity to help me
 3 handle all of my cases. So I had hundreds of
 4 cases when I left Slater & Zurz.
 5 So I think I called Gary Kisling first
 6 because I knew him. I previously had a trial
 7 against him and he put me in touch with Nestico.
 8 Q. You had a good relationship with Gary Kisling?
 9 A. Not good, I just knew him.
 10 Q. Okay.
 11 A. I had I think the one trial with him and that was
 12 it.
 13 Q. But the relationship was professional enough that
 14 you felt comfortable calling him?
 15 A. Right. Right.
 16 Q. Okay. And how did the conversation with Nestico
 17 go?
 18 A. He was interested immediately. I honestly felt
 19 like I was probably pretty appealing to them
 20 because I did have hundreds of cases. And he
 21 told me basically right away that they were
 22 looking to get down to Columbus and that's where
 23 most of the cases I brought with me were in
 24 Columbus.
 25 It was, in some ways, you know, everything I

15

1 wanted to hear. That I wouldn't have to leave to
 2 go to Columbus. That they would make
 3 relationships or continue the relationships with
 4 the referral sources I had and I'd be able to
 5 stay locally in Akron and work -- I can't
 6 remember what the hours were, but a pretty set
 7 schedule, Monday through --
 8 Q. About 8:00 to 5:00?
 9 A. Yeah. I think it was a little later, like 8:30
 10 to 5:30. I don't think I had to be there at
 11 8:00. Because back then my son was getting on
 12 the bus at 8:00 and I would be able to get him on
 13 the bus and still get over there on time.
 14 Q. How many cases did you bring with you?
 15 A. I don't remember exactly, but hundreds.
 16 Q. Do you remember what the date was that you
 17 started working at KNR?
 18 A. Sometime in March.
 19 Q. 2012?
 20 A. I think so.
 21 Q. You executed an affidavit in this case. Do you
 22 recall?
 23 A. Yes.
 24 Q. Okay. We should just mark that now just so that
 25 we can refer to basic facts. I believe you did

16

1 say in the affidavit that it was March of 2012.
 2 So let's just confirm. And we can mark this as
 3 Exhibit 1.
 4 - - - -
 5 (Thereupon, Gary Petti Plaintiff's Exhibit 1
 6 was marked for purposes of identification.)
 7 - - - -
 8 Q. Does this look like a true and accurate copy of
 9 the affidavit that you executed?
 10 A. It sure does.
 11 Q. Okay. You also produced a number of documents
 12 pursuant to a subpoena that the Plaintiffs issued
 13 to you in this case. Do you recall that?
 14 A. I did.
 15 Q. Let's mark these. I'm going to show you those
 16 documents. I'll mark them as Exhibit 2.
 17 - - - -
 18 (Thereupon, Gary Petti Plaintiff's Exhibit 2
 19 was marked for purposes of identification.)
 20 - - - -
 21 Q. I went ahead and Bates stamped these, but you
 22 prepared that notice of service, correct?
 23 A. I did.
 24 Q. That's on the first page.
 25 A. Yes.

17

1 MR. PATTAKOS: And I only have two
 2 copies of this. I don't plan to ask many
 3 questions, I just wanted to mark it for the
 4 record.
 5 MR. KADIR: Is Exhibit 2 the
 6 subpoena records?
 7 MR. PATTAKOS: Yeah. Those were
 8 e-mailed to James Popson at some point
 9 shortly after we received them.
 10 By MR. PATTAKOS:
 11 Q. I'm sorry, did you confirm that those are the
 12 documents that you produced pursuant to the
 13 subpoena?
 14 A. They look like them. I didn't look through every
 15 page, but every page I looked at is familiar.
 16 Q. Okay. So you state in your affidavit that you
 17 became employed with KNR in March of 2012.
 18 There's no reason to doubt that, correct?
 19 A. Correct.
 20 Q. Okay. It also says that when you left Slater &
 21 Zurz to join KNR that you took approximately 200
 22 cases with you?
 23 A. Yes.
 24 Q. Is that accurate, was it 200 or could it have
 25 been more than that?

18

1 A. It could have been more.
 2 Q. You say approximately, it wasn't 500?
 3 A. I don't think -- no, no, I don't think so. I
 4 think -- I didn't take all of my cases with me.
 5 I referred some to other lawyers.
 6 Q. And these were cases that you had taken in while
 7 you were at Slater & Zurz, correct?
 8 A. Correct.
 9 Q. Did Slater & Zurz ever threaten to sue for taking
 10 those cases with you?
 11 A. No, we had an amicable parting.
 12 Q. And they understood that you would take those
 13 cases with you?
 14 A. Yes.
 15 Q. Okay. And were those -- I'm sorry, those were
 16 cases that you had brought into the firm
 17 yourself?
 18 A. Right.
 19 Q. Through your own relationships?
 20 A. Yes.
 21 Q. Okay. Did Slater & Zurz make you sign a
 22 confidentiality agreement while you worked there?
 23 A. No.
 24 Q. What was your understanding of the chain of
 25 command at KNR?

19

1 MR. MANNION: Objection.
 2 A. That Nestico's in charge.
 3 Q. You understood that Nestico didn't answer to
 4 anyone else at the firm, correct?
 5 MR. MANNION: Objection.
 6 A. Correct.
 7 Q. And who else did you consider your superiors at
 8 the firm?
 9 A. Redick, John Reagan, and while he was there, Gary
 10 Kisling.
 11 Q. What about Brandy?
 12 A. I would say they put her in a position where she
 13 almost was, but given that she's not a lawyer,
 14 I'm not listening to her on matters of, you know,
 15 legal advice.
 16 And then I also realized that, you know,
 17 she's sending all these e-mails over telling
 18 people what to do, but all the partners -- or at
 19 least Nestico and Redick were on those e-mails as
 20 well as part of the pre-lit group so they were
 21 seeing everything she was sending.
 22 MR. MANNION: Objection.
 23 Q. Why do you say that?
 24 A. Because I figured they were consenting to
 25 whatever it is she sent because they were getting

20

1 copies of it --
 2 MR. MANNION: Objection.
 3 A. -- there was a pre-lit group for purposes of
 4 sending out interoffice e-mails and I'm sure
 5 there was a litigation group and a paralegal
 6 group and all that kind of stuff. So instead of
 7 adding each of the individual names who receive
 8 the e-mail, they would just send it to the
 9 pre-lit group and everybody that was part of the
 10 pre-lit group would get the same e-mail.
 11 Q. So you understood that when Brandy was sending
 12 instructions to the attorneys that she was
 13 communicating those instructions on Mr. Nestico's
 14 behalf, correct?
 15 MR. MANNION: Objection.
 16 A. That was my understanding, yes. And they
 17 certainly couldn't have done it, in my opinion,
 18 any other way given that she's telling people how
 19 to practice law.
 20 Q. So did you -- strike that.
 21 When you began working at the firm and you
 22 brought your hundreds of cases with you, did you
 23 take on any other cases that weren't a part of
 24 those cases that you had brought over with you?
 25 A. To begin with, I think there were just a small

21

1 handful.

2 Q. Okay. Do you have any recollection of where

3 those came from or why those were given to you?

4 A. Yes, I do. I came to learn that when a new

5 lawyer started, the old lawyers basically would

6 give up a certain number of their cases which,

7 obviously, were the worst cases that they had,

8 the ones that they were never going to make any

9 money on and those would get dumped on the new

10 guy.

11 Q. Okay.

12 A. So I didn't get many of those because I had

13 plenty to work on of my own, but I did get some.

14 Q. A handful you said?

15 A. Yes.

16 Q. Is that about ten?

17 A. That's fair.

18 Q. What did you understand about what the firm

19 expected from you in terms of your performance?

20 A. The most overriding thing was to generate

21 \$100,000 of fees every month.

22 Q. "The most overriding thing," how do you mean?

23 A. I cannot think of anything else that they ever

24 said other than generate fees. And the goal was

25 100,000 a month and you've got to meet the goal.

22

1 Q. That's \$100,000 a month that goes to the firm?

2 A. In fees, yes.

3 Q. Okay. So you would have to resolve cases at a

4 number much larger than that to bring in \$100,000

5 in fees, correct?

6 A. Certainly.

7 Q. So when you're talking about \$100,000 a month,

8 that is from the firm's contingency percentage

9 that it would collect in resolving the cases,

10 correct?

11 A. Right.

12 Q. What were the consequences if you didn't meet

13 these goals?

14 MR. MANNION: Objection.

15 A. Anything up to and including termination.

16 Q. How was that communicated to you?

17 A. Very directly.

18 Q. By whom?

19 A. Nestico.

20 Q. Was this when you started working there?

21 A. No. It was more kinder and gentler when I first

22 started, but shortly thereafter.

23 Q. Okay.

24 A. I started I think right about the same time as

25 another guy did -- and I can't remember his name

23

1 off the top of my head, but he got fired in like

2 three months. I don't think he ever hit the

3 hundred and he was gone in three months.

4 And at one point Nestico called us in, yelled

5 at both of us at the same time, because neither

6 of us had hit it, and then he told the other guy

7 to leave and then I stayed in there and he's

8 like, I just had to do that, you know, I had to

9 bring you in, too, for effect, but really wasn't

10 directed at you.

11 Because at that point they hadn't probably

12 solidified the relationships with the people that

13 I introduced them to in Columbus so they didn't

14 want -- they couldn't fire me yet.

15 MR. MANNION: Objection. State of

16 mind. Speculation.

17 Q. Who are the people that you introduced them to in

18 Columbus?

19 A. The Columbus Injury & Rehab had a few clinics

20 down there and those individual doctors. And

21 then Town & Country, Dr. Kahn and her husband, I

22 can't remember his name.

23 Q. So you had relationships with them --

24 A. I did.

25 Q. -- by which they would refer cases to you,

24

1 correct?

2 A. That's correct.

3 Q. Who are the doctors at Columbus Rehab & Injury?

4 A. Just a second. I think when I started there they

5 had three clinics at Columbus Injury. And the

6 treating doctors would have been Dr. Sherman

7 Pleasant, Dr. Merle Slavin, and in their north

8 clinic I can't remember who it was. They had a

9 couple different people through there, but there

10 was a third doctor who was in there -- there was

11 a couple of them at various times. I don't

12 remember who was in there.

13 Q. Do you know if that's a Plambeck-owned clinic?

14 A. It is not.

15 Q. What was KNR's policy or practice as to the cases

16 the firm would take in?

17 MR. MANNION: Objection.

18 Timeframe.

19 Q. While you were there.

20 A. Any kind of injury case. Anything. Bring it in,

21 sort it out later.

22 Q. Any case?

23 A. Any kind of injury case. I don't recall -- ever

24 recall any parameters saying no. Basically get

25 it in, if we can't do it, we'll find somebody who

25

1 can.

2 Q. Did you ever witness an occasion where the firm

3 turned a case down for lack of capacity to handle

4 it?

5 A. No.

6 Q. So it's fair to say that if a client came to KNR

7 claiming any type of injury and the crash report

8 shows that someone is liable, the firm will take

9 the case no matter how small?

10 MR. MANNION: Objection as to what

11 others there do.

12 A. I certainly never saw anything different than

13 what you describe.

14 Q. Okay. Would you say most of the cases settle for

15 less than \$10,000?

16 A. That was my experience.

17 Q. Rob Horton testified that the average fee was

18 around \$2,000. Does that sound right to you?

19 MR. MANNION: Objection.

20 Timeframe.

21 A. I would say my experience is that was high.

22 Q. That was high --

23 A. Yeah.

24 Q. -- 2,000 would be high?

25 A. Right.

26

1 Q. You would need in an average --

2 A. I'm bad at statistics and the lingo, but I would

3 say the mean, is that right? The most common

4 settlement would be lower than that, but you'd

5 have a few that were higher that would bring the

6 average up, but your typical case, if you just

7 grabbed us a settlement out of the back, I would

8 say the typical case settled for less in terms of

9 fees than \$2,000. You'd be more likely to grab a

10 case with a lower fee.

11 Q. Would you agree that most of the cases did

12 resolve in some recovery for the client?

13 A. Yep. Yes.

14 Q. Would you agree that very few cases resulted in

15 no recovery at all?

16 A. I would agree.

17 Q. What percentage would you estimate?

18 A. Less than five percent.

19 Q. While you were at the firm did it have -- did it

20 run its litigation department in -- strike that.

21 While you were at the firm, was there a --

22 were there attorneys that worked in the

23 pre-litigation department and then attorneys that

24 worked in the litigation department?

25 A. Yes.

27

1 Q. And you were in the pre-litigation department,

2 correct?

3 A. Yes, that's right.

4 Q. What was your experience in terms of how many --

5 what percentage of your cases ended up going into

6 the litigation department?

7 A. Small.

8 Q. How small?

9 A. Probably, again, less than five percent.

10 Q. What was your experience in terms of how many of

11 your cases went to trial?

12 A. None.

13 Q. What do you recall about how the intake -- the

14 pre-litigation attorneys operated on taking cases

15 into the firm?

16 A. You sat there with wearing headphones, the phone

17 rang at some kind of a different ring and the

18 first person that answered the phone when it rang

19 like that would get the case if the person signed

20 up.

21 THE REPORTER: If the person what?

22 THE WITNESS: If the person signed

23 up.

24 Q. How many calls were you handling every day?

25 A. The intake calls or total?

28

1 Q. Intake.

2 A. Not many. I personally -- I knew I wasn't going

3 to stay there long, so I didn't have much

4 personal interest in getting a bunch of clients,

5 so I was not jumping on the phone. I was just

6 trying to take care of my clients, the existing

7 clients, rather than generate new ones. So I

8 took as many as I conveniently could.

9 THE REPORTER: Let's go off for a

10 second.

11 THE VIDEOGRAPHER: Off the record.

12 - - - -

13 (Off the record.)

14 - - - -

15 THE VIDEOGRAPHER: On the record.

16 - - - -

17 (Thereupon, Gary Petti Plaintiff's Exhibit 3

18 was marked for purposes of identification.)

19 - - - -

20 Q. Handing you a document that's been marked as

21 Exhibit 3. You produced this document, correct?

22 A. I did.

23 Q. And what does this document reflect?

24 A. The amount of intakes done during the month of

25 November by the pre-litigation attorneys.

1 Q. So it reflects that six attorneys here took in
 2 between 36 and 116 cases each?
 3 A. That's right.
 4 Q. Okay. What does this mean where Brandy writes,
 5 "just a reminder that objective cases will be
 6 assigned to the attorneys who are doing intakes?
 7 MR. MANNION: Objection.
 8 A. When I first started, it was explained to me that
 9 the objective cases, which would be the ones
 10 where you'd be more likely to generate a
 11 significant fee were handed out -- there they
 12 distributed equally. So, for example, Josh would
 13 get one, Ken would get the next, Paul would get
 14 the one after that, Horton, me then Jason and in
 15 that order. But they were -- they became
 16 unhappy. I think there's a prior e-mail where
 17 they announce that we're not going to do that
 18 anymore, we're going to hand it out -- we're
 19 going to hand out those objective cases in
 20 proportion to the amount of regular intakes that
 21 we did.
 22 Q. Can you explain why these were called objective
 23 cases?
 24 A. Broken bone -- they called them ass cases as
 25 well, so serious cases. But ones that clearly

1 were going to have -- be much more significant in
 2 terms of a financial -- or at least the injury,
 3 perhaps there wouldn't be insurance coverage to
 4 get the recovery that matched the injury, but
 5 there'd be a real injury so that you'd get a
 6 chance to get a fee more than 1,500 in a
 7 soft-tissue injury case. You get a 10, 30,
 8 \$50,000 fee, whatever.
 9 Q. You would get a 10, 30, \$50,000 fee on an
 10 objective case --
 11 A. Right.
 12 Q. Correct?
 13 A. Yes.
 14 Q. And when you say a real injury, that's opposed to
 15 what?
 16 A. Well, a soft-tissue, sprain/strain, you know,
 17 lumbar, cervical, thoracic, whatever. Where
 18 there's no objective evidence of the injury and
 19 you're just relying on your client to relate
 20 their subjective symptoms.
 21 - - - -
 22 (Thereupon, Gary Petti Plaintiff's Exhibit 4
 23 was marked for purposes of identification.)
 24 - - - -
 25 Q. Let's take a look at Exhibit 4. You produced

1 this e-mail as well, correct?
 2 A. Yes, I did.
 3 Q. And you received this e-mail from Brandy?
 4 A. Right.
 5 Q. And she writes on November 9th, 2012, "from now
 6 on, objective injuries will not be distributed
 7 evenly. These cases will be distributed to the
 8 pre-lit attorneys that are doing intakes by
 9 percentage from the month before."
 10 Do you understand this to confirm your
 11 testimony that you just gave about why the -- how
 12 the objective injuries would be distributed?
 13 A. Yes --
 14 MR. MANNION: Objection.
 15 A. -- yes. That's the e-mail I was referring to,
 16 but it doesn't make any sense the way that they
 17 did it because they're saying from the month
 18 before they're going to hand the new objective
 19 cases out based on percentage from the month
 20 before, but as they're handing them out, they
 21 have no way of knowing how many cases they're
 22 going to get that month, how many objective
 23 cases, so they can't even really do what they say
 24 they're going to do.
 25 MR. MANNION: Objection. Move to

1 strike.
 2 Q. What's your understanding of why the firm did
 3 this?
 4 MR. MANNION: Objection.
 5 A. To encourage people to take more calls or punish
 6 them for not doing it.
 7 MR. MANNION: Objection.
 8 MR. PATTAKOS: You're objecting to
 9 his answers? I thought you could only
 10 object to questions. I don't think it's
 11 proper for you to object when you don't
 12 like the witness' answers, Tom.
 13 MR. MANNION: Excuse me.
 14 MR. PATTAKOS: What rule -- I just
 15 never heard of that one --
 16 MR. MANNION: Would you just shut
 17 your mouth and stop speaking objections --
 18 MR. POPSON: If the question
 19 elicits an answer that's not the witness'
 20 personal knowledge, I think it's
 21 appropriate to say objection.
 22 MR. MANNION: He's talking about
 23 things he doesn't know. He's speculating
 24 in other peoples' mind. I'm trying to be
 25 respectful. You asked that I not make

1 speaking objections, so I'm trying to be
 2 very respectful of that, Mr. Pattakos.
 3 A. We did have conversations in addition to these
 4 e-mails. So again, this wasn't subtle, it was
 5 very direct what they were doing.
 6 Q. They had conversations -- you had conversations
 7 with KNR management explaining why the objective
 8 injury cases were distributed in this way?
 9 A. Absolutely.
 10 MR. MANNION: Objection to the
 11 characterization of management.
 12 Q. And who did you speak with about this?
 13 A. It wasn't a conversation, it was Nestico and
 14 Brandy and Redick saying it.
 15 Q. To everyone?
 16 A. The pre-lit people.
 17 Q. Do you believe it was good for the clients to
 18 handle the -- to distribute the objective injury
 19 cases in this way?
 20 MR. MANNION: Objection.
 21 A. No.
 22 Q. And why is that?
 23 A. Well, a couple reasons. First, people would
 24 have, you know, unique skill sets and
 25 qualifications. So it would be more appropriate

1 for more skilled lawyers to handle the more
 2 challenging cases. And then also it was --
 3 what's the right word? That's it.
 4 MR. MANNION: Move to strike.
 5 Q. Would you agree that it's also true that if an
 6 attorney is focused on taking in as many cases as
 7 possible and they do take in more cases, that
 8 that impairs their ability to handle the cases
 9 that they are actually responsible for?
 10 MR. MANNION: Objection. Improper
 11 hypothetical, incomplete hypothetical,
 12 requests an expert opinion and I don't know
 13 which case you're talking about.
 14 MR. PATTAKOS: Okay, Tom.
 15 MR. MANNION: Well, you wanted me
 16 to be more specific in my objections. I
 17 am.
 18 MR. PATTAKOS: I didn't say that,
 19 but that's okay.
 20 MR. MANNION: Well, you asked me.
 21 A. Based on my experience, yes.
 22 MR. MANNION: Which case are you
 23 referring to?
 24 THE WITNESS: I'm referring to my
 25 experience as --

1 MR. PATTAKOS: Tom --
 2 THE WITNESS: -- a personal injury
 3 lawyer.
 4 Q. You don't have to -- please, you don't have to
 5 answer his questions in the middle of my
 6 examination. I would ask you not to. You can --
 7 MR. MANNION: Well, I'd ask you
 8 not to speculate as to --
 9 THE WITNESS: I'm not speculating
 10 as to what I've done.
 11 MR. PATTAKOS: Tom, you'll have
 12 your chance to ask Mr. Petti questions.
 13 Just hold your tongue for now, if you can.
 14 MR. MANNION: Hold yours.
 15 MR. PATTAKOS: I know it's hard
 16 for you, Tom.
 17 MR. MANNION: Mister, calling
 18 people abusive, racist and everything else
 19 and using his hand like that. That's very
 20 nice.
 21 - - - -
 22 (Thereupon, Gary Petti Plaintiff's Exhibit 5
 23 was marked for purposes of identification.)
 24 - - - -
 25 BY MR. PATTAKOS:

1 Q. Okay. Let's take a look at Exhibit 5. You
 2 produced this document as well, correct?
 3 A. Correct.
 4 Q. And this is an e-mail from Attorney Nestico to
 5 staff?
 6 A. Yes.
 7 Q. Where he writes, please -- "To all staff: Please
 8 accept this as a final warning to all staff. If
 9 it comes to my attention or any management's
 10 attention that you discuss your compensation or
 11 bonus with any other KNR employee, this will
 12 result in immediate termination for cause. As I
 13 have mentioned before, nothing good comes from
 14 discussing these matters with other staff. This
 15 information is confidential and must not be
 16 discussed with anyone. If you have any questions
 17 let me know. Thank you."
 18 What do you recall about this?
 19 A. People were comparing what their income level
 20 was. That's really my understanding of what the
 21 impetus of this was.
 22 Q. Well, it wouldn't have been any secret among the
 23 attorneys that the attorneys who handle more
 24 cases would be getting paid more, correct?
 25 A. Correct.

1 MR. MANNION: Objection to the
 2 characterization.
 3 Q. Because there was a base salary and then there
 4 was -- and I understand this from the testimony
 5 of other KNR attorneys who have testified --
 6 MR. MANNION: Objection. Move to
 7 strike.
 8 Q. It was your experience as well, Mr. Petti, that
 9 there was a base salary of approximately 40,000
 10 and then you would obtain a -- you would be paid
 11 a percentage of the fees that you brought in as
 12 well to supplement the base salary?
 13 A. That is my recollection.
 14 Q. Did you start with the \$40,000 base as well or
 15 approximately?
 16 A. Approximately. I don't remember specifically.
 17 Q. Okay. Do you remember anything more specifically
 18 about this and why this was such a concern for
 19 Mr. Nestico?
 20 MR. MANNION: Objection as to
 21 Mr. Nestico's concern.
 22 MR. PATTAKOS: Well, geez, Tom,
 23 he's using a lot of capital letters in this
 24 e-mail.
 25 MR. MANNION: I didn't read -- I

1 A. My understanding was that people were getting
 2 paid at different levels and he didn't want
 3 people -- anybody to know. He didn't want them
 4 comparing and leveraging, you know, against each
 5 other.
 6 Q. Do you recall how you first got in touch with me
 7 about this case?
 8 A. I believe you got in touch with me after the
 9 Second Amended Complaint was filed.
 10 Q. And how did I get in touch with you?
 11 A. You called me.
 12 Q. How did I know to call you?
 13 MR. MANNION: Objection.
 14 A. Conversations with Horton I assumed.
 15 Q. Rob Horton?
 16 MR. MANNION: Move to strike based
 17 on assumption.
 18 A. Yes.
 19 Q. Did Mr. Horton ever -- what do you recall about
 20 your conversations with Mr. Horton about this
 21 case?
 22 A. Not a lot. We spoke -- I ran into him I think at
 23 Walmart. He lives in my neighborhood, Rob does,
 24 so I think we just randomly ran into each other
 25 at Walmart one day and he told me he had been

1 have to read the law again. Is that
 2 against the law to use capitals?
 3 Q. And he's saying that anybody that talks about
 4 their compensation will be immediately terminated
 5 for cause, so I would say that's --
 6 MR. MANNION: I'm just saying
 7 you're going to the state of mind of
 8 another. I just objected for the record.
 9 A. I really don't know any more about it. About
 10 what -- I don't even know who specifically was
 11 talking about it. I saved that e-mail to myself
 12 because my understanding was that you're not
 13 allowed to do that, you're not allowed to make
 14 that threat. That employees are permitted to be
 15 able to discuss their compensation with one
 16 another.
 17 But that wasn't -- this e-mail itself and the
 18 context of it, I didn't talk to anybody really
 19 about anything while I was there, so it wasn't
 20 particularly concerning to me.
 21 Q. What did you understand about the purpose of Mr.
 22 Nestico's demand that people keep their
 23 compensation confidential?
 24 MR. MANNION: Objection as to Mr.
 25 Nestico's state of mind.

1 fired. And I don't know if I'm consolidating
 2 more than one conversation because I'm sure -- I
 3 believe I've seen him at Walmart more than once
 4 so I don't know if it was, hey, I've been fired
 5 and I'm happy and all of it came out in one
 6 conversation or it was multiple conversations,
 7 but I think that's the only time I've ever talked
 8 to him about this stuff was at Walmart.
 9 Q. How did those conversations go?
 10 A. He mentioned that he was unhappy about the way he
 11 was treated there. And that he was willing to,
 12 you know, expose what he perceived was going on
 13 there that was wrong. And I was like, yeah,
 14 there's plenty of stuff going on over there that
 15 was wrong. You know, have you thought about
 16 this, and, for example, the narrative report
 17 fees? And I don't remember what his response
 18 was.
 19 Q. Do you remember the specific subjects that you
 20 and Mr. Horton talked about in terms of what was
 21 going on at the firm that either you or Mr.
 22 Horton thought was wrong and it should be
 23 exposed?
 24 A. The -- for me it was the kickbacks on narrative
 25 reports. I believe Rob mentioned the

41

1 investigation fees that were charged back to the
 2 client in many instances where the investigators
 3 didn't do anything. I can't remember much more
 4 of those specifics.
 5 Q. Rob also provided me documents about Liberty
 6 Capital. Do you recall discussing that with him?
 7 A. Yes, that came up.
 8 Q. And Rob also addressed concerns about Dr.
 9 Ghoubrial with me. Do you recall speaking about
 10 that with Rob?
 11 MR. RUBIN: Objection.
 12 A. Absolutely.
 13 Q. Do you recall providing Mr. Horton with any
 14 documents about this case?
 15 A. I did. I ended up e-mailing him the documents,
 16 same documents that I turned over here.
 17 Q. And that was before the Second Amended Complaint
 18 was filed, correct?
 19 A. Yes.
 20 Q. And why did you send those documents to Mr.
 21 Horton?
 22 A. He asked me to. I said, you know, I saved a few
 23 things, not much, but I've got a few things that
 24 are sort of representative of the unusual things
 25 going on.

42

1 Q. Did you know he was going to provide those to me?
 2 A. I don't think he mentioned you by name, but he
 3 said he was talking to a lawyer who was
 4 interested in investigating.
 5 Q. And you were okay with him providing those
 6 documents to that lawyer, correct?
 7 A. Yes.
 8 Q. And why did you agree to speak with me about this
 9 case?
 10 A. The simple answer is just to tell the truth.
 11 Q. And why did you believe that the truth needed to
 12 be told here?
 13 MR. MANNION: Objection as to the
 14 last answer was nonresponsive to the
 15 question. A little slow on the objection.
 16 A. I did not enjoy my time at KNR. I thought that
 17 what -- the way that clients got treated, used,
 18 was -- reflects poorly on the practice of law
 19 itself. That make all lawyers look bad. Sort of
 20 a race to the bottom that KNR was leading. And
 21 sort of makes an unlevel playing field. If KNR
 22 is willing to run out and hang bags on peoples'
 23 doors and pay kickbacks, it's hard for the guys
 24 who don't want to do that to compete.
 25 MR. MANNION: I'm going to object.

43

1 Move to strike.
 2 MR. PATTAKOS: Okay, Tom.
 3 MR. MANNION: Okay, Peter.
 4 Q. So let's talk about --
 5 MR. MANNION: Wait, wait, wait.
 6 Before you to do that, I want to make an
 7 objection for the record. I just want to
 8 say for the record that we've been
 9 instructed by the Judge in this case not to
 10 mention, talk about, ask questions about,
 11 ethical violations, so I would ask that the
 12 witness be -- understand that that's an
 13 order by the Court in this case.
 14 MR. PATTAKOS: It's not really.
 15 MR. MANNION: So to the extent you
 16 were trying there's some type of ethical
 17 violation for doing that.
 18 MR. PATTAKOS: That's really not
 19 what the court order says --
 20 MR. MANNION: It does.
 21 MR. PATTAKOS: -- we can pull it
 22 out and you can read it to Mr. Petti when
 23 it's your turn to examine him, but I
 24 believe the court's order just says I
 25 cannot ask --

44

1 MR. MANNION:
 2 Look (unintelligible) --
 3 MR. PATTAKOS: -- I cannot ask --
 4 MR. MANNION: -- you know what
 5 you're doing.
 6 MR. PATTAKOS: -- I cannot ask the
 7 defendant --
 8 MR. MANNION: Any witness.
 9 MR. PATTAKOS: -- specifically
 10 about whether they violated the rules and
 11 ask them specifically about the rules, but
 12 if you're saying that he can't testify as
 13 to conduct that constitutes obvious --
 14 MR. MANNION: I didn't say that --
 15 MR. PATTAKOS: Okay. Constitutes
 16 --
 17 MR. MANNION: -- I didn't say
 18 can't --
 19 MR. PATTAKOS: -- obvious ethical
 20 violations --
 21 MR. MANNION: I did not say --
 22 wow. I did not say that he couldn't
 23 testify about conduct, but it can't be tied
 24 in with ethical violations. That's the
 25 Judge's rule, not mine.

1 THE WITNESS: I'm no expert on the
 2 ethical stuff, of what the specific rules,
 3 I'm just talking about conduct.
 4 MR. MANNION: Okay. I appreciate
 5 that.
 6 BY MR. PATTAKOS:
 7 Q. So let's talk about the firm's relationships with
 8 health care providers. Let's just -- I guess,
 9 I'll start by asking you how were you instructed
 10 to handle referrals to health care providers
 11 while you were at KNR?
 12 A. Preference to people who referred them clients.
 13 They maintained a list of people who were
 14 acceptable and get them to an acceptable medical
 15 provider and with preference to people who
 16 referred cases and in some instances without any
 17 other regard than returning an exchange of -- you
 18 know, the e-mail that I'm thinking of is Akron
 19 Square is 30 now, next case -- next Akron case
 20 got to go to Floros.
 21 Q. I'll show you that e-mail and we can talk about
 22 it. Let's take a look at Exhibit 6.
 23 - - - -
 24 (Thereupon, Gary Petti Plaintiff's Exhibit 6
 25 was marked for purposes of identification.)

1 - - - -
 2 Q. You would have received this e-mail while you
 3 were at the firm, correct?
 4 A. Yes.
 5 Q. And it's Brandy mailing all pre-lit attorneys,
 6 please make sure you refer intakes there. And
 7 the subject line is Shaker Square. I just
 8 noticed that we sent two cases to A Plus Accident
 9 & Injury Center when these cases could have gone
 10 to Shaker who sends us way more cases. I sent
 11 this e-mail three times now. Please note this so
 12 next time you're on a Cleveland intake, you
 13 remember this.
 14 What's your understanding of Brandy's
 15 instruction here?
 16 A. Return -- my understanding is --
 17 MR. MANNION: Move to -- excuse
 18 me. Objection as to state of mind. Go
 19 ahead.
 20 A. The way I understood this e-mail was Shaker
 21 Square is better for KNR so make sure you send
 22 them cases at every opportunity.
 23 Q. Why was Shaker --
 24 MR. MANNION: Objection. Move to
 25 strike.

1 Q. Why was Shaker better for KNR?
 2 A. Because they send more cases over to KNR so they
 3 generate more fees. You know, you can turn one
 4 referral to Shaker Square into five referrals
 5 from them --
 6 MR. MANNION: Objection.
 7 A. -- for example.
 8 THE REPORTER: For what?
 9 THE WITNESS: To five referrals
 10 back from them.
 11 MR. MANNION: He said example
 12 after --
 13 THE WITNESS: Yeah, for example.
 14 BY MR. PATTAKOS:
 15 Q. And that's why she writes, these cases could have
 16 gone to Shaker who sends us way more cases,
 17 correct?
 18 MR. MANNION: Objection as to --
 19 A. Yes, that's the way I understood that e-mail.
 20 Q. I don't think there's any other way to understand
 21 that e-mail, do you?
 22 MR. MANNION: Objection.
 23 A. I do not.
 24 - - - -
 25 (Thereupon, Gary Petti Plaintiff's Exhibit 7

1 was marked for purposes of identification.)
 2 - - - -
 3 Q. Did you receive this e-mail?
 4 A. I did.
 5 Q. You sent me this e-mail, correct?
 6 A. I believe so.
 7 Q. And why did you send me this e-mail?
 8 A. Because this to me is a blatant, very clear
 9 example of quid pro quo.
 10 MR. MANNION: Objection. Move to
 11 strike.
 12 Q. And how so?
 13 A. Nestico makes it very clear that Akron Square has
 14 sent over 30 cases, they haven't sent them any,
 15 so KNR hasn't sent any back so KNR owes Akron
 16 Square.
 17 MR. MANNION: Objection. Move to
 18 strike.
 19 MR. KEDIR: Objection.
 20 Q. So when he says 30 to zero, what is your
 21 understanding of precisely what he means by that?
 22 MR. MANNION: Objection.
 23 A. That Akron Square during that -- during that
 24 month or over the whatever span that Akron Square
 25 had sent 30 cases over without receiving any back

1 from KNR.

2 Q. How many other chiropractors were in the area who

3 the firm would send cases to at the time,

4 roughly?

5 MR. MANNION: Objection as to what

6 area.

7 A. A couple.

8 Q. A couple?

9 A. I think.

10 Q. Horton said about 12.

11 MR. MANNION: Objection as to

12 timeframe.

13 A. Well, I don't know, maybe more than a couple. I

14 haven't thought about all the chiropractors in

15 the area, but I've never -- I don't know of

16 anyone. To look at it another way in the Akron

17 area, I can't think of anyone who is on the

18 do-not-refer-to list, if there was such a thing.

19 Q. What do you mean do-not-refer-to list?

20 MR. MANNION: Objection.

21 A. Well, they had the list of people who were okay

22 and then there was the people who, like Akron

23 Square, who were a preferred person, and I don't

24 know that such a list existed, but I don't -- you

25 know, that there are other chiropractors perhaps

1 A. Absolutely not.

2 Q. And why do you believe that?

3 A. I represented several people who had treated at

4 Akron Square various times both before I went to

5 KNR and during. And, you know, I didn't get

6 anyone who was overly thrilled with their

7 experience at Akron Square. In fact, I had at

8 least one person who comes immediately to mind,

9 bitterly complained about the fact that she was

10 referred there.

11 Q. And why was that?

12 A. She had health insurance, she had a doctor, she's

13 employed, a professional woman, and they insisted

14 she go to Akron Square. And she's like, I don't

15 get it, Gary, why?

16 Q. KNR insisted?

17 A. Yes. And that was a case that came in and was

18 eventually referred to me later. Somebody else

19 did that intake, referred her to Akron Square,

20 that person -- that was Kevin Sandel.

21 Kevin left and ultimately somehow that case

22 made its way over to me and I settled it. And in

23 the course of communicating with her, those were

24 some of the concerns that she had, that I could

25 have gone anywhere, I could have gone to my

1 in the area that are like don't send anybody

2 there.

3 MR. MANNION: Move to strike.

4 Q. You would receive e-mails from time to time from

5 Brandy that would say don't send anyone to these

6 chiropractors, correct?

7 A. Yeah.

8 MR. MANNION: Objection.

9 Q. And that's what you're referring to?

10 A. Yes. Yes. So, I mean, I can think of more than

11 a couple of chiropractors who were practicing in

12 Akron at the period of time in which I worked

13 there. I can't think of any who were on the

14 do-not-refer-to list.

15 So when I said a couple, I mean it's clear to

16 me that Akron Square was the favorite. That's

17 where people were suppose to go, if you could get

18 them there.

19 MR. MANNION: Objection. Move to

20 strike.

21 Q. Did you believe that Akron Square provided

22 treatment that was significantly better than

23 other comparable chiropractors in --

24 MR. MANNION: Objection.

25 Q. -- the area.

1 family doctor, you know, instead they send me to

2 south Akron to get chiropractor treatment. Why

3 would they do that? She was very direct.

4 Q. And she had to sign an LOP, correct?

5 A. Yes.

6 Q. To treat with Floros?

7 A. Yes, that's my recollection.

8 Q. Even though she had insurance that would have

9 otherwise paid for treatment?

10 A. Yes.

11 Q. And she indicated to you that she would have no

12 problem getting treatment on her own, correct?

13 MR. MANNION: Objection.

14 A. She indicated to me that she would much rather

15 have done that.

16 Q. Did anyone at KNR ever communicate to you that

17 the purpose of managing referrals and keeping

18 close track of them was to spread the referrals

19 out evenly to make sure that too many weren't

20 going to any one doctor?

21 A. Absolutely not.

22 MR. MANNION: Objection.

23 Q. Both Brandy and Mr. Nestico have testified that

24 the reason that the firm closely tracks its

25 referrals was so that they could monitor and make

1 sure that they were being spread out evenly.
 2 What do you think about that?
 3 MR. MANNION: Objection.
 4 A. That is contrary to my understanding. I did not
 5 believe that that's what they were doing.
 6 Q. Were you instructed to direct your clients to
 7 treat with chiropractors when you worked at KNR?
 8 A. Yes.
 9 Q. And where did those instructions come from?
 10 A. Brandy, either of the Robs. That's about it.
 11 Q. It was standard procedure?
 12 A. Yes.
 13 - - - -
 14 (Thereupon, Gary Petti Plaintiff's Exhibit 8
 15 was marked for purposes of identification.)
 16 - - - -
 17 Q. Here's Exhibit 8. Brandy writes here, if you do
 18 an intake and the person already has an
 19 appointment with a chiropractor we do not work
 20 with, either pull it and send it to one of our
 21 doctors or call the chiropractor directly. You
 22 must do this on all intakes otherwise the
 23 chiropractor will pull and send to one of their
 24 attorneys.
 25 Did you ever receive instructions like this

1 when you were at the firm?
 2 A. Yeah.
 3 MR. MANNION: Objection. This was
 4 subsequent to his departure.
 5 MR. PATTAKOS: That's why I asked
 6 him if he ever received instructions like
 7 this while he was at the firm.
 8 MR. MANNION: Do you have an
 9 e-mail then like this from when he was
 10 there, Peter?
 11 MR. PATTAKOS: No, Tom, I don't.
 12 MR. MANNION: Okay. I didn't
 13 think.
 14 MR. PATTAKOS: But you guys are
 15 refusing to produce the e-mails.
 16 MR. MANNION: There is no e-mail.
 17 MR. PATTAKOS: I'm just working
 18 with what I got before you sued Horton.
 19 MR. MANNION: Oh, come on. Stop
 20 it.
 21 MR. PATTAKOS: Congratulations,
 22 Tom.
 23 MR. MANNION: Stop it. Stop it.
 24 Q. You did receive --
 25 MR. MANNION: He tried to throw

1 his own friend under the bus saying he
 2 swindled people.
 3 A. Yeah, this -- this pretty much accurately
 4 summarizes the course of operation there.
 5 Q. And --
 6 MR. PATTAKOS: Objection. Move to
 7 strike.
 8 Q. -- what does it mean to pull a client from a
 9 chiropractor?
 10 MR. MANNION: Objection.
 11 A. Tell him that, you know, look, you need to see
 12 somebody else. Somebody who we're more familiar
 13 with. Whatever you need to tell them to move
 14 them from the chiropractor that they chose to the
 15 chiropractor that KNR wants them to go to.
 16 Q. And what was the purpose of that?
 17 A. That it's expressed in the e-mail so that there's
 18 a risk -- there's a risk with the chiropractor if
 19 they don't know KNR, perhaps they've had a bad
 20 experience with KNR. Once the patient shows up
 21 in the chiropractor's office, they'll say, look,
 22 KNR is awful, we've got these other lawyers who
 23 you're going to like better so get rid of KNR and
 24 go over here. There's a risk of that.
 25 MR. MANNION: Objection. Move to

1 strike.
 2 Q. So when a case came into KNR, how did you
 3 understand that you were suppose to handle it,
 4 according to the firm policy?
 5 MR. MANNION: Objection as to
 6 policy. Go ahead.
 7 A. It depends on how it came in. If it came in as,
 8 you know, somebody sitting in the chiropractor's
 9 office already ready to sign up, then coach them
 10 through the paperwork so that they do sign up.
 11 Turn it over to my paralegal who encourages the
 12 client to continue to treat where they're getting
 13 their treatment. Stay on top of them so they
 14 continue to make their appointments. Collect the
 15 medical records when they're done. Settle the
 16 case.
 17 Q. And what if it did not come in from a person
 18 already in the chiropractor's office?
 19 A. Get to --
 20 MR. MANNION: Excuse me one
 21 second, can you just repeat that please, I
 22 didn't catch the question.
 23 MR. PATTAKOS: He was
 24 distinguishing between -- he said it would
 25 depend on how the case came in --

1 MR. MANNION: Okay.
 2 MR. PATTAKOS: -- he first
 3 testified to -- about cases that came in
 4 where the person was calling from the
 5 chiropractor's office --
 6 MR. MANNION: Gotcha. Right.
 7 Gotcha.
 8 BY MR. PATTAKOS:
 9 Q. So what about the cases -- other cases?
 10 A. Directed to a chiropractor that KNR liked.
 11 Q. That was on the list?
 12 A. Yes, or that you were directed to.
 13 Q. By the e-mail?
 14 A. Yes. Or direct face to face.
 15 Q. Was there a particular timeline that the
 16 treatment was suppose to follow?
 17 A. Generally speaking, sure. Approximately 20
 18 treatments over the course of about five weeks.
 19 MR. MANNION: Now, wait a minute.
 20 Objection. When you say suppose to, did
 21 you mean KNR from the chiro? I was
 22 confused.
 23 MR. PATTAKOS: Did I mean what and
 24 what?
 25 MR. MANNION: When you said there

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

1 A. Return on investment. That they get a greater
 2 percentage of their bills if they get the people,
 3 you know, to get the bill to a certain level and
 4 then discharge them either as healed or maximum
 5 medical improvement.
 6 MR. MANNION: Objection. Move to
 7 strike.
 8 Q. If they treat too much then they won't -- they're
 9 likely to not get compensated for it?
 10 MR. MANNION: Objection.
 11 A. That's absolutely correct.
 12 MR. KEDIR: Objection.
 13 A. And if they treat too little, they don't get
 14 enough money.
 15 THE REPORTER: What's that?
 16 THE WITNESS: If they treat too
 17 little they don't get enough money in terms
 18 of the fee.
 19 MR. MANNION: Move to strike.
 20 Fee, you mean chiro bill?
 21 THE WITNESS: Good question.
 22 MR. MANNION: I'm just asking --
 23 THE WITNESS: Yeah, that they're
 24 -- there's more blood in the turnip.
 25 - - -

1 (Thereupon, Gary Petti Plaintiff's Exhibit 9
 2 was marked for purposes of identification.)
 3 - - -
 4 Q. Let's take a look at Exhibit 9. This is an
 5 e-mail from Brandy to Horton where she's talking
 6 about a referral that she made to the firm. She
 7 said since she is a nurse, she may not want
 8 chiro. Feel her out for that before you refer.
 9 She may want family doc and PT.
 10 MR. MANNION: Objection.
 11 Q. Did you ever --
 12 MR. MANNION: I'm going to again
 13 object. After he was terminated. Go
 14 ahead.
 15 Q. Did you ever have this experience where the
 16 firm's advice as to medical treatment depends on
 17 the level or type of education a person has?
 18 MR. MANNION: Objection.
 19 A. I did not have that experience, but we got them
 20 to a chiropractor regardless of the circumstance.
 21 Q. Do you remember anything about Red Bag referrals?
 22 A. I remember being confused by them.
 23 Q. Why is that?
 24 MR. MANNION: Objection.
 25 A. I didn't understand -- of course wasn't privy to

1 the marketing strategies or anything like that so
 2 I just got the directive whenever it's a Red Bag
 3 referral, you have to refer to somebody else --
 4 or somebody in particular.
 5 Q. And you never came to understand why that was the
 6 case?
 7 A. Right.
 8 - - - -
 9 (Thereupon, Gary Petti Plaintiff's Exhibits
 10 10, 11 were marked for purposes of
 11 identification.)
 12 - - - -
 13 Q. Exhibit 10 and we'll look at Exhibit 11 as well.
 14 MR. MANNION: Just whenever you're
 15 ready for a break. I need a restroom break
 16 in a little bit, but it doesn't --
 17 MR. PATTAKOS: Okay.
 18 MR. MANNION: -- I don't have to
 19 go this second. Well, I do have to go.
 20 Q. Here's Exhibit 10 and 11. Are these the types of
 21 instructions that you would receive about Red Bag
 22 referrals?
 23 A. Yes.
 24 Q. And Exhibit 10 also reflects -- well, she says
 25 please print this out and refer to it when doing

1 intakes. What did you understand that to mean
 2 you were suppose to do?
 3 MR. MANNION: Objection.
 4 A. Comply with this directive. Send to the people
 5 based on their location to the specific
 6 chiropractor.
 7 Q. Okay.
 8 MR. PATTAKOS: Just one more quick
 9 question --
 10 MR. MANNION: Sure.
 11 MR. PATTAKOS: -- quick line of
 12 questioning and then we can take a break.
 13 Q. Did you understand that the chiropractors work
 14 with telemarketers?
 15 A. Yes, absolutely.
 16 Q. What was your understanding of that process?
 17 A. The chiropractors got a -- their telemarketers
 18 get a list of accident victims of drivers,
 19 passengers, passengers even in the at-fault car
 20 and as soon as they're available, they start
 21 calling and encouraging people to come in for
 22 free visits. You know, various times they offer
 23 free gas cards. Different incentives to get them
 24 to come in.
 25 MR. KEDIR: Objection.

1 Q. What happens from there?
 2 MR. MANNION: Objection. Form.
 3 A. When they come to the chiropractic office, he
 4 sells them on their need for further treatment
 5 then they make referral to a friendly lawyer.
 6 MR. MANNION: Objection.
 7 MR. KEDIR: Objection.
 8 Q. The chiropractor makes the referral --
 9 A. Yes.
 10 Q. -- to a friendly lawyer?
 11 MR. MANNION: Objection. Move to
 12 strike.
 13 Q. Did you understand that this happened with KNR?
 14 A. Yeah.
 15 Q. And which chiropractors?
 16 A. All of their preferred ones. Akron Square, West
 17 Tusc, Town & Country, Vernon Place, Werkmore,
 18 certainly all the Plambeck Group --
 19 MR. KEDIR: Objection.
 20 A. -- Toledo Spine.
 21 MR. KEDIR: Move to strike.
 22 Q. Thera Reid and Naomi Wright are plaintiffs in
 23 this case -- well, Naomi was a plaintiff -- they
 24 have testified that they were contacted by a
 25 chiropractor's office who sent a car to pick them

1 up and then provided them with a KNR fee
 2 agreement and put them on the phone with a KNR
 3 attorney. Is that consistent with your
 4 experience?
 5 MR. MANNION: I'm going to object.
 6 What do you mean Naomi Wright testified?
 7 You wouldn't give us her deposition.
 8 MR. PATTAKOS: She made
 9 allegations.
 10 MR. MANNION: Well, that's a
 11 little different.
 12 MR. PATTAKOS: Well, we can get an
 13 affidavit from her.
 14 MR. MANNION: That's not the
 15 point.
 16 MR. PATTAKOS: I also told you you
 17 could take her deposition.
 18 MR. MANNION: Well, but you just
 19 told the witness that she testified.
 20 MR. PATTAKOS: I'm sorry.
 21 MR. MANNION: She did not testify.
 22 MR. PATTAKOS: Okay.
 23 BY MR. PATTAKOS:
 24 Q. She's told me and alleged in her Complaint and
 25 Thera Reid has testified that this is what

65

1 happened. Is that consistent with your
 2 experience?
 3 MR. KEDIR: Objection.
 4 MR. MANNION: Objection to form.
 5 A. Yeah, I don't know anything about those people
 6 specifically, but that process is exactly my
 7 experience.
 8 Q. Did you understand that it was routine for these
 9 preferred chiropractors to keep KNR fee
 10 agreements at their offices?
 11 A. Yes.
 12 MR. MANNION: Objection.
 13 MR. KEDIR: Objection.
 14 Q. And that it was routine for KNR investigators to
 15 go meet the KNR clients at the chiropractors'
 16 offices?
 17 A. From time to time. I think my recollection is
 18 that most often if they sign up at the
 19 chiropractor's office, the investigator never
 20 went. And that the investigators were utilized
 21 more so to sign people up who were not at the
 22 chiropractor's office.
 23 Q. But you didn't have a lot of experience with this
 24 because most of the cases that you handled were
 25 cases that you had brought over from Slater &

66

1 Zurz, correct?
 2 A. That's right, yes.
 3 Q. And that you didn't do a very high number of
 4 intakes because you didn't want to, correct?
 5 A. That's right.
 6 Q. Okay. And that e-mail that we looked at earlier,
 7 I forget the exhibit number, it may be three or
 8 four, where it shows you handled 36 intakes for a
 9 month whereas Josh handled a hundred and some --
 10 A. Uh-huh.
 11 Q. -- was that typical -- was that a typical month
 12 for you, about 36?
 13 A. It was pretty typical.
 14 MR. PATTAKOS: Okay. We can take
 15 a break.
 16 THE VIDEOGRAPHER: Off the record.
 17 - - - -
 18 (Thereupon, a recess was had.)
 19 - - - -
 20 THE VIDEOGRAPHER: On the record.
 21 BY MR. PATTAKOS:
 22 Q. So when you provided documents to Mr. Horton
 23 about this case before you ever talked to me,
 24 those documents pertain to the narrative reports,
 25 correct?

67

1 A. Most of them.
 2 Q. And why were you concerned about the narrative
 3 reports?
 4 A. I believe strongly the narrative reports are a
 5 kickback and are bad for the practice of law in
 6 general and plaintiffs lawyers in particular.
 7 MR. MANNION: Objection.
 8 MR. KEDIR: Objection.
 9 MR. MANNION: Move to strike.
 10 Q. And why is it that you believe that?
 11 A. That they're a kickback?
 12 Q. Yes.
 13 A. There's --
 14 MR. MANNION: Objection.
 15 A. -- no other reason for them.
 16 MR. POPSON: There's what?
 17 A. There's no other reason for them that -- you
 18 know, in Akron we, of course, did business with
 19 chiropractors and that sort of thing for years
 20 without anyone ever paying a narrative report fee
 21 on every single case or virtually every single
 22 case to one particular chiropractor. There's no
 23 justification for it.
 24 And then as I understand it, the volume of
 25 cases, once KNR started paying for narrative

68

1 report fees went to them -- in terms of an
 2 overwhelmingly majority of cases went to them.
 3 MR. KEDIR: Objection.
 4 Q. What do you mean by that?
 5 MR. MANNION: Objection. Move to
 6 strike.
 7 Q. You mean that KNR started taking in a higher
 8 volume of cases once it started to pay the
 9 narrative reports?
 10 A. Yes.
 11 Q. How do you know that?
 12 A. Well, it was -- and it's an observation from my
 13 time at Slater & Zurz, but also Brandy told me
 14 that.
 15 Q. When did Brandy tell you that? What do you
 16 recall about that?
 17 A. I had a conversation with her where she was
 18 reviewing the history of the firm and how it
 19 developed and she told me that business really
 20 took off once Rob invented the narrative report
 21 thing.
 22 MR. MANNION: Objection.
 23 MR. KEDIR: Objection.
 24 A. And that's a quote.
 25 THE WITNESS: So you can giggle,

1 but you weren't there --

2 MR. MANNION: I'm sorry --

3 THE WITNESS: -- I was.

4 MR. MANNION: -- well, have you

5 read John Lynett's affidavit?

6 THE WITNESS: No. I don't care

7 what John had to say.

8 MR. MANNION: Okay.

9 THE WITNESS: I worked with John.

10 MR. MANNION: I just think it's

11 funny that you say that Nestico invented a

12 narrative report.

13 THE WITNESS: Well, that's what

14 Brandy told me --

15 MR. MANNION: Okay.

16 THE WITNESS: -- and that's what I

17 testified to.

18 BY MR. PATTAKOS:

19 Q. Well, John Lynett probably would get reports from

20 chiropractors from time to time, correct?

21 A. As far as I'm aware, yeah. John was above me in

22 the food chain, so exactly what he did, I don't

23 know. I didn't review his stuff.

24 Q. It wasn't necessarily uncommon or unusual for a

25 law firm to obtain an opinion from a

1 chiropractor, correct?

2 A. Correct. I've done it.

3 Q. And what was different about the narrative

4 reports at KNR that caused you to be concerned

5 about them?

6 A. Well, they do it every single time immediately as

7 soon as the case comes in. As I understand it,

8 they send the check directly to the chiropractor,

9 his or herself, at their home and the reports

10 themselves, if you compare them -- and you guys

11 have seen real reports -- they don't look

12 anything like what they produce. They're a

13 couple sentences all of which can be gleaned

14 easily from the medical records. And it's clear

15 it's just -- they want the claim settled as fast

16 as possible.

17 Q. Well, a lot of the --

18 MR. MANNION: Objection.

19 MR. KEDIR: Objection.

20 MR. MANNION: Move to strike.

21 Guys, guys, please, give a little pause

22 between question and answer. We are

23 allowed to object.

24 Q. Some of the narrative reports that we've seen

25 from Floros are basically one page with a few

1 paragraphs. Does that sound like what you're

2 describing?

3 A. Yeah, I've seen them worse. I think that

4 actually is an evolution. The early ones I saw

5 were basically yes or no. That the firm would

6 submit questions that were capable of being

7 answered yes or no.

8 MR. KEDIR: Objection.

9 A. Do you believe that the injuries caused by this

10 accident -- or the injuries that you treated for

11 were caused by this accident? Yes. And then a

12 few other questions.

13 Q. Let's take a look -- let's take a look at a

14 couple of the narrative reports for the named

15 plaintiffs in this case. We can mark these as 12

16 and 13.

17 - - - -

18 (Thereupon, Gary Petti Plaintiff's Exhibits

19 12, 13 were marked for purposes of

20 identification.)

21 - - - -

22 MR. POPSON: These are Exhibits 13

23 or 14.

24 MR. PATTAKOS: 12 and 13.

25 MR. POPSON: 12 and 13.

1 MR. PATTAKOS: And the

2 highlighting is of no significance.

3 MR. MANNION: No, wait. Which one

4 is 12?

5 MR. PATTAKOS: Norris is 12 and

6 Reid is 13.

7 MR. MANNION: Got it.

8 MR. PATTAKOS: I apologize for the

9 highlighting on these. You'll just see

10 that the client's name is highlighted and

11 then there's one sentence that was

12 highlighted on Monique Norris' report that

13 I just couldn't get deleted off of there,

14 but that was something I added to the

15 document after it had been produced for

16 another purpose. It has no significance

17 here.

18 MR. MANNION: I'll just object to

19 the -- since this postdated his departure,

20 but...

21 MR. PATTAKOS: That's fine.

22 And -- I mean, I'm going to --

23 MR. MANNION: Ask him the

24 question.

25 MR. PATTAKOS: -- I'm going to ask

73

75

1 him specifically about that.

2 BY MR. PATTAKOS:

3 Q. So your testimony is that these narrative reports

4 represent an evolution from the narrative reports

5 that you were familiar with?

6 A. That's my recollection, yeah. These are way more

7 than what they used to be.

8 Q. Okay. But, you know, in terms of what was

9 added -- if you look at say Exhibit 13, for

10 example, the Thera Reid report --

11 A. Uh-huh.

12 Q. -- if you look at the large paragraph towards the

13 bottom of the page beginning with the sentence,

14 the time needed for an injured soft tissue to

15 heal --

16 A. Uh-huh.

17 Q. -- and then the next paragraph -- I suppose you

18 can call it a paragraph, they're not really

19 indented, but it says, several studies have made

20 it quite clear -- that looks like boilerplate to

21 you, doesn't it?

22 MR. MANNION: Objection.

23 A. It does. Sure. It's not referring to her at

24 all.

25 Q. Is there any other information here, apart from

1 A. I can't remember. I met a lot of them over the

2 years. I can't remember. It certainly was not

3 Floros. I don't think I ever had a

4 person-to-person conversation with Floros.

5 Q. Okay. And look at Monique Norris' report,

6 Exhibit 12. You see that -- and again, the two

7 largest paragraphs here under the treatment

8 section, if you look at -- toward the middle of

9 the sentence beginning with the use of passive

10 modalities and then all that text that goes all

11 the way down to prognosis, that looks like

12 boilerplate --

13 MR. MANNION: Wait one --

14 Q. -- as well, doesn't it?

15 MR. MANNION: -- just -- okay.

16 Wait, I just want to find it here. I'm

17 going to object. All the way down -- where

18 are you saying? Down to where it --

19 MR. PATTAKOS: The use of passive

20 modalities all the way down to the

21 prognosis section.

22 MR. MANNION: Okay. All right.

23 A. Yes, I would agree.

24 Q. And then even under the prognosis where it says

25 any trauma to the spine or extremity can result,

74

76

1 the opinion that's contained at the very bottom

2 that wouldn't be easily derived from the

3 patient's medical records?

4 A. No, I mean this is all from the medical records.

5 And I suspect I've seen them, and I can't

6 remember who introduced me to them, but there's a

7 -- chiropractors have a program where these are

8 like auto-generated, so I doubt that he even did

9 anything.

10 MR. KEDIR: Objection.

11 MR. MANNION: I'm going to object

12 as well.

13 A. I'm just guessing.

14 MR. MANNION: Move to strike.

15 A. Like I said, I've seen it. One of the

16 chiropractors I know showed me that, you know,

17 I've got this thing that generates reports and it

18 -- if you input the records in there, it

19 automatically creates a report for them.

20 MR. MANNION: I understand, but

21 I'm going to object on speculation as to

22 whether Dr. Floros (unintelligible) --

23 THE WITNESS: I know, I'm just

24 being clear.

25 Q. Who was the chiropractor that showed you that?

1 et cetera.

2 A. Again, I agree.

3 MR. MANNION: Objection.

4 Q. That's boilerplate.

5 A. Right. It doesn't necessarily have any specific

6 relation to what Ms. Norris experienced.

7 Q. As an experienced personal injury attorney who

8 handled thousands of cases over your career, how

9 long would it take you to assemble this

10 information from a patient's medical records and

11 assuming you had access to the same studies and

12 boilerplates --

13 MR. KEDIR: Objection.

14 MR. MANNION: Objection.

15 Q. -- to put reports like this together,

16 understanding that you can give an opinion as a

17 chiropractor --

18 MR. MANNION: Objection.

19 Q. -- but everything else except for the sentence

20 stating the chiropractor's opinion?

21 MR. MANNION: Objection. That is

22 an outrageous question.

23 A. Not long at all. I mean, this is all stuff

24 that's in the medical records, so -- I wouldn't

25 even do it. This is uneth -- it's repetitive.

1 All this stuff is in the medical records.
 2 Now, the insurance company of course sees
 3 millions of soft-tissue cases. They're not being
 4 educated by this paragraph. They're not. I
 5 mean, they've been sent this paragraph thousands
 6 of times a year by KNR. How is it meaningful to
 7 them in any specific case?
 8 Q. And the opinion that the doctor gives -- the
 9 chiropractor gives at the bottom of the page, did
 10 you ever have the experience of Floros or any of
 11 the chiro -- any of the KNR's preferred
 12 chiropractors coming back with an opinion on one
 13 of these reports that the injuries were not
 14 caused by the car accident at issue?
 15 MR. MANNION: Objection.
 16 MR. KEDIR: Objection.
 17 A. Never.
 18 Q. I'm sorry?
 19 A. Never.
 20 Q. Did you ever become aware of any attorney at the
 21 law firm while you were there getting a narrative
 22 report from Dr. Floros or any of the other firm's
 23 chiropractors where the chiropractor did not find
 24 causation?
 25 A. Never.

1 So this didn't go to me, it didn't go to any of
 2 the lawyers other than Nestico and Redick.
 3 MR. MANNION: I'm going to object
 4 because I think this predated his
 5 employment.
 6 Q. Did the lawyers have any discretion as to whether
 7 the narrative report was ordered?
 8 MR. MANNION: Objection.
 9 A. My experience, absolutely not. I was told
 10 directly by Megan Jennings that, no, the lawyers
 11 didn't have that discretion, and she was my
 12 paralegal.
 13 Q. Let's take a look at Exhibit 15.
 14 - - - -
 15 (Thereupon, Gary Petti Plaintiff's Exhibit 15
 16 was marked for purposes of identification.)
 17 - - - -
 18 Q. Does this document look familiar?
 19 A. It was after I was fired I think.
 20 Q. Does this look similar to e-mails that you would
 21 have received?
 22 A. Yeah --
 23 MR. MANNION: Objection.
 24 A. -- yes.
 25 Q. Did you ever ask why certain narrative reports --

1 - - - -
 2 (Thereupon, Gary Petti Plaintiff's Exhibit 14
 3 was marked for purposes of identification.)
 4 - - - -
 5 Q. What do you recognize this document as?
 6 A. It is a document that indicates that only Dr.
 7 Floros gets the narrative report fee.
 8 Q. Well, this is redacted --
 9 MR. KEDIR: Objection.
 10 Q. -- so I believe there were other -- there were
 11 other chiropractors listed here.
 12 A. Okay.
 13 Q. Would you receive e-mails like this while you
 14 worked at KNR?
 15 A. Yeah, I'd see them.
 16 Q. Where it would say these are the narrative fees
 17 that we're paying and then it would list a number
 18 of chiropractors?
 19 A. I'd see them. Just like this one, this didn't
 20 come to me, this went to all the paralegals and
 21 Nestico and Redick because those are the people
 22 who sent out the checks.
 23 My experience was lawyers had nothing to do
 24 with whether or not there was a narrative report
 25 fee and that the paralegals sent the checks out.

1 certain chiropractors were paid for narrative
 2 reports and others weren't?
 3 A. I absolutely do not.
 4 Q. And why didn't you ask?
 5 A. Because they're a kickback and I knew that.
 6 MR. MANNION: Objection. Move to
 7 strike.
 8 MR. KEDIR: Objection.
 9 Q. But you refused to do it -- you refused to order
 10 these reports on your cases, correct?
 11 A. Yeah, I did not know that they were going out
 12 automatically. So I did get an Akron Square
 13 intake, and when I did that intake, I never
 14 ordered a narrative report. And I figured I
 15 protected myself from this scheme by not ordering
 16 the narrative report. I thought at some point it
 17 would come up, that, you know, they'd address it
 18 with me, why didn't you order a narrative report
 19 or you have to, but then when my paralegal put
 20 all the stuff together, all the medical records,
 21 bills, and in this case a report, it was in there
 22 and I went to her directly, I said, what's this
 23 doing here, I didn't order it, and she said, we
 24 do it all the time.
 25 MR. MANNION: Objection. Move to

1 strike.

2 MR. KEDIR: Objection.

3 Q. Do you have any understanding of why -- well,

4 strike that.

5 The subject line in this e-mail is Plambeck

6 Clinics --

7 A. Uh-huh.

8 Q. -- and there are -- there's a list of

9 chiropractors that I understand to be all from

10 Plambeck Clinics, but then there are a couple

11 chiropractors listed here including Dr. Alex

12 Frantzis here at the top where it says "not

13 Plambec."

14 Do you understand the significance of the

15 Plambeck notation here or why there was -- why

16 the distinction was made?

17 MR. MANNION: Objection.

18 A. Those are -- well, those are high-volume

19 chiropractors. And those were, in my time there,

20 a significant source of referrals to KNR were

21 from those clinics. Plambeck is the name of the

22 guy who, in some sense, owns all of those, Kent

23 Plambeck. That's my only understanding.

24 MR. MANNION: Objection. Move to

25 strike.

1 MR. KEDIR: Objection.

2 Q. All of the Plambeck Clinics were high-volume

3 clinics?

4 A. Yeah. They were, you know, market leaders

5 basically. Columbus is sort of an exception

6 because Town & Country was probably the leader

7 down there.

8 Q. Leader in terms of what?

9 A. Volume.

10 Q. So they were leaders in terms of establishing a

11 high-volume chiropractic practice?

12 A. Right.

13 Q. And working with personal injury firms?

14 A. Really aggressive telemarketing and high volume

15 in terms of intakes, referrals to lawyers, all

16 that -- all that's related.

17 Q. Really aggressive telemarketing to car accident

18 victims?

19 A. Yes. Like we discussed earlier, the

20 telemarketing off the crash reports.

21 MR. KEDIR: Objection.

22 Q. I don't have a date for this document. It came

23 from -- KNR produced it as one of their internal

24 training manuals or employment handbooks.

25 - - - -

1 (Thereupon, Gary Petti Plaintiff's Exhibit 16

2 was marked for purposes of identification.)

3 - - - -

4 MR. MANNION: I'm going to again

5 object. As you know, this is to the staff.

6 Q. So where it says at the top, Those highlighted

7 are the only narrative fees that get paid

8 automatically to the doctor personally.

9 A. Uh-huh.

10 Q. Was this consistent with the way that narrative

11 procedure worked while you were at the firm?

12 A. Yes, it certainly appears to be.

13 MR. MANNION: Objection.

14 Q. Was it your experience that both the narrative

15 report would be requested and the fee would be

16 paid automatically from these -- from select

17 chiropractors at certain times?

18 A. Yes.

19 Q. So she isn't just saying here that if the report

20 is ordered by the attorney, then the payment will

21 be made automatically. She's saying -- or the

22 policy is that all of these chiropractors, if a

23 case is with them, will get paid for a narrative

24 report, correct?

25 MR. MANNION: Objection.

1 A. That was certainly my experience. Nobody ever

2 told me anything differently than that. And like

3 I described a minute ago, in the case that I had

4 from Akron Square, she paid it, nobody ever asked

5 me anything, whether or not we should get it.

6 And after I objected to it, she said there was

7 nothing that she could do about it.

8 Q. So it ended up getting submitted to the insurance

9 company?

10 A. Yes.

11 - - - -

12 (Thereupon, Gary Petti Plaintiff's Exhibit 17

13 was marked for purposes of identification.)

14 - - - -

15 Q. This Exhibit 17 is what you're referring to, your

16 exchange with Megan Jennings --

17 A. Uh-huh.

18 Q. -- correct?

19 A. Yes.

20 Q. And it looks like there's, the subject line says,

21 "remember, no reports from doktor flooroes."

22 Why did you spell his name wrong there?

23 A. I figured I was going to cause some trouble so I

24 wanted to be a little lighthearted about it.

25 Q. Cause some trouble by sending this e-mail?

1 A. Yes.

2 Q. And this was after Megan had told you that it

3 wasn't your choice to order the narrative report?

4 A. This was the very next intake I did from Akron

5 Square --

6 Q. Okay.

7 A. -- so since she told me previously that these go

8 out automatically -- and it already was done in

9 this case -- so as soon as I sign this up,

10 whoever those people were, it doesn't say on

11 here, so it was that immediate. I just got off

12 the phone, it was Akron Square, I sent her this

13 e-mail saying, remember we talked about this the

14 other day, I do not want narrative reports, and

15 that's what I'm saying.

16 Q. The first case where this got your attention and

17 you saw that this was an automatic procedure, do

18 you recall what the settlement amount was on that

19 case, roughly?

20 A. I was fired before that case settled, I believe.

21 Because I got fired like less than two weeks

22 after this, after I sent this e-mail. And the

23 other one would have been days before then.

24 Q. And you write here in this Exhibit 17 that, "I've

25 asked a number of adjusters about the importance

1 of those reports and the most common response is

2 nearly uncontrolled laughter."

3 A. Uh-huh.

4 Q. Is that true?

5 A. It's hyperbole. I mean, I exaggerated it, but it

6 was clear in the people who -- and the adjusters

7 that I had conversations with that they didn't

8 give it any credence whatsoever. Floros is a

9 disliked guy among insurance adjusters.

10 MR. MANNION: Move to strike.

11 MR. KEDIR: Objection.

12 A. Because of the volume. You know, and, you know,

13 I don't love insurance companies, but, you know,

14 they look at it, everybody that makes a claim

15 against them is a bad guy. And since Floros had

16 tons of patients and they saw tons of his medical

17 records and they were handing out tons of money

18 to him, in terms of medical fees, he was not a

19 well-liked guy. And I got comments all the time

20 about the connection between Floros and KNR.

21 Q. From adjusters?

22 A. Yes.

23 Q. Did you discuss those comments with your

24 colleagues or management at the firm?

25 A. Nope.

1 Q. And why didn't you?

2 A. Because that was their business model. I mean,

3 high volume, turn it over as quick as possible.

4 And then actually Rob even told me that before I

5 started. He told me that Slater paid me too much

6 and that if he didn't pay me so much money, then

7 he would be able to invest more money in

8 marketing and advertising, get more people, send

9 them back to the chiropractor, and then get more

10 in return from the chiropractor.

11 MR. MANNION: Objection. Move to

12 strike.

13 Q. More cases --

14 A. More cases referred to him, yes. And that was

15 before I ever started. Because we were talking

16 about -- we were discussing my compensation at

17 KNR, what it would be. And I got -- actually I

18 made more money at Slater & Zurz. And he said --

19 you know, he couldn't pay me that much because he

20 needed to keep a bigger portion of it so that

21 could be reinvested back into marketing for the

22 firm.

23 Q. To bring more clients in?

24 A. Yes. And then refer to the chiropractors and

25 keep feeding the cycle like that.

1 Q. So it would have been pointless for you to say

2 you were concerned about this as --

3 A. Right, that was my understanding, this is how

4 things work.

5 Q. Okay. Did you ever talk about it with your

6 colleagues?

7 A. Yeah, sure. The guy who got fired right away --

8 I didn't expect to love it at KNR. All I wanted

9 to get out of it was 18 months, but I was

10 surprised at the whole experience. And he came

11 from -- gosh, I don't remember the name -- he

12 came from a defense firm. And I remember saying,

13 you know, some things to him, but I didn't trust

14 a lot of people there, so it was people, I don't

15 know who it was, relayed to me that there was

16 sort of a culture of snooping and telling on

17 people. So I mostly kept my objections and

18 things to myself. I just wanted to do my 18

19 months and go.

20 Q. So you were fired two weeks after sending this

21 e-mail?

22 A. Roughly. Early December.

23 Q. Okay.

24 A. It was a Friday I know that. So it could have

25 been the first Friday. And, in fact, I could

1 probably, if needed -- if they didn't have that
 2 record, I probably could figure it out because I
 3 know very shortly thereafter I went to a CLE and
 4 I saw Mr. Slater on that day at the CLE. Because
 5 that was my year for reporting and his as well.

6 So I saw him at a CLE and I told him, you
 7 know, that I had been fired and he offered me a
 8 job.

9 Q. Mr. Slater offered you a job?

10 A. He did. The first of a few times.

11 Q. Since you've left --

12 A. Yes.

13 Q. -- KNR?

14 A. Yes.

15 Q. But you don't want to go back?

16 A. Do not.

17 Q. Let's look back at your affidavit, Exhibit 1.

18 Paragraph two you state, while I was working for
 19 Slater & Zurz, I first learned that KNR paid
 20 kickbacks to certain chiropractors in the form of
 21 a narrative fee. When I spoke with certain
 22 chiropractors from Plambeck-owned clinics who
 23 would occasionally refer me cases, they told me
 24 that KNR paid them a narrative report fee every
 25 time the chiropractors referred a case to KNR and

1 for the client to come see me or anything like
 2 that. I said, well, if you're going there, I'll
 3 meet you there. So I did that. And I signed the
 4 person up and had a conversation with whoever the
 5 doctor was after that. And I don't think it was
 6 Tassi.

7 Q. Crawley?

8 A. It might have been Crawley.

9 Q. Cawley. Cawley.

10 A. Yeah, it might have been Cawley, but something
 11 tells me it was more of like a temporary guy.

12 Because Tassi definitely is not temporary, he was
 13 entrenched there, so it wasn't him, but
 14 someone -- you know, like, look, you know, how do
 15 I get -- how do we build a better relationship?
 16 And he said, well, KNR gives me 200 bucks every
 17 time we refer, so are you willing to do that?
 18 No, I don't need a narrative report in every
 19 case. And that was the end of it.

20 MR. KEDIR: Objection.

21 Q. It says in your affidavit, you say, I didn't
 22 understand at the time that this was KNR's
 23 firm-wide policy as opposed to a practice
 24 followed by certain KNR attorneys. And when I
 25 went to work for KNR, I assumed that I would not

1 asked if I would do the same. I told them I
 2 would not.

3 Can you explain this more? Can you recall
 4 this more --

5 MR. MANNION: Objection.

6 A. I used to -- my sort of marketing strategy as an
 7 individual lawyer was to just be friendly with
 8 chiropractors. So whenever I got the opportunity
 9 to have a client with a new chiropractor or with
 10 a chiropractor who I didn't do business with
 11 often, I would engage in conversation with them
 12 about, you know, how do I get more and, you know,
 13 what happens if I send you more. And that's -- I
 14 believe -- the one I can think of -- and I don't
 15 remember what doctor it was, but I know it was at
 16 West Tusc. I had a client who was down in
 17 Canton, I went over there I think to sign the
 18 person up, because they had already been
 19 telemarketed by West Tusc. So, you know, their
 20 appointment was -- it was in the evening I
 21 remember. It was like 5:00 at night, 6:00 at
 22 night, so I said, okay, well, I'll meet you
 23 there. Because I had a concern that I knew that
 24 West Tusc referred a lot of cases to KNR, so I
 25 actually -- so that's why I didn't want to wait

1 be required to charge my clients for unnecessary
 2 narrative fee expenses.

3 A. That's correct. I assumed, because it was always
 4 my experience, that the lawyer who was handling
 5 the case was the one who had the ability to
 6 decide whether or not a narrative report was
 7 necessary, given the facts.

8 Q. But didn't the doctor at West Tusc, the
 9 chiropractor at West Tusc, tell you that KNR was
 10 sending the narrative fee every time?

11 MR. MANNION: Objection.

12 A. Yeah, he did. But I had no -- at that point I
 13 had no idea that I was going to end up at KNR.
 14 So my -- the way I understood that was whatever
 15 lawyers he was dealing with there. Because KNR's
 16 business model is very different than Slater &
 17 Zurz.

18 At Slater & Zurz I was my own guy. Jim and
 19 Rick really didn't bother much with what I did on
 20 a day-to-day basis. And I assumed that other law
 21 firms were like that, but KNR is not. And my
 22 experience was that very few of the individual
 23 lawyers had direct contacts with any doctors and
 24 it was all -- the firm made all those contacts
 25 and the firm determined the course of dealing

93

1 between the lawyers and the chiropractor. And I
 2 knew that I was never going to get a lot out of
 3 West Tusc Chiropractic.
 4 Q. And why was that?
 5 MR. MANNION: Objection.
 6 A. Because of the relationship they had with KNR.
 7 MR. MANNION: Objection.
 8 Q. And how did you know about that relationship?
 9 A. I don't remember.
 10 Q. If you look at paragraph six of your affidavit on
 11 page three. This is an accurate representation
 12 of the interaction with Megan Jennings that you
 13 were just discussing about the narrative reports,
 14 paragraph six and seven?
 15 MR. MANNION: Objection.
 16 A. Yes, that is accurate, that's what happened.
 17 Q. When was the last time you looked at this
 18 affidavit?
 19 A. Probably the I day I signed it.
 20 Q. Which was?
 21 A. April 3rd, 2017.
 22 Q. So almost two years ago?
 23 A. Right.
 24 Q. I haven't sent you any other documents to look at
 25 about this case, have I?

94

1 A. No.
 2 Q. Did you review any documents to prepare for
 3 today?
 4 A. Nothing to prepare. I have looked at the docket
 5 from time to time just to satisfy my curiosity as
 6 to what was going on. Nothing -- I would say --
 7 I don't know. Nothing to prepare. I know what
 8 I'm going to say.
 9 Q. You don't feel like you had a need to prepare?
 10 A. No, no, I didn't. Some of the dates, you know,
 11 because after I -- after I got fired from KNR, my
 12 own personal life has been less structured, so
 13 some of the dates. Really that's my only issue
 14 is the dates. You know, I don't remember the
 15 year that things happened because I have no
 16 reason to remember the year that I got fired,
 17 even the year that I worked there really.
 18 I know that I worked for Slater & Zurz about
 19 15 years, so when you asked me that early on,
 20 that's really the only way I was able to come up
 21 with the date is I did the math.
 22 Q. Were you upset they wouldn't make you a partner
 23 at Slater & Zurz?
 24 A. Not at all.
 25 Q. Why is that?

95

1 A. Their partnership deal was not economically
 2 favorable to me. So they called me a partner,
 3 but I financially was not a partner.
 4 Q. They represented you to the public as a partner?
 5 A. Right --
 6 Q. Okay.
 7 A. -- right. But financially I didn't share in the
 8 profits. I made more money than some of the
 9 partners, so.
 10 Q. Okay.
 11 A. And that was clear. That's actually when I
 12 described that they were going to change my
 13 compensation structure what Rick specifically --
 14 Rich Zurz specifically told me I'm making more
 15 money than one of the partners and that they
 16 needed to change his deal as well so they
 17 couldn't change his deal without changing mine.
 18 Q. Okay. They liked you there, didn't they?
 19 A. Yes. They offered me a job within days after I
 20 was fired and at least twice more after that.
 21 Q. Let's take a look at Exhibit 18.
 22 - - - -
 23 (Thereupon, Gary Petti Plaintiff's Exhibit 18
 24 was marked for purposes of identification.)
 25 - - - -

96

1 MR. POPSON: What number is this
 2 one?
 3 MR. PATTAKOS: 18.
 4 Q. If you read from the bottom I believe is the
 5 chronology here --
 6 MR. MANNION: I'm going to object.
 7 This is after he left.
 8 MR. PATTAKOS: Yep, nobody is
 9 claiming otherwise, Tom.
 10 Q. Have you ever seen this before?
 11 A. I have not.
 12 Q. So if you read the exchange, it's a chain among
 13 KNR lawyers, it looks like -- well, it looks like
 14 all KNR attorneys are copied --
 15 A. Uh-huh.
 16 Q. -- but Rob Horton first starts off with an e-mail
 17 about a new pre-lit procedure by Allstate.
 18 Josh Angelotta says he's getting unusually
 19 low Allstate offers on Plambeck cases.
 20 Ken Zerrusen then says, "me too. They have
 21 tightened the screws even more."
 22 Josh Angelotta responds by saying in part
 23 that we're wasting our time by allowing the --
 24 allowing Allstate to have recorded statements
 25 because it is wasting the client's time and

1 delaying the inevitable which is filing suit on
 2 all of these claims.
 3 And then Mr. Nestico says, "I agree we need
 4 to file all these Allstate files. Please send
 5 John and I a list of your Allstate Plambeck
 6 cases."
 7 A. Uh-huh.
 8 Q. Did you ever become aware of the fraud suits that
 9 were brought against Plambeck?
 10 A. Yes, I was very aware.
 11 Q. How do you become very aware of them?
 12 A. It was at Slater & Zurz they did business with
 13 Plambeck. I was familiar with Plambeck. I don't
 14 know how it happened, but I had lunch with him
 15 once.
 16 Q. Kent Plambeck?
 17 A. Uh-huh. Down in Canton. So it was a topic of
 18 gossip and conversation.
 19 Q. What do you remember about it?
 20 A. That they were going to get hit and they were up
 21 to no good and Allstate was on them.
 22 MR. KEDIR: Objection.
 23 Q. Up to no good in what way?
 24 A. I was not specifically familiar. I would not --
 25 I'm not familiar with how Plambeck itself works

1 A. Yes, that was while I was there.
 2 Q. And that includes Floros, correct?
 3 A. Yes, it does.
 4 MR. KEDIR: Objection.
 5 Q. Because Floros is -- Akron Square is a Plambeck
 6 clinic, correct?
 7 A. Correct.
 8 Q. So you knew that the insurance companies would,
 9 so to speak, tighten the screws on any Plambeck
 10 case even while you were at the firm, correct?
 11 MR. MANNION: Objection --
 12 A. Absolutely.
 13 MR. MANNION: -- to the
 14 characterization.
 15 A. Absolutely.
 16 MR. KEDIR: Objection.
 17 A. And that somewhat relates to the conversation I
 18 mentioned earlier -- not somewhat relates, we
 19 touched on that in the conversation I mentioned
 20 earlier with Rob and I before I started. That
 21 even though those cases got increased scrutiny,
 22 the volume made up for it.
 23 MR. KEDIR: Objection.
 24 Q. So this is why the firm didn't just stop
 25 referring its clients to Plambeck chiropractors

1 so I suppose I interpreted through my own lens,
 2 which is just a real aggressive telemarketing,
 3 getting people to treat a whole bunch, the
 4 treatment not being justified based on the facts
 5 and the reported injuries.
 6 MR. KEDIR: Objection. Move to
 7 strike.
 8 Q. I believe that there was something at least in
 9 one of these lawsuits about x-rays.
 10 A. Uh-huh.
 11 Q. Do you remember that?
 12 A. Yes, I do remember that. Overcharging.
 13 MR. KEDIR: Objection. Move to
 14 strike.
 15 A. But this -- Allstate -- Grange basically did the
 16 same thing. Grange assigned an investigator to
 17 all of the KNR Akron Square cases and they all
 18 went to their special investigation unit. What
 19 was that guy's name? Gray? Used to come in,
 20 Matt Gray from Grange. He used to get assigned
 21 every single one of those. They automatically
 22 went to the special investigations through I
 23 think it was Grange.
 24 Q. And this is while you were there?
 25 MR. MANNION: Objection.

1 and instead decided to just file suit on all
 2 these cases?
 3 MR. MANNION: Objection.
 4 A. I would say yes.
 5 MR. MANNION: Move to strike.
 6 Speculation.
 7 Q. And you were never instructed to advise your
 8 clients that the insurance companies were
 9 treating the chiropractors from these specific
 10 clinics in this way, correct?
 11 MR. MANNION: I'm going to object.
 12 This is from May of 2013.
 13 A. That's correct. The same kind of thing was going
 14 on though, I mean, just being honest. Like I
 15 mentioned earlier, people didn't like Floros, the
 16 insurance adjusters didn't like Floros. They
 17 didn't like the connection between Floros and
 18 KNR. That's why there was a Matt Gray from
 19 Grange who would look at every single one of them
 20 --
 21 MR. MANNION: Objection as to the
 22 why.
 23 A. -- that's why Allstate, you know, gives \$1,500
 24 offers and rejects all the bills because they
 25 know that they can make Floros look bad at

1 trial --

2 MR. MANNION: Objection.

3 Speculation.

4 A. -- by bringing up all of the different

5 shenanigans that were uncovered in the class

6 action -- or not the class action but the federal

7 case.

8 MR. MANNION: Objection.

9 MR. KEDIR: Objection. Move to

10 strike.

11 A. I mean, that's the kind of thing that happened to

12 me -- or happened to people I know.

13 Q. At trial?

14 A. In litigation.

15 Q. In litigation?

16 A. Uh-huh. Because litigation becomes less about

17 what happened to the client, more about who Dr.

18 Floros is, who Plambeck is, how the lawyer -- how

19 they got to see Dr. Floros. It becomes all about

20 the perceived manufactured claim.

21 MR. KEDIR: Objection.

22 Q. Okay. Strike that.

23 You've mentioned Town & Country and Dr. Kahn?

24 A. Yes.

25 Q. Kelly Phillips said that easily 80 percent of his

1 cases in the Columbus office went to Dr. Kahn,

2 maybe 90 percent?

3 MR. MANNION: Objection.

4 Q. Does that sound right to you?

5 MR. MANNION: Objection --

6 Q. You wouldn't know --

7 MR. MANNION: -- as to Mr.

8 Phillips.

9 Q. -- you wouldn't know because you weren't there at

10 the time, correct?

11 A. Right.

12 Q. So KNR's relationship with Town & Country was

13 something that you introduced them to, correct?

14 A. That's correct.

15 Q. Okay. And you were gone so fast that you

16 wouldn't have seen what happened with that?

17 A. They got a lot. Because my compensation

18 structure while I was there I got paid a bonus on

19 cases that Town & Country referred and we

20 settled, so --

21 Q. So you had a special deal?

22 A. Yes.

23 Q. What was your deal?

24 A. I don't remember. I don't remember the numbers,

25 but I got more, obviously, for the cases that I

1 brought with me and then my referral sources,

2 wherever they were, mostly in Columbus. If they

3 referred something to KNR and we settled it, then

4 I got some of that as well whether I was the

5 lawyer who settled it or not.

6 Q. Whether you were the lawyer who handled the case

7 or not, correct?

8 A. Correct.

9 Q. Do you remember how much you made in your --

10 let's see, you were there from May -- or, I'm

11 sorry, March to December, mid December. Do you

12 remember about how much you made in nine months

13 there?

14 A. No.

15 Q. Kelly Phillips testified at his deposition a week

16 ago that the firm would not cut Town & Country's

17 bills nearly as much as they should have, that

18 Nestico himself would oversee the negotiations

19 with the medical providers -- well, first let me

20 back up.

21 MR. MANNION: Move to strike.

22 Q. Was that your experience as well that Nestico

23 would approve every settlement memorandum and

24 handle it, at least the great bulk of the

25 negotiations with the providers about the bills?

1 MR. MANNION: Objection as to

2 anything outside this case.

3 A. Yes. When I had a settlement, it was not final

4 until Nestico did the approval of the cut on the

5 medical bills -- on the chiropractic in

6 particular.

7 So I would get an offer from the insurance

8 company, get authority from the client to accept

9 a certain net amount, was the way I did it, net

10 amount in their pocket. And in order to make

11 that work, I would have to adjust the medical

12 bills, reduce doctor whomever, and then I'd write

13 it all up saying, okay, you know, this makes the

14 math work if Dr. Kahn, for example, cuts her bill

15 from 5,500 to four, then the math works, the

16 client gets what they're expecting, we get

17 whatever in a fee, and then you take that file

18 all written up and set it in Nestico's office.

19 And then at some point later, you get it back

20 with an "okay" I think he wrote on it.

21 Q. Or?

22 A. Or no. You know, you've got to get more, we've

23 got to take less or cut somebody else. Further

24 instruction. Most of mine were always okay

25 though, as I recall.

105

1 Q. Kelly Phillips testified that Town & Country was
 2 often paid a high percentage of their bills,
 3 upwards of 70 percent from KNR client settlements
 4 when under industry standard practices these
 5 chiropractors would not have been paid more than
 6 50 percent for the same treatment?
 7 MR. MANNION: Objection.
 8 A. I didn't handle many Town & Country cases.
 9 Again, cynically speaking, I think that was
 10 probably deliberate on my part so that my
 11 relationship with Dr. Kahn and her group would go
 12 away. Because Rob and KNR didn't know that I had
 13 no desire to be a personal lawyer anymore. So I
 14 think once I brought that work to them, they
 15 wanted -- you know, they envisioned a day when
 16 Gary Petti wasn't going to be working there
 17 anymore and they wanted to make sure they had
 18 those relationships solidified. And the fastest
 19 way to do that, the most reliable way to do that,
 20 would be to cut me out of the equation.
 21 MR. MANNION: Objection
 22 speculation.
 23 THE WITNESS: It is speculation.
 24 Q. That's the reasonable inference, in my opinion?
 25 MR. MANNION: Objection.

106

1 A. I agree though. I mean that's what happened --
 2 MR. MANNION: Objection.
 3 A. -- I mean, nobody ever told me that, but...
 4 Q. Did you -- was this testimony about the
 5 compensation for Town & Country consistent with
 6 your experience with Akron Square or the other
 7 high referring chiros?
 8 MR. MANNION: Objection.
 9 A. I don't know what you mean by "compensation."
 10 Q. Well, in terms of what they were -- in terms of
 11 what the reductions of what they would accept?
 12 A. I think there was definitely a desire to minimize
 13 the reductions for the high referring
 14 chiropractors, yes.
 15 MR. MANNION: Objection.
 16 Speculation.
 17 Q. And it was your experience that what's happened?
 18 A. Yes.
 19 MR. MANNION: Objection.
 20 Speculation.
 21 Q. You're familiar with Dr. Ghoubrial?
 22 A. Yes, I am.
 23 Q. And how are you familiar with him?
 24 A. I'd see him around more than anything. I had a
 25 couple conversations with him, I'm sure. I know

107

1 I went to lunch with him once or twice, maybe
 2 more.
 3 Q. While you were at KNR?
 4 A. No, not at KNR.
 5 Q. While you were at Slater & Zurz?
 6 A. Yeah.
 7 Q. You would see him around?
 8 A. Uh-huh. Yes.
 9 Q. Where would you see him?
 10 A. He occasionally would visit Slater & Zurz and
 11 KNR.
 12 Q. How often did you see him at KNR's office?
 13 A. Fairly often. I'd say something like once a
 14 week.
 15 Q. What did you see him doing there?
 16 MR. RYAN: Objection.
 17 MR. KEDIR: Objection.
 18 A. Nothing. Walking back and forth to Nestico's
 19 office, goofing around with the staff.
 20 Q. So you would have lunch at -- with Dr. Ghoubrial
 21 when you were at Slater & Zurz?
 22 A. Yeah.
 23 MR. KEDIR: Objection.
 24 Q. Why was that?
 25 MR. RUBIN: Objection.

108

1 A. It was just an introductory I think. We were --
 2 my understanding is they wanted to have him in a
 3 capacity review chiropractic bills and therefore
 4 be in a position to testify in the event that the
 5 cases went to trial.
 6 MR. RUBIN: Objection.
 7 A. He'd review and approve the treatment and say,
 8 okay, yeah, you know, I believe, based on my
 9 training, experience as an MD, as opposed to a
 10 DC, that all the treatment is reasonable and
 11 necessary and caused by the accident --
 12 MR. KEDIR: Objection.
 13 MR. RUBIN: Objection. Move to
 14 strike. Nonresponsive. Speculation.
 15 A. -- and therefore if it went to trial -- well,
 16 they did in certain instances have him testify in
 17 cases where he really didn't do any treatment,
 18 just reviewed the bill.
 19 Q. So he wouldn't treat the Slater & Zurz' clients?
 20 A. He may have. I had little to do with that. Like
 21 I said, it was a different business model at
 22 Slater & Zurz. I sort of did my own thing and
 23 handled the cases the way I saw fit, other people
 24 did what they saw fit.
 25 Q. So other people might have worked with him in a

1 different way than you --

2 A. Yes.

3 Q. -- and they had the discretion to do that?

4 A. That's right.

5 Q. What was the difference between Ghoubrial's

6 involvement in the KNR cases?

7 MR. RUBIN: Objection.

8 MR. MANNION: Objection.

9 A. I don't know. He developed certainly a

10 connection with all the Plambeck doctors. Not --

11 yeah, all I suppose --

12 MR. KEDIR: Objection.

13 A. -- and then routinely became involved in the

14 treatment of when I was there specifically in

15 terms of providing injections, trigger point

16 injections, trigger point injections, trigger

17 point injections.

18 MR. RUBIN: Objection. Move to

19 strike. Lacks foundation.

20 Q. How did you become aware of this?

21 A. I'd see it on the records and bills.

22 Q. Of your clients' cases?

23 A. Of my clients at KNR.

24 Q. And did I understand -- do I understand the

25 testimony you just gave to mean that Dr.

1 Ghoubrial gave injections on almost every file

2 that he handled?

3 MR. KEDIR: Objection.

4 MR. RUBIN: Objection.

5 MR. MANNION: Objection.

6 A. Not almost every. Because again my split was way

7 slanted towards the things that were my own,

8 especially early on.

9 Q. Every file that Ghoubrial was involved with?

10 MR. RUBIN: Objection.

11 A. Yeah, I don't know if he did anything other than

12 give injections --

13 Q. Okay.

14 A. -- that's my recollection. You know, it was a

15 lot.

16 Q. So you were only saying that Ghoubrial wasn't on

17 every file or on a great number of the files that

18 you handled because those were cases that you had

19 already brought over?

20 A. Right.

21 Q. But on the files that he was involved with, there

22 were injections on every single one?

23 MR. RUBIN: Objection.

24 MR. KEDIR: Objection.

25 A. It seemed -- you know, seven years later, however

1 long it's been, it seems like that. It's

2 certainly a lot.

3 Q. What was your experience of the impact that

4 Ghoubrial's involvement would have on these cases

5 when he would treat the KNR clients?

6 MR. MANNION: Objection.

7 MR. RUBIN: Objection.

8 MR. MANNION: Which cases?

9 A. In the cases I handled, it seemed to just make it

10 more difficult to settle because there's more

11 different people who had a hand in getting the

12 money. I don't think -- my experience was the

13 insurance companies didn't give the injections

14 much weight in terms of increasing the settlement

15 value, so you'd have a slightly bigger pie, if

16 bigger at all, divided among more people.

17 MR. MANNION: Objection. Move to

18 strike.

19 MR. RUBIN: Join.

20 MR. PATTAKOS: Here's Exhibit 19.

21 - - - -

22 (Thereupon, Gary Petti Plaintiff's Exhibit 19

23 was marked for purposes of identification.)

24 - - - -

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

1 A. Yeah, I did.

2 Q. And it looks like an exchange that starts on the

3 last page --

4 A. Uh-huh.

5 Q. -- and then the more recent communications occur

6 as we move through the beginning of the document.

7 So I see that you are writing to Mr. Nestico and

8 Mr. Redick for a WD request. What's a WD

9 request?

10 MR. MANNION: Wait a minute, wait

11 a minute. Before you go any further, I'm

12 going to object because there is a client

13 name in here.

14 MR. PATTAKOS: Redacted --

15 MR. MANNION: If you look at the

16 second to last page at the bottom, Ms.

17 Blank, but it said in there --

18 MR. PATTAKOS: Okay.

19 MR. MANNION: -- had exited the

20 car wash.

21 MR. PATTAKOS: We can make sure

22 this is redacted before it gets -- this is

23 not privileged or really confidential

24 either. There's a lot of case law on that,

25 but --

1 MR. MANNION: You're saying that
 2 the information about this client's case
 3 isn't privileged?
 4 MR. PATTAKOS: Not in the context
 5 of this lawsuit, no, it's not. And you can
 6 look at -- geez --
 7 MR. MANNION: Well, this was taken
 8 before the lawsuit --
 9 MR. PATTAKOS: Right. But --
 10 MR. MANNION: -- it was in 2012.
 11 MR. PATTAKOS: -- identity of
 12 clients that were affected by this fraud
 13 alleged --
 14 MR. MANNION: How?
 15 MR. PATTAKOS: -- is not -- is
 16 privileged. There's clear case law holding
 17 that. But we can redact this, okay? We
 18 don't need to make an issue of it right
 19 now.
 20 BY MR. PATTAKOS:
 21 Q. So what's WD request?
 22 A. WD is acronym for "withdraw".
 23 Q. Why did you have to send an e-mail to Mr. Nestico
 24 and Mr. Redick about this?
 25 A. Always Redick. I don't know why I put Nestico on

1 ASC --
 2 MR. MANNION: Was that in the
 3 crash report, too?
 4 Q. -- who referred her here and also to Dr. G.
 5 Offer is off the table if we file.
 6 A. Yeah, those are my words.
 7 Q. So why did you want to withdraw from this case?
 8 A. There was no money. Nobody was going to get
 9 anything paid. So you've got the letter of
 10 protection and/or liens involved with Dr.
 11 Ghoubrial and Akron Square and the insurance
 12 companies indicating very plainly that they're
 13 not going to pay for those things.
 14 So if you settle the case and you've got the
 15 lien, then you have to split up whatever little
 16 bit of money is there to satisfy the liens or get
 17 their approval to reduce, which of course would
 18 be the tact that you would take, but you're only
 19 talking about 500 bucks and nobody is going to
 20 get anything.
 21 So get out of the case, let her have her five
 22 hundred bucks and worry about her own medical
 23 bill.
 24 Q. Okay. Why did you forward this e-mail to
 25 yourself?

1 there. But Redick was in charge of saying yes or
 2 no to withdraws. You know, we had the discretion
 3 to do that on their own, so you needed approval
 4 to do that.
 5 Q. Okay.
 6 A. And it was not willing -- it was not always
 7 forthcoming. So you see I asked in September and
 8 then I asked again in November.
 9 Q. So you write I brought this case with me from S&Z
 10 after she had been formally represented here.
 11 KNR withdrew. She came to me with a bad offer.
 12 A. Uh-huh. Right.
 13 Q. So offer has not changed and will never change --
 14 A. Uh-huh.
 15 Q. -- Medicaid lien plus 500. [REDACTED] had exited
 16 the car wash and stopped to allow her vehicle to
 17 be dried. The next car through --
 18 MR. MANNION: You said we were
 19 going to redact it and you just read it.
 20 Q. -- bumped her from behind --
 21 THE WITNESS: That's from the
 22 crash report.
 23 Q. -- she went to ER because she had a feeding tube
 24 and needed it checked. Three weeks later after
 25 orally agreeing to the offer, she went to see

1 A. Really it was, more than anything, it was just
 2 the frustration that I felt at that time of
 3 having to go over it on multiple occasions with
 4 Redick just to get him to say yes. You know, I
 5 mean, it seems on its face like I need to get out
 6 of this case, and you've already approved it once
 7 before I ever came there with the case, so say
 8 yes, let's get out of this.
 9 - - - -
 10 (Thereupon, Gary Petti Plaintiff's Exhibit 20
 11 was marked for purposes of identification.)
 12 - - - -
 13 Q. Here's Exhibit 20. Now, this is a --
 14 MR. MANNION: Objection again.
 15 Q. If you look at --
 16 MR. MANNION: Two years after he
 17 left.
 18 MR. PATTAKOS: Right. Understood.
 19 Q. This is an e-mail exchange that happened between
 20 Kelly Phillips, an attorney in the Columbus
 21 office and Mr. Nestico in October of 2014.
 22 There's -- read Mr. Phillips' e-mail first.
 23 MR. MANNION: You mean to himself?
 24 MR. PATTAKOS: Yes.
 25 A. Where is it?

1 Q. It is on the third page here.
 2 A. Okay.
 3 Q. KNRO4024.
 4 A. Okay.
 5 Q. Is what Mr. Phillips is describing here
 6 consistent with your experience of Dr.
 7 Ghoubrial's involvement on KNR cases?
 8 MR. RUBIN: Objection.
 9 A. In general terms, yeah.
 10 Q. How so?
 11 A. It didn't do anything to help the offers really.
 12 You know, if you do enough -- and I don't know
 13 all your guys' background, I'm assuming you know
 14 at least as much as I do. Most of the cases are
 15 dependent on the facts, not what the lawyers do
 16 or anything like that. So you have a low-impact
 17 chiropractic case with six weeks of care and a
 18 \$4,000 bill, you know, whatever attorney all star
 19 is going to get a certain amount of money and the
 20 run-of-the-mill guy is going to get something
 21 very similar to that. So adding these
 22 injections, which is what I was familiar with,
 23 doesn't change much.
 24 MR. RUBIN: Objection. Move to
 25 strike.

1 MR. KEDIR: Objection.
 2 A. It doesn't offset the cost of the injection
 3 really.
 4 Q. So when he says I'm now five for five with --
 5 "Five for my last five with Nationwide cases
 6 where they are flat out refusing to consider
 7 anything related to Clearwater." Did you ever
 8 have any experience like that?
 9 MR. RUBIN: Objection.
 10 A. Not exactly like that, but certainly where I had
 11 adjusters say, yeah, we're not paying for that.
 12 Q. Paying for injections?
 13 A. Yes.
 14 Q. From Ghoubrial?
 15 A. Yes.
 16 MR. RUBIN: Objection.
 17 MR. KEDIR: Objection.
 18 Q. On KNR cases?
 19 MR. KEDIR: Objection.
 20 MR. RUBIN: Objection.
 21 A. That's my recollection, yep.
 22 Q. And when Mr. Phillips writes, "I am a bit
 23 concerned with the ethical dilemma this creates.
 24 It is not difficult to make an argument that we
 25 are treating Clearwater's interests as equal to

1 our clients," do you agree with that?
 2 MR. RUBIN: Objection.
 3 MR. MANNION: Objection.
 4 A. I agree that it's not hard to make that argument.
 5 Q. Now if you take a look at Mr. Nestico's response
 6 on the first two pages -- actually, yeah, it
 7 starts at the bottom of the first page.
 8 A. All right.
 9 Q. What are your impressions of this e-mail and the
 10 context of the testimony you've provided today?
 11 MR. MANNION: Objection.
 12 MR. RUBIN: Objection.
 13 MR. MANNION: Nonsensical
 14 question.
 15 Q. Well, you've never seen this e-mail before, have
 16 you?
 17 A. No.
 18 Q. I'll repeat the question: What are your
 19 impressions in the context of the testimony --
 20 MR. MANNION: Objection.
 21 Q. -- you provided today and the subjects we
 22 discussed?
 23 MR. KEDIR: Objection.
 24 MR. MANNION: Objection. Which
 25 testimony?

1 A. I think it's easy for Nestico to say because he
 2 doesn't do any of the work. So saying, go ahead
 3 and fight these battles doesn't cost him anything
 4 really. Lawyers who are pre-lit lawyers that are
 5 handling the cases, you know, it's always the
 6 worst cases that take the most time. So you
 7 fight this battle for hours and hours and hours
 8 and it just bogs you down. It keeps you from
 9 handling cases that are more profitable. And
 10 given that Nestico doesn't really care what you
 11 make on this case, he only cares that you make
 12 100 for the month, 100,000. Like I said, it's
 13 easy for him to say, fight this fight. Because
 14 it's not his time and it's your time and it's not
 15 his bonus, it's your bonus. So it's easy to say.
 16 MR. MANNION: Objection.
 17 A. I also of course was on the defense side and
 18 ended up doing significantly more plaintiff's
 19 work. Not a fan of insurance companies and I
 20 absolutely agree that the insurance company, it
 21 doesn't matter what you do to a certain extent,
 22 like these guys are doing, you've got to find the
 23 favorable side for your client.
 24 MR. MANNION: I'm going to object
 25 to the characterization of what we're

121

1 doing.

2 THE WITNESS: Oh, okay.

3 A. Zealously representing people within the bounds

4 of the law, whatever that entails, in any

5 particular case.

6 So I don't have a lot to say other than it's

7 easy for him to say, but as a practical matter,

8 I'm not sure again that the treatment from

9 Clearwater added value to the client's case.

10 MR. MANNION: Objection.

11 MR. RUBIN: Objection.

12 Q. And when you talk about insurance companies, to

13 some degree, are always going to be doing their

14 jobs --

15 A. Uh-huh.

16 Q. -- to represent their sides zealously, this isn't

17 just that, is it? What Kelly Phillips is talking

18 about here.

19 MR. RUBIN: Objection.

20 MR. MANNION: I'm going to object

21 again.

22 A. I would say no. It's a -- it's a, you know,

23 perception that these look like manufactured

24 cases. And that certainly is an opinion that I

25 share.

122

1 Q. And this is relating to a specific provider that

2 Nationwide and Progressive are looking at with

3 extreme skepticism, correct?

4 MR. POPSON: Objection.

5 MR. RUBIN: Objection.

6 MR. MANNION: Objection.

7 A. Yes. They see it over and over and over and over

8 again. And on the other hand, they see all kinds

9 of people who treat elsewhere who aren't getting

10 trigger point injections, but when they treat --

11 you know, when there's KNR involvement and

12 certain chiropractor involvement then for some

13 reason all these people need trigger point

14 injections.

15 MR. RUBIN: Objection. Move to

16 strike.

17 Q. And Nestico's response is basically just we're

18 going to file suit on all these cases?

19 A. Yeah. Well, as long as we've got a good impact

20 and clear liability and all the other things that

21 make a good case, then we'll take this one on.

22 Q. But the client, again, never hears about the

23 insurance company's view of the treatment that

24 they get from Dr. Ghoubrial, correct?

25 MR. RUBIN: Objection.

123

1 MR. MANNION: Objection.

2 A. That would be up to the individual lawyer on how

3 they explained it.

4 Q. Well, Kelly Phillips testified that -- consistent

5 with what you've said today -- was that you

6 understood that was the business model --

7 MR. MANNION: Objection.

8 Q. -- and that his understanding of Nestico's

9 response was that it wasn't the attorney's job at

10 KNR to question Dr. Ghoubrial's treatment or his

11 bills --

12 A. Right.

13 Q. -- and that his job would be in jeopardy if he

14 continued to do so?

15 MR. RUBIN: Objection.

16 Q. Do you agree with that?

17 MR. MANNION: Complete

18 mischaracterization. Absolute

19 mischaracterization.

20 A. What I will say to that is the lady that I

21 mentioned earlier, who was signed up by Kevin

22 Sandel and I ultimately took over that case who

23 had questions about why she was referred to Akron

24 Square and why she couldn't do her own thing and

25 why she couldn't use her medical insurance and

124

1 all that, created a very, very difficult, what I

2 perceived as an ethical situation for me, because

3 I wanted to tell her the truth, what I believed

4 to be the truth, which is that that's the way

5 this works and you're part of a larger operation.

6 Q. Okay. There were other doctors that the firm

7 could have sent its clients to other than Dr.

8 Ghoubrial, correct?

9 MR. MANNION: Objection, saying

10 the firm sent them to Ghoubrial. You know

11 that's a mischaracterization.

12 MR. RUBIN: Join.

13 A. Certainly. You know, if people have health

14 insurance, they can go anywhere for medical

15 treatment ordinarily, at least in my experience.

16 You know, there are a few -- a few that I've run

17 across over the years. Doctors that is, MDs,

18 that don't want to be involved in auto accident

19 cases. But most of them, I would say in my

20 experience, the overwhelming majority are -- if

21 you have some means to pay, they'll treat you.

22 Q. If you have insurance, they'll accept your

23 insurance, correct?

24 A. Right. Yeah.

25 MR. MANNION: Objection.

125

1 MR. RUBIN: Objection.

2 Q. And this was your experience in handling

3 thousands of personal injury cases over 15 plus

4 years, correct?

5 MR. RUBIN: Objection.

6 MR. MANNION: Objection.

7 A. That was my preference.

8 Q. And what was your preference?

9 A. My preference would be if people had a doctor

10 already, whether it be a chiropractor or

11 otherwise, stick with that person. I'm not -- I

12 don't want to manage your treatment. I spent a

13 lot of time and I met with all of my clients

14 before I got to KNR face-to-face -- not all, most

15 of them face-to-face, and I explained to them in

16 what I thought was great detail of how the

17 process worked and I explained to them the

18 importance of their treatment, not just so that

19 they get better, but also in terms of creating

20 evidence in their case.

21 So that they were prepared to be out on their

22 own making good decisions. And I would tell

23 them, you know, if you've got questions,

24 certainly call, but you're a grown person, take

25 care of yourself. If this was a car accident and

126

1 you had the flu, you'd find yourself to the

2 doctor. So do what you think is right. If you

3 have questions and issues, give me a call and

4 I'll help you through those. So if you've got

5 medical treatment, go see your doctor. But I

6 would caution them, based on my experience, MDs

7 are very conservative. So if you go see your own

8 doctor, don't let him tell you, ah, you're not

9 dead yet, check back in three weeks see if you're

10 any better. Oh, you're still not dead, come back

11 in three weeks.

12 Because I know the insurance companies will

13 look at that and say, well, you really didn't

14 treat for a month or two months after this

15 accident and all of a sudden you're in physical

16 therapy.

17 So I would tell them very directly that that

18 was a risk of going to see their family doctor.

19 And if they wanted physical therapy, they should

20 discuss that openly with their doctor so they get

21 there sooner rather than later.

22 But I would get out of -- I tried to be not

23 in the business of managing their treatment.

24 Now, if they had nobody and they didn't have --

25 they didn't have a doctor or they didn't have any

127

1 health insurance, maybe they didn't have a ride

2 because chiropractors give people rides to the

3 clinic, then, sure, I'll give you a referral to

4 someone who I like.

5 Q. And it was also your preference that your clients

6 pay their medical bills with their own health

7 insurance, correct?

8 A. Yes, if they have health insurance, use it. If

9 they had med pay, that's another thing. Some of

10 the doctors will take med pay if the auto

11 insurance will -- of the car that they were

12 operating, whether it be their own insurance or

13 somebody else's, if they have medical payments

14 coverage, you'd sometimes talk to the MDs about

15 that and say, well, here's your form of payment.

16 Like State Farm -- back then at least, I haven't

17 done any personal injury in years -- they often

18 have \$100,000 med pay policy. So get whatever

19 treatment you want, it's going to be paid for.

20 Q. So how -- strike that.

21 THE VIDEOGRAPHER: I need to

22 change.

23 MR. PATTAKOS: You need to change

24 now? Okay. Just please quickly.

25 THE VIDEOGRAPHER: Yes. Off the

128

1 record.

2 - - - -

3 (Off the record.)

4 - - - -

5 THE VIDEOGRAPHER: On the record.

6 BY MR. PATTAKOS:

7 Q. So even if a client had a primary care physician

8 who was reluctant to handle personal injury cases

9 or handle them in a way that maybe the -- would

10 be best for the client in terms of recovery,

11 there were other doctors that the client could go

12 see, correct?

13 MR. MANNION: Objection.

14 MR. RUBIN: Objection.

15 A. Sure. There's -- you would get -- you know, some

16 of the doctors would approach you if they wanted

17 to be involved in personal injury stuff. You

18 know, they would send you promotional materials

19 and buy you bagels. You know, hey, we can get --

20 do you want to refer people here? You know,

21 we'll work on an assignment or we'll work on a

22 letter of protection. Less often certainly for

23 MDs than other doctors, but, yeah.

24 Q. There were also doctors who would be comfortable

25 handling personal injury cases and being paid

129

1 from the client's health insurance, correct?

2 A. For sure. For sure.

3 Q. So was that your practice when you went to KNR?

4 A. My practice by the time I went to KNR most of it

5 was chiropractic only. You know, if people had

6 an MD and they were seeing that MD, then that's

7 what they did. Now, most -- I didn't -- again, I

8 ran my own show and Gary Petti didn't advertise,

9 so I didn't have the capacity to myself generate

10 lots of clients. I got lots of referrals. Every

11 now and then I would get someone who was referred

12 to me word of mouth because I represented their

13 sister, their brother or whoever, and they were

14 already treating with an MD or they had medical

15 insurance that -- where they could go to an MD,

16 but in terms of volume, most of my cases at the

17 time I started at KNR were referred to me by

18 chiropractors.

19 Q. What about the cases that you took in while you

20 were at KNR?

21 A. I didn't get a lot of them to the point where I

22 was negotiating on them. Like I said, Akron

23 Square was a big player at KNR in terms of

24 volume. That one case in November where Megan

25 sent out the -- or prepared the package that

130

1 included their narrative report was like in mid

2 November, some point like that, and I was fired

3 two weeks later, so -- and that --

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

5 A. -- three weeks maybe. I was conscious -- that

6 was the first time I was consciously aware of the

7 narrative report being part of a Plambeck

8 chiropractor settlement package.

9 So I guess what I'm trying to say is I didn't

10 see a lot of cases that I originated through to

11 even the point where the portfolios were going

12 out.

13 Q. Were there other doctors --

14 MR. POPSON: Objection.

15 Q. -- were there other MDs besides Dr. Ghoubrial

16 that the firm would use?

17 A. Yeah.

18 MR. RUBIN: Objection.

19 MR. MANNION: I'm going to object

20 to "the firm using".

21 Q. What do you recall about that?

22 MR. MANNION: You haven't

23 established that the firm referred them to

24 Ghoubrial.

25 A. The only -- the only instance that comes to mind

131

1 is somebody sent some kind of a promotional thing

2 to KNR and it was an MD willing to work on an

3 assignment. So to me that was good news because

4 I prefer MDs to chiropractors. And if I can get

5 somebody to see an MD as opposed to a

6 chiropractor, especially on an assignment basis

7 where they're not getting -- you know, the client

8 is not getting beat up to pay their bill, then I

9 wanted to do that.

10 Q. What does an assignment basis mean?

11 A. You assign a portion of your settlement to the

12 doctor in the event that settlement comes in, to

13 pay your medical bill.

14 Q. Is that different from an LOP?

15 A. I use them interchangeably --

16 Q. Okay.

17 A. -- but they're not very particular.

18 Q. What do you recall about this?

19 A. I did that, I made the referral to whatever that

20 person is, and Josh Angelotta most have as well

21 independently, and then Redick called us into a

22 meeting and Brandy was there and they both yelled

23 at the two of us for doing that and said we

24 should have referred it somewhere else, to some

25 chiropractor who was nearby. And don't do it

132

1 again because the other chiropractor refers us

2 many more people. Those people never referred

3 anything or very little, whatever it was.

4 Q. What would you estimate -- what's your estimate

5 of the percentage of your clients who didn't have

6 health insurance?

7 A. 50/50 maybe. I mean some of them would be

8 employed and have, you know, Medical Mutual or

9 something like that and then a significant

10 portion would have CareSource, Medicaid/Medicare,

11 something like that. So as far as the people who

12 are truly uninsured, probably less than 50

13 percent.

14 Q. Less than 50 percent?

15 A. Yes.

16 Q. How much less?

17 A. I don't know.

18 Q. Was it your experience that the providers that

19 the KNR firm worked with never accepted insurance

20 payments from the --

21 MR. MANNION: Okay.

22 Q. -- client's health insurance?

23 MR. RUBIN: Objection.

24 A. Yeah, that is -- that's my understanding.

25 Q. What did you understand the purpose behind that

1 to be?

2 MR. RUBIN: Objection.

3 A. Better payment rate that Medicare or Medicaid

4 paid, you know, 15 bucks for a chiropractic

5 visit, that they can bill the auto insurance

6 company 150 bucks for.

7 - - - -

8 (Thereupon, Gary Petti Plaintiff's Exhibit 21

9 was marked for purposes of identification.)

10 - - - -

11 Q. Let's take a look at Exhibit 21. You sent me

12 this e-mail, correct?

13 A. Yes.

14 Q. Why did you send me this e-mail?

15 A. Because you asked for it. And I can't remember

16 why I saved it though. I don't remember what I

17 perceived the significance of it was or is.

18 Q. How do you mean, I asked for it?

19 A. Well, the subpoena.

20 Q. You thought it was responsive to the subpoena --

21 A. Yes.

22 Q. -- that we sent you?

23 A. Yes.

24 Q. Okay. I didn't specifically ask for this e-mail.

25 A. Right. No, you didn't know it existed. Your

1 subpoenaed covered, you know, whatever

2 communications I had from there. I can't

3 remember how it was phrased, but I thought it was

4 responsive.

5 It just -- and I'm sure this is not why --

6 you know, I can't imagine why you'd be interested

7 in this, but one of the frustrations I had there

8 was how the rules were always changing. You

9 know, I worked from March until November and then

10 no settlement memos can leave without Rob's

11 approval. You're going to be terminated without

12 question.

13 Q. Okay. Exhibit 22.

14 - - - -

15 (Thereupon, Gary Petti Plaintiff's Exhibit 22

16 was marked for purposes of identification.)

17 - - - -

18 Q. This is another e-mail that you provided to me,

19 correct?

20 A. Yeah.

21 Q. And why did you save this e-mail?

22 A. I just thought it was curious that -- I don't

23 know what they were up to in terms of not sending

24 a letter of protection on office letterhead.

25 That perhaps there was some way that they were

1 trying not to be obligated to honor those in the

2 event it became problematic to honor them. That

3 they would be able to push it back on the

4 individual lawyer who sent it as opposed to the

5 firm represented on the letterhead.

6 MR. MANNION: I'm going to object

7 to speculation.

8 Q. Was it common practice at the time for letters of

9 protection for doctors to be sent on KNR

10 letterhead?

11 A. I never sent those so I don't remember and I

12 don't remember. I'm sure I've seen them, but I

13 was not responsible for generating them, so I

14 don't remember. I assume so based on this, but I

15 didn't --

16 MR. MANNION: Objection. Move to

17 strike.

18 A. -- I never saw -- I can't remember seeing one.

19 MR. PATTAKOS: Okay. I might not

20 have more than about a half hour right now.

21 MR. MANNION: When you get done

22 then we'll take lunch.

23 MR. PATTAKOS: Why don't we take a

24 short break now --

25 MR. MANNION: Okay.

1 MR. PATTAKOS: -- and then, yeah,

2 I won't be any later than 1:00.

3 THE VIDEOGRAPHER: Off the record.

4 - - - -

5 (Thereupon, a recess was had.)

6 - - - -

7 THE VIDEOGRAPHER: On the record.

8 BY MR. PATTAKOS:

9 Q. What do you recall about the investigators' role

10 at the firm?

11 A. Sign-up guys. That's what they were often

12 referred to, sign-up guys.

13 Q. They were referred to as the sign-up guys. Who

14 referred to them as sign-up guys?

15 A. Virtually everyone, if not everyone.

16 Q. And what did they do?

17 A. Sign up people. They had -- they took turns --

18 the way I remember it is one of them would do

19 Summit County one week and the other one would do

20 everything else. And then -- specifically

21 referring to Aaron and Mike. So Portage,

22 Cuyahoga, all that, wherever the firm didn't have

23 a remote sign-up guy like Gary Monto [phonetic]

24 wherever he was at and --

25 Q. Toledo?

1 A. -- and Wes Steele.
 2 Q. Columbus?
 3 A. Right.
 4 MR. MANNION: Can you guys please
 5 not talk over each other?
 6 THE WITNESS: Sure.
 7 A. So there was a -- Aaron and Mike were in KNR's
 8 office virtually all day, every day, unless they
 9 were out signing somebody up, but then there were
 10 other guys who were elsewhere.
 11 Q. Elsewhere in cities that were far away from
 12 northeast Ohio essentially?
 13 A. Yes.
 14 Q. And you're referring to Aaron Czetli and Mike
 15 Simpson, correct?
 16 A. Right.
 17 Q. And that's AMC Investigations and MRS
 18 Investigations?
 19 A. Yeah. I of course would never refer to them as
 20 that, but it would show up on the settlement
 21 memos as AMC Investigations.
 22 Q. What did you think about the fact that was called
 23 an investigation fee?
 24 MR. MANNION: Objection.
 25 A. It's -- in no case that I'm aware of was there an

1 actual investigation done.
 2 Q. Did they do anything else besides sign people up?
 3 A. Not that I'm aware of.
 4 Q. Maybe sometimes they would take photos of an
 5 accident -- take photos --
 6 A. If they were out there signing somebody up, they
 7 would take pictures, but as far as going out
 8 specifically to do that, I have no recollection
 9 of them doing that.
 10 I did specifically ask one of them -- because
 11 I really didn't use investigators much before I
 12 went to KNR and I didn't use them much when I was
 13 there, but I had an instance where it seemed an
 14 investigator would be helpful. I think we were
 15 trying to identify someone whose address was not
 16 identified -- or locate someone whose address was
 17 not identified correctly on the crash report and
 18 we needed to send them a letter so they could
 19 figure out who their insurance was. And I asked
 20 one of the two, either Aaron or Mike, say, hey,
 21 you know, you're the investigator figure this
 22 out, find this person. And they said, that's not
 23 what we do.
 24 And it took me a while, despite the
 25 simplicity, to figure out their arrangement.

1 That one of them did the Summit County and the
 2 other one did everything but Summit Country that
 3 was still in northeast Ohio. So I was forever
 4 asking those guys to do things and being told no,
 5 that's not my -- you've got to ask my cousin.
 6 Q. They were cousins?
 7 A. That's my understanding.
 8 Q. Czetli and Simpson are cousins?
 9 A. That's my understanding.
 10 Q. Okay. Did you ever become aware of them doing
 11 any investigations or investigative work or even
 12 sign-up work or courier work, whatever you want
 13 to call it, for any other law firm or any other
 14 law firm's clients?
 15 A. No.
 16 Q. Like you said they were in the office every day?
 17 A. Every -- unless they were out signing somebody
 18 up, as far as I was aware. I mean, I didn't of
 19 course didn't keep track of them, but they
 20 seemingly were there every day that I was there
 21 and I was not aware of them leaving the office to
 22 do anything other than sign people up.
 23 Q. And maybe take some photos or obtain some other
 24 documents while they were meeting the client?
 25 A. Yeah.

1 Q. Okay. You say in your affidavit that you would
 2 often witness Mike and Aaron performing odd jobs
 3 around the Akron office such as stuffing
 4 envelopes and putting up holiday lights --
 5 A. Yes.
 6 Q. -- correct?
 7 A. That is correct. Election signs I think out in
 8 the yard. I saw them doing that at one point.
 9 Q. Election signs for judges?
 10 A. Yes.
 11 - - - -
 12 (Thereupon, Gary Petti Plaintiff's Exhibit 23
 13 was marked for purposes of identification.)
 14 - - - -
 15 Q. Here's Exhibit 23. This is an e-mail from
 16 Brandy. And I understand this is after you had
 17 left the firm.
 18 A. Uh-huh.
 19 Q. Brandy writes to all pre-lit attorneys copying
 20 Nestico: We must send an investigator to sign up
 21 clients. We cannot refer to chiro and have them
 22 sign forms there. This is why we have
 23 investigators. We are losing too many cases
 24 doing this.
 25 Did you receive instructions like this while

1 you were working at the firm?
 2 A. Absolutely.
 3 Q. By e-mail?
 4 A. I don't remember. But there was a great emphasis
 5 of course on not losing clients and prospective
 6 clients. So somebody could go out, get
 7 telemarketed elsewhere so you've got to get the
 8 people, get to them quickly before anybody else
 9 does.
 10 Q. Losing clients to other law firms?
 11 A. Other law firms, other chiropractors who would
 12 then refer them somewhere else. You know, I had
 13 -- over the years I had -- there was a
 14 chiropractor in Columbus whose telemarketers were
 15 essentially abducting people. They would --
 16 MR. MANNION: I'm laughing with
 17 you on that one.
 18 THE WITNESS: Sure.
 19 A. It was part of the unsavory business that I
 20 didn't like. I mean, they -- what would happen
 21 is my chiropractor in Columbus would call me and
 22 say, hey, Gary, we've got four people coming in
 23 Tuesday morning. Can you be here at 10:00 a.m.?
 24 They want to meet with a lawyer. So I'd say,
 25 okay. Sure. Drive down there, be there sitting

1 there at 10:00 a.m., 10:30, people aren't there,
 2 so chiropractor gets on the phone, calls the
 3 people, hey, where you at? I mean, you're
 4 suppose to be here at 10:00 -- or actually that's
 5 what it was, transportation because people don't
 6 have a car so we have to pick them up at 9:30 to
 7 get them to their appointment at 10:00. So 9:30
 8 the guy is not there, the people aren't there.
 9 So they call them, where are you at? We were
 10 suppose to pick you up, you have an appointment
 11 here at 10:00. What do you mean where am I at?
 12 I'm here. You're not here, we're here. Where
 13 are you? He's at a different chiropractor's
 14 office.
 15 What happened was after he made the
 16 appointment with one guy, another called and
 17 said, oh, we're affiliated, you've got an
 18 appointment at 10:00, we're affiliated, they're
 19 overbooked, come see us at 9:30. We'll be there
 20 to pick you up at 9:00.
 21 So they think they're going to see one
 22 chiropractor affiliated when they're not and get
 23 taken to another one altogether.
 24 So great emphasis to get after people before
 25 they could be diverted elsewhere. That went on

1 pretty -- reasonably common, but for a very short
 2 period of time. Whoever -- whatever chiropractor
 3 marketers were responsible for that must have put
 4 an end to it pretty quickly. That was even low
 5 for them.
 6 - - - -
 7 (Thereupon, Gary Petti Plaintiff's Exhibit 24
 8 was marked for purposes of identification.)
 9 - - - -
 10 Q. So this is Exhibit 24. March 19th, 2012, this is
 11 an e-mail from Brandy to all attorneys.
 12 Is this an e-mail that you received?
 13 A. Probably.
 14 Q. The end of the first paragraph here Brandy writes
 15 -- I'm sorry, strike that.
 16 The second paragraph, which is really just a
 17 few sentences, she writes, "I've also noticed
 18 that signups aren't being scheduled for the same
 19 day as the intake. Obviously this isn't always
 20 possible, but always try your best to make that
 21 happen. This is a sure way to not get the case."
 22 What did you understand this to mean?
 23 A. Basically refers to what I just said that you've
 24 got to get to the people as soon as possible so
 25 that somebody else doesn't get to them.

1 Q. And then you send the investigator?
 2 A. Send the investigator out the same day that you
 3 do the intake, if possible. You know, you talk
 4 to somebody at 9:00 in morning, they're in
 5 Ashland County, not at a chiropractor or
 6 something like that, then, you know, okay, we're
 7 going to represent you. Whoever's job it is,
 8 either Aaron or Mike, to service Akron -- or
 9 Ashland County that week, you coordinate with
 10 their schedule and get them out there on the same
 11 day that you spoke to them, if possible.
 12 Q. Did you use investigators like this at Slater &
 13 Zurz?
 14 A. Not like that, no. We did have for a period of
 15 time a guy who lived in Columbus, since most of
 16 my business was in Columbus, who did some
 17 sign-ups for us.
 18 Q. Did you charge the client for it?
 19 A. No.
 20 - - - -
 21 (Thereupon, Gary Petti Plaintiff's Exhibit 25
 22 was marked for purposes of identification.)
 23 - - - -
 24 Q. Here's Exhibit 25. This is an e-mail that was
 25 sent in 2014 after you left the firm --

1 MR. MANNION: Same objection. Go
 2 ahead.
 3 Q. -- that lists a series of criteria that Holly
 4 Tusko is e-mailing to a bunch of the firm's
 5 investigators then copying pre-lit attorneys and
 6 Brandy and Mr. Nestico.
 7 She writes, please note that if this criteria
 8 is not met, you will not be paid. When doing a
 9 sign-up the following steps need to be taken.
 10 Number 1, the subject line of the e-mail must
 11 contain the client's name. Number 2, these
 12 forms, the fee agreement, the authorization and
 13 proof of representation forms need to be signed
 14 and dated as well as a discharge letter, if
 15 applicable. Photos of insurance cards, photo of
 16 the client from the chest up. Photos of any
 17 visible injuries, photos of the vehicle and photo
 18 of police report.
 19 Was it your experience that the investigators
 20 obtained all this information while you were at
 21 the firm?
 22 MR. MANNION: Objection.
 23 A. I would say -- no, it was not my experience. I
 24 don't remember it --
 25 Q. You can't say --

1 A. -- that way.
 2 Q. -- one way or the other?
 3 A. Right. I do think that absolutely sometimes they
 4 took photos. I don't know what their -- you
 5 know, that this was the reporting that went back
 6 so that they could get paid, but I know sometimes
 7 they took photos sometimes when they were out
 8 there.
 9 Q. Do you recall that the investigators had
 10 firm-issued iPads while you were at the firm?
 11 A. I don't recall that.
 12 Q. Could it be that these criteria were a new policy
 13 that was instituted after you left the firm?
 14 A. Yes.
 15 Q. Maybe after they were providing with firm-issued
 16 iPads?
 17 MR. MANNION: Objection --
 18 A. Certainly at any point after I left.
 19 MR. MANNION: -- speculation.
 20 Q. Okay. So it was never your experience that the
 21 investigators had to do all seven of these things
 22 to get their investigation fee paid, correct?
 23 MR. MANNION: Objection. He
 24 already answered that he didn't know.
 25 A. Yeah, what -- as far as I knew, all they had to

1 do is sign somebody up.
 2 THE REPORTER: Do what?
 3 A. As far as I knew all they had to do was complete
 4 the signup to get paid. And actually I don't
 5 even know if it was there. You know, I don't
 6 know if they got paid if it was an unsuccessful
 7 signup for some reason. If they went out there
 8 and, you know, the person changed their mind and
 9 said, you know what, this all happened too fast,
 10 I'm not going to sign, I don't know if they would
 11 still get paid or not.
 12 Q. Rob Horton testified that Mike and Aaron were
 13 paid on some cases where there -- where an
 14 investigator simply did not do a signup. That
 15 there was an investigation fee on every
 16 settlement memorandum and that on cases where the
 17 signup was say done at a chiropractor's office --
 18 A. Uh-huh.
 19 Q. -- and no one investigator went to meet with the
 20 client, that Mike and Aaron would be paid on a
 21 rotating basis on these cases, too. Do you
 22 recall that ever happening?
 23 MR. MANNION: Objection.
 24 A. Yes, yes. I would say that's certainly true.
 25 Q. And how do you know that that happened?

1 A. Because I knew that people were signing up at
 2 Akron Square, for example, and at that point
 3 there was no investigator there, because how
 4 could there be? They've got a new -- you know,
 5 Akron Square, for example, is just having a new
 6 intake at 10:00 a.m. on a Tuesday. They have put
 7 them on the phone, the people sign, fax
 8 contingent fee contract and authorizations would
 9 be there ten minutes later and Mike and Aaron
 10 would still be in the office or they'd be out
 11 somewhere else, I mean, that they couldn't have
 12 gotten to the office that fast to do anything.
 13 MR. KEDIR: Objection.
 14 Q. The defendants have represented repeatedly
 15 throughout this lawsuit that part of their job
 16 was to obtain the police reports. Is that your
 17 experience?
 18 A. No.
 19 MR. MANNION: Objection.
 20 Q. You would agree that to handle any personal
 21 injury case competently the attorney would have
 22 to have a copy of the police report, correct?
 23 A. Yeah. And they're available readily online,
 24 crashdocs.com or something like that. It's three
 25 seconds of a search.

1 Q. At some periods of time they weren't though?
 2 A. That's correct, sure.
 3 Q. And sometimes material is needed to be obtained
 4 from a police department, correct?
 5 A. Right.
 6 Q. But most of the time you can get those online,
 7 correct?
 8 MR. MANNION: Objection. Time
 9 period.
 10 A. At Slater & Zurz, for example, we didn't use
 11 investigators for that, we had paralegals who
 12 somehow, someway, were able to get crash reports.
 13 Q. And it would be something that the firm would
 14 simply would have to do on every single case --
 15 MR. MANNION: Objection.
 16 Q. -- to handle the case competently?
 17 A. We did that on every single case and we did not
 18 use investigators for that, just the paralegals
 19 did that. And they could get them online. You
 20 know, if they knew, for example, that the City of
 21 Akron crash reports are online, they could go
 22 there. I do know that they would send out
 23 letters at times to records departments
 24 requesting copies of crash reports, but as far as
 25 I'm aware, they never -- prior to me going to

1 KNR, we never used an investigator for that.
 2 Q. And you expected these investigators, Aaron and
 3 Mike, to be on-call every day to handle signups,
 4 correct?
 5 A. Yes.
 6 Q. You knew that Mike and Aaron at least were
 7 on-call every day to handle signups and whatever
 8 other tasks you or one of the attorneys might
 9 need them to do?
 10 A. Yeah. That was -- I didn't use them much but,
 11 yeah, they were -- that was their jobs, as I
 12 understood it.
 13 Q. Okay. You knew they weren't going to be tied up
 14 working on investigative work for clients of
 15 other law firms, correct?
 16 A. That would be a complete surprise to me.
 17 Q. Though sometimes they did tell you that -- when
 18 you asked them to do anything that that wasn't
 19 their job?
 20 A. Yes.
 21 Q. What were the types of things you asked them to
 22 do when they told you it wasn't their job?
 23 A. To locate someone. Find a valid address for like
 24 tort feasor in a car crash case. That was
 25 specifically what it was. Because in the past at

1 Slater & Zurz that's basically the only thing I
 2 would ever use an investigator for is -- because
 3 you can run the -- find somebody who had the
 4 means of running the plate to find an alternate
 5 address from something that was different than
 6 what showed up on the crash report. So we'd use
 7 an investigator for that.
 8 And I had a similar scenario. I think we --
 9 you know, they guy failed to show proof of
 10 insurance at the scene, so we sent him a letter,
 11 hey, you know, who's your insurance and it came
 12 back addressee unknown, so now we've got to find
 13 where this guy is living.
 14 - - - -
 15 (Thereupon, Gary Petti Plaintiff's Exhibit 26
 16 was marked for purposes of identification.)
 17 - - - -
 18 Q. Here's Exhibit 26. You would have received this
 19 e-mail right before you were terminated, right?
 20 A. Right there somewhere, yeah. Within a day or two
 21 either way. I honestly can't remember seeing
 22 it --
 23 Q. Okay.
 24 A. -- but that's right about the time -- I worked
 25 there some part of December 2012.

1 Q. This is an e-mail that went out to the staff
 2 where Mr. Redick says, please be advised that if
 3 the attorney on the case requests any
 4 investigator who is not Mike or Aaron to do
 5 something for a case that has already been
 6 opened, i.e. pick up records, knock on the door
 7 to verify address, they can be paid on a
 8 case-by-case basis depending on the task
 9 performed. However, no checks for anything other
 10 than the SU fee, meaning signup fee, should ever
 11 be requested without getting in-writing approval
 12 from the handling attorney, myself and/or Brandy.
 13 Then it says, under no circumstances should any
 14 additional checks to MRS or AMC be requested
 15 other than at the time the case is set up.
 16 Do you have any understanding of why Mike and
 17 Aaron are being treated differently here in
 18 comparison to the other investigators?
 19 MR. MANNION: Objection.
 20 A. Because they're local and they do things other
 21 than signups. The tasks around the office kind
 22 of stuff.
 23 Q. And they're expected to do that?
 24 A. Uh-huh.
 25 THE REPORTER: "Uh-huh"?

1 A. Yes, yes.
 2 MR. MANNION: Objection.
 3 Q. And they're compensated for that by the payments
 4 on cases where they do nothing?
 5 A. Right.
 6 MR. MANNION: Objection.
 7 MR. RUBIN: Objection.
 8 MR. MANNION: That's speculation.
 9 Q. Okay. You understood that the KNR firm
 10 advertised while you were working there it could
 11 get your clients cash advances, correct?
 12 A. Yes, and they still do. My daughter was in an
 13 accident, she was a passenger, and they sent her
 14 a letter.
 15 Q. Your daughter?
 16 A. Yes.
 17 Q. Is she okay?
 18 A. It was last spring. She's fine. But, yes, KNR
 19 sent her a letter and it had the dollar bill in
 20 it with, we can get you money.
 21 Q. What year was that?
 22 A. It was last spring, I believe. No more than two
 23 years ago because she was coming home -- well,
 24 no, it must have been last spring because she was
 25 coming home from Ohio State and she's only a

1 sophomore now so this is her second year.
 2 Q. Do you still have a copy of that?
 3 A. I don't. I kept it for a little while as a
 4 curiosity and I threw it out.
 5 Q. What do you recall about the way the firm --
 6 strike that.
 7 What do you recall about the firm's policies
 8 and practices regarding these cash advances while
 9 you were there?
 10 A. It was all about not getting fired, so they --
 11 whenever anybody asked, they'd give it to them.
 12 Offer it to them, do whatever you could to not
 13 get fired. Make sure the client stayed happy.
 14 Make sure the client's eyes didn't wander to
 15 somebody else who may have been promising them
 16 something, but get them -- you know, make sure
 17 they know they can get money, if they want it.
 18 Q. So not getting fired by the client?
 19 A. Right.
 20 Q. So if a client was impatient or unhappy with
 21 their case?
 22 A. Get them some money, yes. And I was told -- you
 23 know, I see these e-mails, some of them at least
 24 remind you, you're going to get fired if you do
 25 this, you're going to get fired if you do that.

1 If a client fired you -- and this is what I was
 2 told -- and they, the management, felt like it
 3 was your fault, they would dock your fee, your
 4 commission check, an amount of money that they
 5 thought fairly represented what you cost them by
 6 not -- by getting fired.
 7 So if there was some possibility you were
 8 going to get fired because the client wants money
 9 now, you've got to make the offer to them.
 10 Because if it doesn't, if you don't and they end
 11 up firing you, then Rob and Rob, can look back
 12 and say, you know what, you should have done
 13 this, you got fired, you cost us whatever amount
 14 of money in legal fees, you're getting docked.
 15 Q. So that creates an incentive for the attorneys to
 16 use these loans?
 17 A. Absolutely.
 18 MR. MANNION: Objection.
 19 Q. To keep the clients from terminating the
 20 relationship with the firm?
 21 MR. MANNION: Objection.
 22 A. Right.
 23 Q. Did anyone at the firm ever instruct you
 24 specifically to use the loans in this way?
 25 A. Yeah, sure. To keep people happy.

1 Q. Who told you that?
 2 A. Redick and Nestico.
 3 Q. Even when the client wasn't necessarily asking
 4 for a loan?
 5 MR. MANNION: Objection.
 6 A. I can't say that, but it was -- it was clear
 7 that, you know, that's sort of a go-to. You
 8 know, if it comes up, you better be ready to tell
 9 them, you know, hey, you've got this loan where
 10 you can get money in a couple days. It will tide
 11 you over until we get the rest of your settlement
 12 in.
 13 Q. Did they tell you this in private individual
 14 conversations or was this in group conversations,
 15 a group context or --
 16 A. Well, in part it was group because I think they
 17 had the meeting the one time with Ciro who came
 18 in and brought lunch for everybody. And, you
 19 know, they talked about how to use it to our
 20 benefit, to the law firm's benefit.
 21 Q. So during that lunch it was discussed how to use
 22 the loans to the law firm's benefit?
 23 A. Right.
 24 Q. What do you recall about that, anything more
 25 specific?

157

1 A. Just that, to keep people happy. You know, make
 2 sure that, you know, somebody who's -- people are
 3 out of work, they're not making any money,
 4 they've got bills to pay, get them some money.
 5 Q. What do you remember about Liberty Capital?
 6 A. That -- I never heard of them before joining KNR.
 7 And for a period of time Liberty Capital was the
 8 person who we were instructed -- or the group
 9 that we were instructed to use.
 10 Q. Did you understand why?
 11 A. No, I did not.
 12 Q. Did you know who owned Liberty Capital?
 13 A. Somehow somehow I came to believe that that Ciro
 14 guy did.
 15 Q. Why was that?
 16 A. I think he was the only person who was ever
 17 involved in any of it. I think. I don't really
 18 --
 19 Q. And the firm was constantly negotiating, the
 20 firm's attorneys were constantly negotiating with
 21 Ciro about taking write-offs on the loans,
 22 correct?
 23 A. Yeah, yeah. You know, because those things --
 24 those loans are, in a sense, predatory, so they'd
 25 become very burdensome come settlement time. You

158

1 know, you borrowed 500 bucks a year ago, now
 2 you've got to pay us back 900. Well, after we do
 3 the math and we pay back Liberty or whoever, the
 4 900 bucks, there's no money in it -- or there's
 5 200 bucks in it left for the client. The firm is
 6 going to get 1,100, the client is only going to
 7 get 2000 because they already got -- or that math
 8 -- yeah, essentially they already got 500, but it
 9 cost them 900 to get it so they're really getting
 10 1,100 but they're only seeing the 200 at the
 11 moment. So they've created -- had the tendency
 12 to create some animosity with the client.
 13 Because they see and hear that you're going to
 14 get 1,100 bucks and they're really only getting
 15 700 total, the 500 they got initially plus the
 16 200 that's left over after they pay Liberty
 17 Capital back the 900. So, no, I don't want to
 18 settle it. I'm not getting enough money. You're
 19 getting all the money. So I would discourage
 20 that. I mean last resort.
 21 Q. Did anyone at the firm ever tell you that the
 22 client should be discouraged from taking these
 23 cash advances?
 24 A. Never, never. And, gosh, I can't remember
 25 exactly what the conversation was and it was

159

1 probably -- it was probably with one or the other
 2 Rob where, you know, I was expressing just what I
 3 expressed to you, that, oh, my God, why would we
 4 do this, it makes it so much harder to settle the
 5 case and the response was, you know, at least
 6 you're going to get something out of it. If they
 7 fire you, because they're going somewhere else
 8 for money then you're going to get zero. So keep
 9 them happy, keep the client happy.
 10 Q. Let me show you -- I don't need to go through all
 11 the Liberty Capital e-mails.
 12 - - - -
 13 (Thereupon, Gary Petti Plaintiff's Exhibit 27
 14 was marked for purposes of identification.)
 15 - - - -
 16 Q. This is Exhibit 27. This is Thursday, May 10th,
 17 2012. And Mr. Nestico says, "For any Plambeck
 18 patients only please use the below company for
 19 cash advances."
 20 Now I can represent to you that he later sent
 21 an e-mail saying sorry applies to all cases not
 22 just Plambeck, but did you ever have any
 23 understanding of why he would distinguish between
 24 Plambeck and non-Plambeck cases here?
 25 MR. MANNION: Objection.

160

1 MR. RUBIN: Objection.
 2 A. No, I didn't. And this -- I'm very new still at
 3 this point. And just at Slater & Zurz we had,
 4 you know, a policy to talk them out of it, talk
 5 the client out of it. You know, make sure they
 6 know how bad this is going to be for them. So
 7 that if they do follow through and do it, then
 8 you can say, I told you so later on when the case
 9 settles.
 10 So -- and since I was still new there and I
 11 come from 15 years or however long -- in fact,
 12 Slater & Zurz handled a case that made interim
 13 settlement funding illegal in Ohio for however
 14 many years, until they decided -- I can't
 15 remember if they changed the legislation or what
 16 they did differently, but Slater & Zurz took that
 17 case to the Ohio Supreme Court and it was not
 18 permitted for some period of time here in Ohio.
 19 So again, I had a culture of this is all bad.
 20 So when I see this, you know, just more jaw
 21 dropping really than anything that -- because in
 22 the past -- first of all, we wouldn't have
 23 e-mailed it, but it was all no, no, no, keep
 24 people away from this, not here's who you use.
 25 Q. What did you think about using just one company?

161

1 A. I wouldn't understand why. Wouldn't -- and it
 2 did absolutely raise some red flags for me, but I
 3 didn't have the answers as to why it would be
 4 directed to one group in particular.
 5 Q. Did you ever talk to anybody about this?
 6 A. No. I'm sure if I did, it was just an expression
 7 that just I don't know why it's even accepted.
 8 Why the policy, why the culture isn't like it was
 9 at Slater & Zurz to really strongly discourage
 10 people from doing it. But then, like I said,
 11 from the "you get fired and they take money from
 12 you perspective", you have an incentive to do
 13 what it takes to keep the client.
 14 Q. Do you understand that this e-mail from Mr.
 15 Nestico is an instruction or did you consider it
 16 just a suggestion?
 17 MR. MANNION: Objection.
 18 A. I would say you have no choice.
 19 Q. So you don't read this as saying you have any
 20 discretion to recommend another loan company to a
 21 KNR client --
 22 A. Right --
 23 Q. -- correct?
 24 A. -- no, no, that wouldn't be my...
 25 Q. Did you ever become aware of a single instance

162

1 where Liberty Capital denied funding to a KNR
 2 client?
 3 A. No, I'm not aware of anywhere they denied.
 4 MR. MANNION: I'm going to object.
 5 How would he know that?
 6 MR. PATTAKOS: Well, he worked at
 7 the firm, so --
 8 MR. MANNION: So he knows every
 9 time that there was an application --
 10 MR. PATTAKOS: I didn't ask him if
 11 he knew if it ever happened, I asked him if
 12 he ever became aware of an --
 13 MR. MANNION: That's --
 14 MR. PATTAKOS: -- instance when it
 15 happened.
 16 MR. MANNION: -- ridiculous.
 17 MR. PATTAKOS: That's your
 18 opinion, Tom.
 19 MR. MANNION: Well, your
 20 representative for the class was offered,
 21 too, Peter, so...
 22 - - - -
 23 (Thereupon, Gary Petti Plaintiff's Exhibit 28
 24 was marked for purposes of identification.)
 25 - - - -

163

1 Q. Here's Exhibit 28. So this is an e-mail where
 2 Rob Nestico writes to Ciro, can we get this
 3 client an advance of \$250 or more? Please let me
 4 know. Don't want to lose this client.
 5 This is consistent with what you were
 6 describing before, correct?
 7 A. Yeah, absolutely.
 8 Q. Okay. Do you remember -- well, I'll tell you
 9 what, let's go right to the documents.
 10 - - - -
 11 (Thereupon, Gary Petti Plaintiff's Exhibit 29
 12 was marked for purposes of identification.)
 13 - - - -
 14 Q. Exhibit 29. These are e-mails that you provided
 15 me; is that correct?
 16 A. I did, yep.
 17 Q. And what do you remember about this?
 18 A. This one was frustrating. I had a guy who really
 19 was very, very close to getting his case settled,
 20 but wanted money now. And I tried to talk him
 21 out of it. Your money is coming. It's going to
 22 -- you're going to get penalized so much for --
 23 in terms of the fees charged by the -- by the
 24 loan company for basically renting this money for
 25 less than a week. I mean your cash is coming, do

164

1 not do this, but he insisted on doing it.
 2 And they gave him a loan because they knew
 3 the money was coming and that it was just a
 4 matter of time. And I went through with it
 5 because of the fear that if you fired me, it
 6 would cost me money and, of course, ironically it
 7 cost me money anyhow.
 8 Q. How would it have cost you money otherwise?
 9 A. If he fired us then, like I said, they make the
 10 decision that I should have --
 11 Q. I'm sorry.
 12 A. -- authorized the loan and participated in that
 13 process, so they dock me some money. So in this
 14 instance what happened was basically everything
 15 crossed in the mail. I -- we gave Preferred
 16 Capital Funding -- that's who PCF is -- we gave
 17 them the information they needed in order to
 18 approve the loan over the phone or e-mail or fax,
 19 whatever, my paralegal did that. They approved
 20 it and they sent him a check. Like the next day
 21 we got the settlement check in the mail from the
 22 insurance company and promptly disbursed the
 23 money to him. And then we got the envelope from
 24 Preferred Capital Funding saying we loaned this
 25 guy money, you owe us however many hundreds of

1 dollars when you settle the case, so --
 2 MR. MANNION: I'm just going to
 3 object because there was a pronoun in there
 4 about they sent them the money and I just
 5 want --
 6 A. Preferred Capital sent the client the money, the
 7 loan, and then right away when you do that, you
 8 know, we send you 500, now you owe us 800 even if
 9 the case settles between tomorrow and six months,
 10 or whatever their framework was. And we just --
 11 everything crossed in the mail.
 12 And I owned up to it, I said hey, this is
 13 what happened -- I resented this because in some
 14 large part I thought it was Megan's fault for not
 15 noting the file that we had to pay Preferred
 16 Capital back and I never liked Megan and thought
 17 she was incompetent, but they never did anything
 18 about that.
 19 Q. There was also a case where you closed out
 20 without paying Liberty Capital, correct?
 21 A. Not that I can recall.
 22 - - - -
 23 (Thereupon, Gary Petti Plaintiff's Exhibit 30
 24 was marked for purposes of identification.)
 25 - - - -

1 Q. It looks like you did it twice according to
 2 Exhibit --
 3 A. Yay.
 4 Q. -- 30, if you take a look at this?
 5 MR. MANNION: I'm going to object.
 6 Move to strike the commentary.
 7 Q. Do you have any memory of this?
 8 A. This doesn't say my name on it.
 9 Q. Gary P.
 10 A. Does it? Where?
 11 Q. If you look at the -- well, on November 30th,
 12 2012 --
 13 A. Oh.
 14 Q. -- says please use Liberty Capital until further
 15 notice. Brandy says, I've been working with Ciro
 16 today trying to get everything up to date in our
 17 system. So Far Gary P has closed two cases
 18 without paying and Ken one case. Nestico
 19 responds, really they better pay them. And
 20 Brandy then says, oh, I know. Neither of them
 21 told us about it. Ciro was going to waive. Do
 22 you remember this now?
 23 A. No, I don't remember it.
 24 Q. This was shortly before you got fired?
 25 A. Yeah.

1 Q. Okay. And Brandy says, I discussed this with
 2 Robert and we decided to make attorneys pay
 3 because at some point we will need a favor from
 4 Ciro and need him to waive.
 5 A. Right. So that makes sense to me.
 6 Q. Why does it make sense to you?
 7 A. Take the money from me instead of them.
 8 Q. What do you think she meant by at some point
 9 you'll need a favor from Ciro and need him to
 10 waive?
 11 MR. MANNION: Objection. Move to
 12 strike.
 13 A. That would be an instance where, you know, the
 14 case falls apart, there's not enough money to pay
 15 or maybe just a client won't accept it, the
 16 settlement as it's proposed, so they'll need him
 17 to write it off in order to just make the case go
 18 away.
 19 He, Ciro, would have made an error in
 20 judgement in loaning these people money in the
 21 first place, so he's going to have to eat it in
 22 order to allow the case to settle.
 23 Q. So there was constant bargaining with Ciro about
 24 whether he would take a write-off on the amounts
 25 owed to him on any given case, correct?

1 MR. MANNION: Objection.
 2 A. I did not have a lot of loans, but that was
 3 certainly part of it. Part of the loan process
 4 because like I said, when you -- and I'm using
 5 500 bucks, as soon as they loan you 500 bucks,
 6 you owe 800 even if the case settles the next
 7 day. So sometimes there would be a conversation,
 8 hey, we're not going to pay you 800 bucks, will
 9 you take 750, whatever it is just to allow the
 10 case to resolve. They were -- you could
 11 negotiate with them just like you could a
 12 provider.
 13 Q. I want to go back to the investigation fee. I
 14 want to ask you: How did you in good conscience
 15 recommend that your clients pay this fee out of
 16 their settlement?
 17 MR. MANNION: Objection to the
 18 form.
 19 A. Honestly it never occurred to me while I there
 20 that they were paying for an investigation that
 21 they didn't get. It never occurred to me.
 22 Q. It never occurred to you that this was getting --
 23 that this charge was essentially for the sign-up?
 24 MR. MANNION: Objection.
 25 A. Right. I assumed that there was something else

169

1 going on that I wasn't aware of to justify the
 2 payment.
 3 Q. But you're not -- you're still to this date not
 4 aware that any such thing --
 5 A. Right.
 6 Q. -- happened that would justify the payment,
 7 correct?
 8 A. That's right.
 9 Q. Did you ever go on any of the trips that Nestico
 10 would take KNR lawyers and healthcare providers
 11 on?
 12 A. I did go to Florida. I don't remember the name
 13 of the city. Wherever the Hard Rock is.
 14 Q. And who was on that trip?
 15 A. The pre-lit people from the office and some
 16 chiropractors. The guy from Cincinnati, I can't
 17 remember his name. Tassi. I don't remember who
 18 else in terms of medical providers.
 19 Q. Any MDs?
 20 A. None that I'm aware of.
 21 Q. Ghoubrial wasn't there?
 22 MR. RUBIN: Objection.
 23 A. I don't think so. Pre-lit lawyers and both Robs
 24 were there.
 25 Q. Was Floros there?

170

1 A. No, he was not.
 2 Q. What did you do on this trip?
 3 A. What I principally did was try to arrange a
 4 fishing trip that I could never get to work
 5 because of the weather, but we went to the casino
 6 and I think we golfed one round of golf
 7 somewhere, which I'm not much of a golfer, but we
 8 golfed. And I think we were supposed to do two,
 9 but it was raining the second day, which I wasn't
 10 going to go if I could arrange a fishing trip
 11 anyhow, I was going to go fishing, but it rained,
 12 so then we just hung out in the casino. I think
 13 we had one, sort of, group dinner where we all
 14 got together for dinner, but the rest of it was
 15 sort of on their own, which in hindsight I
 16 probably shouldn't have gone because I'm a
 17 gambler, I'm not really a golfer. I do like to
 18 hunt and fish and I gave up an opportunity to
 19 hunt locally here in Ohio to go down to Florida
 20 to sit in a casino, so...
 21 Q. How many days was the trip?
 22 A. I think it just two. A long weekend maybe.
 23 Q. Do you understand, like, what the criteria was
 24 for who got to go on the trip?
 25 A. No.

171

1 MR. POPSON: Objection.
 2 Q. How did you come to find out or be invited onto
 3 it?
 4 A. E-mails I think, interoffice e-mails. Hey, we're
 5 having, the pre-lit guys are going. And I didn't
 6 know -- I don't know if there was a qualification
 7 on the pre-lit side for, you know, as a lawyer
 8 did you have to earn your way on. I doubt I did.
 9 Just because I hadn't been there that long. We
 10 must have went in October if I missed hunting to
 11 go. I wouldn't have gone in November so -- and I
 12 got fired in December. So it's almost certainly
 13 October, so I had only been there a few months
 14 before we went.
 15 - - - -
 16 (Thereupon, Gary Petti Plaintiff's Exhibit 31
 17 was marked for purposes of identification.)
 18 - - - -
 19 Q. Here's Exhibit 31. This is an e-mail you sent
 20 me, correct?
 21 A. Yes.
 22 Q. What do you remember about this?
 23 A. That it was shockingly racist.
 24 MR. MANNION: Move to strike.
 25 Q. Did you talk with anyone about it?

172

1 A. No.
 2 Q. Do you remember anyone talking about it?
 3 A. No, I don't.
 4 Q. Again, you weren't there much longer after this,
 5 correct?
 6 A. Right.
 7 Q. But you did receive this e-mail?
 8 A. Yes, I did. I did. And I forwarded it to myself
 9 because, like I said, it was -- given the
 10 demographic of the firm's clientele, I thought it
 11 was shockingly racist, stereotypical.
 12 Q. And what you do mean about the demographic of the
 13 firm's clientele?
 14 A. Lots of minorities. High percentage of
 15 minorities.
 16 Q. KNR claimed in an interrogatory response that you
 17 were terminated because you quote, did not return
 18 client calls, did not handle after-hours intake,
 19 were often absent without notification and had a
 20 poor work attitude.
 21 Do you agree with that?
 22 A. No, not in total. I'm not certain my attitude is
 23 fabulous. I thought it was a sweatshop and it
 24 was fairly difficult to put a good face on every
 25 day. As far as frequently absent without notice,

173

1 that -- I mean we've got stacks of e-mails. I
 2 mean, there's no e-mail to that effect at all,
 3 that they ever said, hey, Gary why weren't you
 4 here?
 5 I did, as I kind of described when I decided
 6 to come there, I didn't have to go, I could have
 7 stayed at Slater & Zurz. So when I went there, I
 8 was very clear. I did miss some time, but I like
 9 to do things. Every April I go trout fishing in
 10 Pennsylvania. I go on vacation with my family.
 11 I go deer hunting in November after Thanksgiving.
 12 I do those things. If you're going to tell me
 13 no, then I'm not going to work for you. They're
 14 important to me. So I didn't take any time away
 15 without notice.
 16 After-hours intake, again, there's no e-mail
 17 to that. Nobody's ever said a word to me then or
 18 later or now would be the first I heard of it
 19 that I was suppose to do. I mean, we did get the
 20 e-mail saying that, you know, certain ones were
 21 done after hours. Because when I was there, Paul
 22 did all the after-hour intakes.
 23 Q. Paul Steele?
 24 A. Yes. Maybe they took turns, but it wasn't up for
 25 grabs. There was no assignment. So -- and

174

1 returning client phone calls, I would say I was
 2 no better or worse than anybody as far as that
 3 goes. They would -- I don't know that I got a
 4 lot of complaints or any, from the clients about
 5 not returning phone calls, but in the Needles
 6 system there was a tickler and a tracking, which
 7 I didn't always use, so I would occasionally get
 8 an e-mail saying, you know, you've got however
 9 many hundreds of undone tasks according to
 10 Needles, but because I didn't always use it
 11 didn't mean -- it didn't mean that it didn't
 12 really happen. You just had to check the box on
 13 Needles to keep it from coming up.
 14 So I did have conversations with guys there
 15 and basically they would just blow through their
 16 undone tasks and check, check, check, check,
 17 check, to shrink the box, to shrink the list of
 18 undone tasks, without even doing them --
 19 Q. About Needles --
 20 A. -- not completing the task.
 21 Q. Okay. About Needles -- during Mr. Horton's
 22 deposition I would ask him questions about, for
 23 example, how many of his files Dr. Ghoubrial
 24 treated the client on or how many of his files
 25 Dr. Floros treated the client on. He said it

175

1 would be easy to find out if you check Needles?
 2 A. Absolutely simple.
 3 Q. Yeah. Do you agree with that?
 4 A. Yeah. It's got a search function and you can
 5 search by provider. All the different ones by
 6 provider. You can search by referral source
 7 easily.
 8 Q. When's the last time you've spoken with Paul
 9 Steele?
 10 A. On or about the day I got fired.
 11 Q. Was he part of the group that you spoke with that
 12 informed you --
 13 A. No, I didn't speak to anyone really.
 14 Q. -- you were terminated?
 15 A. Paul -- I sort of view Paul while I was there as
 16 essentially management. And I don't know if he
 17 was or not. But he -- I would not have shared
 18 any concerns with anyone there, least of all
 19 really Paul. Because I felt that Paul was a real
 20 KNR loyalist.
 21 Q. Why do you believe you were terminated?
 22 MR. MANNION: Objection.
 23 A. Because they had no other way to address the
 24 narrative report thing, my objection to the
 25 narrative report -- well, John told me I wasn't a

176

1 good fit. That's the reason he gave me, right,
 2 John?
 3 MR. MANNION: Objection. Don't do
 4 that.
 5 THE WITNESS: That's what he said.
 6 Q. Okay.
 7 A. I was all ready to quit. I would have given them
 8 my notice in three weeks. And I told John that,
 9 I told Redick that, I told Nestico that. The day
 10 I was fired they had Matt, one of the paralegals,
 11 a bigger guy, standing outside the door as if I
 12 was going to be disruptive. And John asked if I
 13 needed Matt to help me with anything out and I
 14 said, no, absolutely not. I've got a bottle of
 15 hot sauce because I had already moved everything
 16 out, I was ready to go.
 17 I would have quit sooner, but we were coming
 18 up on Christmas. My wife already wasn't working,
 19 my oldest kids I think would have been unnerved
 20 about neither parent having a job through
 21 Christmas, at least that was my fear.
 22 So -- and I had a bunch of my CLEs scheduled.
 23 Then we were going to hit Christmas, historically
 24 at least in my practice, the week between
 25 Christmas and New Year is kind of slow, so I was

1 going to quit the first workday into the new
2 year, but I didn't get the opportunity. I was
3 going to give them my two weeks notice with the
4 expectation that they'd say, okay, leave.

5 But I generated the fees, I hit the hundred
6 however many times. They never sent me any
7 e-mails saying that, you know, I was not doing
8 anything right. I know Megan Jennings was a
9 complete -- very tight with Brandy so I know when
10 I sent that e-mail that Brandy knew instantly.

11 MR. MANNION: Objection.

12 Q. About the narrative reports?

13 MR. MANNION: Speculation.

14 THE WITNESS: Yes, you're right.

15 A. I believed when I sent it, that it was going to
16 get to management instantly as soon as I sent
17 it --

18 MR. MANNION: Objection.

19 A. -- and I was a little bit surprised that there
20 wasn't any pushback immediately, but then even
21 before I got fired, I expected to be fired
22 because, you know, I thought, well, what are they
23 going to say, hey, Gary, you have to do this, and
24 I'm going to say, no, I'm not going to, and we're
25 going to be at an impasse anyhow. So they almost

1 Q. And they would give you specific instructions on
2 when you said something that was improper?

3 A. That one there was the only time that it was ever
4 me. I think I listened to other people speak.

5 Q. So in these training sessions, like the one
6 that's described here, you weren't the only one
7 to have your phone calls played?

8 A. No, I think I was. I don't really know what that
9 -- I don't remember what that whole thing was
10 about, why we were all there, but it was a
11 conference room, their big conference room, right
12 when you walk in the door to the right, there was
13 virtually every lawyer who worked in the Akron
14 office was there. And like I said, I don't
15 remember what we were all doing, but they played
16 the recording of me attempting an intake.

17 Q. And you were criticized for it?

18 A. Yeah, yeah. It was -- after the intake Nestico
19 asked, what did Gary do wrong? And they're
20 crickets because of course nobody wants to
21 criticize me to my face. And then Gary Kisling
22 says, you know, I think that sounded like a
23 setup, like it was a planted setup phone call.
24 And honestly that had been my initial reaction,
25 too, as I was talking to this guy because he was

1 had no choice once I sent the e-mail, but to fire
2 me.

3 Q. Unless they were going to change their policy --

4 A. Right.

5 Q. -- and stop doing the --

6 MR. MANNION: Objection.

7 Q. -- narrative report?

8 MR. MANNION: Objection.

9 A. Right, right, right. And they're not going to.

10 Q. Let's just look back at the affidavit and I think
11 this will be the end. Let's look at paragraphs
12 10 and 11. Let's look at paragraph 10 first.

13 This is an incident where you were in a
14 training session and Mr. Nestico played a
15 recording of a phone call that you had over the
16 firm's phone line with a potential client.

17 So, did -- you understood that Mr. Nestico
18 and the firm's management monitored all the phone
19 calls that you had with the firm's clients?

20 A. Yes, I did.

21 Q. Did they tell you that?

22 A. I don't recall how I first learned of it, but I
23 knew that they were listening. I think I
24 probably sat in Nestico's office and listened to
25 some, some calls.

1 trying to get me to commit to promise him certain
2 things. And I'm very reluctant to promise
3 anybody anything because I can't deliver results
4 as a lawyer, I can deliver effort. But then the
5 conversation went on and the guy was hung up
6 about his lost wages, but he was an independent
7 contractor, which I know from experience that's
8 difficult. I mean, you can't just not go to work
9 as an independent contractor and say, I didn't
10 work today, and, you know -- or I didn't work for
11 ten days and I usually make 300 bucks a day, a
12 lot of insurance companies demand much more
13 specific proof than that so that's what I was
14 telling this guy was like, look, we'll try, but
15 it's going to be on you.

16 You're going to have to show us, you know,
17 who you were going to work for, what you would
18 have made that day. That you're so booked up
19 that after you got better, you couldn't go do
20 that job again.

21 That, you know, you're going to have to
22 demonstrate conclusively that that stuff -- that
23 that income was conclusively lost. And the guy
24 basically said, well, you know, I've got some
25 other people to talk to, I'll call you back.

1 So then Rob asked, Nestico asked, what did
 2 Gary do wrong? Kisling then said, well, the guy
 3 sounded like a plant, and, you know, I'm real
 4 skeptical about what was going on there. And
 5 then Nestico interrupted and said, you know, the
 6 problem was the guy was worried about his lost
 7 wages, he should have told him, don't worry about
 8 it, we're going to get your lost wages taken care
 9 of. We're going to do that for you.

10 And I'm never going to promise anybody that
 11 I'm going to get them anything other than what's
 12 fair and reasonable as they decide.

13 Q. Were you ever asked to redact information from
 14 client's medical bills like Medicare or Medicaid,
 15 payment information?

16 A. Yes, all the time.

17 Q. Were you -- okay. Can you describe that?

18 A. For purposes of the Robinson versus Bates stuff,
 19 you'd eliminate any source of payment so that --
 20 or any evidence, if you could, that the bills
 21 have been paid so that you could present as big
 22 of a Robinson number as possible, as big of a
 23 potential out-of-pocket number as possible.

24 Q. Did you always do it?

25 A. I did not always. I would only do it if it was

1 simple. You know, because some of the medical
 2 providers -- they used whiteout, I mean, they had
 3 cartons of whiteout there, the strip kind. So
 4 some of the medical providers produce bills that
 5 are shaded, dark gray, light gray, dark gray,
 6 light gray. So if you whiteout the light gray,
 7 it's obvious because the next -- the
 8 corresponding row should be light gray but
 9 instead it's white, so it's obvious that
 10 something has been redacted.

11 So I wouldn't do it in that scenario, not
 12 because I thought I was really doing anything
 13 wrong, more so the insurance company would see
 14 that and it would just create question, you must
 15 have redacted something, give use the real bill
 16 and make the process take longer. So I didn't
 17 want to go through that exercise.

18 Q. And also make the insurance company more
 19 skeptical?

20 A. Yeah, of the whole thing. I didn't want to, you
 21 know, give them any reason to distrust, but like
 22 I said, I would do it if, if it was simple. You
 23 know, if it was just sort of the black and white,
 24 like this piece of paper, and at the end it says
 25 minus whatever we got paid from CareSource or

1 whoever, delete that. You've still got to make
 2 sure in my practice at least, still got to make
 3 sure, that CareSource or whoever is getting paid
 4 back, but eliminate the source of payment so that
 5 your Robinson number appears to be higher than
 6 what it actually is.

7 Q. What have you been doing for a living since you
 8 were terminated by KNR?

9 A. General contracting principally.

10 Q. For yourself?

11 A. Yes. The Petti CC is the name of the company.

12 Q. You haven't practiced any law?

13 A. Very little. I still maintain my license. I did
 14 my CLE last year. I really keep my license so I
 15 can refer cases to people and that's it.

16 MR. PATTAKOS: Okay. I have no
 17 further questions subject to any follow-up
 18 on defendant's questions.

19 MR. MANNION: We obviously have
 20 quite a ways to go. It's 1:00 now. We'll
 21 take lunch, be back right around 2:00, five
 22 minutes after, somewhere in that timeframe.

23 THE VIDEOGRAPHER: Off the record.

24 - - - -

25 (Thereupon, a recess was had.)

1 - - - -

2 EXAMINATION OF GARY M. PETTI

3 BY MR. MANNION:

4 Q. Did you ever work on Naomi Wright's case?

5 A. No.

6 Q. Do you know who represented her at KNR?

7 A. I don't know, but for some reason I think it was
 8 Horton.

9 Q. Okay. Do you know how she was signed up?

10 A. No.

11 Q. Do you know who obtained the police report?

12 A. No.

13 Q. Do you know what was said to her during the
 14 initial conversation with KNR?

15 A. No.

16 Q. What was she told about medical care?

17 A. No idea.

18 Q. How would you find out?

19 A. Ask her.

20 Q. Ask her, ask the lawyer, look at the records,
 21 look at Needles?

22 A. Yeah, any of those.

23 Q. Okay. You don't have those answers?

24 A. I do not.

25 Q. Just because you handled cases a certain way at

185

1 KNR doesn't mean that's what happened with Naomi
 2 Wright, does it?
 3 A. That's correct.
 4 Q. What about Member Williams, how was she signed
 5 up, do you know?
 6 A. I'm not familiar with the Member Williams case.
 7 Q. Do you know who represented her --
 8 A. No.
 9 Q. -- at KNR?
 10 A. No.
 11 Q. How was she signed up?
 12 A. Do not know.
 13 Q. What was she told about chiropractic care?
 14 A. Don't know.
 15 Q. Did they send her for chiro care?
 16 A. I do not know.
 17 Q. Do you know if they had a discussion about
 18 chiropractic care and she said no?
 19 A. No, I do not know that.
 20 Q. How would you find out?
 21 A. Ask her, have them refer to other sources who
 22 were there.
 23 Q. So you'd have to ask the lawyer, Member Williams,
 24 look at the records, maybe ask the doctor, fair?
 25 A. Yeah. Each of them may have some relevant

186

1 information.
 2 Q. What did the investigators do on her case?
 3 A. Don't know.
 4 Q. How would you find out?
 5 A. Ask them.
 6 Q. Ask the investigator, look at the file, ask the
 7 lawyer?
 8 A. Yes. All the same thing --
 9 Q. All the same?
 10 A. -- similar thing.
 11 Q. And whether they did the same thing on her case
 12 as they did on Naomi Wright's case, do you have
 13 any idea?
 14 A. No, I do not.
 15 Q. Okay. You'd have to look at that case
 16 separately?
 17 A. Yes.
 18 Q. What about Monique Norris, same answer as far as
 19 it relates --
 20 A. Right, I don't have any familiarity with her,
 21 what she was told or how she was signed up,
 22 anything like that.
 23 Q. Do you know whether a loan was discussed with Ms.
 24 Wright or Ms. Williams?
 25 A. No, I do not.

187

1 Q. Do you know whether one was discussed with Ms.
 2 Norris?
 3 A. No.
 4 Q. Okay. Do you know what was said to her about
 5 loans or chiropractors or Dr. Ghoubrial or any of
 6 those?
 7 A. I do not.
 8 Q. Whether it's the same as what happened with Naomi
 9 Wright or Member Williams, do you have any idea?
 10 A. No, I do not.
 11 Q. How you would you find out with Monique Norris
 12 what was told to her about a Liberty Capital loan
 13 or an Oasis loan or a loan with whoever?
 14 A. Ask her and the lawyer.
 15 Q. And perhaps the loan company?
 16 A. Perhaps. But it depends on what issues you were
 17 curious about.
 18 Q. Okay. Of whether they issued a loan or talked to
 19 her about a loan?
 20 A. Yeah, you'd have to -- loan company, sure.
 21 Q. And what discussions they had, you'd have to
 22 actually talk to Monique Norris and the people
 23 that she talked with, fair?
 24 A. That's fair.
 25 Q. Look in Needles perhaps?

188

1 A. Perhaps.
 2 Q. And to determine what the investigator did, if
 3 anything on her case, you'd have to ask that
 4 investigator and the lawyer and look at Needles?
 5 A. Yes, for certainty.
 6 Q. Okay. Do you know whether there were any
 7 photographs taken of vehicles or anything of that
 8 nature in her case?
 9 A. I don't.
 10 Q. And you'd have to look at the file?
 11 A. Yes.
 12 Q. What about Richard Harbor, do you know any of the
 13 information as it relates to him?
 14 A. No, I'm completely unfamiliar with Mr. Harbor.
 15 Q. Did you know that he had four separate cases with
 16 KNR?
 17 A. No, I did not.
 18 Q. Do you know that he treated with Dr. Ghoubrial at
 19 two of those cases and received injections for
 20 two of those cases?
 21 A. No.
 22 Q. And that he didn't receive injections on the
 23 other two cases. Did you know that?
 24 A. No, I did not know that.
 25 Q. To find that out, you'd have to go look at those

189

1 individual cases?
 2 A. Yes.
 3 Q. Who referred Richard Harbor to Dr. Ghoubrial?
 4 A. I would not know that.
 5 Q. You never referred a KNR client to Dr. Ghoubrial,
 6 did you, personally?
 7 A. I never did, no.
 8 Q. In fact, KNR typically did not refer cases to
 9 Dr. Ghoubrial, did they?
 10 A. Typically, I would say probably not, but it came
 11 through the relation that everyone had with one
 12 another and most directly then through the
 13 chiropractor.
 14 Q. Well, it would be a conversation between the
 15 chiropractor and the patient, true?
 16 A. In my cases, certainly. I would never have
 17 intervened in that.
 18 Q. Okay. And you don't know how the others did it,
 19 do you?
 20 A. No, I do not.
 21 Q. And when you worked at KNR, you were essentially
 22 either on the phone or working on cases, for the
 23 most part?
 24 A. Yes.
 25 Q. Were you paying a lot of attention to how

190

1 everybody else was interacting on the phones or
 2 handling their cases?
 3 A. None. Virtually none.
 4 Q. Okay. As far as like what percentage of cases
 5 Rob Horton or Kelly Phillips or any other lawyer
 6 referred to a chiropractor, you don't know the
 7 exact percentage of those, do you?
 8 A. Exactly, no. But like we discussed, I mean, it
 9 was principally chiropractic referrals.
 10 Q. The same with how you practiced at Slater & Zurz,
 11 fair?
 12 A. I almost never referred. Not almost -- yeah,
 13 almost never is fair to say. Most of my clients
 14 came to me from a referral source so I wasn't in
 15 a position to refer out and I didn't really
 16 direct care.
 17 Q. And you didn't direct care at KNR either, did
 18 you?
 19 A. Well, in terms of saying, you know, hey, go here.
 20 Q. Well, if they wanted chiropractic care, you would
 21 give them a referral source, true?
 22 A. Well, certainly that's true, but beyond that
 23 also, you know, hey, you'd select for them, you
 24 know, here's where you should go.
 25 Q. But my question is: You wouldn't do that if they

191

1 didn't want chiropractic care, would you?
 2 A. You wouldn't ask. If they said, hey, I don't
 3 want to go to a chiropractor, I wouldn't send
 4 them to one.
 5 Q. You never forced a client at KNR to get unwanted
 6 health care, did you?
 7 A. I would never have, no.
 8 Q. You never heard anybody do that, did you?
 9 A. The lady I spoke to who is initially signed up by
 10 Sandel was very clear that she did not want to go
 11 to a chiropractor, but they told her she had to
 12 --
 13 Q. Okay.
 14 A. -- she felt forced to.
 15 Q. And so one case out of all the ones you know at
 16 KNR, do you know of any other cases that
 17 allegedly somebody received unwanted health care?
 18 A. I do not know of any other.
 19 Q. Okay. And do you know Attorney Sandel?
 20 A. I do know Kevin.
 21 Q. Are you trying to say that something -- he does
 22 things wrong?
 23 A. I'm saying that the pressure at KNR to refer
 24 people to chiropractors, specifically Akron
 25 Square, resulted in him, you know, pressuring her

192

1 to go there.
 2 Q. Did he tell you that?
 3 A. No.
 4 Q. Okay. You don't know why he sent her there, do
 5 you? That's your speculation?
 6 A. It is --
 7 Q. Okay.
 8 A. -- yeah, based on what I saw at --
 9 Q. Okay.
 10 MR. PATTAKOS: Objection.
 11 A. -- KNR.
 12 Q. And did you ever go talk to Attorney Sandel about
 13 that after the fact and say, hey, what do you
 14 know about this?
 15 A. No. And when I say I know Kevin, I should say I
 16 -- we went to law school together. Beyond that
 17 -- and I think we have some friends in common or
 18 some acquaintances in common --
 19 Q. Right.
 20 A. -- so I don't have an ongoing relationship with
 21 Kevin at all.
 22 Q. And once that client went to see Akron Square, it
 23 was the discussions between Akron Square and that
 24 client that got them to see the medical doctor,
 25 true?

193

1 A. True. In that woman's case I don't know that she
 2 then went to a medical doctor --
 3 Q. Okay.
 4 A. -- may have been exclusively Akron Square
 5 treatment. I don't remember.
 6 Q. And of course you told her if you don't like it,
 7 stop. Fair?
 8 A. Well, by the time I got involved, it was already
 9 over and I was just trying to settle the case.
 10 Q. So her treatment was over?
 11 A. Well, all the -- her treatment was over, all the
 12 material had been submitted to the insurance
 13 company, it was just negotiation, trying to get
 14 her some money.
 15 Q. Okay. And you certainly, when you negotiated
 16 with the insurance company, you represented that
 17 that chiropractic care was reasonable and
 18 necessary, didn't you?
 19 A. Probably not directly. I mean, it's not like --
 20 most of those cases really settle themselves.
 21 Again, like I said earlier, there's very little
 22 legal stuff going on. You know, everybody --
 23 it's a template sort of.
 24 Q. Well, do you remember your conversations with the
 25 insurance company --

194

1 A. No --
 2 Q. -- in --
 3 A. -- I do not.
 4 Q. Okay. And when you say a template, you weren't
 5 provided a template from KNR, were you?
 6 A. No. No.
 7 Q. Okay. You're talking about a template just as
 8 you would have had at Slater & Zurz or anywhere
 9 else; is that what you mean?
 10 A. Same thing that defense lawyers have. I mean,
 11 you see the medical treatment and how long it
 12 lasted, what the nature of it is with the nature
 13 of the impact and you already have a general
 14 range where this case is going to go, unless
 15 there's some other compelling reason otherwise.
 16 Q. Did you go back and look at her treatment with
 17 Akron Square?
 18 A. I'm sure I did.
 19 Q. Do you remember telling the insurance company,
 20 hey, don't consider that?
 21 A. Oh, I would never do that.
 22 Q. You certainly wouldn't try to defraud the
 23 insurance company, would you?
 24 A. No. No, I would not.
 25 Q. I mean, if you thought the medical care wasn't

195

1 reasonably and medically necessary, would you
 2 still try to collect for it?
 3 A. I would not develop an opinion as to whether or
 4 not it was personally reasonable or necessary or
 5 anything like that.
 6 I mean, my understanding of my role as a
 7 lawyer is to be a zealous advocate on behalf of
 8 my client and not make decisions about the facts
 9 and argue against them. So the care is what it
 10 is. If the insurance company says they don't
 11 want to pay for it, then I say, oh, come on, this
 12 is -- you know, these are the bills, this is how
 13 we have to get this case settled, but I'm not
 14 developing my own personal opinion as to whether
 15 or not it was reasonable and necessary and
 16 inserting it in the case.
 17 Q. That's for the chiropractor and the medical
 18 doctor to determine, true?
 19 A. Right. Sure.
 20 Q. And you certainly don't want insurance companies
 21 dictating how your clients treat, do you?
 22 A. No, I don't.
 23 Q. I mean, the purpose for treatment, as you said I
 24 think, was two-fold. One, it has some
 25 evidentiary value in how to get the case settled

196

1 --
 2 A. Uh-huh.
 3 Q. -- but two, it's to heal?
 4 A. Yes.
 5 Q. So if trigger point injections, for example, are
 6 helping somebody heal --
 7 A. Uh-huh.
 8 Q. -- then that patient or client may want those
 9 regardless of its impact on the settlement, true?
 10 A. That is true.
 11 Q. And do you think if injections are helping a
 12 person heal, that it's right for the insurance
 13 company not to consider them?
 14 A. No, you would -- if they're helpful, they should
 15 be considered.
 16 Q. And your job as a zealous advocate and
 17 representing that client is get the insurance
 18 company to reimburse the client for those, true?
 19 A. That is true.
 20 Q. Now, what was Monique Norris told about Dr.
 21 Floros and whether she should go see him or
 22 somebody else or anything, do you know?
 23 A. I don't know anything about Monique Norris.
 24 Q. And again, you'd have to look at the file?
 25 A. Yeah.

1 Q. You don't know her discussions with Dr. Floros
 2 about whether to see Dr. Ghoumbrial or not, do
 3 you?
 4 A. No, I don't have any personal information about
 5 that.
 6 Q. You don't know Monique Norris' conversations with
 7 Dr. Ghoumbrial about whether to receive trigger
 8 point injections or opioids or TENS units or any
 9 of that, do you?
 10 A. Of course not.
 11 Q. And you've had clients that have used TENS units
 12 even before you got to KNR, true?
 13 A. Yeah.
 14 Q. Because they help some patients, don't they?
 15 A. I don't recall whether or not they were
 16 successful or not.
 17 Q. But you would leave that to the medical doctor?
 18 A. Yeah.
 19 Q. And you certainly had chiropractors who did
 20 electrical stimulation even at their office,
 21 correct?
 22 A. All the time.
 23 Q. And that your clients told you helped, fair?
 24 A. Generally, yes.
 25 Q. And you certainly had clients who had trigger

1 point injections at times, didn't you?
 2 A. I'm sure of it.
 3 Q. If you heard --
 4 A. I don't remember any specific instances, but --
 5 Q. Sure.
 6 A. -- thousands -- thousands of people, yeah.
 7 Q. You're not here arguing, are you, that trigger
 8 point injections, in and of themselves, have no
 9 medical value? You're not here to make --
 10 A. No, of course I'm not qualified for that.
 11 Q. Okay. Do you know what a CPT code is?
 12 A. Uh-huh.
 13 Q. What is it?
 14 A. It's a code assigned on a medical bill that the
 15 medical insurance typically uses for pricing.
 16 Q. And, for example, trigger point injections have a
 17 CPT code, don't they?
 18 A. Yes. Each treatment has a code assigned. There
 19 are two. And it's been so long I can't really
 20 remember, but there are ICD9 codes and CPT codes
 21 and I can't quite remember which is which
 22 anymore.
 23 Q. And there's different codes depending on how many
 24 different trigger points are being injected, two
 25 different codes --

1 A. Beyond --
 2 Q. -- three and less or three and more, whatever the
 3 --
 4 A. Yeah, I wouldn't know that.
 5 Q. Okay. But have you ever seen an insurance
 6 company have CPT codes for treatment that is
 7 somehow not recognized in the medical field?
 8 A. No. No, I don't think so.
 9 Q. And the same with TENS units, there's CPT codes
 10 for electrical stimulation?
 11 A. As far as I'm aware, sure.
 12 Q. Okay. And you're not here to argue that either
 13 trigger points or TENS units are not reasonably
 14 and medically necessary for some patients, are
 15 you?
 16 A. Again, I'm not qualified for that.
 17 Q. You'd have to look at every individual patient,
 18 their records, the doctor, and look at the whole
 19 entire file to determine whether, for that
 20 particular patient, it was reasonably and
 21 medically necessary, fair?
 22 A. Yes.
 23 Q. And you didn't do that in any of these cases, did
 24 you?
 25 A. Certainly not.

1 Q. And, for example, let's say Mr. Harbor, as an
 2 example, had trigger point injections and felt
 3 they were helpful and had another accident and
 4 went back again to Dr. Ghoumbrial and got more
 5 trigger point injections --
 6 A. Uh-huh.
 7 Q. -- and even testified under oath that they were
 8 helpful and provided relief, would you at least
 9 say, based on those limited facts, they seemed to
 10 be helpful for him?
 11 A. Yeah.
 12 Q. And if he was told that they were cortisone
 13 shots, is that what your understanding of what
 14 those are?
 15 A. Yes, that is my understanding.
 16 Q. Now, would you, in a Complaint, if your client
 17 met with Dr. Ghoumbrial and told you and sent you
 18 an e-mail saying he's giving me trigger point --
 19 or he's giving me injections of cortisone --
 20 A. Uh-huh.
 21 Q. -- and then later testified that it was a
 22 cortisone shot and it was helpful, would you put
 23 in a pleading that Dr. Ghoumbrial gave him an
 24 injection of an unspecified medication?
 25 A. I don't think so.

201

1 Q. Why not?

2 A. Well, I'm a big fan of notice pleadings, so I

3 would be as general as possible. I probably

4 wouldn't even specifically mention any of the

5 treatment.

6 Q. But if you did mention the treatment, you

7 wouldn't say it's unspecified when it was, would

8 you?

9 A. No. But that's not what I -- I wouldn't plead

10 that way. I mean, I'm simple. You know, he went

11 for treatment and it was reasonable and

12 necessary. I'm not sure where -- what

13 perspective we're looking at if from. You know,

14 If I was representing on the plaintiff's case,

15 I'd say he was involved in an accident, the

16 accident was caused by this person. As a result

17 of that person's negligence he was harmed in the

18 following ways. Injuries to his body, lost

19 wages, blah, blah, blah, that's it.

20 Q. Okay.

21 A. And as a result he had to get medical treatment

22 from various providers.

23 Q. Have you read any of the complaints in this case?

24 A. Yes. At least the second.

25 Q. Did you read any complaints involving Mr. Harbor?

202

1 A. His name is not familiar to me. Member Williams

2 is because she's the one that comes up on the

3 caption --

4 Q. Sure.

5 A. -- the other people I'm not familiar with them at

6 all.

7 Q. If Mr. Harbor's allegations are that Dr.

8 Ghoubrial gave him an unspecified medication --

9 A. Uh-huh.

10 Q. -- based upon the facts that I told you, it

11 certainly wasn't unspecified, was it?

12 A. It doesn't appear to be, I mean, if he told him.

13 Q. So what do you know about Thera Reid's case,

14 anything?

15 A. Nothing.

16 Q. What about her conversations with an

17 investigator, do you know?

18 A. No, I do not.

19 Q. Were there any?

20 A. No idea.

21 Q. Do you know if any of these folks had

22 conversations with investigators?

23 A. I don't.

24 Q. Do you know who signed them up, any of them?

25 A. I don't.

203

1 Q. Again, you'd have to go look at the file?

2 A. Yes.

3 Q. And if I asked you any --

4 A. Well, I don't even know that it would be in the

5 file. Because if there were a charge necessarily

6 -- and I don't know that they kept that close of

7 records, you'd probably have to look at the

8 contingent contract itself maybe or the stuff

9 that was signed. I don't know how you would be

10 able to determine that.

11 Q. Okay. You -- as you sit here, you don't know?

12 A. No.

13 Q. Okay. And even on your individual cases except

14 for maybe a few you remember, you'd probably have

15 to go back and look at the Needles' notes to see

16 whether that person got a loan, whether they went

17 to a chiro, who they treated with?

18 A. Right.

19 Q. Okay. You certainly never forced somebody to

20 take a loan, did you?

21 A. No, I argued against it.

22 Q. Yeah, you always argued against them, didn't you?

23 A. Personally, yes.

24 Q. Okay. And were you aware that Kelly Phillips

25 always tried to discourage KNR clients from

204

1 taking loans?

2 A. No, I was not aware of that.

3 Q. Were you aware that Robert Horton always tried to

4 discourage clients from taking loans?

5 MR. PATAKOS: Objection.

6 A. No.

7 Q. Okay. And there was something that you would

8 sign from the loan company, right? That said you

9 were not recommending or giving advice on taking

10 the loan. Do you recall that?

11 A. Yes, I do.

12 Q. And in fact, the client had to initial that as

13 well, right?

14 A. I don't remember that specifically.

15 Q. Now, you didn't have clients come into KNR and

16 fill out all the loan documents and hand them a

17 check from KNR for that, did you?

18 A. No.

19 Q. That was usually done electronically?

20 A. In the handful -- I mean, apparently I screwed up

21 two of them. I wouldn't even have thought that I

22 done two, so I perhaps screwed up a really high

23 percentage of the ones I did, but they were

24 always through the mail.

25 Q. Okay. Yours were?

205

1 A. Mine were, yes.

2 Q. Okay. And you meaning between the lending

3 company and the client?

4 A. Yeah. Why -- you know, you've got to fill out

5 whatever paperwork you have to fill out -- and I

6 don't remember what that is -- in order to

7 facilitate -- you know, I know what the loan

8 company is doing on their end --

9 Q. Yeah.

10 A. -- is assessing risk, are we going to get paid

11 back and how much is the -- what's the value of

12 this case? Are we going to be able to get paid

13 back everything, so they need some information in

14 order to make that happen. And beyond telling

15 the client -- you know, making sure they are well

16 aware of the pitfalls and the true cost, I was

17 out. You know, give them whatever paperwork they

18 need, tell them how bad it is going to be for

19 them in the future and then I had nothing else to

20 do with it.

21 Q. It's their decision after that --

22 A. Yes.

23 Q. -- fair?

24 A. Yes.

25 Q. And you never -- or you never saw anybody from

206

1 KNR give clients the loan money, that came

2 directly from the loan company, fair?

3 A. Yes, that's fair --

4 Q. Okay.

5 A. -- I never saw that.

6 Q. And did you ever see anybody else at KNR actually

7 interact with clients regarding the loans?

8 A. No.

9 Q. Okay. Oh, you mentioned something manufacturing

10 cases.

11 A. Yes.

12 Q. Okay. Now, to manufacture a case, are you trying

13 to say that the client was complicit with that

14 and was getting care that they knew they didn't

15 need?

16 A. No.

17 Q. Okay. I mean, are you saying that the clients

18 were lying about their injuries?

19 A. Sometimes, sure.

20 Q. Okay. Did you know that?

21 A. There's a couple after the fact.

22 Q. Okay. How did you find that out?

23 A. Clients told me.

24 Q. Okay. But as the -- when you were at KNR?

25 A. No.

207

1 Q. Okay. Where were you at?

2 A. Slater & Zurz.

3 Q. But as you were representing them, you believed

4 what they were telling you?

5 A. Yeah. It's the only way to do it. You can't

6 make an assessment as to, you know, whether or

7 not they're telling you the truth.

8 Q. Okay. And, in fact, the doctor should have some

9 role in that, too, as determining whether the

10 care is actually needed, fair?

11 A. They certainly should.

12 Q. You certainly never at KNR thought a client was

13 not injured but sent them for care anyway, did

14 you?

15 A. I never met any of those people, very few. So I

16 was in no position to assess whatever they were.

17 I mean, they were already at the chiropractor in

18 most instances, so you want a lawyer, I'm your

19 guy.

20 Q. So in those cases, they had decided on their own

21 to get the care?

22 A. Yes.

23 Q. But my question to you is a little different, at

24 KNR --

25 A. Uh-huh.

208

1 Q. -- you were never aware of a client who was not

2 injured, but you sent them to get care anyway,

3 true?

4 A. That's true.

5 Q. Okay. Did you ever see where another lawyer,

6 actually observe another lawyer knowing that a

7 client was not injured and send them for care

8 even though the client was not injured?

9 A. I'm not aware of that specifically happening.

10 Q. Okay. You never saw that happen, true?

11 A. Right.

12 Q. You never heard about that happening either, did

13 you?

14 A. Correct.

15 MR. MANNION: Just so we get this

16 out of the way, just a second, for the

17 record. Hopefully we can hear this.

18 MR. POPSON: As long as nobody

19 calls you.

20 MR. MANNION: As long as nobody

21 calls me.

22 Q. Okay. I'm going to play something for you and

23 please tell me if this is you.

24 A. Okay.

25 - - - -

209

1 (Thereupon, an audio recording was played.)

2 - - - -

3 MR. PETTI: Hi, Diedra.

4 UNIDENTIFIED VOICE: Hello, Gary.

5 How are you?

6 MR. PETTI: I'm very well.

7 UNIDENTIFIED VOICE: Okay. Well,

8 I have a guy on the line. He does not want

9 to give any information, including his name

10 to any of us. He wants to speak directly

11 to an attorney.

12 MR. PETTI: Oh, this should be

13 fun.

14 UNIDENTIFIED VOICE: Yes. So you

15 would need to just probably start a new

16 intake form.

17 MR. PETTI: Will do.

18 UNIDENTIFIED VOICE: All right.

19 Here he is.

20 MR. PETTI: All right. Good

21 afternoon. Attorney Gary Petti.

22 UNIDENTIFIED VOICE: How you

23 doing, sir? I was in a car wreck a few

24 days ago. A guy hit me from behind --

25 MR. PETTI: Okay.

210

1 UNIDENTIFIED VOICE: -- he was

2 going probably 45 miles an hour. We was at

3 a red light.

4 MR. PETTI: Uh-huh.

5 UNIDENTIFIED VOICE: They sent

6 this packet to me in the mail with you guys

7 1-800 HURT NOW packet --

8 MR. PETTI: Yep.

9 UNIDENTIFIED VOICE: -- with a

10 business card, it says Rob --

11 MR. PETTI: Nestico.

12 UNIDENTIFIED VOICE: -- Nestico or

13 something like that.

14 MR. PETTI: Uh-huh.

15 UNIDENTIFIED VOICE: I was

16 curious, man, I mean, I'm hurt pretty good,

17 man. My back and my neck, my legs,

18 tingling in -- my legs went numb on me.

19 You know, I'm pretty banged up here.

20 I just had a question that I think

21 the hospital won't give me an MRI --

22 MR. PETTI: Okay.

23 UNIDENTIFIED VOICE: -- how would

24 I go about -- how do I go about getting an

25 MRI?

211

1 MR. PETTI: Well, you really can't

2 without a referral. Typically though I

3 wouldn't be too concerned at this point

4 about not getting an MRI because those

5 tests are very, very expensive. So

6 generally, as a matter of practice,

7 hospitals and doctors don't order those in

8 the days shortly after the accident unless

9 you meet specific and pretty -- you know,

10 pretty traumatic criteria.

11 UNIDENTIFIED VOICE: Sure.

12 MR. PETTI: Because they don't

13 want to get either you or them in a big

14 hole right off the bat.

15 So what happens is they get -- you

16 know, some time passes and if the symptoms

17 still persist, then the doctors will make

18 the referral. Because like I said, it has

19 to be medically necessary. And there are

20 two ways it becomes medically necessary.

21 One, is for those traumatic-type

22 symptoms to appear immediately. And the

23 second is for the less-dramatic symptoms to

24 continue longer than they ordinarily would

25 be expected to.

212

1 So in either of those two --

2 UNIDENTIFIED VOICE: Right.

3 MR. PETTI: -- things happen then

4 you can get the MRI.

5 And, you know, in most cases

6 especially if it's going to turn up

7 negative, you don't want an MRI because

8 it's just an additional expense that, you

9 know, you're going to have to pay back

10 either through a settlement or out of your

11 own pocket if it wasn't a car accident

12 case.

13 But I have doctors who we are

14 familiar who I can refer you to and, you

15 know, they can handle your treatment. And

16 in the event they felt like it was

17 medically necessary to get you an MRI, then

18 they can make that referral.

19 UNIDENTIFIED VOICE: Sure. Now,

20 you guys are no way, shape or form tied

21 with the insurance company, right?

22 MR. PETTI: None at all. As a

23 matter of fact, I quit working for

24 insurance companies about ten years ago

25 because I can't stand them either.

213

1 UNIDENTIFIED VOICE: Yeah, they
 2 try to fuck you around, man, then ten years
 3 down the line, you know, your body, you
 4 can't even walk from the accident --
 5 MR. PETTI: Absolutely.
 6 UNIDENTIFIED VOICE: -- I know --
 7 I'm familiar with them. My brother was in
 8 one, you know, 12 years ago, man, and he's
 9 almost crippled right now, but in the
 10 beginning it didn't even hurt him too bad.
 11 You know, he had some back aches and normal
 12 symptoms in a normal wreck like I was in
 13 and then now, man, this guy he can't even
 14 hardly walk, man --
 15 MR. PETTI: Right. Well that --
 16 UNIDENTIFIED VOICE: -- he can't
 17 do it --
 18 MR. PETTI: That's why it's
 19 important to get the treatment now even if
 20 your symptoms aren't --
 21 UNIDENTIFIED VOICE: Sure.
 22 MR. PETTI: -- terrible. You need
 23 to make sure you heal right.
 24 UNIDENTIFIED VOICE: Right.
 25 Well, I mean, I was wondering, I

214

1 mean, I'm not -- I don't need money, I have
 2 money, I have money put up, I'm not
 3 working, I have a legitimate business, but
 4 I'm not able to work no more, so they got
 5 to pay for my lost wages and all that, too,
 6 right?
 7 MR. PETTI: They do. Now --
 8 UNIDENTIFIED VOICE: Okay.
 9 MR. PETTI: -- if it's your own
 10 business that you're working on, you're
 11 going to have to do a lot of the work --
 12 help us to develop the evidence we need to
 13 prove how much you lose.
 14 UNIDENTIFIED VOICE: Sure. I've
 15 got tax returns and all that what I usually
 16 make, yeah.
 17 MR. PETTI: Well, typically it's
 18 more than just the tax returns --
 19 UNIDENTIFIED VOICE: Right.
 20 MR. PETTI: -- you know, if -- I
 21 don't know what business --
 22 UNIDENTIFIED VOICE: I've been in
 23 business --
 24 MR. PETTI: -- you're in.
 25 UNIDENTIFIED VOICE: -- I've been

215

1 in business for 12 years and I gross, end
 2 of year, I usually do 150,000, 180,000 a
 3 year for the last 12 years what I have been
 4 doing.
 5 MR. PETTI: Good. Obviously they
 6 don't pay --
 7 UNIDENTIFIED VOICE:
 8 (Unintelligible).
 9 MR. PETTI: -- they won't pay
 10 gross. You know, I had a client -- I have
 11 a client who's a truck driver and he was --
 12 we were talking about the other day and,
 13 you know --
 14 UNIDENTIFIED VOICE: Sure.
 15 MR. PETTI: -- he tells me what he
 16 grosses, but I was like, well, what
 17 expenses do you got to pay out of that and
 18 he goes, well, I've got to pay --
 19 UNIDENTIFIED VOICE: Right.
 20 MR. PETTI: -- you know, for my
 21 gas, I've got to pay for my insurance, I've
 22 got these other fees, so, you know --
 23 UNIDENTIFIED VOICE: Right.
 24 MR. PETTI: -- his net is 20
 25 percent of what his gross is.

216

1 UNIDENTIFIED VOICE: I bring home
 2 myself, after all of my expenses, I bring
 3 home right at 90,000 a year --
 4 MR. PETTI: Okay.
 5 UNIDENTIFIED VOICE: -- is what I
 6 clear --
 7 MR. PETTI: All right.
 8 UNIDENTIFIED VOICE: -- money in
 9 my pocket. After taxes and all my
 10 expenses.
 11 MR. PETTI: Well good. So we
 12 should be able to develop the kind of proof
 13 we need to demonstrate that you missed --
 14 UNIDENTIFIED VOICE: Right.
 15 MR. PETTI: -- income as a result
 16 of this. Because that's really all they
 17 pay is the actual income net to you.
 18 UNIDENTIFIED VOICE: Okay. Right.
 19 Okay. And I just -- man, I'm not real
 20 curious --
 21 MR. PETTI: Uh-huh.
 22 UNIDENTIFIED VOICE: -- on right
 23 now wanting to settle with no one, I want
 24 to hold off --
 25 MR. PETTI: Yeah, you shouldn't

217

1 be.
 2 UNIDENTIFIED VOICE: -- for six,
 3 seven months. Yeah, I'm not interested in
 4 no settlement right now, I need to get some
 5 doctors --
 6 MR. PETTI: Yeah.
 7 UNIDENTIFIED VOICE: -- and some
 8 advice. And maybe even a year or so from
 9 now --
 10 MR. PETTI: Yeah.
 11 UNIDENTIFIED VOICE: -- I just
 12 want to make sure my body don't go into any
 13 kind of situation -- because my brother,
 14 like I said, after his accident, he hurried
 15 up and settled, he settled in like three
 16 months and they gave him like three or four
 17 grand or something crazy, it wasn't
 18 anything --
 19 MR. PETTI: Uh-huh.
 20 UNIDENTIFIED VOICE: -- and paid
 21 his medical bills. And my brother said
 22 about a year, year and a half later, he
 23 started noticing a lot of back pain all of
 24 a sudden. Like he couldn't hardly sit.
 25 And when he went to get up, he couldn't get

218

1 up, you know what I mean?
 2 MR. PETTI: Right.
 3 UNIDENTIFIED VOICE: And then he
 4 started noticing -- and then he -- and
 5 then, you know, over the years it's just
 6 progressed from the car wreck and now he's
 7 just in bad shape, man --
 8 MR. PETTI: Right.
 9 UNIDENTIFIED VOICE: -- he can't
 10 even -- his whole back is destroyed. And
 11 it was just a normal -- a rear-end deal. I
 12 mean, these guys, they hit him at like 20
 13 mile an hour. This guy hit me going like
 14 50 or 60 and I was sitting still.
 15 MR. PETTI: Right.
 16 UNIDENTIFIED VOICE: Yeah, I've
 17 never been hit that hard in my life, man.
 18 I mean, it knocked -- put it this way, it
 19 chipped my tooth.
 20 MR. PETTI: Oh, geez.
 21 UNIDENTIFIED VOICE: Yeah, I've
 22 never been hit that hard in my life. My
 23 front tooth is chipped. It knocked a big
 24 ass hole in my tooth.
 25 I mean, I've had a headache, my

219

1 back -- and what scared me this morning, I
 2 went to use the restroom, you know, my
 3 defecation --
 4 MR. PETTI: Uh-huh.
 5 UNIDENTIFIED VOICE: -- and I'm
 6 sitting on the toilet and my damn foot went
 7 numb, my left foot went numb. It literally
 8 went -- the whole leg went asleep to, you
 9 know, I couldn't get -- I mean, there was
 10 no feeling. I stepped up, it scared me, I
 11 didn't wipe my behind or anything, I stood
 12 straight up and there was no pressure. I
 13 hollered for my old lady, I told her -- I
 14 was getting ready to have her call 911 and
 15 I started stomping it, moving it and
 16 lifting it up on my hand and stomping and
 17 pushing around on it, and I stood up and it
 18 got circulation back in it. And that's
 19 never happened to me before in my life. So
 20 there's something really bad going on back
 21 there with my body.
 22 MR. PETTI: Yeah. Well --
 23 UNIDENTIFIED VOICE: So I don't --
 24 MR. PETTI: -- and those are the
 25 kind of symptoms that we -- you know, that

220

1 would ordinarily can or influence a doctor
 2 to order an MRI, so I do think --
 3 UNIDENTIFIED VOICE: Right.
 4 MR. PETTI: -- we should get you
 5 referred out to a doctor somewhere who is,
 6 you know, familiar with dealing with
 7 accident cases and --
 8 UNIDENTIFIED VOICE: Sure.
 9 MR. PETTI: -- can get you headed
 10 to the treatment that you need, at least a
 11 diagnosis.
 12 UNIDENTIFIED VOICE: Let me get
 13 your name real quick, buddy --
 14 MR. PETTI: Sure.
 15 UNIDENTIFIED VOICE: -- and write
 16 it down and -- I mean, you make sense and
 17 you sound pretty reasonable. You talked to
 18 me like you had sense.
 19 MR. PETTI: Oh, I do have sense.
 20 UNIDENTIFIED VOICE:
 21 (Unintelligible) you've got to be careful,
 22 my brother was telling me, man, them
 23 lawyers that usually send you them packets
 24 in the mail --
 25 MR. PETTI: Yeah.

221

1 UNIDENTIFIED VOICE: -- are
 2 immediately tied into the insurance company
 3 and they're all out to fuck you --
 4 MR. PETTI: Right.
 5 UNIDENTIFIED VOICE: -- they want
 6 to hurry up and get you to settle with no
 7 problem. You know what I mean?
 8 MR. PETTI: I wouldn't say --
 9 UNIDENTIFIED VOICE: That's what
 10 he told me because he went --
 11 MR. PETTI: That's not real true.
 12 I mean, really none of the lawyers -- none
 13 of the personal injury lawyers are tied in
 14 with the insurance company --
 15 UNIDENTIFIED VOICE: Oh, really?
 16 MR. PETTI: Yeah.
 17 UNIDENTIFIED VOICE: I didn't
 18 know, man.
 19 MR. PETTI: I know. And I'm just
 20 being straight with you. You can lose your
 21 license for that kind of thing. And, you
 22 know, in any one case, you know, if the
 23 insurance company was kicking you back a
 24 couple grand for screwing one of your
 25 clients --

222

1 UNIDENTIFIED VOICE: Right, that
 2 sounds crazy.
 3 MR. PETTI: -- I mean, for a
 4 couple grand --
 5 UNIDENTIFIED VOICE: I just want
 6 --
 7 MR. PETTI: -- but, yeah, to lose
 8 your license to ever practice, it ain't
 9 worth it.
 10 UNIDENTIFIED VOICE: Uh-huh. No,
 11 that's not worth that at all, man. I just
 12 want a good lawyer that's going to fight
 13 for me, man, you know?
 14 MR. PETTI: Well, that's
 15 absolutely what we do. And that's really
 16 one of the benefits of doing business with
 17 a big law firm like us is we do get the
 18 attention of the insurance companies. They
 19 know our reputation. They know that, you
 20 know, if they're not going to treat you
 21 fairly then we're going to sue them and
 22 we're going to have a trial. And, you
 23 know, we've got good lawyers here who, you
 24 know, are going to fight for them, for our
 25 clients, so --

223

1 UNIDENTIFIED VOICE: They're
 2 really not going to sell me out at the end?
 3 MR. PETTI: No, no. I mean,
 4 you're going to get a fair evaluation of
 5 your case at the end. You know, once we
 6 know all the facts of your case, you know,
 7 we're going to tell you --
 8 UNIDENTIFIED VOICE: Sure.
 9 MR. PETTI: -- hey, this is what
 10 we think you should do, but ultimately it's
 11 your case so nobody signs off on anything
 12 unless they want to. I can't --
 13 UNIDENTIFIED VOICE: Right.
 14 MR. PETTI: -- (unintelligible)
 15 case for you, I don't even try to. What I
 16 try and do -- I mean, what I tell people
 17 all the time is, hey, look, you make the
 18 facts of your case, not me. So I can
 19 get --
 20 UNIDENTIFIED VOICE: Right.
 21 MR. PETTI: -- you know, a client
 22 who's hit by a drunk driver in a huge crash
 23 with lots of broken glass, twisted metal
 24 and Life-Flighted, but if they don't follow
 25 up with their treatment, if they sit on the

224

1 couch and take Tylenol and expect to get
 2 paid like they were hurt for six months,
 3 they're going to have a hard time. They
 4 have to -- you've got to do your part, too.
 5 You've got to go to the doctor, tell the
 6 doctor everything that's bothering you,
 7 follow up --
 8 UNIDENTIFIED VOICE: Sure. You've
 9 got to --
 10 MR. PETTI: Right. Otherwise, you
 11 know, we deal with the evidence that we're
 12 given, so --
 13 UNIDENTIFIED VOICE: Sure. Yeah,
 14 you've got to make your doctor
 15 appointments, all that --
 16 MR. PETTI: Uh-huh.
 17 UNIDENTIFIED VOICE: -- I agree
 18 fully with that. I mean, you've got to
 19 work just like your lawyer works, you know?
 20 Like you said, if you're just sitting on
 21 the couch eating Tylenol and not doing
 22 anything and following up then, yeah,
 23 you're not going to get paid for that.
 24 MR. PETTI: No, no. It's too --
 25 if it were that easy, then I'd be retired

225

1 already.
 2 UNIDENTIFIED VOICE: I heard that,
 3 man, I heard that, yeah. I understand
 4 fully on that.
 5 And I have but one more question
 6 --
 7 MR. PETTI: Uh-huh.
 8 UNIDENTIFIED VOICE: -- if I
 9 commit to a certain -- if I commit to an
 10 attorney --
 11 MR. PETTI: Yep.
 12 UNIDENTIFIED VOICE: -- with doing
 13 my case on this --
 14 MR. PETTI: Uh-huh.
 15 UNIDENTIFIED VOICE: -- and I
 16 decide a couple months down the line that
 17 he's not working for me and I feel like,
 18 you know, basically it's not what I want to
 19 do, can I back out of that --
 20 MR. PETTI: You can. Now --
 21 UNIDENTIFIED VOICE: -- or are you
 22 tied with that lawyer?
 23 MR. PETTI: You're not tied with
 24 the lawyer, you can back out of it.
 25 However, it's not a clean break. You know,

226

1 lawyers are -- we have what's known as an
 2 attorney lien. So you've got -- you have
 3 to pay the lawyer for the reasonable value
 4 of their services.
 5 UNIDENTIFIED VOICE: Right.
 6 MR. PETTI: Generally what happens
 7 is the lawyer who gets fired -- and we pick
 8 up a lot of cases from other lawyers where
 9 they've been terminated. Generally what
 10 happens is when the client comes to us and
 11 says, hey, look I fired my prior lawyer,
 12 will you guys take my case? Yes, we will.
 13 And we do it with the understanding that
 14 we're going to have to probably share some
 15 of our fee, the fee that we earn, with
 16 their prior lawyer just to reimburse them
 17 for the amount of time and money that
 18 they've spent pursuing the case to that
 19 point.
 20 So if you fire somebody, generally
 21 you don't get away clean, you know, it's
 22 not a, all right, I owe you nothing, but
 23 whatever financial --
 24 UNIDENTIFIED VOICE: Right.
 25 MR. PETTI: -- arrangements need

227

1 to be made later on are usually worked out
 2 between the lawyers. So you don't have to
 3 come out of pocket for that.
 4 UNIDENTIFIED VOICE: Okay. All
 5 right. That sounds --
 6 MR. PETTI: My office, whenever we
 7 send out those letters and talk to
 8 somebody, they want to be able to send you
 9 a letter just thanking you for your time.
 10 And so far we don't have any information
 11 about you. So I mean if you're interested
 12 in being represented, then I need --
 13 UNIDENTIFIED VOICE: Sure.
 14 MR. PETTI: -- a lot of
 15 information about you and your accident,
 16 but if you're still --
 17 UNIDENTIFIED VOICE: Sure.
 18 MR. PETTI: -- shopping around and
 19 want to talk to more people, then at the
 20 very least if you can give me a name and an
 21 address so that we can send you out that
 22 letter, otherwise, you know, the system
 23 doesn't work the way it's designed.
 24 UNIDENTIFIED VOICE: Sure, sure.
 25 I tell you what, I'm going to give you my

228

1 name and address --
 2 MR. PETTI: Okay.
 3 UNIDENTIFIED VOICE: -- and also
 4 so you guys know, this ain't the packet
 5 that had the police report in it --
 6 MR. PETTI: It should have been.
 7 UNIDENTIFIED VOICE: -- oh, no,
 8 there's two other lawyers, never mind. I
 9 thought you guys were the one with the --
 10 MR. PETTI: We usually do --
 11 UNIDENTIFIED VOICE: -- oh, never
 12 mind --
 13 MR. PETTI: -- it with the police
 14 report.
 15 UNIDENTIFIED VOICE: Let me see
 16 here. Oh, this is the wrong one, I'm
 17 sorry, buddy. I meant to -- I called the
 18 wrong one --
 19 MR. PETTI: Uh-oh.
 20 UNIDENTIFIED VOICE: -- I grabbed
 21 the wrong -- I mean apparently it worked
 22 out, I talked to you for a minute.
 23 MR. PETTI: Yeah.
 24 UNIDENTIFIED VOICE: Yeah, they
 25 sent a copy of the police report with the

229

1 other photo -- man, I got a stack of
 2 letters from lawyers, man --
 3 MR. PETTI: Of course.
 4 UNIDENTIFIED VOICE: -- you know
 5 what I mean?
 6 MR. PETTI: Yeah, your police
 7 report is public record so that's what
 8 happens is that --
 9 UNIDENTIFIED VOICE: Right. Yeah,
 10 it wasn't even sitting in my mailbox, man.
 11 MR. PETTI: Well, I'm with --
 12 UNIDENTIFIED VOICE: You know, and
 13 whoever I go with --
 14 MR. PETTI: Uh-huh.
 15 UNIDENTIFIED VOICE: -- I have
 16 three other people that's going with -- two
 17 other people, I'm sorry.
 18 MR. PETTI: All right.
 19 UNIDENTIFIED VOICE: I have a
 20 girlfriend that was in the vehicle with us
 21 and my brother was in the vehicle with me,
 22 my other brother --
 23 MR. PETTI: Okay.
 24 UNIDENTIFIED VOICE: -- my little
 25 older one, so he was in the vehicle so

230

1 there's -- we're all going to stick with
 2 the same attorney --
 3 MR. PETTI: Okay.
 4 UNIDENTIFIED VOICE: -- they just
 5 leaving it up to me to find out which
 6 attorney I want to use and then we'll just
 7 go with that and go that route because, you
 8 know, they kind of trust me on that part --
 9 MR. PETTI: Sure.
 10 UNIDENTIFIED VOICE: -- I've been
 11 the successful one out of the family.
 12 MR. PETTI: I know the feeling.
 13 UNIDENTIFIED VOICE: You know what
 14 I mean?
 15 MR. PETTI: I do.
 16 UNIDENTIFIED VOICE: You've always
 17 got the -- you've always got the other one
 18 -- you know, you do something successful
 19 and the other family kind of leans on
 20 you --
 21 MR. PETTI: Yeah.
 22 UNIDENTIFIED VOICE: -- you know
 23 what I mean, whatever you think we'll do,
 24 you know what I mean?
 25 MR. PETTI: Right. Yep.

231

1 UNIDENTIFIED VOICE: So I want to
 2 make the right decision for my other
 3 brother also, but he's banged up pretty
 4 good, he's younger though --
 5 MR. PETTI: Right.
 6 UNIDENTIFIED VOICE: -- a little
 7 older, but he was banged up pretty good,
 8 but he's not -- I don't think he was bad --
 9 he hasn't complained about, like this
 10 situation I went through in the bathroom.
 11 MR. PETTI: All right.
 12 UNIDENTIFIED VOICE: I tell you
 13 what, let me get your name and number,
 14 man --
 15 MR. PETTI: Okay.
 16 UNIDENTIFIED VOICE: -- and I will
 17 call you back within the day's out and let
 18 you know what I want to do here.
 19 What is your name?
 20 MR. PETTI: I'm Gary Petti.
 21 UNIDENTIFIED VOICE: One minute.
 22 Gary --
 23 MR. PETTI: Uh-huh. Petti,
 24 P-e-t-t-i.
 25 UNIDENTIFIED VOICE: All right.

232

1 MR. PETTI: And our number is the
 2 1-800 HURT NOW, so it's 800 --
 3 UNIDENTIFIED VOICE: What's your
 4 extension?
 5 MR. PETTI: We don't have
 6 extensions because that way clients never
 7 get our voicemail. When our clients call
 8 here, they --
 9 UNIDENTIFIED VOICE: Oh, that's
 10 cool.
 11 MR. PETTI: -- speak to a live
 12 person every single time.
 13 UNIDENTIFIED VOICE: That works,
 14 man. I hate talking to an answering
 15 machine --
 16 MR. PETTI: Yeah.
 17 UNIDENTIFIED VOICE: -- nobody
 18 calls you back.
 19 MR. PETTI: Yeah, since you and I
 20 have been talking, I got an e-mail that one
 21 of my clients did try and call and I'll
 22 call her back on that, but you don't just
 23 get dumped in voicemail and then because
 24 it's an e-mail, there's a record of the
 25 fact that the client --

233

1 UNIDENTIFIED VOICE: Okay.
 2 MR. PETTI: -- called, so I can
 3 search those and see, you know, who's
 4 called and that sort of thing how many
 5 times.
 6 UNIDENTIFIED VOICE: All right.
 7 I'll call and ask for you --
 8 MR. PETTI: Yeah.
 9 UNIDENTIFIED VOICE: -- before the
 10 day's up.
 11 MR. PETTI: Can I get your name
 12 and number just in case, just in case we
 13 misconnection?
 14 UNIDENTIFIED VOICE: Yeah, yeah.
 15 Jerry Horn. J-e-r-r-y, H-o-r-n --
 16 MR. PETTI: Uh-huh.
 17 UNIDENTIFIED VOICE: -- and it's
 18 (513)488-4620.
 19 MR. PETTI: 513 -- I was trying to
 20 type. I don't type that fast, Jerry.
 21 UNIDENTIFIED VOICE: Oh, you're
 22 fine, buddy. Go ahead, take your time.
 23 MR. PETTI: (513)488-4620?
 24 UNIDENTIFIED VOICE: Yes, sir.
 25 MR. PETTI: And your address --

234

1 like I said they'd like -- they require me,
 2 pretty much, to get the address when
 3 somebody calls --
 4 UNIDENTIFIED VOICE: Sure. Yeah,
 5 I'll -- I'll tell you what, I would rather
 6 not give my personal address out yet until
 7 I commit to someone, not to be rude or
 8 anything --
 9 MR. PETTI: No, no, that's fine.
 10 UNIDENTIFIED VOICE: -- I just --
 11 but I do have -- you do have my number --
 12 MR. PETTI: Uh-huh.
 13 UNIDENTIFIED VOICE: -- feel free
 14 to call me back if you don't hear from me,
 15 but I'm sure I'll be calling you back today
 16 sometime.
 17 MR. PETTI: Okay.
 18 UNIDENTIFIED VOICE: Just let me
 19 go through and just try and figure out what
 20 I'm going to do. I'm going to call my
 21 personal lawyer -- I have an actual
 22 personal lawyer also I usually use, but
 23 he's not anything for like this, he's just
 24 a civil -- or he's like a criminal lawyer,
 25 you know, lawsuits, stuff of that nature,

235

1 but he don't really do like hurt, accident
 2 deals.
 3 MR. PETTI: Okay.
 4 UNIDENTIFIED VOICE: But I'll go
 5 this route and then I'll call you back.
 6 And like I said, if you don't hear from me
 7 by the end of the day before you leave,
 8 call me back and we'll go from there.
 9 MR. PETTI: Actually, Jerry, we --
 10 because we sent you a letter, we already
 11 have your address. I know you don't want
 12 to give out your personal information --
 13 UNIDENTIFIED VOICE: Right.
 14 MR. PETTI: -- but if I said your
 15 address was 717 Nellwood [phonetic] would I
 16 be --
 17 UNIDENTIFIED VOICE: That's it.
 18 You already have it. Yes, sir, you do.
 19 MR. PETTI: All right.
 20 UNIDENTIFIED VOICE: That was
 21 stupid, I got something in the mail from
 22 you guys, so I'm sure you got my address.
 23 MR. PETTI: Yeah, yeah.
 24 UNIDENTIFIED VOICE: Yeah, that
 25 was stupid.

236

1 MR. PETTI: Just when I typed in
 2 your name, it popped up, so. All right.
 3 Anyhow, take care of whatever business you
 4 want to take care of, call whoever you want
 5 to call. I will follow up with you
 6 because, again, that's just how we do
 7 things here. If I don't hear from you
 8 today, I'll call you tomorrow --
 9 UNIDENTIFIED VOICE: I just want a
 10 -- man, here's what -- I just want -- I
 11 want a good lawyer that's not going to sell
 12 me out to the insurance company. That's
 13 going to fight and work for me and get me
 14 what I got coming, man.
 15 And, you know, five years down the
 16 line, because I'm in a lot of pain right
 17 now, my back is killing me -- and I've had
 18 minor backaches before and it ain't nothing
 19 like this. I never had my leg go to sleep
 20 on me before --
 21 MR. PETTI: Right.
 22 UNIDENTIFIED VOICE: -- tingling
 23 and so forth. My brother he went through
 24 the same situation and it's been almost 12
 25 years ago since his wreck and he can't even

237

1 hardly walk right now. I'm not going to be
 2 him --
 3 MR. PETTI: Right.
 4 UNIDENTIFIED VOICE: -- you know
 5 what I mean? Laid up. I want proper
 6 attention and I want -- I'm not rushing to
 7 get any kind of payday. I'm not rushing, I
 8 don't need money, I have money put away. I
 9 have plenty of money to live on. So I'm
 10 not worried about (unintelligible), I just
 11 want a good attorney to fight for me and
 12 get me some good doctors and so forth from
 13 that part --
 14 MR. PETTI: Right.
 15 UNIDENTIFIED VOICE: -- and let's
 16 find out what the situation is --
 17 MR. PETTI: Okay.
 18 UNIDENTIFIED VOICE: -- and do it
 19 the right way.
 20 MR. PETTI: And whether you choose
 21 us or not, for lots of reasons, you do want
 22 to get this started right away. You may
 23 not want to finish it right away --
 24 UNIDENTIFIED VOICE: Yes, sir, I
 25 do.

238

1 MR. PETTI: -- that's excellent
 2 advice -- but you do want to start right
 3 away --
 4 UNIDENTIFIED VOICE: I do, you're
 5 right --
 6 MR. PETTI: -- because the
 7 insurance companies, they're already
 8 working on their end.
 9 UNIDENTIFIED VOICE: -- probably
 10 within the next day or so.
 11 MR. PETTI: Okay.
 12 UNIDENTIFIED VOICE: Yeah, within
 13 the day -- by tomorrow I want to have me a
 14 -- chose me an attorney to take care of all
 15 this for me --
 16 MR. PETTI: Uh-huh.
 17 UNIDENTIFIED VOICE: -- that I
 18 feel comfortable with and go that route.
 19 And let's just get this over with and get
 20 it started.
 21 MR. PETTI: All right, Jerry,
 22 that's a plan.
 23 UNIDENTIFIED VOICE: Thank you,
 24 buddy.
 25 MR. PETTI: You're welcome.

239

1 UNIDENTIFIED VOICE: Yes, sir.
 2 MR. PETTI: All righty. Bye.
 3 - - - -
 4 (Thereupon, the recording ended.)
 5 - - - -
 6 BY MR. MANNION:
 7 Q. So that was the conversation?
 8 A. That is my recollection, sure.
 9 Q. That was you, right?
 10 A. That was with definitely me.
 11 Q. Okay. And what -- the advice you did give that
 12 potential client, was all good advice, wasn't it?
 13 A. I absolutely think so.
 14 Q. Like getting started right away. That's good
 15 advice?
 16 A. Absolutely.
 17 Q. You believed that at Slater & Zurz, you believed
 18 it at KNR and you believe it today?
 19 A. Yes.
 20 Q. You weren't pushing to sign him up?
 21 A. I wasn't, no.
 22 Q. Okay. You never know what you're going to get on
 23 those calls, do you?
 24 A. No, not at all.
 25 Q. They're all a little different, aren't they?

240

1 A. Yes.
 2 Q. That right there was a lot different than a lot
 3 of the others, fair?
 4 A. Fair.
 5 Q. Okay. You didn't have any script to follow on
 6 what you had to do with him, did you --
 7 A. No.
 8 Q. -- as far as what to say?
 9 A. No.
 10 Q. Okay. And you never saw anybody else have a
 11 script on how to handle those intakes?
 12 A. Not that I recall.
 13 Q. In fact, at that meeting there were some other
 14 recordings as well that were listened to at that
 15 quarterly meeting, correct?
 16 A. Don't remember.
 17 Q. Okay. You're not saying one way or the other,
 18 you just don't remember?
 19 A. Right, I don't remember.
 20 Q. Okay. A couple of the things in there that I
 21 wanted to ask you about. You did talk about
 22 potentially referring to a doctor in his case.
 23 Were you referring to a chiro or a medical or
 24 weren't sure until you got more info?
 25 A. Yeah, I would have needed to know where he lived

241

1 and based on his symptoms, I probably would have
 2 tried to get him to an MD right away.
 3 Q. So those decisions on who you would refer the
 4 client to as far as medical care or chiropractic
 5 care, would depend on the conversation with the
 6 client?
 7 A. Yes.
 8 Q. Because that's not necessary, especially in the
 9 513 area code, you're not going to send him to
 10 Dr. Floros, correct?
 11 A. No. 513 would have been what, the Cincinnati
 12 guys down there, Werkmore.
 13 Q. But even if it was Akron, that's a guy that you
 14 probably would have sent to a medical doctor
 15 instead?
 16 A. Me personally, yes.
 17 Q. Okay.
 18 A. Like I said, that was always my first preference
 19 was let them do their own health insurance, if
 20 possible. If they have a relationship with a
 21 doctor, that's what I want to do.
 22 Q. And that's how you handled cases even at KNR,
 23 true?
 24 A. Yes.
 25 Q. And you talked some about we saw e-mails from

242

1 Brandy and Megan, but I think what you said was
 2 you didn't let them tell you how to practice law,
 3 fair?
 4 A. That is fair. I'm not listening to them.
 5 Q. Okay. You handled your cases the way you felt a
 6 lawyer should handle the cases, true?
 7 A. That is true.
 8 Q. And you followed your professional duties, true?
 9 A. Yes.
 10 Q. And what you did is what you thought was in the
 11 client's best interest, true?
 12 A. True.
 13 Q. And, in fact, whether you sent them to a chiro or
 14 a medical doctor or whatever it is or just kept
 15 them with who they were, that was based on each
 16 individual conversation with each individual
 17 client, fair?
 18 A. Fair.
 19 Q. You'd have to look at the notes and talk to the
 20 client and talk to you to find out how those
 21 conversations went?
 22 A. I would, yes.
 23 Q. Okay. Pretty much no two are exactly alike, are
 24 they?
 25 A. And of course they're not exactly alike, but, you

243

1 know, like I said, there's sort of a template in
 2 terms of how things go.
 3 Q. But again, a template meaning the way you did it
 4 at Slater as well, true?
 5 A. Yeah. How soft tissue cases work.
 6 Q. But where it goes on that template depends on the
 7 conversation between you and that client and that
 8 client's desires, true?
 9 A. For me, yes.
 10 Q. That's how you handled cases at KNR, fair?
 11 A. That is fair.
 12 Q. And when you told the patient -- or excuse me,
 13 the client, that KNR would give them a fair
 14 evaluation of their case, true? Isn't that what
 15 you just said on there?
 16 A. I don't remember if that's what it said is what
 17 -- that's what I said is what I said.
 18 Q. You did that with every KNR client, didn't you?
 19 A. A fair evaluation, sure.
 20 Q. And you said that you make the facts of your
 21 case, not me?
 22 A. Yes.
 23 Q. And you told that to every client?
 24 A. Virtually.
 25 Q. Okay. And you said that it's important to follow

244

1 your doctor's orders. Why did you say that?
 2 A. Evidentiary purposes. Really that's mostly what
 3 I'm concerned about always is that when the time
 4 comes to settle their case, that I have ammo to
 5 get it settled. So if they didn't go to the
 6 doctor and they're getting a crappy offer, I can
 7 say, look, I told you you were suppose to go to
 8 the doctor, so...
 9 Q. Now, you wouldn't tell them that unless the
 10 doctor had wanted them to go, fair?
 11 A. Well, that's why I said follow your doctor's
 12 advice. Tell your doctor -- I mean, typically
 13 that's very similar to what I said to virtually
 14 everyone, tell your doctor everything that's
 15 bothering you, even if it's minor, because you
 16 don't know what the future holds. Perhaps that
 17 minor thing lasts forever. And the things that
 18 bother you today get better quickly -- or things
 19 that bother you most today get better quickly,
 20 and this little issue you have with your elbow
 21 that lasts for six months. So tell the doctor
 22 everything that's bothering you. It gets better
 23 quickly, that's terrific for you. If it doesn't,
 24 you're protected from an evidentiary standpoint
 25 because there's a record of that part of your

245

1 body having symptoms.
 2 Q. You mentioned something too about getting
 3 treatment now to heal right?
 4 A. Yes.
 5 Q. Do you think that was proper advice?
 6 A. Yeah, I do.
 7 Q. And you said it's important to get started right
 8 away --
 9 A. Yes.
 10 Q. -- why is that?
 11 A. Well, that was a mix, to be honest with you,
 12 because I'm sensing that the guy doesn't want to
 13 make a decision so I want to put some pressure on
 14 him to decide.
 15 Q. Improper pressure?
 16 A. Improper, no. But I know that there's -- I know
 17 as I'm speaking to this guy that there's a great
 18 likelihood that somebody is listening or going to
 19 listen later, especially if the guy doesn't sign
 20 up. So to the extent I apply any pressure at
 21 all, that's why.
 22 Q. Well, I mean, the reason it's also important to
 23 get started right away is what you said, to heal
 24 right, and so the insurance company looking at
 25 their case evidentiary wise, doesn't say --

246

1 A. Yeah, he didn't have any treatment --
 2 Q. -- well, you didn't get treatment?
 3 A. -- sure.
 4 Q. I mean, that was good advice you gave him to get
 5 started right away, true?
 6 A. It is, yeah.
 7 Q. Same type of advice you gave when you were at
 8 Slater & Zurz, true?
 9 A. Yes.
 10 Q. You mentioned something about policies changing
 11 all the time during your what, nine months or so
 12 there?
 13 A. Yes.
 14 Q. So how you handled cases would change or you
 15 would still handle your cases the same way
 16 despite the policy's changing?
 17 A. My recollection is I didn't spend a lot of time
 18 worrying about the policies in terms of how they
 19 affected me. I mean, it really did -- at first I
 20 was taken aback by all the direction you get from
 21 Brandy because she's not a lawyer, so how is it
 22 even possible that she's telling us what to do?
 23 But then, like I said, it occurred to me that
 24 she's sending all the pre-lit, so these are
 25 sponsored -- not sponsored, but sanctioned

247

1 messages, but, no, I did what I thought was
 2 right.
 3 Q. Well, did you know if Rob Nestico was even on the
 4 string that said "pre-lit attorneys"?
 5 A. Yes, I do believe I knew that.
 6 Q. Okay.
 7 A. I think you can click on the pre-lit in their
 8 system and it would display everybody who was
 9 part of that group.
 10 Q. What if I told you that he wasn't on that group?
 11 A. That would surprise me.
 12 Q. Okay. Well, if he wasn't, then he may not have
 13 known every e-mail that she sent, true?
 14 A. That's possible, but that's -- that's not good
 15 either because --
 16 Q. I'm just asking --
 17 A. -- she's giving advice -- oh, yeah, yeah.
 18 Q. It was your job as the lawyer to make the legal
 19 decisions for your clients, true?
 20 A. That's how I regarded it, yes.
 21 Q. That's what you did at KNR, true?
 22 A. That's what I did, yes.
 23 Q. You are aware that Kelly Phillips testified
 24 that's how he did it as well?
 25 A. I'm not aware of any of his testimony.

248

1 Q. But if that's what he did, that's good, isn't it?
 2 A. Yeah, he should. Everybody should.
 3 Q. All the lawyers should have followed their own
 4 professional duty in representing these clients,
 5 true?
 6 A. That is true, that's what they should have done.
 7 Q. Okay.
 8 A. Different for Kelly and I thought because Kelly
 9 and I had experience. A lot of those guys had no
 10 experience going over there, especially in the
 11 pre-lit part. And I practiced law for 15 years
 12 in personal injury before I went there.
 13 Q. Josh Angelotta had experience, right?
 14 A. On the defense side.
 15 Q. Well, he still had experience with PI work,
 16 right?
 17 A. Sure. But it's different.
 18 Q. Do you know whether he followed all of Brandy's
 19 orders or whether he used his own independent
 20 professional judgement?
 21 A. I have no idea.
 22 Q. What about Rob Horton, he had experience on the
 23 PI side before he went over, right?
 24 A. A little bit, as far as I'm aware. I'm not
 25 specifically familiar. I met Josh I think when

1 he was with Roger Williams, so I know he was on
 2 the defense side, but I really don't know
 3 anything about Josh Angelotta. Same thing with
 4 Rob Horton, I mean before -- well, even less with
 5 Horton. Before I started at KNR, I had no idea
 6 who Rob Horton was.
 7 Q. Do you know whether Rob Horton exercised his own
 8 independent professional judgement in treating
 9 KNR -- in representing KNR clients or not?
 10 A. I don't know that, no.
 11 Q. Okay. Do you know whether Paul Steele exercised
 12 his own independent professional judgement in
 13 representing KNR clients?
 14 A. No.
 15 Q. Did you ever watch Amanda Lance handle a case?
 16 A. I don't think I even know her.
 17 Q. Did you ever watch any of the Youngstown
 18 attorneys handle a case?
 19 A. No.
 20 Q. How many attorneys did you watch handle a case?
 21 A. None.
 22 Q. Okay. So how any individual lawyer handles any
 23 individual case, you weren't there to watch -- I
 24 wouldn't say not there -- you didn't actually
 25 observe that, fair?

1 A. No, I wasn't watching anybody else.
 2 Q. So regardless of these e-mails, how those
 3 individual attorneys took those e-mails from
 4 Brandy or Megan or whomever and actually
 5 interacted with the clients, you didn't observe
 6 that, did you?
 7 A. I didn't observe it, no.
 8 Q. Okay. Did you say, when you were at Slater &
 9 Zurz, it was about 200 or so cases you brought
 10 over to KNR?
 11 A. I think so.
 12 Q. I mean, not holding you to it, but somewhere
 13 around there?
 14 A. Yeah, yeah. There was a specific number.
 15 Because there was sort of a -- like I said, I
 16 didn't bring them all with me. Another lawyer
 17 left Slater & Zurz at the same time I did, so I
 18 gave him some of the good cases and the local
 19 cases in Ohio, Summit County, northeast Ohio.
 20 And then, essentially, all I took with me were
 21 the Columbus -- to KNR, were the Columbus ones.
 22 Q. Where did you live at the time?
 23 A. Wadsworth.
 24 Q. And was there some reason you gave the northeast
 25 cases away or --

1 A. I like him.
 2 Q. Okay. Is one of the reasons you went to KNR is
 3 because you had so many cases you were getting
 4 worried about missing deadlines and things like
 5 that?
 6 A. No.
 7 Q. And in fact --
 8 A. That's why I didn't go on my own.
 9 Q. Okay.
 10 A. Like I said, I wanted out. It wasn't -- that's
 11 it, I want a way out of personal injury. And I
 12 had a ton of cases. I don't know that I was very
 13 direct with Slater & Zurz about the fact I wanted
 14 out, out. I think they knew that I didn't want
 15 to be doing soft-tissue, personal injury cases,
 16 and driving to Columbus constantly. Because they
 17 did make an effort -- they didn't make an effort,
 18 they made a promise, that they would help me in
 19 Columbus, but they didn't. So I didn't have a
 20 lot of confidence that it was going to work out
 21 there.
 22 And then going on my own or going off with
 23 anybody else and managing my own docket would
 24 have been difficult because I would have had all
 25 travel and I would have still had people trying

1 to refer me cases, I would of had to tell them no
 2 if I really wanted out and that would have
 3 complicated my life in terms on getting cases
 4 resolved and that sort of thing.
 5 Q. And you would have had to hire paralegals and --
 6 A. Yeah, I would hire people and manage people and I
 7 needed to make my life similar. My wife's
 8 schooling -- she was gone before, basically, the
 9 rest of us got up in the morning, she would come
 10 back at dinnertime. You know, I was Mr. Mom with
 11 a full-time job, so I needed to make my life
 12 simpler.
 13 Q. And I'm not saying you had an obligation to tell
 14 KNR either, but you weren't quite upfront with
 15 them when you --
 16 A. I wasn't at all --
 17 Q. Okay.
 18 A. -- I never told them that, I don't think ever,
 19 that I wanted out. And I probably should have, I
 20 probably could have got the same deal, frankly,
 21 if I would have just essentially sold my clients,
 22 but I didn't.
 23 Q. So in getting those 200 cases or so, were nearly
 24 most of -- strike that.
 25 Of those cases you brought over, what

253

1 percentage do you think involved chiropractic
 2 care?
 3 A. Virtually all.
 4 Q. And were those mostly referrals from
 5 chiropractors?
 6 A. Yes.
 7 Q. Okay. And it was standard procedure for you to
 8 obviously handle cases that you use chiropractors
 9 in soft-tissue injury cases?
 10 A. Yes.
 11 Q. I mean, that's how soft-tissue injuries are
 12 treated a lot of times are with chiropractic
 13 care, fair?
 14 A. Yes, physical therapy, chiropractic.
 15 Q. You also at times referred some of your clients
 16 to chiropractors, true?
 17 A. At times, yes.
 18 Q. And I think what you said is to chiropractors
 19 that you like --
 20 A. Uh-huh.
 21 Q. -- and that were acceptable, true?
 22 A. Yes.
 23 Q. So what made a chiropractic somebody that you
 24 liked or that was acceptable? How did you
 25 decide?

254

1 A. Typically someone who would have some experience
 2 in personal injury work. Lots of chiropractors
 3 are -- not lots, but there's certain of them are
 4 true believers in chiropractic and they want to
 5 treat people forever and they want to cure your
 6 sinuses and that sort of thing so they get people
 7 in and they never let them go and that's not good
 8 for the client.
 9 Q. And it's not reasonably related to the accident?
 10 A. Right.
 11 Q. So when you say familiar with personal injury
 12 accidents, you're saying they would keep the
 13 treatment limited to those injuries caused by the
 14 accident?
 15 A. Yeah. And have, you know, the capacity to make,
 16 you know, good judgements regarding the
 17 prognosis. Handle them -- just in general handle
 18 them appropriately, you know, either on
 19 plaintiff's side or defense side, occasionally
 20 I'd run into somebody who didn't seem to know
 21 what they were doing, you know -- it seemed like
 22 some of the chiropractors who didn't have a
 23 familiarity with injury stuff, you know, they
 24 felt like it was an open checkbook. You know,
 25 you can treat here for nine months, four times a

255

1 week, and I'm going to bill 150 bucks every visit
 2 and at the end I'm going to get paid for that.
 3 And based on the facts of the case, they might be
 4 very, very wrong.
 5 Q. And in most of those two hundred cases, fair to
 6 say that the chiropractors had to wait until the
 7 care was done and the case settled to be paid?
 8 A. Yeah.
 9 Q. Working on letters of protection?
 10 A. Right.
 11 Q. And letters of protection are helpful to the
 12 clients?
 13 A. Yeah. Those who don't have insurance, sure.
 14 Q. Most of yours, apparently, if they mostly had to
 15 wait to get paid until the case was over, must
 16 not have had insurance?
 17 A. Well, I mean, we're saying -- I don't know. I
 18 don't really remember is the more accurate
 19 answer. I just don't want to -- to me it's a
 20 small point, but I really -- I assume that's the
 21 case, but I don't know.
 22 Q. Okay. At least the majority of your clients when
 23 -- before you came to KNR, would have had letters
 24 of protection with the chiropractors?
 25 A. Letters of protection were common.

256

1 Q. Did you ever just hang out at the chiropractor's
 2 office and wait for --
 3 A. No, I don't think so. I think the only time I
 4 would -- I think the only time I would go there
 5 is -- well, chiropractors, as far as I'm
 6 concerned, did business with me because they
 7 liked me. I wasn't giving --
 8 Q. Nothing wrong with that, is there?
 9 A. Right. No, no. I wasn't giving them anything
 10 though. Like I said, very little referrals back,
 11 which they love, and certainly no other
 12 inducements in any fashion.
 13 So, you know, I would go there if there was
 14 an appointment, you know, then which they would
 15 call and say, hey, Gary, we've got somebody
 16 coming at 10:00 a.m., can you be here and I'd go.
 17 After I signed them up, I generally wasn't in a
 18 hurry to get out of there. You know, try to have
 19 a conversation with someone, usually not the
 20 doctor, often the staff, because the doctors
 21 would be busy. But I'd speak with an office
 22 manager or something like that for a few minutes
 23 before I would go, but I was always -- my --
 24 certainly my recollection is I was always busy
 25 when I was down there so -- in Columbus -- so I

257

1 was not sitting around anywhere waiting on
 2 anything. I virtually always had something to do
 3 unless it was -- you know, unless there were --
 4 I'm sure there were instances where, you know,
 5 I'm in a chiropractor's office at 1:00, I'm done
 6 signing somebody up at 1:30 and I've got to be
 7 back there at 2:30.
 8 Q. So you wait around?
 9 A. Yeah, so I'd wait around. Because by the time I
 10 get back to the office and then come back here, I
 11 don't have time to do anything there anyhow.
 12 Q. How did the chiropractor know -- if the patient
 13 was coming in at 10:00 a.m., how would they know
 14 that the patient already wanted to seek
 15 representation?
 16 A. My understanding is they would ask them.
 17 Q. On the phone?
 18 A. Yes.
 19 Q. Okay. Some of those people were coming to the
 20 chiro because of telemarketing?
 21 A. I think, as far as I'm aware, I'd assume nearly
 22 all of them.
 23 Q. Okay. You thought -- you think that's sleezy?
 24 A. I do, yes.
 25 Q. But you took the referrals?

258

1 A. Sure.
 2 Q. I mean, the fact that it's sleezy wasn't a
 3 reflection on you, was it?
 4 A. To a degree it was. It's one of the reasons why
 5 I don't do it anymore.
 6 Q. Well, you didn't think there was anything
 7 actually wrong with it though, true? I mean,
 8 it's permitted, true?
 9 A. It is permitted by the chiropractic. I'm glad
 10 lawyers aren't allowed to do it and I wish
 11 chiropractors weren't. I can't fault the
 12 chiropractors for doing it because, you know,
 13 it's effective. So you're not going to get
 14 injury people as a chiropractor or not many if
 15 you don't telemarket.
 16 Q. And you never telemarketed yourself, true?
 17 A. Never.
 18 Q. Not at KNR or anywhere else, true?
 19 A. No.
 20 Q. And you never heard KNR telemarket, did you?
 21 A. I did not.
 22 Q. So did you think Town & Country was sleezy?
 23 A. Yeah.
 24 Q. But you brought them and introduced them to KNR?
 25 A. Uh-huh.

259

1 Q. Why is that?
 2 A. They wanted them -- yes.
 3 Q. Well, you wanted them, too, right? You would get
 4 referrals?
 5 A. Yeah. I -- Town -- yeah, I mean, Town & Country
 6 was a sleezy chiro telemarketer.
 7 Q. That you did a lot of business with?
 8 A. I did.
 9 Q. Of your 200 cases how many were Town & Country?
 10 A. No idea.
 11 Q. Did Town & Country give you more cases than
 12 anybody?
 13 A. No.
 14 Q. Who did?
 15 A. Columbus Injury & Rehab.
 16 Q. And who else?
 17 A. That's it.
 18 Q. How many of the 200 do you think were -- who was
 19 it again? Columbus --
 20 A. Injury & Rehab.
 21 Q. How many do you think were, percentage wise?
 22 A. I don't know. See, that's the only reason why --
 23 I met Town & Country through their office
 24 manager. As I mentioned earlier, the
 25 chiropractic wars down there were very intense,

260

1 so I did business almost exclusively with
 2 Columbus Injury originally and then that business
 3 started to dwindle for no reason that I'm aware
 4 of other than I didn't have referrals for those
 5 peoples --
 6 Q. Okay.
 7 A. -- so they were finding local lawyers --
 8 Q. Did they tell you that?
 9 A. Yeah.
 10 Q. Who told you that?
 11 A. The office manager. I can't remember her name.
 12 Q. At the chiropractor's office?
 13 A. Yeah, yeah.
 14 Q. Town & Country didn't tell you that though, did
 15 they?
 16 A. Well, see then what happened was the former
 17 office manager at Columbus Injury got fired for
 18 some reason and hired at Town & Country. So she
 19 actually introduced me. Because like I said, I
 20 would be nice to those people and hang around
 21 with them and she said, hey, Gary, you know,
 22 these people, you should meet them, they've got
 23 tons of business, you should come meet them. So
 24 I actually hadn't been -- my recollection is I
 25 hadn't been doing business with Town & Country

261

1 for very long when I left Slater & Zurz. And I
 2 really didn't want to do business with Town &
 3 Country because they were competitors with
 4 Columbus Injury who had been very friendly to me
 5 for a much longer period of time.
 6 Q. So it wasn't that you didn't want to do business
 7 with Town & Country because you thought they
 8 wouldn't treat your clients well, it's that you
 9 didn't want to ruin the relationship with the
 10 Columbus chiropractic firm?
 11 A. Right.
 12 Q. Okay. And Town & Country, did you promise them
 13 anything?
 14 A. That I would not embarrass them.
 15 Q. Did you --
 16 A. And I returned their clients phone calls and that
 17 I would reflect well on them.
 18 Q. You'd take good legal care of their clients?
 19 A. Yes.
 20 Q. And that's why they sent you cases?
 21 A. Yes, I think so.
 22 Q. And did you ever tell Town & Country, for
 23 example, I'll make sure your bills get paid?
 24 A. That -- yeah. I mean, not that I'm going to make
 25 sure, but, you know, make representations that

262

1 I'm going to work hard if there's money here, you
 2 know, we're going to cover it, and do what we can
 3 to make sure that your bills do get paid.
 4 Q. That's not a quid pro quo, is it? Do you think
 5 you were involved in a quid pro quo with Town &
 6 Country when you were at Slater & Zurz?
 7 A. No, I don't.
 8 Q. Okay. That's proper, isn't it, that if the care
 9 is reasonable and necessary you're going to try
 10 to get it reimbursed by the insurance company?
 11 A. Sure.
 12 Q. Okay. You weren't doing anything improper when
 13 you dealt with Town & Country, were you?
 14 A. No.
 15 Q. Okay. You never had an agreement with Town &
 16 Country of, any referrals I do get, even though I
 17 do get many, I'll send them to you if you send me
 18 cases?
 19 A. An agreement, no.
 20 Q. You hesitated.
 21 A. Well, sure. Because there's an expectation.
 22 Q. From Town & Country?
 23 A. Yeah. From Town & Country. Because, you know,
 24 referrals are valuable. You know, the average
 25 chiropractic bill is whatever, so say, for

263

1 example, the average reimbursement on a
 2 soft-tissue chiropractic case, the average
 3 reimbursement to the chiropractor is 3,500 bucks.
 4 So if I can give you -- for every one I give you
 5 you make \$3,500, those are valuable.
 6 And like I said I believe that's -- well,
 7 that's what I was told why I was getting sort of
 8 cut out of the Columbus Injury ones, certainly
 9 minimize, if not cut out, but it was less.
 10 Q. You though sent clients to Town & Country
 11 sometimes?
 12 A. I probably did.
 13 Q. Because you thought they'd give them good
 14 chiropractic care, true?
 15 A. Because I thought they'd give good chiropractic
 16 care and they're in the neighborhood and they're
 17 going to be happy with us.
 18 Q. Okay. So --
 19 A. And there was definitely a benefit for me.
 20 Q. And you liked doing business with people that
 21 liked doing business with you, fair?
 22 A. For sure.
 23 Q. Nothing wrong with that, is there?
 24 A. Not that I'm aware there.
 25 Q. And you can't control the chiropractor's

264

1 expectations, can you?
 2 A. No -- well, I mean you can -- I didn't.
 3 Q. You didn't promise Town & Country anything, did
 4 you?
 5 A. I did not, no.
 6 Q. You never promised them anything at any time, did
 7 you, other than to take good care of their
 8 clients?
 9 A. Yeah, that's really it.
 10 MR. MANNION: Okay. How long have
 11 we been going?
 12 THE VIDEOGRAPHER: Just over an
 13 hour.
 14 MR. MANNION: Let's take a quick
 15 break.
 16 THE VIDEOGRAPHER: Off the record.
 17 - - - -
 18 (Thereupon, a recess was had.)
 19 - - - -
 20 (Thereupon, Defendant's Exhibit A was marked
 21 for purposes of identification.)
 22 - - - -
 23 Q. I'm going to hand you, Mr. Petti, what's been
 24 marked as Defendant's Exhibit A for
 25 identification. I'm sure that you probably don't

265

1 remember this exactly, but does this appear to be
 2 an e-mail that you sent to Robert Redick and
 3 Brandy Brewer, April 2nd, 2012?
 4 A. It does.
 5 Q. Okay. And you said "My chiro referral sources
 6 are" and then you listed four. Can you read
 7 those for us?
 8 A. They're -- yeah. Columbus Injury, Town &
 9 Country, Granger Chiro and the Accident Injury
 10 Center of Akron.
 11 Q. And for Columbus Injury you said all three
 12 locations. Where were those?
 13 A. They had an east and north and a west.
 14 Q. You also indicated in the second line there,
 15 second sentence below those, "I'd like to restart
 16 those relationships now that I'm somewhere with
 17 the resources and interest in maintaining
 18 developing them." Did I read that correctly?
 19 A. Yeah, that's what it said.
 20 Q. Okay. And you felt that was appropriate, didn't
 21 you?
 22 A. I did.
 23 - - - -
 24 (Thereupon, Defendant's Exhibit B was marked
 25 for purposes of identification.)

266

1 - - - -
 2 Q. Handing you what's been marked as --
 3 A. But I wasn't referring to those people.
 4 Q. You weren't referring to what people?
 5 A. I wasn't referring to the four people in that
 6 list. I said I had a few others that I worked
 7 with in the past.
 8 Q. Okay.
 9 A. So --
 10 Q. In other words, you were going to obviously keep
 11 going with these, but you wanted some others that
 12 you wanted --
 13 A. Right, there were others I worked with.
 14 Q. Who were those?
 15 A. I don't even remember. One of these I mention is
 16 a guy I went to high school with. His office is
 17 in north -- oh, John Owonic [phonetic] that's the
 18 one that comes to mind.
 19 Q. You were friends with him?
 20 A. Yeah. John and I were really good friends in
 21 high school. We didn't do anything really
 22 professionally together. He didn't do much in
 23 the car accident stuff, but that's specifically
 24 one of the people I know I was referring to.
 25 Q. You didn't find anything wrong with doing

267

1 business with friends, did you?
 2 A. No, no.
 3 Q. Handing you what's been marked as --
 4 MR. MANNION: I gave you a copy,
 5 right, of Exhibit B --
 6 MR. PATAKOS: Uh-huh.
 7 MR. MANNION: -- "we need a new
 8 chiro"?
 9 Q. Do you recognize this?
 10 A. No.
 11 Q. Okay. Does this appear to be -- you never got it
 12 apparently, but August of 2014, from Paul Steele
 13 to Brandy Brewer. And I want to see if this
 14 reminds you of anything. It says Gary Petti F'd
 15 over the Dr. Lynch on Google Earth - Springfield
 16 Chiro - self-paid 5k between two patients. He'll
 17 never cut a bill now. I'm calling trying to work
 18 it out.
 19 Do you remember having an issue with a Dr.
 20 Lynch?
 21 A. No.
 22 Q. Do you know any chiros in Springfield that you
 23 send work to or that send work to you?
 24 A. No --
 25 Q. Okay.

268

1 A. -- no. I think what he's probably referring to
 2 there is I settled a case while at KNR and Dr.
 3 Lynch was due to be paid and for some reason we
 4 didn't pay him. Maybe he was unwilling to cut
 5 his bill and we didn't have an LOP so I sent the
 6 money directly to the client and too bad.
 7 Q. That's what self-pay is? Is that what that
 8 means?
 9 A. Yeah, yeah.
 10 Q. So it --
 11 A. But I'm just guessing. Maybe it was on there and
 12 I just didn't see it. It could have been a screw
 13 up on my part. I don't know. But that, to me,
 14 he's very clearly referring, given the timeframe,
 15 2004, I had been gone for two years --
 16 Q. Uh-huh.
 17 A. -- that Dr. Lynch was one of their people and he
 18 won't deal with them anymore because of what I
 19 apparently did to him.
 20 Q. When you did work with -- let me see one of
 21 those, I gave my copy away, the other one.
 22 A. Oh, yeah. I didn't realize I set it there.
 23 Yeah, that's almost certainly what I did then.
 24 Q. Okay.
 25 A. I wanted to get him to cut the bill, he wouldn't

1 do it, so I gave the money to the client
 2 without -- because we didn't have an LOP --
 3 Q. It was their right, the client's right?
 4 A. Yep.
 5 Q. Columbus Injury, do you recall, like, the average
 6 percentage of their bill that you would cut?
 7 A. No.
 8 Q. It differed on each case, true?
 9 A. Yeah. Yep.
 10 Q. I mean, and you didn't have any set percentage
 11 that you would recommend when you were at KNR
 12 either for any of the chiros that you cut?
 13 A. No.
 14 Q. You made that decision and gave the
 15 recommendation to higher-ups and then they would
 16 either approve or not approve, true?
 17 A. Yeah, I think I've described that already. I'd
 18 take whatever the gross amount coming in was --
 19 and I don't know how anybody else did it, but for
 20 me I always spoke to the clients in terms of net
 21 in their pocket. So if you've got more
 22 recordings, I probably have said that 100 times.
 23 Because I mean what I tell them it doesn't matter
 24 if you're getting a million dollars of gross, if
 25 all you're getting is ten bucks, the million is

1 just a distraction. So let's focus on how much
 2 you are getting. So I think, blah, blah, blah,
 3 you should get 1,500 bucks or more, but at least
 4 1,500. And if they said yes, then I'd go about
 5 negotiating, get as much money as possible.
 6 But I'd get them, the client, to agree to
 7 some number as a minimum and then I'd try to get
 8 them more than that.
 9 If that required -- if the top dollar of the
 10 insurance company then requires a reduction, then
 11 I'd look at reducing.
 12 Q. And in most cases you would try to reduce the
 13 bills?
 14 A. I only would if I had to in order to get to the
 15 top -- you know, to stay above the number that
 16 the client said was the best -- or the least that
 17 they would be willing to accept.
 18 Q. And I think what you said when Mr. Pattakos asked
 19 you questions, is that Nestico usually approved
 20 your recommendations on those?
 21 A. Yeah. It was a long time ago, but I don't
 22 remember any problems getting resolved.
 23 Q. Mr. Nestico never told you not to cut Dr.
 24 Ghoubrial's bills, did he?
 25 A. No, I didn't have many Ghoubrials, no.

1 Q. You weren't told that?
 2 A. No, I don't think so.
 3 Q. Okay. And you don't -- you never heard him say
 4 that to anybody else, did you?
 5 A. No, I did not.
 6 Q. You didn't hear Mr. Redick say that, did you?
 7 A. No.
 8 Q. You never saw an e-mail that said don't cut Dr.
 9 Ghoubrial's bills, did you?
 10 A. No, not that I can recall.
 11 Q. And you were never told not to cut Dr. Floros'
 12 bills, were you?
 13 A. Not that I can recall.
 14 Q. And you would make those determinations on how
 15 much it should be cut, you would send it to
 16 Mr. Nestico and more likely than not, based on
 17 your memory, he'd approve it, true?
 18 A. Yes.
 19 Q. And you did those in the best interest of the
 20 client?
 21 A. Yes.
 22 Q. But as far as how much was cut, what the reasons
 23 were for, you'd have to look at each individual
 24 file, true?
 25 A. Yeah, I would. Yep.

1 Q. And sometimes you would write on the settlement
 2 memorandum some notes so that if Mr. Nestico
 3 looked at the settlement memorandum, he would
 4 know why maybe it was justified to cut those
 5 bills?
 6 A. I don't have any specific recollection of that,
 7 but probably.
 8 Q. Okay. What are some of the reasons that it would
 9 be justified to cut one of the chiropractor's
 10 bills or medical doctor's bills other than just
 11 the fact that you need the money for the
 12 settlement?
 13 A. Really there is no other reason. I'm a bottom
 14 line kind of a guy. That's not to say I never
 15 wrote anything. I don't know. But as I
 16 described earlier, all I really wanted to do was
 17 get the client an amount of money that they're
 18 willing to accept. And truth be told, the actual
 19 value of the case really doesn't matter.
 20 Q. You mean total value that it settled for?
 21 A. Well, you know, if the insurance company is
 22 willing to pay six grand and I think it's a
 23 \$7,000 case, if I can get six grand that -- twist
 24 it in a way that makes the client happy, then I'm
 25 not going to argue about the 1,000 to get the

273

1 7,000 because nobody wants to try a case over
 2 \$1,000 if everything works out for you.
 3 Q. And if you can get the chiropractic providers
 4 and/or medical providers and/or KNR --
 5 A. Uh-huh.
 6 Q. -- to cut their fees or bills --
 7 A. That's what I meant by twisting it. Twisting the
 8 money so that the numbers work and satisfies the
 9 client, then the total settlement -- again, all
 10 of my focus is on getting enough money so the
 11 client is willing to say that's enough, I'm ready
 12 to go.
 13 Q. In other words, if you can get them the same
 14 amount in pocket that they would have had with a
 15 \$7,000 settlement, but it was only a \$6,000
 16 settlement, it's the same net to the client?
 17 A. That's sort of the fine line that I'm walking.
 18 Because maybe not. You know, maybe if we
 19 litigate the case and everything works out and
 20 maybe I genuinely believe it's a \$7,000 case and
 21 we have a trial and instead of getting 1,500,
 22 they're going to get 1,700, but they're willing
 23 to take 1,500, I'm not going to fight about the
 24 1,000.
 25 Q. If it's \$1,000, litigation expenses and time --

274

1 A. Yes.
 2 Q. -- and everything else?
 3 A. Yes.
 4 Q. Okay. But you would discuss those issues with
 5 the client, fair?
 6 A. I would not, no.
 7 Q. Okay.
 8 A. I mean, I would -- well, I wouldn't hide anything
 9 from them, but again, my focus is on money in
 10 your pocket. If you're willing to take 1,500,
 11 then what do you care how I get it to you as long
 12 as it's 1,500 or more. So to tell them, you
 13 know, gee, I really think your case is worth
 14 seven, but by the time we get, you know,
 15 litigation expenses and extra time and all that,
 16 I suppose -- and now that I think about it, I did
 17 have those conversations with them often about
 18 how it works out, you know, yeah. But that was
 19 sort of as a lever and not really over \$1,000, it
 20 would be, well, gee, your case is probably worth
 21 ten, but to get you ten, it's going to take us a
 22 year and then you're going to have all these
 23 costs. And right now we're willing to reduce our
 24 fee, but if we go to trial, we're not going to be
 25 willing to reduce our fee, so in order to get you

275

1 what you're getting right now at trial, you need
 2 more than ten, you need 12, and I don't think
 3 you're going to get 12.
 4 I had those -- I would have those
 5 conversations for sure.
 6 Q. The same conversations you had when you were at
 7 Slater & Zurz?
 8 A. Yep.
 9 Q. KNR didn't tell you to change those --
 10 A. No.
 11 Q. -- did they?
 12 A. No.
 13 Q. You wouldn't have changed anyway even if they did
 14 tell you?
 15 A. Yeah, not that. I mean, there were some things
 16 certainly that I picked up there, but, you know,
 17 there are other things I was pretty set in my
 18 ways on.
 19 Q. And each of those conversations would go a little
 20 different with the client, some would have more
 21 questions than others, fair?
 22 A. Yeah, yeah. Some were very happy, you know,
 23 whatever you say.
 24 Q. I'll trust you --
 25 A. Yep.

276

1 Q. -- you do it?
 2 A. Yep.
 3 Q. Others wanted to look at every little line item?
 4 A. Yeah. And, you know, Uncle Johnny got five grand
 5 so I need at least six because my wreck was worse
 6 and he was faking anyhow, so I need more than
 7 that.
 8 Q. Okay. To know about the discussions regarding
 9 the settlements of any of the plaintiffs in this
 10 case, you'd have to ask those lawyers and those
 11 plaintiffs, true?
 12 A. Yeah, how they handled them, yep.
 13 Q. You certainly didn't overhear those
 14 conversations?
 15 A. No.
 16 Q. And there was no script for those, was there?
 17 A. Not that I'm aware of, not that was shared with
 18 me.
 19 Q. You never used one, true?
 20 A. No.
 21 Q. So when you use the word "kickback" --
 22 A. Uh-huh.
 23 Q. -- I just want to make sure, was that your word,
 24 "kickback"?
 25 A. As opposed to who?

1 Q. I don't know. In the affidavit -- who prepared
 2 the affidavit?
 3 A. Kickback is my word --
 4 Q. Okay.
 5 A. -- I mean it's certainly in the affidavit, yeah.
 6 I believe the payment to the chiropractor is a
 7 kickback.
 8 Q. For the narrative report?
 9 A. Yep. Yep. The narrative report has no
 10 independent value whatsoever in those cases and
 11 that it's paid strictly as a means to make the
 12 chiropractor happy.
 13 Q. Now, you understand that other lawyers both at
 14 KNR and elsewhere disagree with you on the value
 15 of narrative reports, true?
 16 A. The ones that are doing it.
 17 Q. I'm asking. Well --
 18 A. Yeah.
 19 Q. -- if you don't think it's valuable, then you
 20 would assume those lawyers aren't doing it, fair?
 21 A. No. No.
 22 Q. Okay.
 23 A. I would say if Dr. Floros is getting a kickback
 24 from KNR and he says, look, if you want referrals
 25 from me, you're not going to give them up -- I'm

1 not going to give up that 200 bucks, so you've
 2 got to give me 200 bucks, too. So they either
 3 walk away from Floros or they pay the 200 bucks.
 4 Q. Are you saying Dr. Floros said that?
 5 A. I'm saying -- no, I never heard that.
 6 Q. Okay. So you never heard somebody say that
 7 getting \$200 for a prepared and typed-out, signed
 8 narrative report --
 9 A. Uh-huh.
 10 Q. -- was a kickback, did you?
 11 A. No. Kickback is my word --
 12 Q. Okay.
 13 A. But I did hear John Lynett phrase it in a way
 14 that suggested the same thing.
 15 Q. You think John Lynett was --
 16 A. He knows it's a kickback. Everybody knows it's a
 17 kickback.
 18 Q. And he does it anyway?
 19 A. Yes.
 20 Q. So you're saying John Lynett gives kickbacks to
 21 chiros?
 22 A. Yeah. Everybody who pays the 200 bucks, it's a
 23 kickback.
 24 Q. That's your opinion?
 25 A. Yes.

1 Q. Now, you would agree that that's not paid until
 2 there's actually a narrative report signed by the
 3 doctor talking about the patient, true?
 4 A. I don't know that. I was told otherwise.
 5 Q. Really?
 6 A. Yes.
 7 Q. What if you found out that you had to have the
 8 narrative report signed about that patient --
 9 A. It wouldn't matter.
 10 Q. Just wait. Signed about that patient and then a
 11 check was requested to pay for that narrative
 12 report?
 13 A. It wouldn't matter.
 14 Q. What if the lawyer on that individual case
 15 believed in his professional judgment that that
 16 narrative report had value?
 17 A. Then --
 18 Q. That wouldn't be a kickback, would it?
 19 A. No, it wouldn't.
 20 Q. Okay. And different lawyers have different
 21 judgments about what's valuable to a case, don't
 22 they?
 23 A. They do.
 24 Q. Now, you're not alleging that Dr. Floros, Akron
 25 Square or any chiropractor or medical provider

1 actually made some type of cash payments to KNR,
 2 are you?
 3 A. No.
 4 Q. And other than paying for a narrative fee, you're
 5 not saying that KNR or Rob Nestico or Robert
 6 Redick, made any cash or other payments to the
 7 chiropractors, are you?
 8 A. Other than the narrative reports --
 9 Q. Right.
 10 A. -- is that what you said? No, I would not be
 11 aware of that.
 12 Q. For example, you're not saying that the client
 13 gets charged \$200 for the narrative reporting,
 14 KNR and the chiros split it?
 15 A. No, I don't know that.
 16 Q. And, in fact, did you know that the narrative
 17 report is paid even when KNR refers the client --
 18 A. I did know that.
 19 Q. -- to the chiropractor?
 20 A. I did know that.
 21 Q. So --
 22 A. Thirty to nothing though, right?
 23 MR. KEDIR: What's that?
 24 THE WITNESS: Thirty to nothing
 25 though.

1 Q. I understand your commentary, but let me --
 2 A. Right.
 3 Q. -- re-ask the question and if you can just answer
 4 the question.
 5 A. I will.
 6 Q. Okay. Because you do know how a deposition
 7 works?
 8 A. I do.
 9 Q. Okay.
 10 A. I'm out of practice though.
 11 Q. How many have you taken do you think?
 12 A. Hundreds.
 13 Q. How many trials?
 14 A. Dozen.
 15 Q. So you understand at trial you have to have a
 16 doctor relate the injuries to the accident --
 17 A. Yes.
 18 Q. -- true?
 19 A. That is true.
 20 Q. Okay. That's what the law says, right?
 21 A. Right.
 22 Q. Now you're not saying that -- well, strike that.
 23 Do you understand that even on cases that KNR
 24 referred to Akron Square or other chiropractors
 25 or other medical providers, that when they

1 received a narrative report, they paid for that
 2 narrative report. Did you know that?
 3 A. I did know that.
 4 Q. In those cases, certainly they weren't paying for
 5 a referral, were they? They were the ones who
 6 referred it to the chiropractor?
 7 A. I look at it more as a global, as a big picture
 8 kind of thing. And in each of those referrals is
 9 worth much more than 200 bucks. So, yeah, you've
 10 got to pay on the ones that you referred us, too.
 11 Q. Well --
 12 A. And also -- I mean, we wouldn't be here -- there
 13 would be no argument if they weren't paying for a
 14 narrative report on the ones that they referred
 15 over. I mean, then it would be completely
 16 transparent. Now it's just pretty transparent.
 17 Q. In your opinion?
 18 A. Yeah, certainly my opinion --
 19 Q. Okay.
 20 A. -- well, I suspect more, other people know.
 21 Q. Well, that's not -- I'm saying it's in your
 22 opinion -- you weren't there to have the
 23 discussions, to hear the discussions between the
 24 chiropractor and Mr. Nestico and Brandy, were
 25 you?

1 A. Well, I was there when Brandy said Rob invented
 2 the narrative report thing and that's for
 3 business, number one. I was there when the
 4 chiropractor told me, well, look, if you --
 5 essentially if you want referrals from me, you've
 6 got to get a narrative report every time.
 7 Q. When did he tell you that?
 8 A. I was still at Slater & Zurz and it was a West
 9 Tusc guy.
 10 Q. Who was that?
 11 A. I don't remember his name. It wasn't Tassi
 12 because Tassi, he's super tall and skinny. I
 13 remember him. It wasn't Tassi.
 14 Q. Okay.
 15 A. And I certainly dealt with Akron Square
 16 Chiropractic on many occasions before Floros was
 17 there and I never paid a narrative report to
 18 anyone, and I don't know any other lawyer who
 19 did.
 20 Q. Did you look at all the cases that they had?
 21 A. Certainly not all of them, no, but I never did
 22 and I don't think John Lynett was paying a
 23 narrative report back then either. KNR -- at
 24 some point it started. What started it?
 25 Q. Well, do you understand that there's lawyers who

1 think that it is a good value for \$150 to \$200 to
 2 get a narrative report?
 3 A. I would say that that's -- I don't believe them.
 4 Again, it's a kickback and so you --
 5 Q. In your opinion again?
 6 A. It's not a matter of opinion --
 7 Q. Okay.
 8 A. -- it's not.
 9 Q. Why don't you listen to the question and answer
 10 it, would you?
 11 A. I am.
 12 Q. Okay.
 13 A. You asked me a question --
 14 Q. You understand --
 15 A. -- you said in my opinion and I answered --
 16 Q. -- do you understand -- no, no, that's not what I
 17 asked. I said do you understand that there's
 18 attorneys who in their professional judgement
 19 having a narrative report from a chiropractor or
 20 a medical doctor causally relating the injuries
 21 to the accident is valuable. Do you understand
 22 that?
 23 A. Are you speaking about the narrative reports that
 24 Dr. Floros and the Plambeck doctors create on
 25 every single case or virtually every single case?

1 Are those the ones you're talking about or are
 2 you talking just generally? Because if you're
 3 saying generally, then I say -- and the lawyer is
 4 making a thoughtful decision about whether or not
 5 this is going to create a return on behalf of the
 6 client, then, yeah, I believe that.

7 But if you're saying they have decided
 8 without seeing the facts of the case, that we
 9 need a narrative report from a Plambeck doctor
 10 and Plambeck doctors only in virtually every
 11 single case and there's value in that, then I
 12 think they're selling you a bill of goods --

13 Q. Well, how --

14 A. -- and covering their own rear because they're
 15 doing it themselves.

16 Q. Well, how would you determine in any one case
 17 whether the report is valuable? What would you
 18 have to do?

19 A. You'd have to -- causation in a rear-end
 20 collision is essentially a given. And that's why
 21 they don't get it from any other doctors because
 22 you don't need it. The adjusters assume that
 23 you've got a sore back -- sore neck and sore back
 24 from this car accident case. Everybody gets
 25 that, that's why you don't get it from Columbus

1 Q. There's times --

2 A. From a chiropractor, no.

3 Q. I'm not asking about reports.

4 A. Okay.

5 Q. There are times where also you're going to try to
 6 recover for your client for future pain and
 7 suffering, true?

8 A. Every time that it's justified.

9 Q. And sometimes it is helpful to have a report from
 10 a doctor or some type of medical provider that
 11 causally relates that future pain and suffering
 12 to the accident, true?

13 A. Sometimes that is helpful.

14 Q. And you believe sometimes it's not, fair? Both.

15 A. Yeah. Yeah, sure.

16 Q. To determine that you'd have to look at the
 17 individual case, fair?

18 A. Yes, you would.

19 Q. And it's the lawyer's duty to look at the
 20 individual case and make a determination, true?

21 A. It's the lawyer's duty.

22 Q. And when you sat down with your clients whether
 23 you were at Slater & Zurz or at KNR, would you
 24 charge them for things that you didn't think were
 25 reasonably necessary?

1 Injury, that's why you don't get it from Accident
 2 & Injury Center of Akron, because everybody knows
 3 that so why pay the guy 200 bucks to say what's
 4 obvious.

5 Q. Well, there could be preexisting injuries --

6 A. There could be.

7 Q. -- and the insurance companies will argue over
 8 whether the injuries were caused by the accident
 9 or not, true?

10 A. Certainly they could be, so you wait for all the
 11 evidence to come in and then you as the lawyer
 12 make a determination as to whether or not the
 13 amount you spend on that narrative report is
 14 going to result in -- and use your best judgement
 15 -- as to whether it's going to result in a net to
 16 the chiropractor -- or to your client.

17 Q. There were times too where you may be asking the
 18 insurance company for damages for future pain and
 19 suffering based on the prognoses, true?

20 A. Yes. I almost never. I mean, just I almost
 21 never got a narrative report --

22 Q. That's not what I asked --

23 A. I know, but --

24 Q. Well, I've asked you to answer my question.

25 A. From a chiropractor, no.

1 A. I wouldn't, no. But at KNR it was -- it was out
 2 of my control.

3 Q. Well, you went over the settlement memorandum
 4 with the clients, right?

5 A. Yeah, sometimes -- yes.

6 Q. With your clients you did, right?

7 A. Uh-huh. Well, the net. Like I said, I'm worried
 8 about a net.

9 Q. Well, you sat down with them with the settlement
 10 --

11 A. No.

12 Q. -- memorandum and went over --

13 A. It was very often -- most often over the phone.
 14 I almost never sat down with them.

15 Q. For the settlement memorandum?

16 A. Correct.

17 Q. Well, the settlement memorandum listed out all
 18 the expenses, true?

19 A. I know. Yes.

20 Q. Okay. And you would go over those with the
 21 client, wouldn't you?

22 A. Yep.

23 Q. That was your duty as a lawyer?

24 A. Yeah, I suppose.

25 Q. Okay. Well, what did you tell them about the

1 narrative?
 2 A. I didn't tell them anything.
 3 Q. Why did you charge them if you didn't think
 4 it's --
 5 A. I didn't charge them, KNR did.
 6 Q. It was on the settlement memorandum that you were
 7 discussing with the client, true?
 8 A. But I didn't charge them.
 9 Q. Wait a minute --
 10 A. I didn't authorize it, I didn't write the check,
 11 I didn't collect the money, I didn't charge
 12 them --
 13 Q. Okay. How many --
 14 A. -- KNR did. And I never was the one who was the
 15 lawyer when the treatment took place, except for
 16 the one time where I said, no, we can't do this,
 17 we're not doing this, how did this happen, I
 18 never ordered it.
 19 Q. Okay.
 20 A. And I wish we had that person's name because I
 21 bet despite my objection --
 22 Q. You don't have that?
 23 A. -- that case settled -- you're right, I don't.
 24 Q. Okay.
 25 A. Well, I don't know that, but it happened.

1 Q. Well, wait a minute. You do not know that, do
 2 you?
 3 A. It certainly happened.
 4 Q. Sir, have you seen that? Have you seen that
 5 settlement memorandum?
 6 MR. PATTAKOS: You guys don't need
 7 to argue about it --
 8 A. You're asking --
 9 MR. MANNION: No --
 10 MR. PATTAKOS: -- I'm sure you can
 11 find it on the docket.
 12 MR. MANNION: -- stop it, stop it.
 13 I don't even know the patient's name.
 14 MR. PATTAKOS: I'm sure it would
 15 be easy to find out.
 16 MR. MANNION: I have no idea what
 17 you're talking about.
 18 BY MR. MANNION:
 19 Q. Do you know the client's name?
 20 A. No, I do not.
 21 Q. So you haven't seen the settlement memorandum in
 22 that case, true?
 23 A. That is true.
 24 Q. You don't know whether it was charged or not, do
 25 you, sir? Have personal knowledge of that?

1 A. No, I don't, but you know what I'm getting at.
 2 Q. Do you have personal knowledge of that or not?
 3 A. I answered that question.
 4 Q. The answer is, no, you don't, true?
 5 A. Right. But you know what I'm getting at.
 6 Q. Sir --
 7 A. Sir.
 8 Q. -- answer the question --
 9 A. I did twice now.
 10 Q. -- it's a yes or no -- it's a yes or no.
 11 A. I did, I answered it.
 12 Q. Answer it without your commentary.
 13 Do you have any personal knowledge --
 14 A. I'm allowed to give commentary --
 15 Q. Do you have any --
 16 A. I'm allowed to give commentary, Tom.
 17 Q. -- personal -- so that's what you're here for as
 18 a -- to give your opinions?
 19 A. No. To make sure -- I mean, that is factfinding.
 20 So if --
 21 Q. Well, factfinding --
 22 A. -- you really want to know --
 23 Q. I want facts.
 24 A. -- if you really want to know what happened, I'm
 25 telling you what happened.

1 Q. I want a fact and I'm asking you a fact. Do you
 2 have personal knowledge --
 3 A. But I already answered it twice. What did I say?
 4 Q. And the answer is no, correct?
 5 A. Fair.
 6 Q. Okay. So how many times did you sit down when
 7 you were at KNR with a client and have a
 8 narrative fee on the settlement memorandum? Do
 9 you have any idea?
 10 A. No.
 11 Q. A dozen?
 12 A. Don't know.
 13 Q. Less than a dozen?
 14 A. No idea.
 15 Q. Hundred?
 16 A. No idea.
 17 Q. What percentage of your cases?
 18 A. I already said --
 19 Q. A small percentage?
 20 A. -- no idea.
 21 Q. A small percentage of your cases, true?
 22 A. I have no idea.
 23 Q. How many total cases did you handle at KNR other
 24 than the ones you brought over?
 25 A. No idea.

293

1 Q. More than you brought over or less?
 2 A. Probably less.
 3 Q. So --
 4 A. No, I don't know. They got my settlement memos,
 5 so --
 6 Q. I'm asking to the best of your memory.
 7 A. I don't remember.
 8 Q. Okay. But to the extent that -- if you believe
 9 there's less cases you worked on than the ones
 10 you brought over, then the minority of the cases
 11 that you had would have had narrative reports?
 12 A. I don't know.
 13 Q. To the extent you --
 14 A. I mean all that. The honest truth, I mean -- and
 15 I don't know where you're going with this,
 16 really, but I don't remember what the split was.
 17 I know when I started it was heavy on my own
 18 stuff, but obviously I went through those and
 19 then I started to get the -- well, the other guy
 20 who started the same time I did got fired, so I
 21 got a bunch of his junk --
 22 Q. Approximately how many?
 23 A. I don't know.
 24 Q. I mean a dozen or a hundred?
 25 A. A hundred probably.

294

1 Q. Okay.
 2 A. I got a bunch of his junk and was true junk. And
 3 I worked through that as best as I could.
 4 Whether or not those were junk as in Plambeck
 5 junk or somebody else's junk -- and again, I'm
 6 saying junk because that's the way it worked.
 7 When a new guy started, they asked the old
 8 guys, the guys who were there, to donate some
 9 files. Nobody is going to give a file where
 10 they're going to make \$10,000. So they go
 11 through and they find all the problem ones, the
 12 ones where they tried to get it -- pass it off to
 13 litigation, but it got denied and they hand those
 14 to the new guy.
 15 So that guy who got fired, had a bunch of
 16 those. I don't think I had any when I started
 17 because I had enough of my own. And then when he
 18 got fired, they gave his junk to me.
 19 Q. You're not claiming there's something nefarious
 20 about somebody handing off the junk cases, are
 21 you?
 22 A. Just it was a shitty thing to do to the new guy.
 23 Q. Is it nefarious?
 24 A. To the new guy, yeah.
 25 Q. Is there something --

295

1 A. Well, nefarious, I'm not even sure what that
 2 means. I mean, I know it's bad.
 3 Q. I mean, are you saying that something was done
 4 that was wrong, that was wrong against that
 5 client?
 6 A. Not to the client, no. Not to the client, no.
 7 Q. Okay. And so when you sat down -- strike that.
 8 Those cases that you took over --
 9 A. Uh-huh.
 10 Q. -- some of those clients were still treating,
 11 true? They didn't just send you 100 files where
 12 the treatment was --
 13 A. Yeah, yeah, I assume so. Because see that's
 14 different because -- it's not different, but I
 15 have less of a cognitive connection to that
 16 because I didn't actually see those files. Those
 17 -- when they're still treating, at least when I
 18 was there, the paralegals kept those files in
 19 their office or their cubicle kind of thing. And
 20 then only when they were done did they get
 21 delivered to me. So I don't have a tangible idea
 22 of what got passed to me other than the stuff
 23 that was already done.
 24 Q. You never kept up with your clients' cases?
 25 A. Not in terms of, you know, knowing who they all

296

1 are, no.
 2 Q. I mean, you can get on Needles and look, right?
 3 A. Yeah, I didn't do that.
 4 Q. Why not?
 5 A. I had my hands full just doing what I was doing.
 6 Q. I mean, you can get on Needles and look at what
 7 the care was being provided?
 8 A. Never did that.
 9 Q. You could, right?
 10 A. Assuming it was up to date, yeah.
 11 Q. Well, it was suppose to be, right?
 12 A. It was supposed to be, sure.
 13 Q. Isn't Needles one of the ways you communicated
 14 with your paralegal?
 15 A. I don't think so. Maybe.
 16 Q. They would do things, put notes in the file?
 17 A. Yeah, they would. I'd see --
 18 Q. And you would put notes in the file?
 19 A. Yes, I would, yep.
 20 Q. And they would tell you, for example, so and so
 21 is done treating now?
 22 A. I wouldn't see that in Needles because I wouldn't
 23 look.
 24 Q. They would send you an e-mail?
 25 A. Yeah.

1 Q. And then it would be copied into Needles?
 2 A. Maybe, maybe not. I don't remember.
 3 Q. And for certain clients you knew that the -- that
 4 a decision had been made by some attorneys, from
 5 what you're telling me, whether it was Nestico
 6 or --
 7 A. No, I don't believe it was a decision -- I'm
 8 sorry, ask your question.
 9 Q. Well, you're saying -- you didn't let me finish.
 10 A. I said, I'm sorry.
 11 Q. A decision was made that they would get a
 12 narrative fee on all cases, for example, that Dr.
 13 Floros treated the patient --
 14 A. Uh-huh.
 15 Q. -- that's your testimony, correct?
 16 A. Yeah. At some point they made that decision,
 17 yep.
 18 Q. That's what you believe, true?
 19 A. Yes, that's what I believe.
 20 Q. Okay. But once you learned that the treatment
 21 was done --
 22 A. Uh-huh.
 23 Q. -- did you know then that the -- what the
 24 paralegal was going to do and what the paralegal
 25 was going to request?

1 A. No.
 2 Q. But you saw what happened, didn't you? There
 3 were letters that went out and sometimes it would
 4 ask for bills, records and a report and sometimes
 5 it just asked for bills and records?
 6 A. Based on -- I mean, nobody at KNR ever trained me
 7 in that and said that there's a point where, you
 8 know, this is going to happen --
 9 Q. You saw it.
 10 A. No, I didn't see it.
 11 Q. You were just blind to these files?
 12 A. Well, I would see the files when they were done.
 13 Q. You weren't handling these files yourself?
 14 A. What do you mean by "handling"?
 15 Q. Well, when you found out you that your patient
 16 was done treating --
 17 A. Uh-huh.
 18 Q. -- didn't you make some decisions as a lawyer?
 19 A. I'd say they're done treating, make sure you
 20 collect the records. And typically she was
 21 already started.
 22 Q. Well, if it was Dr. Floros, for example, in your
 23 mind you knew they'd ask for a report too, right?
 24 A. No, I didn't know that.
 25 Q. Well, it happened every time you had one with him

1 you're saying?
 2 A. No, what I'm saying -- and this is very simple,
 3 so let's not complicate it -- I didn't have any
 4 Floros' files that weren't already in settlement.
 5 So where the --
 6 Q. Okay.
 7 A. -- settlement pack -- let me finish. Where the
 8 package was already created --
 9 Q. Okay.
 10 A. -- at first. And then so I assume then that --
 11 not assume -- so in each one of those that I can
 12 recall there was a report. And I expected that
 13 because I knew before I even got there, that they
 14 were paying 200 bucks or whatever it was for
 15 reports. So I expected to see that.
 16 And I thought that I would be able to
 17 insulate myself from what I strongly believe was
 18 a kickback by just never requesting it, so I
 19 didn't, I never requested one.
 20 The ones that had them already, I dealt with
 21 that issue by trying to resolve the case. If --
 22 and then the one came through that I did the
 23 intake myself, never requested a report, and
 24 there it was. And I confronted Megan about that
 25 immediately, what's this doing here? I don't

1 want it. It has no value to this case, it's just
 2 an unnecessary expense. What's it doing here?
 3 And she said, we do it automatically every time,
 4 we send the money right to the chiropractor's
 5 house. And I was upset by that.
 6 Q. That it went to the house or that they requested
 7 it --
 8 A. They sent it to the house.
 9 Q. Why did that upset you, that it went to the
 10 house?
 11 A. I was upset by the whole thing. And by the house
 12 to me, again, it just to me adds support that
 13 it's a kickback. It's not going through the
 14 clinic.
 15 Q. Well did you know --
 16 A. I mean, if he's spending clinic time using clinic
 17 resources, but the money is not going to the
 18 clinic --
 19 Q. Well, isn't that the clinic's decision on whether
 20 they're paid or the chiropractor is paid?
 21 A. If the clinic is aware.
 22 Q. Well, did you know that they were?
 23 A. No.
 24 Q. Okay. So --
 25 A. But I didn't know that they weren't, but --

301

1 Q. Well, if --
 2 A. -- it didn't matter to me, it's still a kickback.
 3 Q. But you're staying it somehow is wrong to send it
 4 to the house?
 5 A. I'm just pointing that out that that was an
 6 additional factor.
 7 Q. No, no. You just didn't point it out --
 8 A. Well, that's what I meant.
 9 Q. Well, that's not what you said.
 10 A. Well, that's what I meant.
 11 Q. What you said is maybe the clinic didn't even
 12 know and so --
 13 A. Well, maybe they didn't. You asked me, you said,
 14 did I know --
 15 Q. Well, now that I'm --
 16 A. -- and I said, no, I didn't know.
 17 Q. -- now that I'm asking you to assume that the
 18 clinic and the chiropractor discussed it and
 19 decided who would be paid, whether it would go to
 20 the clinic or the chiropractor.
 21 A. Uh-huh.
 22 Q. If the clinic said it's okay, pay the
 23 chiropractor directly if he's doing those
 24 reports --
 25 A. Uh-huh.

302

1 Q. -- you still have a problem with that decision as
 2 to where it goes?
 3 A. No, I don't have a problem with where it goes.
 4 Q. Okay. And have you ever seen Dr. Floros prepare
 5 one of these reports?
 6 A. No.
 7 Q. You don't know that he uses some program, do you?
 8 A. I don't.
 9 Q. How many of his reports have you compared to each
 10 other?
 11 A. I don't know. A few handful, a couple handful.
 12 It's been a long time. I've seen enough.
 13 Q. But you were referring to reports that you talked
 14 about earlier that were a few sentences or so --
 15 A. Uh-huh --
 16 Q. -- is that true?
 17 A. -- I referred to those, yep.
 18 Q. They didn't look like the ones you saw here?
 19 A. Those are useless.
 20 Q. Did they look like the ones you saw here?
 21 A. No.
 22 Q. Okay. So when you were talking in your affidavit
 23 about those affidavits, you were -- those
 24 narrative reports -- you were talking about the
 25 ones that you saw, true?

303

1 A. And I saw some when I was at KNR as well that
 2 were not too dissimilar from that, but again,
 3 there was an -- I think I used the word evolution
 4 before because they were super bare bones
 5 initially then at KNR they looked a little --
 6 when I was at KNR they looked a little bit
 7 different than these and now these are a little
 8 bit more detailed.
 9 Q. So if I would have came up to you when you were
 10 at KNR and said, hey, tell me about Mary Jones'
 11 case.
 12 A. Uh-huh.
 13 Q. You probably wouldn't remember her personally for
 14 the most part, true?
 15 A. True.
 16 Q. What would you have to do?
 17 A. I would look at the police report and the bills.
 18 Q. And you'd have to go through the file?
 19 A. I would look at -- if it was already done
 20 treating, I would just look at the cover sheet.
 21 Q. Okay. If you were going to negotiate with the
 22 insurance company, wouldn't you look through to
 23 find out some of the things that were bothering
 24 that patient, how it impacted the patient's life
 25 to --

304

1 A. Uh-huh --
 2 Q. -- try to get leverage?
 3 A. -- I would.
 4 Q. Okay. Do you know how much time that would take
 5 you? It would depend on the case, right?
 6 A. Yeah, it would.
 7 Q. If there was a lot of treatment, it would take
 8 you longer?
 9 A. Yeah.
 10 Q. There might be tricky situations with liability,
 11 true?
 12 A. Yes. Liability is important.
 13 Q. So if I asked you how long it took you to review
 14 a case before you sent out your -- excuse me --
 15 before you called the insurance company to
 16 negotiate, you couldn't give me a number, you'd
 17 have to look at the individual case, fair?
 18 A. Other people I'm sure did it differently, but I
 19 wouldn't even look at it before I called.
 20 Q. You would call them without knowing the facts?
 21 A. Uh-huh.
 22 THE REPORTER: "Uh-huh"?
 23 Q. Serious?
 24 A. Yes, yes. Yes, of course.
 25 Q. Is that how you did it at Slater & Zurz?

1 A. Yes.

2 Q. Did you ever tell anybody you did it that way?

3 A. No. Or nobody ever asked.

4 Q. Don't you think you could have done a better job

5 negotiating if you actually knew the facts and

6 the treatment?

7 A. No, I don't think so.

8 Q. Why not?

9 A. Because as an initial matter it really doesn't

10 matter. They're -- it doesn't --

11 Q. What doesn't matter?

12 A. What I think are the facts.

13 Q. Well, isn't your job to --

14 A. Well, eventually I'll get there, eventually I'll

15 get there, but to start with in virtually every

16 case, you want them to make the offer first. So

17 the fact that I'm super prepared and I can argue

18 all day long about my client's case really isn't

19 going to affect what GEICO offers me out of the

20 box.

21 Q. Okay. After that though you go back and

22 negotiate with them again?

23 A. Uh-huh.

24 Q. "Yes"?

25 A. Yes, that's correct.

1 Q. And before you do that you take the time to learn

2 the file, fair?

3 A. Depends on how far apart I think we are would be

4 how much time I would spend.

5 Q. Well, you had to do an evaluation on those cases

6 to determine what a fair value was, true?

7 A. Like I said, I wasn't concerned about fair value,

8 just bottom line to the client.

9 Q. Well, how would you know whether that was fair to

10 the client or not, their bottom line?

11 A. The template that I referred to.

12 Q. And this is not a KNR template?

13 A. No.

14 Q. Okay. This is the way you practiced PI injuries

15 since you started?

16 A. Right. Plaintiffs and defense.

17 Q. You never told Rob Nestico about a template, did

18 you?

19 A. Probably not in those words.

20 Q. Well, did you tell him that you don't care what

21 the value of the client's case is?

22 A. I didn't say that to you either, so, no, I didn't

23 say that.

24 Q. Well, what did you do to determine a fair value

25 for your clients' cases, whether you were at

1 Slater & Zurz or --

2 A. I would look at the rough facts of the case. I

3 mean, it's a soft-tissue injury involving \$1,100

4 in care and 18 chiropractic visits. Frankly does

5 it matter that they have a sore neck versus back,

6 no. And that they got treatment from Dr. Floros

7 and a medical report, a narrative report, from

8 Dr. Floros, does that matter? Is that going to

9 affect substantially the value of the case for

10 neck versus back, no, it's not.

11 Q. What affects the value of a case?

12 A. The severity of the collision, the actual

13 diagnosis of the injuries as they show, you know,

14 objective injuries, those affect the value. The

15 length of the treatment, the prognosis.

16 Q. Whether there's any gaps in treatment?

17 A. Sure, gaps in treatment. Whether they got a

18 prior history of injury to the same or similar

19 parts of their body, but frankly in most

20 instances -- and I'm sure you guys know this --

21 the insurance company, you know, they look at the

22 medical reports and when they call, I mean those

23 are the things they point out. They're like

24 look, we're only offering five grand, your guy

25 took three weeks to get to the chiropractor, he

1 had a claim in 2004 for the same parts of his

2 body, you know, we maybe have a little room, but

3 that's going to be it.

4 Q. Well, in a case like that that you just

5 mentioned, it would be nice to have a report that

6 says, no, no, no, he healed from that injury,

7 these are new injuries that are related to this

8 accident?

9 A. Maybe, maybe not.

10 Q. Well, you'd have to look at the individual case

11 to determine that, true?

12 A. It's exceptionally unlikely. In the situation

13 that I described with a minimal impact case, that

14 they're going to substantially change their value

15 based on anything I say.

16 Q. In any one case to determine whether or not the

17 report has value, you have to look at whether

18 there were preexisting injuries they're

19 disputing, whether there's future care they're

20 disputing, whether there's causal relation

21 they're disputing, all those things, true?

22 A. Yeah. Before you order a narrative report you

23 should look at all those things, that's right.

24 Q. Well, before you determine whether the report has

25 value, those are the things you need to look at,

309

1 correct?

2 A. Well, you wouldn't order it unless you determine

3 it has value.

4 Q. Okay. Well, why don't you listen to my question.

5 A. Isn't that it?

6 Q. No.

7 A. Oh.

8 Q. My question to you was: The value of the

9 report --

10 A. Uh-huh.

11 Q. -- whether that report has any value, whether

12 it's worth 150, 200, 500, whatever it's worth --

13 A. Uh-huh.

14 Q. -- you have to look at the individual case and

15 all those factors, true?

16 A. But you're presupposing that it has to have a

17 narrative report and cases don't, so I'm not -- I

18 don't understand the points of the question.

19 Q. No, you're just arguing with me.

20 A. No, I'm not trying to --

21 Q. If there's a narrative report in a case --

22 A. Uh-huh.

23 Q. -- whether it's from a medical doctor or --

24 A. Okay. So we're assuming --

25 Q. -- a chiropractor --

310

1 A. -- there is one?

2 Q. -- or any medical provider --

3 A. Okay.

4 Q. -- to determine the value of that report --

5 A. Okay.

6 Q. -- you'd have to look at that individual case,

7 fair?

8 A. Yeah, that's fair. Assuming that there is one.

9 Q. Okay. And you'd have to look at preexisting

10 injuries is one thing you'd look at, true?

11 A. Yes.

12 Q. You'd have to look at whether there was

13 significant future pain and suffering that you

14 might expect or not and whether it was causally

15 related to the accident, fair?

16 A. Fair.

17 Q. There may be injuries that the insurance company

18 is saying was or not related to this accident and

19 you'd have to see if the report addressed those

20 issues, fair?

21 A. That is fair.

22 Q. There might be future care and cost for future

23 care that aren't necessarily in the medical

24 record, but that might be in the report, true,

25 and you'd have to look at that?

311

1 A. Right. That's if -- one of the bases for

2 requesting a narrative report is if you -- you

3 know, if there's going to be future treatment,

4 that should be addressed.

5 Q. There were actually some claims examiners who

6 needed and asked for a report causally relating

7 injuries, true?

8 A. In certain cases, yeah.

9 Q. And you'd have to look at that individual case to

10 determine whether they asked, true?

11 A. Yeah.

12 Q. And -- now, any of the cases that you inherited

13 with narrative reports, did you go back and ask

14 the lawyer whether or not they thought the report

15 had value?

16 A. No. No.

17 Q. Did you go through and search through the records

18 of each of those cases and compare what was in

19 the report to the records on each --

20 A. No.

21 Q. -- of those cases?

22 A. No. The narrative reports were essentially

23 useless to me.

24 Q. That's not what I asked.

25 A. But that's why I didn't look at them.

312

1 Q. I didn't ask you why you didn't look.

2 A. I'm just telling you, isn't that helpful?

3 Q. Well, if I ask that, answer it.

4 My question to you is: Did you go back and

5 compare --

6 A. I answered it, no.

7 Q. Let me finish.

8 A. Oh.

9 Q. Did you go back and compare the narrative report

10 to the medical records in those cases you

11 inherited?

12 A. No.

13 Q. So you can't sit here and tell me whether those

14 narrative reports contained information not in

15 the medical records or not, can you?

16 A. I didn't do it in every case. And none of the

17 ones that I looked at did I ever find anything

18 different.

19 Q. Well, in the medical records it usually doesn't

20 say "causally-related", does it?

21 A. It doesn't.

22 Q. Okay. That was in every report though, wasn't

23 it?

24 A. I don't know.

25 Q. You don't recall?

1 A. I don't recall every report I ever looked at.
 2 Q. Okay. Well, you'd have to go back and look at
 3 all those individual reports and compare them to
 4 the medical records in that case, fair?
 5 A. In order to do what?
 6 Q. To see whether or not they contained information
 7 not contained in the medical records, true?
 8 A. In this particular instance based on the reports
 9 that Dr. Floros was producing.
 10 Q. Even with the reports Dr. Floros was producing,
 11 you certainly know that they --
 12 A. Yeah, I haven't read all of them, so I don't know
 13 what they say.
 14 Q. And you'd have to go back and look and compare
 15 the medical records to his report to see if it
 16 contained additional information, true?
 17 A. That is true.
 18 Q. Now, have you seen the affidavit of John Lynett?
 19 A. No.
 20 - - - -
 21 (Thereupon, Defendant's Exhibit C was marked
 22 for purposes of identification.)
 23 - - - -
 24 Q. Hand you a copy of Exhibit C.
 25 MR. MANNION: I only have one

1 extra.
 2 Q. If you want to just take a moment to read through
 3 this and let me know when you're done. I'm going
 4 to grab a water while you do that.
 5 - - - -
 6 (Off the record.)
 7 - - - -
 8 BY MR. MANNION:
 9 Q. Are you done reviewing that?
 10 A. I am.
 11 Q. Okay. Are you saying that John Lynett is lying
 12 under oath?
 13 A. Yeah.
 14 Q. Serious?
 15 A. I -- when I was at Slater & Zurz, it was not
 16 regarded as a legitimate expense. So perhaps
 17 they changed their mind. They resented it.
 18 Q. Would you agree that John Lynett has significant
 19 experience in the personal injury field?
 20 A. I would. I would also say that John Lynett gets
 21 a lot of business from Dr. Floros.
 22 Q. Okay. What does that have to do with the
 23 question I asked? You got a lot of business from
 24 Columbus Injury, right?
 25 A. And I didn't pay narrative report fees.

1 Q. That's not my question.
 2 A. Well --
 3 Q. Well, I don't understand why you're adding the
 4 commentary. Does he have a lot of experience in
 5 personal injury cases?
 6 A. Well, let me --
 7 Q. Does he?
 8 A. -- answer -- you asked me a different question
 9 first, why I'm adding the commentary --
 10 MR. PATTAKOS: Tom, please stop
 11 shouting at the witness.
 12 MR. MANNION: No, I want him to
 13 answer my question.
 14 A. You did, you said you don't understand why I'm
 15 adding --
 16 Q. Answer my question --
 17 A. -- the commentary.
 18 Q. -- does John Lynett have significant --
 19 A. Yes, of course he does.
 20 Q. Okay.
 21 A. I like John.
 22 Q. He's a good person, isn't he?
 23 A. As far as I'm aware.
 24 Q. He's a good professional lawyer, isn't he?
 25 A. Yeah.

1 Q. But you're saying he put his hand up, took an
 2 oath and lied on this?
 3 A. What I'm saying -- and you may want to twist my
 4 words after --
 5 Q. No, you said that.
 6 A. -- I say it, but what I'm saying is the narrative
 7 report is a kickback. John pays it. He's not
 8 going to admit to it.
 9 Q. Okay. And Dr. Floros told you that? No?
 10 A. No.
 11 Q. Okay. John Lynett told you that?
 12 A. Essentially.
 13 Q. Okay. No. 11 --
 14 A. Uh-huh.
 15 Q. -- the narrative report that I ask Dr. Floros and
 16 other health care providers for --
 17 A. Uh-huh.
 18 Q. -- is obtained for the benefit of my client in
 19 negotiating a settlement and/or for use in
 20 litigation.
 21 A. Right.
 22 Q. You're saying that's a lie?
 23 A. I'm saying that he doesn't believe that himself.
 24 Q. He signed this under oath, right?
 25 A. Uh-huh, I assume.

317

1 Q. "It is a cost of preparing the demand package to
 2 facilitate a settlement and/or in anticipation of
 3 litigation." Did I read that correctly?
 4 A. Yes, I believe so.
 5 Q. Okay. And are you saying that's a lie?
 6 A. No, I think that's true.
 7 Q. "It is not part of the health care treatment my
 8 client received, and therefore is a separate
 9 expense of litigation." Is that true?
 10 A. Yeah, it's certainly not part of the health care.
 11 Q. Okay. In paragraph ten, "In the normal course of
 12 business, I request written narrative reports
 13 from Minas Floros, DC (and other health
 14 providers) once the physician has completed
 15 treating one of my clients." Did I read that
 16 correctly?
 17 A. Yes.
 18 Q. And are you aware that at KNR those narrative
 19 reports are never requested until the patient has
 20 done -- has completed their treatment with Dr.
 21 Floros or the medical providers?
 22 A. I was specifically told otherwise by Megan
 23 Jennings in the incident that I've described a
 24 couple times now. She said it happens
 25 automatically, immediately, as soon as the case

318

1 comes in.
 2 Q. Okay. Do you know of a single case where the
 3 care wasn't done yet and Dr. Floros just sent in
 4 a report without a request?
 5 A. No. Like I said, I never requested them, so that
 6 was not my responsibility to, A, see the report
 7 when it came in or, B, request it, or, C, pay
 8 him. So I had nothing to do with that.
 9 Q. You're telling me things that Megan Jennings
 10 said, I'm asking: Do you know whether there was
 11 a specific file where Dr. Floros just sent in a
 12 narrative report without being requested for one?
 13 A. By the lawyer?
 14 Q. Yeah.
 15 A. Yeah, that case that I mentioned to her. Because
 16 I never requested it, but it was there, included
 17 the charge.
 18 Q. My questions is: Do you know whether there was a
 19 request to Dr. Floros for the report though? Do
 20 you know that?
 21 A. I believe Megan requested it --
 22 Q. Okay. And --
 23 A. -- but I don't know when.
 24 Q. Well, essentially she's working for you doing
 25 that, right? She's your paralegal working on the

319

1 case.
 2 A. She was not working for me.
 3 Q. Well, she was assisting you in representing the
 4 client, fair?
 5 A. Correct. But as I mentioned -- and I'm picking
 6 on Megan, she was fine enough, but it was clear
 7 that she worked for them --
 8 Q. Okay. And in --
 9 A. -- not for me.
 10 Q. -- that particular case you don't know whether it
 11 got charged to the client, fair?
 12 A. That's fair. That's fair. I got fired before
 13 then.
 14 Q. Do you know of a single case at KNR where Dr.
 15 Floros was paid for a narrative report without
 16 preparing it or before it was requested and it
 17 got charged to a client? Any?
 18 A. No, I don't know that.
 19 Q. Okay. In paragraph 10, John Lynett testifies --
 20 A. Uh-huh.
 21 Q. -- "I find a narrative report to be useful in
 22 negotiating with the claims adjuster."
 23 A. Uh-huh.
 24 Q. Did I read that correctly?
 25 A. Yep. Yes, you did.

320

1 Q. And different attorneys negotiate differently
 2 with insurance companies, true?
 3 A. That is true.
 4 Q. There's no one way to do it, is there?
 5 A. Not that I'm aware of.
 6 Q. If John Lynett believes that a narrative report
 7 is useful in negotiating with a claims adjuster,
 8 that's his professional judgement, isn't it?
 9 A. That is.
 10 Q. "This report explains the causal relationship
 11 between the motor vehicle accident in which my
 12 client was involved and the injuries sustained."
 13 Did I read that correctly?
 14 A. You did.
 15 Q. And if he believes that that's useful, he should
 16 do it, shouldn't he?
 17 A. If he really believes it's useful, he should do
 18 it every single time.
 19 Q. Exactly.
 20 A. Does he?
 21 Q. The plain language used by the health care
 22 provider in the narrative report makes it easy
 23 for a layperson to understand what caused the
 24 injury, what the injury was, what treatment was
 25 administered, what treatment was administered,

321

1 and what the patient's prognosis is." Did I read
 2 that correctly?
 3 A. Whether it makes it easy for them is a question
 4 for a layperson to answer, not for me.
 5 Q. Did I read it correctly?
 6 A. You did.
 7 Q. Okay. And you'd certainly agree that these
 8 claims people also have many, many files, true?
 9 A. True.
 10 Q. Some of them have 300, 400 files, right?
 11 A. I have no idea, but they frequently complained to
 12 me about how busy they were.
 13 Q. And they don't necessarily have time to sort
 14 through hundreds of pages of records, do they?
 15 A. I'm not guessing about what they have time for.
 16 Q. You never wanted to find out how claims adjusters
 17 look at cases and analyze cases?
 18 A. I've spoken to some. I mean, if you're asking
 19 about that, I mean, they told me that these
 20 reports are useless.
 21 Q. Who? Who told you that?
 22 A. Kathy Thomas at Westfield.
 23 Q. Okay. Anybody else?
 24 A. Not -- I can't recall any other names.
 25 Q. Okay. Because in that e-mail you had, you seem

322

1 to make it sound like there were others?
 2 A. Yeah. Frequently -- not frequently, but more
 3 than once.
 4 Q. Well, Kathy Thomas doesn't speak for all claims
 5 people, does she?
 6 A. She doesn't, no.
 7 Q. She speaks for Kathy Thomas, true?
 8 A. Yeah, yeah. Fair enough. And I think Kathy
 9 Thomas is the name. It's been a long time.
 10 Q. So if an insurance claims person doesn't have
 11 time to look through the records and look through
 12 and see what the injuries were and whether they
 13 were related, doesn't a one or two-page report
 14 help them do that?
 15 A. If what you're saying is true and I don't know
 16 that it is, then it might.
 17 Q. Okay. Did you ever take time to find out?
 18 A. By doing what?
 19 Q. I'm asking you: Did you ever take any time to
 20 find out?
 21 A. To find out what?
 22 Q. Did you ever ask any of the claims people?
 23 A. If it helps them? Yeah, I told you Kathy Thomas
 24 --
 25 Q. No, no, that's not --

323

1 A. -- said it was useless.
 2 Q. -- what I asked. About whether they had time to
 3 sort through --
 4 A. No, I didn't ask them about their schedule
 5 ordinarily. I did hear them complain about the
 6 fact that they were busy though.
 7 Q. And --
 8 A. But I do think their employer expected them to
 9 look at the stuff closely. I mean, if they were
 10 sitting here answering questions under oath, that
 11 they would probably say, yeah, I did look at
 12 everything that came through, all the records and
 13 bills.
 14 Q. And the claims people, they have their files
 15 audited, don't they?
 16 A. I believe so.
 17 Q. And, in fact, when they're looking to see what
 18 they paid, they're looking to see, hey, were
 19 these injuries reasonably related to the
 20 accident, that's one of the things that their
 21 managers and other people look at, isn't it?
 22 A. I don't know.
 23 Q. You don't know that?
 24 A. No, I don't know how they get audited.
 25 Q. Okay. So then you may not know for any one

324

1 individual claims person whether these are
 2 required for their files or not?
 3 A. Only if they asked me. And like I said, I never
 4 gave them and nobody ever asked for a Plambeck
 5 narrative report from me.
 6 Q. Do you have any explanation for why some
 7 insurance claims people would send a letter
 8 directly to lawyers at KNR saying, hey, do you
 9 have a report causally relating these injuries?
 10 A. From a Floros case?
 11 Q. From any case.
 12 A. Sure. If the circumstances of the accident were
 13 such that they doubted anybody was hurt, they'd
 14 say, look, you need to tell us, you know, how
 15 this happened. You know, this is a
 16 one-mile-an-hour accident, I need an explanation.
 17 Q. So you'd have to look at each individual case to
 18 see whether a report was necessary?
 19 A. Yeah. There's no way to do it on virtually every
 20 one of them.
 21 Q. You just can't blanketly say none of the cases
 22 need reports, you can't say that, can you?
 23 A. Right, that's fair.
 24 Q. And again, you'd have to look at the medical
 25 records, talk to the attorney who was involved in

325

1 the case, talk to the claims examiner, there's
 2 all sorts of things you'd have to look at, fair?
 3 A. That's, generally speaking, fair.
 4 MR. MANNION: Can I see some of
 5 those records and narratives?
 6 MR. KEDIR: Do you want both of
 7 them?
 8 MR. MANNION: Yeah, any of them.
 9 BY MR. MANNION:
 10 Q. Now, one of the things you told me -- or excuse
 11 me -- that you put in your affidavit, Mr. Petti,
 12 is it's your understanding that the decision as
 13 to whether a narrative report is worthwhile is
 14 the attorney's to make upon consultation with the
 15 client?
 16 A. Right.
 17 Q. Now, there's no requirement that you discuss
 18 every expense with the client, is there?
 19 A. No, there's not.
 20 Q. That's up to the attorney in his own --
 21 A. Right.
 22 Q. -- professional judgement, true?
 23 A. Yeah.
 24 Q. And if the attorney determines in his own
 25 professional judgment that a narrative report is

326

1 worthwhile to the client, by signing the
 2 contingency fee agreement, the client is giving
 3 them the authority to do that, true?
 4 A. That is true.
 5 Q. So another thing that you said in your
 6 affidavit --
 7 A. Uh-huh.
 8 Q. -- only proper -- strike that.
 9 In your affidavit you stated that narratives
 10 are only properly used to allow a medical
 11 professional to explain why the plaintiff's
 12 injuries are different or more challenging than
 13 might appear from the contents of the medical
 14 records and provide information not provided in
 15 the medical records. Do you recall that?
 16 A. I do.
 17 Q. Okay. So what else would be needed to be
 18 valuable in a report? I mean, what are the
 19 things that would be valuable to you if they were
 20 in a report?
 21 A. I would -- if, as I described, if the injuries
 22 were different than what you would anticipate
 23 based on the accident. So you get a very
 24 low-speed collision, a one-mile-an-hour
 25 collision, and six months of chiropractic care,

327

1 you have no chance really of settling that case,
 2 but a narrative report might help.
 3 An orthopedic case you've got a Lisfranc
 4 fracture on a 18-year-old girl, what's her future
 5 going to be with respect to that fracture? Can
 6 we link the cost of future medical treatment?
 7 How likely is future medical treatment? Is that
 8 bone going to devascularize and die? What's your
 9 opinion, doctor? Put it in writing for me.
 10 So that's what I was getting at in the
 11 affidavit. More complex issues than I've got a
 12 sore neck following this automobile accident
 13 case.
 14 Q. When it's providing information that's not in the
 15 medical records that increases the value of the
 16 case, that's a good thing, fair?
 17 A. Yes, yes.
 18 MR. MANNION: What am I up to? D?
 19 E? Exhibits -- do you remember?
 20 A. Oh, I don't know.
 21 THE REPORTER: He's got them right
 22 here.
 23 MR. MANNION: I can't see that
 24 far.
 25 THE WITNESS: C. C is Lynett's

328

1 affidavit so if that's next.
 2 - - - -
 3 (Thereupon, Defendant's Exhibit D was marked
 4 for purposes of identification.)
 5 - - - -
 6 Q. I'm going to hand you what's been marked Exhibit
 7 D.
 8 A. Uh-huh.
 9 Q. Now, I'd like you to tell me --
 10 MR. PATTAKOS: I'm going to mark
 11 this as confidential under the protective
 12 order.
 13 MR. MANNION: All this is, we've
 14 agreed to that --
 15 MR. PATTAKOS: Okay.
 16 MR. MANNION: -- until a week
 17 after the -- right?
 18 MR. PATTAKOS: Okay.
 19 MR. MANNION: No, I mean is that
 20 correct? I want to make sure --
 21 MR. PATTAKOS: Yeah, that's fine.
 22 MR. MANNION: Okay.
 23 (Unintelligible).
 24 MR. MANNION: Well, we all have a
 25 week after the transcript, too.

1 BY MR. MANNION:
 2 Q. So can I ask you what the cost to stabilize Thera
 3 Reid's condition will be over the next year, can
 4 you tell me?
 5 A. No, I don't know.
 6 Q. It's not in there?
 7 A. I don't know. I didn't look through it all.
 8 Q. How long would that take you to find?
 9 A. How long would it take me to find?
 10 Q. Yeah.
 11 A. I'm out of practice, so I don't know if it's in
 12 there.
 13 Q. And you don't expect Dr. Floros or any
 14 chiropractor to remember every patient, do you?
 15 A. No.
 16 Q. They'd have to go back and look through the
 17 medical records, wouldn't they?
 18 A. They would.
 19 Q. Do you know how much time he --
 20 A. Well, if you're saying they -- yes, they would.
 21 Q. Do you know how much time it took Dr. Floros to
 22 prepare a narrative report for Thera Reid?
 23 A. No.
 24 Q. Any idea?
 25 A. No, none.

1 Q. Okay. So just looking through there, do you see
 2 any reference to how much it will cost to
 3 stabilize her condition over the next year?
 4 A. Over the next year, so following her treatment?
 5 Q. Yeah.
 6 A. No, I don't see anything about that.
 7 Q. It's not in there, is it?
 8 A. I didn't see anything about it, but again, I
 9 didn't look through it all and I really don't
 10 want to.
 11 Q. Well, where in there does it say that the
 12 chiropractic care was reasonable and causally
 13 related to the motor vehicle accident, in those
 14 words, the magic legal language?
 15 A. To use -- using the magic language, I would
 16 suggest he probably did not do that.
 17 Q. Okay. That's not what doctors and chiropractors
 18 do, is it?
 19 A. Ordinarily, no.
 20 Q. Okay. In most -- in the vast majority of your
 21 cases, you don't see that in the medical records,
 22 do you?
 23 A. Not that I recall. I mean, there's some
 24 handwritten notes where he indicates that she was
 25 a motorcycle passenger, fell off a bike. So, you

1 know, there's a suggestion certainly that she
 2 sustained injuries falling off a motorcycle.
 3 Q. Okay. But where does it say that --
 4 A. Using the magic -- I'm sorry.
 5 Q. -- it's his opinion, based upon a reasonable
 6 chiropractic probability, that the injuries she
 7 sustained were due to the motor vehicle accident
 8 and that the treatments rendered thus far had
 9 been a necessity as a result?
 10 A. Yeah, I don't --
 11 Q. That's not in there, is it?
 12 A. I don't see it.
 13 Q. Okay. Can you tell me in there where it says
 14 that Thera Reid had multiple risk factors that
 15 would significantly lower her threshold for
 16 injury and increase the probability of long-term
 17 symptoms?
 18 A. I would say that that probably is in here
 19 somewhere.
 20 Q. Okay. Find it.
 21 A. In those words?
 22 Q. Where it says that it lowers her threshold for
 23 injury and increases the probability for
 24 long-term symptoms?
 25 A. Lowers her threshold for injury.

1 Q. And increases her probability for long-term
 2 symptoms.
 3 A. I don't see any.
 4 Q. So if that's contained in the report, that's
 5 certainly something that's not contained in the
 6 records, fair?
 7 A. Yeah. What did he say were the factors? Because
 8 I'm sure he didn't have it memorized so he must
 9 have had it written down somewhere, right?
 10 Q. Well, but it was a little more than that, what I
 11 asked you, wasn't it?
 12 A. Uh-huh.
 13 Q. I'm not saying that there isn't documentation in
 14 there of injuries, but where in there does it say
 15 there's risk factors that will significantly
 16 lower the threshold for injury and increase the
 17 probability for long-term symptoms? There's not,
 18 is there?
 19 A. I don't see that, no.
 20 Q. It also doesn't say that the risk factors can be
 21 subcategorized into risk factors for acute injury
 22 and long-term symptoms, does it?
 23 A. I didn't see that.
 24 Q. It doesn't then talk about the risk factor for
 25 acute injury, does it?

333

1 A. No, I did not see that.

2 Q. Or the risk factors for long-term symptoms, does

3 it?

4 A. Nope, I didn't see it.

5 Q. Okay. Do you know anything about Thera Reid's

6 medical treatment and her course of treatment

7 with Dr. Floros or anybody else other than what

8 you just looked at?

9 A. No, I don't know anything about Thera Reid that's

10 not on these papers.

11 Q. Okay. Do you think it's helpful to have an

12 insurance company understand that there's going

13 to be future costs of \$5,000?

14 A. It depends on the nature of those costs. I mean,

15 as a practical matter, if the chiropractor is

16 saying, oh, my gosh, your neck is sore and based

17 on my experience you're going to have to come

18 back five to seven times a year for three to four

19 visits each and that's going to cost this, then,

20 no, it's probably not helpful.

21 If it's, you know, that you had an orthopedic

22 injury like a torn meniscus and you had surgery

23 as a result of that and that may stiffen up a

24 couple times, then, yes, that's helpful.

25 Q. Do you know who the claims examiners was in

334

1 Monique Norris' case?

2 A. No, of course not. How would I know that?

3 Q. And do you know how it is that Dr. Floros decided

4 to put those specific types of comments in Thera

5 Reid's report as opposed to Monique Norris'

6 report or somebody else's report?

7 A. No, I don't.

8 Q. It's something that would have been gleaned

9 factually from the medical records as far as his

10 treatment and then he had to apply his opinion to

11 those as to her future, true?

12 A. Right. Yes, I assume so. I don't know how he

13 does it.

14 Q. You don't know how long it took him, do you?

15 A. No. No, I don't.

16 - - - -

17 (Thereupon, Defendant's Exhibit E was marked

18 for purposes of identification.)

19 - - - -

20 Q. Okay. Showing you a copy of Exhibit E. And you

21 certainly never seen this report before, have

22 you?

23 MR. PATTAKOS: Objection. This is

24 the same report that I already examined

25 him.

335

1 MR. MANNION: Okay. You're right.

2 Q. But before today you never saw this report, fair?

3 A. That's fair, yes.

4 Q. Okay. And, in fact, this has, if you look down

5 at two paragraphs from the bottom where it

6 starts, "Thera Reid sustained, joint, disc and

7 ligamentous injury." Do you see that?

8 A. No, I'm not looking there.

9 Q. Four lines up from the bottom.

10 A. Four lines, yes, I see it.

11 Q. And it says, "The cost to stabilize her condition

12 over the next year is approximately \$5,000." Did

13 you see that?

14 A. Yes, I did.

15 Q. And that's information you didn't find in the

16 medical records, true?

17 A. That is true.

18 Q. And if you look at the next line where it talks

19 about reasonable chiropractic probability and a

20 necessity as a result, that wasn't in the medical

21 records, was it?

22 A. It wasn't, no.

23 Q. Okay. The information --

24 A. Not that I saw.

25 Q. -- regarding -- information regarding the

336

1 research was not in the records, was it?

2 A. No.

3 Q. Okay. If you look up here about the multiple

4 risk factors were present in the case of Thera

5 Reid, right under prognosis/discussion. Do you

6 see that?

7 A. Yeah, her gender?

8 Q. No.

9 A. Well, that was --

10 Q. "Thera Reid continues to be symptomatic." The

11 next line, multiple risk factors were present in

12 the case of Thera Reid --

13 A. Right.

14 Q. -- these risk factors will serve to significantly

15 lower -- and I go on -- we talked about this --

16 A. And that's where it mentioned gender, risk

17 factors for acute injury, colon, and then he

18 apparently lists them, female --

19 Q. Well, you're not --

20 A. -- poor head restraint --

21 Q. -- you're not there yet. You skipped a paragraph

22 from me. I'm still reading the multiple risk

23 factors were present in the case of Thera Reid --

24 A. Right.

25 Q. -- these risk factors will serve to significantly

337

1 lower the threshold for injury and increase the
 2 probability for long-term symptoms.
 3 That wasn't in the records, was it?
 4 A. Not that I saw.
 5 Q. And the next line wasn't in the records either,
 6 was it?
 7 A. Not that I saw.
 8 Q. Those -- you don't know that he cut and paste
 9 those from anywhere, do you?
 10 A. No. Like I said, I didn't know how he did it.
 11 Q. Okay. You're not -- you can't sit here and tell
 12 me how the claims examiner valued this report,
 13 how the attorney valued this report or what
 14 impact it had on Thera Reid's case, can you?
 15 A. With absolute certainty, no.
 16 Q. Well, you can't do it because you weren't there,
 17 were you?
 18 A. That's what -- right. With absolute certainty, I
 19 cannot.
 20 Q. Did you talk to the claims examiner?
 21 A. Of course not. How would I?
 22 Q. Do you know how much the case would have settled
 23 for without this report?
 24 A. No --
 25 Q. You don't know, do you?

338

1 A. -- I don't know how much it settled for with the
 2 report.
 3 Q. Okay. And you'd agree that if the attorney on
 4 this case determined, in his professional
 5 judgment, that this was a valuable report for the
 6 client's benefit, then that was up to that
 7 attorney to make that professional judgment,
 8 true?
 9 A. Yeah, if an individual attorney makes that
 10 decision then they're allowed to do that.
 11 Q. These aren't like the reports that you were
 12 talking about with the future care of 5,000 and
 13 things of that nature, is it?
 14 A. Future care was contained in the other ones.
 15 That --
 16 Q. With the cost?
 17 A. Yeah. The cost of the future care.
 18 Q. And you don't think that's beneficial?
 19 A. In most cases, no. In some cases, it is.
 20 Q. Okay. You don't know in this case whether it was
 21 or not, fair?
 22 A. Fair.
 23 Q. You'd have to look at each individual case to
 24 determine --
 25 A. My objection --

339

1 Q. -- whether it was beneficial?
 2 A. -- I don't have an objection to narrative
 3 reports. I have an objection to couching them as
 4 a narrative -- couching something else as a
 5 narrative report.
 6 Q. Well, you missed my question. This is a
 7 narrative report, true?
 8 A. I know. Like I said, I don't have an objection
 9 to it in general.
 10 Q. And to know whether this particular narrative
 11 report was beneficial or not, you'd have to look
 12 at this case and all the records and the
 13 negotiations, true?
 14 A. Yeah, that's true.
 15 Q. That's true for every case, isn't it?
 16 A. It is true.
 17 Q. Do you believe you ever committed legal
 18 malpractice at KNR?
 19 A. At KNR, no.
 20 Q. Okay. And we don't need to get into it,
 21 obviously there was one lawsuit you had with
 22 legal malpractice at Slater & Zurz, true?
 23 A. Yeah. We missed a statute.
 24 Q. Okay. Would you agree that it's extremely
 25 beneficial to a client not to have their lawyer

340

1 not miss a statute?
 2 A. In this case, speaking frankly, it was probably
 3 the best thing that ever happened to them.
 4 Q. They got more money because of that?
 5 A. For sure. It was a disputed liability Allstate
 6 case.
 7 Q. Okay.
 8 A. We 41A'ed it and there were instructions that she
 9 be advised that she needed to find a new lawyer
 10 who would re-file within a year, and we could
 11 find no evidence that we actually sent her that
 12 letter. So factually that's what happened there.
 13 I was the lawyer of record on that.
 14 Q. Okay. Generally speaking though, it's not
 15 beneficial to a client to miss statutes, is it?
 16 A. No, you don't want to do that.
 17 Q. Okay. If you miss the statute of limitations and
 18 don't get to file the case whether it's from the
 19 41A or whether it's the original statute, that
 20 could have detrimental effects on a client?
 21 A. It sure could.
 22 Q. I mean, do you think it's beneficial to have
 23 checks and balances at a law firm to make sure
 24 you don't miss a statute?
 25 A. Yes --

341

1 Q. Okay.

2 A. -- you should do that.

3 Q. Do you think police reports are valuable?

4 A. Yeah.

5 Q. What are the value of police reports?

6 A. I love the crash report. It gives a thumbnail of

7 how the accident happened. Whether or not you've

8 got a liability dispute. The names of parties.

9 It typically has accurate information about who

10 the insurer is on there. It will have some

11 representation of the severity of the collision.

12 So, yeah, I like the police reports.

13 Q. I want to ask you another question about Thera

14 Reid's report, by the way. Thera Reid testified

15 or a relative or somebody like that said that he

16 thinks this report only had an eighty-some dollar

17 value.

18 Do you have any idea how they would come to

19 that conclusion?

20 A. No.

21 Q. Do you have any idea why Thera Reid had the

22 information for that relative in her phone at the

23 deposition and to this date refuses to tell us

24 who it was?

25 A. No, I don't know.

342

1 Q. Don't you think that the rules of discovery

2 required her to do that?

3 A. I'm poor in civil procedures, but I would assume

4 -- I don't know.

5 Q. Okay. Do you think that somebody in California

6 who hasn't looked at all the medical records or

7 notes in negotiations can tell you exactly how

8 much that report is worth?

9 A. I'm sorry, ask that again.

10 Q. Sure. Do you think that -- do you think that an

11 individual just looking at the report without

12 looking at the medical records and knowing how

13 the negotiations went and talking to the lawyer

14 and looking through the file, can tell you that

15 that's worth \$86 or whatever dollar value that

16 is?

17 A. No, I think that's arbitrary. I mean --

18 Q. You'd have to look at the individual case and

19 talk to all those people to make that

20 determination, true?

21 A. I would expect so.

22 Q. And there's times as a lawyer you did things in

23 your professional judgement that you thought

24 would increase the value of the case that didn't?

25 A. Yeah. Yeah.

343

1 Q. I mean, it doesn't mean you were wrong or

2 anything of that nature, it's you did what you

3 thought was right, true?

4 A. Yeah. Again -- yes.

5 Q. You try to get leverage, so to speak, against the

6 insurance company to get them to settle?

7 A. It's all about leverage.

8 Q. Did you ever -- were you ever accused of not

9 providing good representation by any of the

10 clients at KNR?

11 A. No, I don't think at KNR, no.

12 Q. And have you ever had a client who was

13 unsatisfied at KNR that talked to somebody about

14 how you handled their --

15 A. None that I'm aware of.

16 Q. It's a mere fact that if a client complains that

17 they're unsatisfied doesn't necessarily mean that

18 you did something wrong in the handling of the

19 case, does it?

20 A. To complain, no. No, no, it doesn't.

21 Q. Did you ever accuse any of the clients at KNR of

22 lying or not telling the truth?

23 A. Maybe. I don't specifically remember it.

24 Q. Do you recall any?

25 A. No, I don't, but --

344

1 Q. And generally speaking though you have to take

2 your clients at their word, right?

3 A. Yeah, you do.

4 Q. I mean when a client goes to see a chiropractor

5 or a medical doctor, those two are talking about

6 what care they're going to receive, fair?

7 A. I assume so.

8 Q. You never got a call at KNR while somebody was at

9 the chiropractors and said, hey, uhm, the doctor

10 says this many visits over this many times, what

11 do you think?

12 A. Maybe that kind of thing could have happened.

13 Q. What would you say?

14 A. It's up to you and the doctor --

15 Q. Okay.

16 A. -- keep me out of it.

17 Q. And you never heard of any of the lawyers at KNR

18 on a call like that, did you?

19 A. None that I can recall.

20 Q. Did you ever get any calls from Ghoubrial's

21 office saying, hey, the doctor says I should get

22 injections, should I?

23 A. No, Ghoubrial would never speak with me.

24 Q. Well, I mean, I'm talking about whether or not

25 the client called. Did you ever get that kind of

345

1 call?

2 A. It's possible.

3 Q. You don't remember any?

4 A. No, I don't.

5 Q. You would have told them the same thing, that's

6 between you and the medical doctor?

7 A. Yes, I would have.

8 Q. So you don't get along with Ghoubrial? You said

9 he wouldn't call me?

10 A. No, I don't think he knows me at all --

11 Q. Okay.

12 A. -- and the way things were arranged at KNR, I

13 mean, Rob and other people talked to doctors, not

14 me.

15 Q. But you don't know that Dr. Ghoubrial ever called

16 Rob Nestico saying what kind of care should I

17 provide a patient?

18 A. I -- no, I do not know that.

19 Q. You've never heard anybody even say that, have

20 you?

21 A. No.

22 Q. I'm going to show you -- what are we on E?

23 A. Yes, I believe -- no, F.

24 Q. F.

25 A. Yeah. E is Thera Reid.

346

1 - - - -

2 (Thereupon, Defendant's Exhibit F was marked

3 for purposes of identification.)

4 - - - -

5 Q. I just want to make sure we don't have anything

6 more than a first name in here. Ah, son of a

7 gun.

8 Okay. Do you recall --

9 MR. PATTAKOS: I'm going to ask

10 this document be produced once you have a

11 chance to redact it.

12 MR. MANNION: Yeah, I don't have a

13 problem there.

14 MR. PATTAKOS: Okay.

15 MR. MANNION: Yeah. I can produce

16 it now because he knows the client's name.

17 If we agree, we can redact it and we won't

18 say her name --

19 MR. PATTAKOS: That's fine.

20 MR. MANNION: -- other than her

21 first name. Is that fair?

22 MR. PATTAKOS: Yeah, let's do

23 that.

24 MR. MANNION: Anybody have a

25 problem with that?

347

1 MR. RUBIN: No.

2 BY MR. MANNION:

3 Q. Okay. Handing you what's been marked as Exhibit

4 F. I'm not sure if -- and don't say her name out

5 loud, if you don't mind, Mr. Petti. Look this

6 over and see if this refreshes your recollection

7 at all.

8 MR. PATTAKOS: I'm going to object

9 to the whole e-mail chain not being

10 included here too.

11 MR. MANNION: I don't know what

12 you're talking about --

13 MR. PATTAKOS: Oh, I'm sorry.

14 MR. MANNION: -- I gave you two

15 pages.

16 MR. PATTAKOS: Sorry, Tom.

17 A. Uh-huh.

18 Q. Apparently there was a complaint by a KNR client

19 about your communications with them?

20 A. By complaint earlier when you asked about

21 complaint, I assumed you meant like a bar

22 complaint.

23 Q. Oh, I apologize. I did not, we're not allowed to

24 ask about those.

25 MR. PATTAKOS: Tom, I don't care

348

1 if you want to ask about bar complaints.

2 A. Yeah, I don't care.

3 MR. MANNION: We'd violate the

4 order of the case.

5 MR. PATTAKOS: I don't really

6 think so.

7 A. As far as dissatisfied clients, there were

8 probably dozens.

9 Q. Okay. It doesn't mean the clients were always

10 right, fair?

11 A. Fair. Sure.

12 Q. Now in this --

13 A. I have no specific recollection of this.

14 Q. If you look at this one though --

15 A. Uh-huh.

16 Q. -- your response you say I'm not convinced Ms.

17 Blank is telling you the truth. Do you see that?

18 A. Yes.

19 Q. Then if you go down to the first sentence in the

20 second paragraph, it says to pretend like she

21 didn't understand the Medicaid issue --

22 A. Uh-huh.

23 Q. -- is a good example of you not getting the

24 truth. Meaning from the client, true?

25 A. Right. That she went above my head and said,

349

1 Gary is not calling me back, he's not telling me
 2 everything, even though it appears, at least I
 3 was representing, at least that's the point I was
 4 trying to make that I had had those specific
 5 conversations with her.
 6 Q. About the Medicaid issue?
 7 A. Yeah, I told her all about it.
 8 Q. Do you know why she would be lying?
 9 A. Because she wasn't getting what she wanted. I
 10 mean, what she wants is her case settled.
 11 Q. Okay. It's not always possible though and it's
 12 out of your hands sometimes, too?
 13 A. Sure. Sometimes I've got to wait for Medicaid.
 14 Q. And sometimes you have clients who they don't
 15 mention a thing about being unhappy about any
 16 medical care until they want some more money in
 17 their pocket at settlement, fair?
 18 A. I wouldn't know, but, yes.
 19 Q. Okay. Never happened to you?
 20 A. Not that I can recall.
 21 Q. But you know that clients sometimes will ask you
 22 to negotiate the bills down to get more in their
 23 pocket?
 24 A. It's been a long time. That sounds like
 25 something that would happen, but honestly I can't

350

1 remember it ever happening --
 2 Q. And by the way --
 3 A. -- because I wouldn't say that to people because,
 4 again, all I wanted to do is get the cases
 5 settled, that's it. Just get the cases settled,
 6 so --
 7 Q. And this is how you were before KNR and after
 8 KNR?
 9 A. Yes. So if I tell them about how I'm going to
 10 negotiate the bills, then there's some
 11 possibility at least that the client is now going
 12 to want to be involved in that process and going
 13 to want to direct me, don't pay so and so, and
 14 then I'm stuck because so and so has got to be
 15 paid because there's an LOP or whatever. So I
 16 would not, I don't think ever, suggest to them
 17 right until the end that I'm going to do that or
 18 have done it.
 19 I think -- again, now we're talking about --
 20 or I'm talking about very -- what I perceive to
 21 be technical stuff that I've last done going on
 22 seven years ago, so...
 23 Q. Okay. When you were talking about redacting
 24 collateral benefits --
 25 A. Uh-huh.

351

1 Q. -- information --
 2 A. Yeah.
 3 Q. -- I mean you certainly never tried to defraud an
 4 insurance company, have you?
 5 A. No.
 6 Q. And you certainly never tried to defraud a
 7 client, have you?
 8 A. No.
 9 Q. Did you defraud any of your clients when you were
 10 at KNR?
 11 A. No.
 12 Q. Did you defraud any of the insurance carriers
 13 when you were at KNR?
 14 A. I do not believe so.
 15 Q. Did you lie to any of the clients at KNR?
 16 A. No.
 17 Q. Did you lie to any of the insurance companies
 18 while you were at KNR?
 19 A. Probably like crazy.
 20 Q. Serious?
 21 A. I'm just joking. You know, you talk about as
 22 you're negotiating the case, you know, you put
 23 the best spin on it possible.
 24 Q. In the light most favorable to your client?
 25 A. Exactly.

352

1 Q. You didn't lie to them?
 2 A. No, no, no. I'm getting tired.
 3 Q. For example, if they would have asked you whether
 4 there was Medicaid involved, you would have
 5 been truthful?
 6 A. Absolutely. I'm not messing with that.
 7 Q. Okay. Nobody told you to lie to the insurance
 8 company, did they?
 9 A. No.
 10 Q. You wouldn't have done it anyway, fair?
 11 A. I would not have, no.
 12 Q. And it's proper to redact collateral benefits
 13 from there, isn't it?
 14 A. I hope so.
 15 Q. Well, you thought so, right?
 16 A. Yes, I thought so.
 17 Q. Okay. And you still think so as you sit here,
 18 don't you?
 19 A. That's what I told the FBI.
 20 Q. Well, the fact is, sir, that there's insurance
 21 companies know that some people have collateral
 22 benefits and some don't, right?
 23 A. Yes.
 24 Q. You weren't trying to defraud anybody by doing
 25 that?

353

- 1 A. No, I was not. I was not.
- 2 Q. Okay. Ever since Robinson versus Bates,
- 3 plaintiff's firms often redact collateral
- 4 benefits information, true?
- 5 A. I don't know that. I didn't do it at Slater &
- 6 Zurz. The only place I ever did it is KNR.
- 7 Q. Okay.
- 8 A. Whether it's widespread or not, I mean, that's my
- 9 sample size right there, one yes, the other no.
- 10 Q. Okay. And you thought it was proper, fair?
- 11 A. I did.
- 12 Q. And, in fact, you've seen no law that says it's
- 13 not proper, have you?
- 14 A. I have not.
- 15 Q. And it's your job, as you said, to be a zealous
- 16 advocate for your client and you were doing that
- 17 in their best interest, weren't you?
- 18 A. I believe so.
- 19 Q. That wasn't being done for your benefit, it was
- 20 being done for your clients' benefit, fair?
- 21 A. Well, I mean, of course it does have a benefit
- 22 perhaps on the fee. If you raise the Robinson
- 23 number, then you should get a bigger fee out of
- 24 it as well.
- 25 Q. But that would benefit the client even more,

354

- 1 fair?
- 2 A. Not even more, but they'd participate relatively
- 3 equally.
- 4 Q. Well, they'd get two thirds versus your one
- 5 third, fair? Of any interest --
- 6 A. Yeah, yeah. The math -- that math is correct.
- 7 Q. So it would benefit your client even more, true?
- 8 A. Yes.
- 9 Q. I mean, using your logic of what you just said,
- 10 anytime you do something to increase the value --
- 11 A. I didn't say it was -- I'm sorry. Go ahead.
- 12 Q. Okay. It's not a bad thing, right?
- 13 A. That's -- those were going to be my exact words.
- 14 Q. Okay. So if you increase the settlement value it
- 15 may increase the fee, but it doesn't always
- 16 increase the fee, does it, because you may take a
- 17 cut?
- 18 A. That's hard. Yeah, I suppose.
- 19 Q. Wouldn't you agree that on the vast majority of
- 20 cases at KNR you reduce the KNR fee?
- 21 A. The fee on the vast majority -- I mean semantics.
- 22 It certainly was common.
- 23 Q. And most of your cases had a fee reduction, true?
- 24 You don't recall?
- 25 A. Right, I don't know.

355

- 1 Q. Would you agree that most of those fee reductions
- 2 were enough to cover both the narrative fee and
- 3 the investigative report?
- 4 A. Wouldn't know.
- 5 Q. Okay. If, for example, a fee -- any fee
- 6 reduction of 250 or more would be enough to cover
- 7 the narrative report and the investigation fee in
- 8 most cases, true?
- 9 MR. PATTAKOS: Objection.
- 10 A. No. Because in my view, those expenses were
- 11 unnecessary, so covering it --
- 12 Q. Well --
- 13 A. -- it doesn't make it equal out.
- 14 Q. -- my question to you is: If you reduced your
- 15 fee by that much, by \$300, that would be greater
- 16 than the cost of the narrative report and the
- 17 investigation fee, true?
- 18 MR. PATTAKOS: Objection.
- 19 A. 300 is more than 250.
- 20 Q. And, in fact, if you looked at the settlement
- 21 memorandum, you could have just cut those two
- 22 fees, those two expenses that were on there
- 23 versus cutting the fee, true?
- 24 A. Yeah, I mean the result is the same --
- 25 Q. It would be the same result, fair?

356

- 1 A. Yes, yeah, you'd arrive at the same place
- 2 financially.
- 3 Q. You talked about that Popeyes Chicken e-mail, but
- 4 you're aware, sir, that that was at a Youngstown
- 5 pawn shop, right?
- 6 A. All I'm aware of is what was in that e-mail.
- 7 Q. And were you aware --
- 8 A. And, as I sit here today, I'm consciously aware
- 9 of none of it. You know, if it wasn't for that
- 10 e-mail, I wouldn't remember any of it.
- 11 Q. Well, were you aware that the attachment to that
- 12 was just simply a picture of the gift card?
- 13 A. Yeah, yeah, that somebody saw it and I think
- 14 that's what it was at somewhere.
- 15 Q. You'd agree that the gift card doesn't tell you
- 16 what the race or ethnicity was of the client,
- 17 true?
- 18 A. That's true.
- 19 Q. And, in fact, if it was in Youngstown, the
- 20 likelihood is that it was not an African American
- 21 client, more likely than not, fair?
- 22 MR. PATTAKOS: Objection.
- 23 A. I do not know the racial composition of Mahoning
- 24 County or Youngstown.
- 25 Q. Okay. Well --

357

1 A. And I'm not being facetious. I mean, I was out
 2 there, I had a referral source who was a Mahoning
 3 County guy and I honestly can't remember if I was
 4 getting -- you know, what races I was getting in
 5 terms of referrals.
 6 Q. Well, let me ask you just as an example, let's
 7 say two thirds of the KNR clients in Youngstown
 8 were not African American, what about the picture
 9 of that gift card would make you think that that
 10 particular client was African American? Nothing,
 11 right?
 12 A. No, nothing.
 13 Q. Okay. So don't you think that that's jumping to
 14 a conclusion? If that was a Caucasian client,
 15 how is it racist?
 16 A. Like I said, I think it's a stereotype that
 17 relies on that kind of racial assumption. That's
 18 what he did. I mean Popeyes Chicken doesn't
 19 have, that I'm aware of, any significance to
 20 Caucasians, so what --
 21 Q. What do you mean?
 22 A. Well --
 23 Q. What percentage of Popeyes Chicken customers are
 24 Caucasian versus --
 25 MR. PATTAKOS: Oh, geez, Tom.

358

1 A. I of course have no idea.
 2 MR. PATTAKOS: I object.
 3 Q. Okay. Why are you jumping to the conclusion that
 4 it was a racist comment?
 5 MR. PATTAKOS: Objection. This
 6 is --
 7 A. I don't know.
 8 MR. MANNION: You're the one who
 9 went through this, Peter, at length,
 10 bringing articles.
 11 MR. PATTAKOS: I'm not -- well,
 12 okay. That's not what I --
 13 A. Because there's a well-known stereotype among
 14 African Americans that they like -- that African
 15 Americans are fond of fried chicken, Popeyes
 16 makes fried chicken. I didn't see any -- any
 17 issue -- any reference to the race anywhere, so I
 18 assume that Nestico was the one drawing the
 19 conclusion that it was an African American and
 20 that such person would be more satisfied with a
 21 Popeyes Chicken gift card instead of wherever it
 22 was they sent them.
 23 Q. That's a huge jump, isn't it?
 24 A. No -- well, I mean, it's huge is you're talking
 25 about --

359

1 Q. If two-thirds --
 2 A. -- subjective.
 3 Q. -- if two-thirds of the clients in Youngstown are
 4 not African American why --
 5 A. I didn't.
 6 Q. -- would he assume it was African American?
 7 A. I didn't deal with them.
 8 Q. Okay.
 9 A. I didn't deal with Youngstown at all.
 10 Q. So you're making the conclusion that Rob Nestico
 11 thought it was an African American client, right?
 12 A. What was his explanation then? Convince me what
 13 it was.
 14 Q. I'm not asking -- I'm asking you. You made that
 15 conclusion, right?
 16 A. I did, yeah.
 17 Q. Okay. But you don't know what was in his mind,
 18 do you?
 19 A. No, of course not --
 20 Q. Okay.
 21 A. -- thankfully.
 22 Q. And if it was a Caucasian -- I understand you
 23 have bad blood, sir --
 24 A. I don't, I don't dislike Nestico at all. He may
 25 not like me, but I've got nothing against him.

360

1 Q. He paid you a lot of money even after you left,
 2 right?
 3 A. I don't know. "A lot" is a relative term.
 4 Q. How much?
 5 A. Some. I don't know. I have no idea.
 6 Q. Tens of thousands?
 7 A. Well, I mean, we had an agreement. He seemingly
 8 honored at least some of the agreement.
 9 Q. Well, when you left -- if you want to get into
 10 that, we will --
 11 A. I don't, you brought it up.
 12 Q. -- but when you left you never called up your
 13 clients and told them they should go elsewhere,
 14 did you?
 15 A. No --
 16 Q. You never told them --
 17 A. -- I wanted out. I wanted out. It was a gift.
 18 I was gone.
 19 Q. You never told any of your clients, hey, you
 20 better be careful and watch your expenses, did
 21 you?
 22 A. Nope. Gone. Done.
 23 Q. But you took the money from those cases?
 24 A. I did. I brought them there. That was our deal.
 25 Q. Because you thought they were being handled

361

1 appropriately, right?

2 A. Because I wanted to be out, I wanted done. I

3 needed the money -- I didn't need the money, but,

4 you know, I was owed the money, you pay me what

5 you owe me.

6 Q. Well, you even had some friends who were still at

7 KNR as clients, right? Neighbors?

8 A. Yeah, one neighbor. Darlene.

9 Q. Yeah. And certainly if you thought they weren't

10 handling his case properly, you would have told

11 him?

12 A. Yeah.

13 Q. But you didn't, did you?

14 A. Well, I mean, you're asking about this so let me

15 think, that's something I hadn't considered --

16 the truth is I thought about that, pulling those

17 cases, I could have. You know, I had good

18 relationships with people, I could have, look,

19 you're gone. You know, sorry, KNR, you're not

20 making any money, or you're going to get the

21 whatever, the Quantum Meruit, but I didn't do

22 that. And part of my decisionmaking there was

23 they owed me money. If I take Darlene Ware or

24 whoever -- that's one of them that was still left

25 there --

362

1 Q. I would ask that you please not --

2 A. I'm sorry, I apologize for that. Please --

3 Q. Don't worry about it, that's sealed --

4 A. One of my neighbors. You know, I could have done

5 that, but I didn't in part because they owed me

6 money. The other part is again at this point I'm

7 pretty cynical. So are they going to do better

8 if they go away from KNR? Maybe. Is it going to

9 matter to that person in terms of dollars and

10 cents in a meaningful way? Probably not.

11 I mean, I don't think that KNR is inventing

12 -- or perfected the art of litigation over there

13 or personal injury settlements. I think, you

14 know, you pretty much get what you get.

15 Q. Wherever you go?

16 A. Yes.

17 Q. You're not trying to say that they're doing

18 things different than Slater & Zurz or --

19 A. In terms of results --

20 Q. Right, that's what I mean.

21 A. -- yeah, I don't think they're any better or any

22 worse.

23 Q. Okay. If you thought they were going to cheat

24 the clients you left behind, you wouldn't have

25 left those clients, would you?

363

1 A. Yeah, if I thought they were going to get

2 cheated, I would have stepped in.

3 Q. Now, KNR never tracked the race or ethnicity of

4 their clients or you didn't have a form to do

5 that, did you?

6 A. No, I did not.

7 Q. Okay. You weren't ever told to treat lower

8 socioeconomic clients different than higher

9 socioeconomic clients, did you?

10 A. I was not.

11 Q. You were never told to treat African Americans

12 different than Caucasians, were you?

13 A. No, I was not.

14 Q. I mean, you wouldn't have done it anyway, would

15 you?

16 A. No, I wouldn't have.

17 Q. Okay. We saw some e-mails about responsibility

18 for liens, letters of protection, Ciro, Liberty

19 Capital's fees, things like that?

20 A. Uh-huh.

21 Q. Do you recall those?

22 A. Today?

23 Q. Yes.

24 A. Yeah, vaguely, generally, from what I recall in

25 seeing them.

364

1 Q. And I think we saw two e-mails, one involving

2 Preferred Capital and one involving Liberty

3 Preferred Funding? Preferred Funding --

4 A. Preferred Capital Funding.

5 Q. Yeah. Whatever it is. Preferred.

6 A. Yeah, Preferred.

7 Q. And Liberty Capital. And talked about where

8 somehow the amount owed to those loan companies

9 wasn't on the settlement memorandum --

10 A. Uh-huh.

11 Q. -- true?

12 A. Yeah, the one involving Preferred Capital, that

13 one I have a recollection of. The other appears

14 like it surfaced at some point after I left, so I

15 don't know how that came to pass.

16 Q. Okay. And however it came to pass, the clients

17 took their settlement memorandum, the loan

18 company wasn't paid back, and whatever money

19 would have went to the loan company, the client

20 had, true?

21 A. The firm, I'm sure got an increased fee as well,

22 because we didn't account for that. I'm not

23 sure, but that's likely.

24 Q. Well -- excuse me?

25 A. They were providing, for example, \$6,000 and I

365

1 don't have to worry about paying the 800 to
 2 Preferred Capital.
 3 Q. Wait a minute. The fee is not taken off the
 4 money from Preferred Capital. If Preferred
 5 Capital --
 6 A. Uh-huh.
 7 Q. -- gives a \$500 loan, you don't get a third of
 8 that at KNR, fair?
 9 A. That's fair.
 10 Q. Okay. So if there's a \$6,000 settlement --
 11 A. Uh-huh.
 12 Q. -- KNR is essentially entitled to 2,000 unless
 13 they reduce their fee, true?
 14 A. Right. Unless they reduce their fee.
 15 Q. And expenses are taken after that, true? That's
 16 how, legally, what's allowed to be done, true?
 17 A. Expenses are taken after the fee --
 18 Q. You know that's how it works, right?
 19 A. I'm trying to remember. I'm not trying to be
 20 difficult, I mean really, I don't want to be a
 21 personal injury lawyer. I did it for a long
 22 time. The less I do of it the better.
 23 Q. So the cases you brought over were at 25 percent
 24 contingency, most of them?
 25 A. A variety -- most of them, yeah, for sure.

366

1 Q. One of the reasons why some of those settlements
 2 were lower than the 33 percent, true?
 3 A. Sure. I mean, you can't charge a third if the
 4 agreement is 25.
 5 Q. Okay. But the reason we're going down this line
 6 is you said that KNR somehow would have got more
 7 money if the client didn't pay back the loan?
 8 A. Well, I'm suggesting that that's a possibility.
 9 And I might be wrong. I mean, if you want to
 10 think it through because of the prevalence like
 11 you mentioned about reducing the fee. So if I
 12 don't have to pay the 800 bucks, for example,
 13 that I missed maybe -- and maybe I'm wrong, like
 14 I said, if we work it through different
 15 scenarios, it's possible, it seems possible to me
 16 that, you know, I wouldn't have to take a
 17 reduction or I wouldn't have to take quite as
 18 steep a reduction because I don't have -- I'm not
 19 -- I'm mistakenly not worrying about this 800
 20 bucks.
 21 Q. Okay. But whatever KNR was entitled to for the
 22 fee, they were entitled to that amount regardless
 23 of whether the client paid that loan back or not,
 24 fair?
 25 A. Yeah, that's the way I've heard it.

367

1 Q. And once KNR saw that the loan wasn't paid back,
 2 they didn't go back to the client and try and get
 3 that money, did they?
 4 A. No, they went to me.
 5 Q. Well, or any other lawyer who did it, right?
 6 A. Yes, yeah. I think Rob said that they were going
 7 to ding Sandel and that's why he quit. That's
 8 what Rob told me.
 9 Q. My question was: Whatever lawyer was responsible
 10 for it, they tried to make that lawyer pay it,
 11 not the client, fair?
 12 A. Yeah. Yeah, that's fair.
 13 Q. And that was to the client's benefit, wasn't it?
 14 A. In that case, again, it certainly worked out well
 15 for the client.
 16 Q. Because Liberty Capital or Preferred or whoever
 17 wasn't paid back, still could go back against
 18 that client, couldn't they?
 19 A. I don't remember the agreement.
 20 Q. You certainly don't dispute that?
 21 A. I have no basis to dispute it. Again, I don't
 22 remember the agreement.
 23 Q. And when the e-mail talks about because we might
 24 need a favor from Ciro in the future --
 25 A. Uh-huh.

368

1 Q. -- that means a favor to reduce how much a client
 2 has to pay him back, true?
 3 A. That's the way I read it.
 4 Q. Okay. And that would be to the client's benefit?
 5 A. Again, subject to getting -- just being able to
 6 get a case resolved.
 7 Q. It would be to the client's benefit if Ciro took
 8 less money on the loan, true?
 9 A. Yeah, yeah. That's fair.
 10 Q. And that was true not just with loans, but if you
 11 left a letter of protection off and it had to be
 12 paid, the lawyer would be responsible as well,
 13 correct?
 14 A. Yeah, the lawyers got to eat that.
 15 Q. And the reason that KNR didn't want letterhead on
 16 letters of protection is because then the doctor
 17 could sue them directly?
 18 A. Sue them?
 19 Q. I hate when people use pronouns and I just did
 20 it --
 21 A. Yeah, who are you --
 22 Q. -- I'm going to start it over.
 23 So if KNR put their letterhead on a letter of
 24 protectin for a medical provider then that
 25 medical provider could potentially go against KNR

369

1 directly for those expenses as opposed just the
 2 client, true?
 3 A. As a matter of contract law, I wouldn't be --
 4 Q. Okay.
 5 A. -- familiar enough to say. I would guess that
 6 it's something related to that. And that's
 7 because I thought that's kind of what I suggested
 8 earlier, that the firm didn't want to be on the
 9 hook for that.
 10 Q. Well, because it's -- they shouldn't be on the
 11 hook for expenses that -- for medical treatment
 12 that the client has consented to, fair?
 13 A. That is fair.
 14 Q. And you're not saying that any of your clients --
 15 excuse me. You're not saying that Dr. Ghoubrial,
 16 Dr. Floros, or any of the chiropractors or
 17 medical doctors who treated your clients, that
 18 those clients were being treated without informed
 19 consent, are you?
 20 A. I'm not saying that, no.
 21 Q. Okay. Who's Jon Thomas?
 22 A. Jon Thomas is a guy that Slater & Zurz hired to
 23 do the signups for me in Columbus when I wasn't
 24 available.
 25 Q. And did you introduce KNR to Jon Thomas?

370

1 A. In some fashion. I think they -- when I first
 2 started at KNR, they did not have a Columbus
 3 office so I think they continued to utilize the
 4 services of Jon Thomas after I started at KNR. I
 5 think that's what happened.
 6 Q. Okay. Do you recall negotiating with Jon Thomas
 7 as to what he would charge KNR clients?
 8 A. No, I don't recall.
 9 Q. And if there's e-mails on that, you don't recall
 10 those?
 11 A. Correct.
 12 Q. Do you recall having Jon Thomas track down a
 13 client who was -- then you were able to get the
 14 case resolved because he tracked the client down
 15 long after --
 16 A. No, I don't recall.
 17 Q. You could ask Jon Thomas to do other activities,
 18 right?
 19 A. Did I ever -- I don't remember doing that. Jon
 20 mostly did signups, but if he did other stuff
 21 from time to time, I suppose that's true, but I
 22 don't have any specific recollection of that.
 23 Jon is a very good guy. I like Jon a lot.
 24 Q. Okay. And did you put -- did you ever have any
 25 settlement memorandums at KNR with Jon Thomas on

371

1 the expenses?
 2 A. Not that I remember.
 3 Q. Okay. So on the cases -- did he ever sign up any
 4 cases for you at KNR?
 5 A. I don't remember.
 6 Q. No idea?
 7 A. I don't remember. I mean, again, we're talking
 8 about seven years ago.
 9 Q. Okay. Do you recall any cases where the client
 10 at the time of the settlement memorandum asked
 11 you what the fee was for the investigator?
 12 A. No, I don't recall.
 13 Q. Do you recall what you would tell them, if they
 14 did ask?
 15 A. No.
 16 Q. You were never told what you had to tell them
 17 about that fee, did you?
 18 A. No.
 19 Q. You certainly weren't told to tell them that it
 20 was the cost of securing the relationship, you
 21 weren't told to say that, were you?
 22 A. I have no recollection of -- until you mentioned
 23 it, I forgot that Jon Thomas had anything to do
 24 with my time at KNR.
 25 Q. I'm talking about any investigator. You never

372

1 told the client it was for the cost of securing
 2 the relationship, did you?
 3 A. What relationship? I would never use those
 4 words.
 5 Q. Okay. And you were never told to say that, were
 6 you?
 7 A. Not that I recall, no.
 8 Q. Do you recall ever talking to a client about the
 9 investigation fee one way or another?
 10 A. No, I don't recall.
 11 - - - -
 12 (Thereupon, Defendant's Exhibit G was marked
 13 for purposes of identification.)
 14 - - - -
 15 Q. Handing you what's been marked for identification
 16 as Exhibit G. Do you recognize this?
 17 A. No.
 18 Q. Okay. Is this an e-mail from you to Brandy
 19 Brewer March 29th, 2012?
 20 A. Yes, it appears to be.
 21 Q. You don't dispute that it's yours, do you?
 22 A. No.
 23 Q. And this was shortly after you started?
 24 A. Yeah. It looks like it.
 25 Q. From looking at this, do you recall what this was

373

1 about at all?

2 A. What KNR was going to pay Jon for doing signups.

3 Q. Okay. And you actually -- this was you sending

4 it to Brandy, right?

5 A. Uh-huh.

6 Q. I spoke -- meaning you, right?

7 A. Yeah.

8 Q. "Spoke with Jon Thomas"?

9 A. Yeah, at that point they didn't know --

10 Q. Okay.

11 A. -- Jon and they needed somebody.

12 Q. So you negotiated these fees with Jon --

13 A. I didn't negotiate, no. I think I was just a

14 go-between.

15 Q. Well, do you recall the conversation?

16 A. No, but I didn't -- I had no interest in

17 negotiating on Jon's behalf. I mean, I wasn't

18 getting any of that.

19 Q. Well, you talked to Jon and asked what he would

20 charge, right?

21 A. Yeah.

22 Q. Okay. And this is what he said he would charge?

23 A. Right. And I relayed that info.

24 Q. You didn't set this fee and KNR didn't set this,

25 this is what Jon Thomas said he would charge,

374

1 fair?

2 A. That is fair.

3 Q. Okay. And --

4 A. That's seemingly fair. Again, I don't have a

5 specific recollection of this happening at all.

6 I forgot Jon Thomas had anything to do with KNR

7 while I was there.

8 Q. Do you know what he was paid when he was at

9 Slater & Zurz?

10 A. No, I don't remember.

11 - - - -

12 (Thereupon, Defendant's Exhibit H was marked

13 for purposes of identification.)

14 - - - -

15 Q. Handing you what's been marked as Exhibit H for

16 identification. Do you recognize this?

17 A. No.

18 Q. You'd agree it's an e-mail from you to Brandy

19 Brewer and it was an e-mail that you said, good

20 call on sending Jon to look for that guy. Found

21 him and have authority to settle his case.!

22 A. Yeah, that's what it says.

23 Q. Okay. So on whatever case this was, Jon was

24 certainly doing something more than signing up

25 the person, wasn't he?

375

1 A. Yes, it appears that way.

2 Q. And to determine what he did on any individual

3 case you'd have to go look at that case, wouldn't

4 you, and talk to Jon?

5 A. Yeah.

6 Q. Do you know why you would get an e-mail from

7 Brandy saying use Paul Hilenbran to do

8 investigative work?

9 A. No.

10 Q. Do you recall getting that?

11 A. No. As an aside, Jon's kid is a very talented

12 football player.

13 Q. Where at?

14 A. Washington Court House. He's a quarterback. His

15 name is Gio.

16 MR. MANNION: Well, guys, what do

17 you want to do? It's 5:00 and I know we

18 got a -- can we go off the record for a

19 second.

20 THE VIDEOGRAPHER: Off the record.

21 - - - -

22 (Thereupon, a recess was had.)

23 - - - -

24 BY MR. MANNION:

25 Q. You mentioned the FBI?

376

1 A. Yeah.

2 Q. What were you talking about?

3 A. Most of the redaction that's what they were

4 asking about.

5 Q. When? Where? Who? Discussions?

6 A. I don't remember their names. They were at my

7 house.

8 Q. Okay. When?

9 A. December.

10 Q. Of last year?

11 A. Yeah.

12 Q. Okay. Who was it?

13 A. I don't remember.

14 Q. Now, do you know whether they were from an

15 insurance company who used to work for the FBI or

16 are you saying it was the actual FBI?

17 A. It the was the Federal Bureau of I nvestigations

18 and somebody who worked for some agency related

19 to insurance theft.

20 Q. Okay. Do you know who that was?

21 A. I don't remember either of their names.

22 Q. Tell me about the conversation.

23 A. They dropped by -- well, one of the -- the FBI

24 agent dropped by my house and put a card in my

25 mailbox and said, hey, we want to talk to you.

377

1 Q. Do you still have that card?
 2 A. No, otherwise I would know her name. First name
 3 was Michelle I believe.
 4 Q. Okay.
 5 A. And it was a card -- and again, I'm not going to
 6 remember her last name, but she had either
 7 recently been married or recently divorced
 8 because her card didn't have the right last name
 9 on it. It was scratched out with a different
 10 name written on it.
 11 Q. Uh-huh.
 12 A. And I didn't see it for a few days, I don't know
 13 why, I can't remember, there was some issue,
 14 maybe we just forgot to get the mail. Then when
 15 I got it, I called her and she described that she
 16 wanted to ask me some questions about my time at
 17 KNR and would I be willing to do that. And I
 18 said, well, I don't know, I've got to think about
 19 that a little bit.
 20 And I don't believe I ever did anything
 21 criminally wrong at KNR, but I talked to some
 22 criminal lawyers and he said, well, if you're
 23 going to be changed with anything, it would
 24 probably be bank fraud and it's been -- just
 25 under that statute, some kind of insurance fraud

378

1 kind of thing statute. And the statute of
 2 limitation on that is six years and I'm past it.
 3 So he said you should be free on whatever you
 4 want to talk about or whatever they want to ask
 5 you about. And it was mostly about the
 6 redactions. And honestly they didn't seem all
 7 that interested in my answers. Their angle
 8 seemed to be -- and you were asking me questions
 9 about it today -- their angle seemed to be that
 10 it was perpetuating some kind of fraud by then
 11 hiding the existence of the lien and never paying
 12 the federal government back.
 13 Q. Never paying the federal government back?
 14 A. For the Medicare/Medicaid lien --
 15 Q. Oh, I see.
 16 A. -- you hide it from the insurance company, so
 17 they don't know there's the super lien out
 18 there --
 19 MR. RUBIN: You mean Medicare?
 20 THE WITNESS: Yeah, Medicare.
 21 A. That seemed to be what they were suggesting to me
 22 that was going on at KNR. They were suggesting
 23 it to me. And I gave answers substantially
 24 similar to what I gave today that, you know, it's
 25 certainly not me.

379

1 Q. Okay. But those liens when you were at KNR, were
 2 negotiated and paid, you didn't leave the client
 3 with --
 4 A. Right. Like I said, I thought we essentially
 5 covered that already today and my answer is, no,
 6 I never did anything like that and I'm not aware
 7 of anybody who did.
 8 Q. Okay. And you're not aware of that going
 9 anywhere else, are you? Like any further
 10 investigations?
 11 A. No, they have not contacted me since.
 12 Q. Anything else they asked about?
 13 A. Not that I recall.
 14 Q. Okay.
 15 A. It was -- you know, they came to my house -- they
 16 ultimately came to my house and it was maybe an
 17 hour, something like that.
 18 Q. Their concern was whether the Medicare lien had
 19 been satisfied?
 20 A. Yeah. And it may not -- and the insurance lady
 21 -- again, there was an FBI and a lady who was --
 22 she described herself as like a liaison between
 23 the insurance industry and law enforcement. I'm
 24 sure her agency had a title. She, on the same
 25 topic, she was interested as well in the private

380

1 insurers, whether or not there -- they were
 2 getting stiffed.
 3 Q. And?
 4 A. And you're asking what my answer was?
 5 Q. Yeah.
 6 A. Not to my knowledge.
 7 Q. Okay. Did they say who tipped them off?
 8 A. No. They asked -- I assumed that somehow they
 9 got -- since my name showed up in the complaint,
 10 that they got to me through that. So I asked
 11 them that and all they said was no. I said, I
 12 assume you contacted me because my name popped up
 13 in this lawsuit that's going on in Summit County
 14 and they said no.
 15 Q. And you certainly never engaged in any such fraud
 16 or saw anybody at KNR do so; is that fair?
 17 A. That is correct.
 18 Q. Okay. There's some questions about the Plambeck
 19 lawsuit the -- where the insurance company --
 20 A. Yeah --
 21 Q. -- was against Plambeck?
 22 A. -- yeah, yeah.
 23 Q. And that wasn't in Ohio, right?
 24 A. As I recall it was Texas.
 25 Q. Do you think it would have been a good idea for

381

1 John Reagan or Rob Nestico or Robert Redick to
 2 investigate what that was about?
 3 A. Yeah.
 4 Q. Do you realize they did that?
 5 A. No.
 6 Q. Did you know that John Reagan and Mr. Nestico
 7 actually went and watched part of the trial?
 8 A. No.
 9 Q. And that they found out that it had absolutely
 10 nothing to do with any of the Ohio chiropractors
 11 that they used? Do you know that?
 12 A. I don't know that. I do know that some of them
 13 were defendants at least at one point.
 14 Q. And do you realize that there was no findings of
 15 wrongdoing by any of the chiropractors used by --
 16 that referred cases to KNR or vice versa?
 17 A. No, that I don't know.
 18 Q. Okay. But you don't let carriers tell you who
 19 your client should treat with, do you?
 20 A. I don't let them tell me, but if you're getting a
 21 bad result from somebody, then you move them
 22 along. You know, you don't kept beating your
 23 head against the wall.
 24 Q. Do you tell your chiropractors who they can refer
 25 the patients to?

382

1 A. No, I don't have any control over the
 2 chiropractor.
 3 Q. And I mean not to other lawyers, I mean to other
 4 medical providers?
 5 A. Oh, I've never had cause to, no. But if there
 6 was -- if there was somebody who, you know, I
 7 felt should be involved in their case, you would,
 8 right?
 9 Q. Right. You never had to do that at KNR, true?
 10 A. No.
 11 Q. And certainly the information regarding that
 12 lawsuit, if it didn't involve the chiropractor at
 13 question, you don't know of any trial where that
 14 information was admitted in Ohio, do you, in a
 15 KNR case?
 16 A. Where it was admitted? No, I don't.
 17 Q. And that just -- that fraud suit involves x-rays,
 18 issues with x-rays?
 19 A. Yes.
 20 Q. There was some testimony that you gave about
 21 there was a great emphasis on not losing clients?
 22 A. Yes.
 23 Q. Now, you had that same emphasis yourself when you
 24 were at Slater & Zurz, true?
 25 A. No.

383

1 Q. Well, you went down to West Tusc because you were
 2 upset that they were abducting a client?
 3 A. Oh, yeah, I misunderstood your question. I
 4 thought you meant -- one of my other frustrations
 5 -- John, I'm venting to you -- is I couldn't fire
 6 people willy-nilly at KNR.
 7 Q. Different question. Yeah.
 8 A. Yeah, I know. But that's what I thought you were
 9 asking. So at Slater & Zurz I was free to fire
 10 any of my clients whenever I wanted to, and that
 11 was --
 12 Q. Okay.
 13 A. -- tremendously satisfying at times.
 14 Q. Right, right. But that's a business decision,
 15 too, right, partly? It's both.
 16 A. It's both. It's both. Like I said, the end of
 17 the day, they trusted me at Slater & Zurz to make
 18 that decision, I didn't have to consult with
 19 anybody.
 20 Q. What I'm talking about though is --
 21 A. Right, losing a client getting snatched up by
 22 somebody else, sure.
 23 Q. You were concerned about that on your own, too,
 24 right, at Slater & Zurz?
 25 A. Yeah, yeah.

384

1 Q. I mean, that's one of the reasons --
 2 A. That's one of the things I didn't like about the
 3 business.
 4 Q. That's one of the reasons you went to West Tusc,
 5 right? Because you thought there was -- your
 6 clients got abducted?
 7 A. That they might divert them somewhere --
 8 Q. Yes.
 9 A. -- sure, I suppose that was a possibility.
 10 Q. Okay. There's nothing wrong with not wanting to
 11 lose the client to another law firm, is there?
 12 A. No, I don't think so.
 13 Q. Especially after they've already said they want
 14 you to represent them, true?
 15 A. That is true.
 16 Q. And you certainly never sent out an investigator
 17 to talk somebody into representation?
 18 A. No, you can't do that.
 19 Q. And you never did that at KNR or anywhere else,
 20 did you?
 21 A. No.
 22 Q. In fact, what you did was you would only send an
 23 investigator out if the client agreed to
 24 representation, true?
 25 A. Yes.

385

1 Q. And you would have already gone over the
 2 contingency fee agreement with them and the terms
 3 of the representation, true?
 4 A. Yes.
 5 Q. Now, in this particular case I will represent to
 6 you that Member Williams' contingency fee
 7 agreement was signed on September 17th, 2013.
 8 A. Uh-huh.
 9 Q. That would have been some nine months or so after
 10 you left KNR, true?
 11 A. Yes.
 12 Q. After you left KNR, you would have no personal
 13 knowledge of how they were using their
 14 investigator, did you?
 15 A. No, I did not.
 16 Q. So do you have any knowledge as to what the
 17 investigator did or did not on Member Williams'
 18 case?
 19 A. No, I do not.
 20 Q. And any of the other issues involved in this
 21 case, after the time you left -- well, strike
 22 that.
 23 You said that the policies were changing all
 24 the time?
 25 A. Correct.

386

1 Q. Do you know how the policies changed in the first
 2 part of 2013, if at all?
 3 A. No, I don't know.
 4 Q. Do you recall seeing, when you were there, the
 5 e-mails that had the list of all the things the
 6 investigators had to do to get paid?
 7 A. No.
 8 Q. And I think you testified you weren't exactly
 9 sure of the criteria for the investigators
 10 getting paid, true?
 11 A. Yeah, that's true.
 12 Q. It was you don't have evidence of any single case
 13 where an investigator did nothing whatsoever and
 14 got paid, do you?
 15 A. I don't have any evidence of that, no.
 16 Q. And, in fact, do you realize that there were
 17 certain minimums even during your time at KNR
 18 that the investigators had to do to be paid?
 19 A. No.
 20 Q. You just weren't aware of that, right?
 21 A. Yeah, I wouldn't have been aware of that.
 22 Q. Okay. Thera Reid began her representation April
 23 22nd, 2016. So now we're talking how many years
 24 after you left?
 25 A. I don't know. Two thousand -- end of 2012 I was

387

1 gone, so...
 2 Q. You have no idea what their policies and
 3 procedures were in 2016, do you?
 4 A. No.
 5 Q. If Thera Reid was given two loan companies to
 6 choose from, does that sound like they were
 7 forcing her to use one of them?
 8 A. No.
 9 Q. And if -- there were times also where you were
 10 told, use Preferred or use Oasis, true?
 11 A. Yeah.
 12 Q. Did you think that Rob Nestico or KNR had an
 13 ownership in Preferred or Oasis because of that?
 14 A. Yes.
 15 Q. You did?
 16 A. Didn't think it, but it raised questions. Why --
 17 you know, they're all the same, essentially, so
 18 why direct us to a specific one. Just suspicion.
 19 Q. Okay. You don't have any facts to suggest --
 20 A. I don't know.
 21 Q. -- Mr. Nestico owns Preferred Capital, do you?
 22 A. No, I don't.
 23 Q. Owns Oasis?
 24 A. I don't believe he owns Oasis.
 25 Q. You don't have any facts to suggest he has an

388

1 ownership interest at all in any of the loan
 2 companies, do you?
 3 A. Not at all. It's just what I said, that it just
 4 seemed peculiar that we were directed to one.
 5 Q. But sometimes you had to change to who you were
 6 directed to, true?
 7 A. I think when I was there and my -- perhaps my
 8 recollection is incorrect, but I think when I was
 9 there, the only direction was Liberty and then at
 10 some point, okay, you don't have to use Liberty
 11 anymore.
 12 Q. And then who could you use?
 13 A. At that point anyone.
 14 Q. And so what -- what, do you think he sold his
 15 ownership interest after that?
 16 A. Again, I'm just talking about suspicions and
 17 curiosity --
 18 Q. Okay.
 19 A. -- but I suppose what I thought was not certain
 20 about anything, but that, you know, perhaps they
 21 found out it wasn't so easy to make money doing
 22 it.
 23 Q. You have no idea what Rob Nestico's relationship
 24 or lack of relationship is with Liberty Capital,
 25 true?

389

1 A. None whatsoever.

2 Q. Was my statement true?

3 A. Yeah.

4 Q. Okay. And you have no facts to suggest that he

5 has an ownership interest, do you?

6 A. That is 100 percent correct.

7 Q. You've never seen Liberty Capital hand Rob

8 Nestico cash, have you?

9 A. No.

10 Q. And every time that you had a loan taken out of a

11 settlement of a client, did you ever see Liberty

12 Capital send money back to Rob Nestico?

13 A. Absolutely not.

14 Q. Same with Preferred and Oasis, true?

15 A. Right.

16 Q. Monique Norris, July 2013, you don't know what

17 the procedures were then, do you?

18 A. No.

19 Q. Richard Harbor did have a case in April 2011 and

20 May 2012, but then he had a case in April of 2015

21 and May of 2016 and you don't know what the

22 procedures were either at the 2011 one or the '15

23 or '16 one, do you?

24 A. I don't know any of the procedures that were in

25 place after when I was not there.

390

1 Q. Okay. When you went over a settlement memorandum

2 with a client, it was your professional duty to

3 be truthful and honest with them, correct?

4 A. Yes.

5 Q. And you were, weren't you?

6 A. Certainly.

7 Q. Do you recall that there were problems that Mr.

8 Nestico and Mr. Redick brought to your attention

9 with your performance virtually every month you

10 were there?

11 A. No.

12 Q. That's not your memory?

13 A. It's not, no. I'm not saying it didn't happen.

14 Q. I'm going to show you -- what am I up to there?

15 A. H, I think.

16 MR. PATTAKOS: I.

17 - - - -

18 (Thereupon, Defendant's Exhibit I was marked

19 for purposes of identification.)

20 - - - -

21 Q. Showing you what's been marked as Exhibit I. And

22 I know you haven't seen this before, but I'm

23 going to ask you if you remember this meeting, if

24 you see on the second page it says, please make

25 yourselves available to meet in my office today

391

1 at 5:00. Do you see that?

2 A. That's the conversation I was referring to --

3 Q. That's what I --

4 A. -- and that's the guy, Jeff Lang, that he pulled

5 me aside afterwards and said that wasn't about

6 you.

7 Q. Okay. Well, do you see Robert Redick says to Rob

8 Nestico, is this the step up or step out

9 conversation? Do you see that?

10 A. Yeah.

11 Q. What's the answer?

12 A. Yes.

13 Q. He doesn't say it's limited to Jeff, does he?

14 A. No, but that's what he told me.

15 Q. Does this say it's limited to Jeff?

16 A. No, you see it just like I do.

17 Q. Okay.

18 A. But that's funny because this corresponds exactly

19 to what I said. It makes me seem more credible,

20 don't you think?

21 Q. I think it makes you seem less credible because

22 it doesn't say it's only limited to Jeff.

23 A. Okay.

24 MR. PATTAKOS: Tom, your opinion

25 doesn't count.

392

1 MR. MANNION: Well, he asked me a

2 question --

3 A. I did, I did, that's fair --

4 MR. MANNION: -- Peter.

5 A. -- that's fair.

6 MR. MANNION: Thank God your

7 opinion doesn't count because they're

8 bizarre, Peter.

9 Q. Peter accused me of abusing women --

10 A. Oh, he did not --

11 Q. Yes, he did.

12 A. -- you just misinterpreted.

13 Q. No, it was those exact words.

14 - - - -

15 (Thereupon, Defendant's Exhibit J was marked

16 for purposes of identification.)

17 - - - -

18 Q. He also told me that -- as we're going here since

19 he made comments -- showing you Exhibit J, that

20 although he didn't believe Mr. Nestico was a

21 racist, he thought he'd ask these questions --

22 MR. PATTAKOS: Tom, you're

23 misconstruing --

24 Q. -- because he has a duty --

25 MR. PATTAKOS: -- my statements.

393

1 Q. -- to represent his clients.
 2 MR. PATTAKOS: Tom, you're
 3 misconstruing my statements --
 4 MR. MANNION: No, I'm not.
 5 MR. PATTAKOS: -- that's fine.
 6 The fact that you --
 7 Q. Exhibit J --
 8 MR. PATTAKOS: -- the fact that
 9 you --
 10 MR. MANNION: People heard it.
 11 MR. PATTAKOS: -- feel the need to
 12 do this says quite a bit about your defense
 13 of this case.
 14 Q. Did you know that Monique -- you can set that
 15 down for a second --
 16 A. Uh-huh.
 17 Q. -- did you know that Monique Norris tried to
 18 claim that Rob Horton swindled her into signing
 19 the contingency fee agreement?
 20 MR. PATTAKOS: That's --
 21 objection.
 22 A. No, of course I didn't.
 23 MR. PATTAKOS: Objection.
 24 Misrepresentation.
 25 Q. Okay. You don't think Rob Horton would do that,

394

1 do you?
 2 A. No.
 3 Q. Do you know that she testified in her own words
 4 that he swindled her into taking a loan?
 5 A. No, of course I didn't know that.
 6 Q. Okay. You don't think he would do that, do you?
 7 A. No, I don't think he would do that.
 8 Q. And are you aware that she testified that he
 9 essentially threw documents under her and had her
 10 sign those documents without telling her it was a
 11 loan?
 12 A. I'm not aware of that, no.
 13 Q. You don't think he'd do that, do you?
 14 A. No, I don't.
 15 Q. I mean, if he didn't do that and she's making
 16 those allegations, that's pretty serious, isn't
 17 it?
 18 A. Those are serious allegations, yes.
 19 Q. Are you aware that she's also claiming that Dr.
 20 Ghoubrial treated her even though at the time she
 21 was being treated she was in -- Dr. Ghoubrial was
 22 in Columbus and --
 23 MR. PATTAKOS: Tom, this is
 24 ridiculous --
 25 Q. -- and she was in Akron --

395

1 MR. PATTAKOS: -- why are you
 2 asking him about --
 3 Q. -- are you aware of that?
 4 MR. PATTAKOS: -- this. This is
 5 just ridiculous.
 6 A. No, I'm not aware of any of that.
 7 Q. Okay. Well, those are the types of things that
 8 certainly if you knew a client was lying about
 9 that, you wouldn't pursue that kind of suit,
 10 would you?
 11 A. What kind of suit?
 12 Q. If you knew your client was lying, directly lying
 13 about who she treated with, you wouldn't put that
 14 in a pleading, would you?
 15 A. I don't think so.
 16 Q. Looking at Exhibit J. Do you recall this in June
 17 that you were being talked about regarding the
 18 number of intakes?
 19 A. No, I don't recall it.
 20 Q. But you were questioning about whether they were
 21 actually accurate or not; do you recall?
 22 A. I was questioning whether or not they were
 23 accurate?
 24 Q. Yeah. From you to Brandy saying given the amount
 25 of errors.

396

1 A. I don't doubt this. I didn't do many intakes.
 2 Q. Okay. And if you look up at the top --
 3 A. Top of page one?
 4 Q. Yeah.
 5 A. Uh-huh.
 6 Q. Brandy is saying in the middle there with none
 7 all capped, NONE of the attorneys actually like
 8 doing intakes --
 9 A. Yeah.
 10 Q. -- but it's part of the job. True? Did I read
 11 that correctly?
 12 A. You did read it correctly.
 13 Q. And the reason they didn't like doing intakes is
 14 because they'd obviously rather be working on
 15 settling cases, fair?
 16 A. That is fair.
 17 Q. That's --
 18 A. Yeah, I think so. Nobody expressed that to me.
 19 And I did speak to the other lawyers about this
 20 and nobody said, hey, Gary -- nobody, I cannot
 21 recall, like, for example, Josh Angelotta, he
 22 seemed to be more than happy to do as many
 23 intakes as possible, so I did have conversations
 24 with them, only half joking, where I said, look,
 25 the less I do, the more you get.

397

1 Congratulations, some day you'll be rich.

2 Q. Well, it's up to the individual lawyer how hard

3 they want to work and how many intakes they take?

4 A. Well, I don't think it's a question of working

5 hard. I think everybody was working hard, even I

6 was, but you, in order to take a hundred and

7 however many intakes a month, Josh needed to have

8 a strategy to do that, which would be to be

9 available, make himself available during the day,

10 so that he can answer the intakes when they came

11 in and then return client phone calls after hours

12 and on weekends, stuff like that, at periods of

13 times when I was absolutely not going to be

14 working.

15 Q. Okay. There's nothing wrong that Josh did that,

16 is there?

17 A. No. Like I said, good for you.

18 Q. And what you said earlier with the assignment of

19 objective injuries, for a while it was just went

20 in a rotation?

21 A. Yeah.

22 Q. And so during that rotation, certainly all of the

23 pre-lit attorneys were capable of handling a

24 case, true?

25 A. Handling like a trial?

398

1 Q. No, no, no. It was pre-litigation --

2 A. Correct.

3 Q. -- handling an objective injury case

4 pre-litigation?

5 A. I don't know. I honestly don't know.

6 Q. Okay. So can you identify one pre-lit attorney

7 who you think was not capable of handling a

8 pre-litigation file of an objective injury?

9 A. I'm not saying that some were or not, I'm just

10 saying I don't know any of their qualifications.

11 You know, I met Josh Angelotta when he worked for

12 Roger Williams and the rest of the guys I knew

13 nothing about.

14 Q. If any of those lawyers handled a case with an

15 objective injury and felt they weren't capable of

16 handling it, they had a duty to tell somebody

17 about that, fair?

18 A. Yeah, they should have.

19 Q. And whether these were handed out in a rotation

20 manner or whether they were handed out based upon

21 the number of intakes you took, that didn't

22 change the competency of the lawyer, did it?

23 A. No, it didn't.

24 Q. Okay. You seemed to suggest earlier that somehow

25 the objective injuries should have been handled

399

1 differently, but --

2 A. They could have.

3 Q. -- they could have handled them differently --

4 A. Uh-huh.

5 Q. -- but that's --

6 A. And perhaps it would have benefited the client

7 more because, for example --

8 Q. You don't know that, do you?

9 A. You don't know it, but like, for example, when a

10 call came in, at least while I was there, if it

11 was apparent to the intake person who answered

12 the call, not the lawyer, then I would never get

13 that call, Angelotta would never get that call,

14 any of the other guys, pre-lit guys would get

15 that call, it would go to Nestico. Because he

16 appreciated the fact that he had an expertise in

17 convincing people to sign up. So he didn't want

18 that going to anybody else.

19 So in that context they recognize that there

20 was a benefit to having a certain lawyer handle

21 certain issues.

22 Q. What was his expertise in getting people to sign

23 up?

24 A. I don't know. I --

25 Q. And you're saying you did something improper in

400

1 --

2 A. No, I'm not suggesting that at all --

3 Q. Okay.

4 A. -- I'm just saying that he thought he was good at

5 it. You know, I can convert this call to a

6 client with whatever percentage of regularity so

7 I'm not going to risk it go to Petti, I'm going

8 to do it myself.

9 Q. But as far as who it was assigned to to be

10 handled, whether it went to you or Josh

11 Angelotta, you certainly thought they were

12 getting proper --

13 A. As far as I knew, but again, I had no, no idea

14 what anybody else's qualifications were other

15 than my own, even Josh.

16 Q. Okay.

17 A. I mean, I don't know that Josh ever tried a case.

18 Q. Well, you're pre-litigation, right?

19 A. Yeah, but I mean there are similar issues. I

20 mean, you have to -- as you mentioned risk

21 earlier, settling cases is about risk. So how

22 you present the case at trial, what you think you

23 can get at trial is one of the big factors in

24 what a settlement is worth.

25 Q. Do you know whether Josh ever tried a case?

401

1 A. No, I just said specifically --

2 Q. Okay.

3 A. -- I don't know that.

4 Q. You're not alleging that any of the pre-lit

5 attorneys were not qualified?

6 A. No, I'm just saying I don't know.

7 Q. Okay.

8 A. I'm not vouching for them.

9 - - - -

10 (Thereupon, Defendant's Exhibit K was marked

11 for purposes of identification.)

12 - - - -

13 Q. Handing you what's been marked as Exhibit J --

14 MR. PATTAKOS: No, this is --

15 MR. MANNION: K is it?

16 MR. PATTAKOS: Yep, K.

17 MR. MANNION: Sorry about that.

18 I'm going to --

19 MR. PATTAKOS: The last one was J.

20 MR. MANNION: -- write over this.

21 Q. Exhibit K. And just if you see at the top here

22 you say throughout the intake I was too

23 distracted by the thought of why is the chiro

24 even calling us. Do you remember this case at

25 all?

402

1 A. No, I don't.

2 Q. Who's Valley Spine?

3 A. Dayton I think.

4 Q. Okay. But after you hung up, you said it hit me

5 that I should have got more info.

6 A. Yeah.

7 Q. Do you see that?

8 A. Yeah. Because they wanted it.

9 Q. Who did?

10 A. They would want it.

11 Q. Well, nothing wrong with wanting that info, is

12 there?

13 A. No, there's nothing wrong with it, but it was a

14 no accept. So they weren't going to do anything

15 with it.

16 Q. It was a what? No insurance?

17 A. They weren't going to accept the case. The case

18 was complete garbage and the chiropractor put him

19 on the phone and it was why am I even talking to

20 this person.

21 Q. Right. In other words, representations won't

22 really help, there's nothing to recover?

23 A. Right. That's where this seems to be going, but

24 I don't have -- well, it says no insurance

25 coverage anywhere, no accept. So, yeah, I'm

403

1 talking to this person and it was already -- it

2 seems to have been cleared at the chiropractor

3 that there was no coverage anywhere, so as fast

4 as I get off the phone and move onto the next one

5 and I though, oh, crap, part of what we do is

6 send the letter saying, gee, thanks for calling

7 but we're not representing you.

8 Q. There's nothing wrong with sending a letter?

9 A. No, the letter is fine.

10 Q. It's courteous, in fact, isn't it?

11 A. It is. And it makes it clear for liability

12 perspectives --

13 Q. That you don't represent them?

14 A. -- that there's no representation, sure.

15 Q. Now, Attorney Pattakos made it seem, in my mind,

16 that KNR just took all comers, it didn't matter

17 who they were, but that's not true, is it?

18 MR. PATTAKOS: Objection.

19 A. Clearly not.

20 Q. I mean, they -- as you mentioned earlier, they

21 would assess the liability situation on the

22 phone, correct? You wouldn't take cases if you

23 thought there wasn't liability?

24 A. I honestly don't remember.

25 Q. You said it earlier.

404

1 A. Well, perhaps, I'm thinking about it more deeply.

2 I'm not trying to be evasive or difficult or

3 anything like that, but it is sort of a sliding

4 scale, as you might imagine.

5 So, okay, now you've got -- and I've done

6 this before I was at KNR, so I'm just trying to

7 be accurate. You know, if somebody comes, calls

8 you and they're mangled, you know, they've got

9 all these awful injuries, then liability doesn't

10 have to be so clear, we're going to take a shot

11 at that one. If it's a three-mile-an-hour impact

12 and I didn't get any treatment until a month

13 after the accident, then liability better be very

14 clear or I'm not interested at all. I mean, I'm

15 hardly interested to begin with, but if you're

16 going to give me a liability dispute, forget it.

17 Q. So those evaluations were made by you while you

18 were at KNR as well, true?

19 A. I don't remember.

20 Q. Well, that's how you practiced?

21 A. That's how I practiced, yep.

22 Q. Okay. You have no reason to think you changed

23 that, do you?

24 A. The only reason I would have to think that I

25 changed that is so many of the people came

1 through the chiropractor --

2 Q. Well, that's how you got your work before, isn't

3 it?

4 A. I met with them face to face, so it's generally.

5 Occasionally at some point Rob Thomas -- or Jon

6 Thomas was involved, but for the most part I met

7 with the people face to face, so I would make an

8 assessment. I wouldn't --

9 Q. But they were referred by the chiropractor?

10 A. They were referred by the chiropractor, but

11 whether or not I signed them up, I would have a

12 detailed face-to-face conversation with them and

13 I don't remember -- and again, I'm not trying to

14 be difficult -- whether or not the pressure to

15 sign people up was pervasive enough that you just

16 signed them up and then worried about it later in

17 terms of the liability and stuff like that or if

18 you told people no over the phone, or if Dr.

19 Floros did a good enough job of weeding them out,

20 that that rarely happened. For example, Dr.

21 Floros, I'm not picking on the guy.

22 Q. But you don't remember as you sit here?

23 A. No, I don't.

24 Q. Okay. So you're not alleging that either then?

25 A. Alleging? No, I'm not alleging.

1 Q. Okay.

2 A. Leaving open the possibility rather than

3 alleging.

4 Q. Well, big difference.

5 A. There is.

6 Q. And you can't remember a single case that you

7 thought, yeah, you know, I don't care, I'm just

8 going to bring them in no matter what. No

9 liability, no insurance --

10 A. No, I wouldn't have done that, that creates

11 problems for me.

12 Q. Okay.

13 - - - -

14 (Thereupon, Defendant's Exhibit L was marked

15 for purposes of identification.)

16 - - - -

17 Q. Handing you what's been marked as Exhibit K.

18 MR. RUBIN: L.

19 MR. MANNION: Gosh darn it.

20 A. We've got two K's here.

21 Q. Let me see that back. L.

22 A. Is it two pages? Because you're giving me two.

23 Q. Yes.

24 A. Okay.

25 Q. In August do you see this where you --

1 A. That's so me.

2 Q. -- said something to Robert Redick about you're

3 in a desperate spot with CLEs?

4 A. Yeah.

5 Q. Okay. And, you know, virtually every month

6 something was going on with you at work, wasn't

7 there, in a negative fashion?

8 A. I would say more than every month, but these

9 aren't big issues, that I needed a CLE? Okay.

10 Everybody does. That I wait until the last

11 minute, I'm certainly not the only one. So, I

12 mean -- and then not getting an address for

13 somebody who they're not going to represent

14 anyhow. This other one, I mean, I told you about

15 it.

16 You can choose not to believe me, which is a

17 little bit hurtful, Tom, but that's what

18 happened.

19 Q. Well --

20 A. And you maybe --

21 Q. You think maybe --

22 A. -- maybe Jeff Lang remembers that Nestico had me

23 stay after he left, but that's what happened.

24 Q. Well, do you think it would be hurtful to folks

25 to know that you came there knowing you intended

1 to leave and never told them?

2 A. I regret that, I regret that. And I honestly

3 don't regret a ton about my time at KNR. I told

4 everybody pretty much as directly as possible, I

5 got pretty much what I expected. I didn't expect

6 to like it, I expected -- I didn't expect to make

7 a career out of it and that's what happened.

8 - - - -

9 (Thereupon, Defendant's Exhibit M was marked

10 for purposes of identification.)

11 - - - -

12 Q. Exhibit M, is this fair to say, by looking at the

13 top here --

14 MR. PATTAKOS: I'm not sure the

15 witness has the exhibit yet.

16 Q. Oh, I didn't hand it to you yet?

17 A. Yeah, I didn't see it.

18 Q. Exhibit M -- I'm getting tired myself --

19 THE WITNESS: I turned this one

20 over as well, didn't I?

21 MR. PATTAKOS: You got the

22 client's name on this, too.

23 MR. MANNION: Where is that?

24 MR. PATTAKOS: In the subject

25 line.

409

1 THE WITNESS: Oh, yeah, that's his
 2 name.
 3 MR. PATTAKOS: Right down here.
 4 MR. MANNION: Yep. We'll have to
 5 all agree and redact that.
 6 I will redact that with a new
 7 Exhibit M.
 8 BY MR. MANNION:
 9 Q. This is one of the issues about the Preferred
 10 Capital loan?
 11 A. Right.
 12 Q. And do you see though at the top the purpose of
 13 this is at that time even in November before you
 14 sent your e-mail to Ms. Jennings, what did Mr.
 15 Nestico say?
 16 A. I already said it, he said, good, hope he leaves.
 17 Q. I mean, he wasn't happy with your performance,
 18 was he?
 19 A. I don't know. That sentence doesn't make it seem
 20 so.
 21 Q. And that's before you sent that e-mail to Ms.
 22 Jennings, isn't it?
 23 A. Yeah, it looks like it predated it by about 13
 24 days.
 25 Q. Okay.

410

1 A. But then it was more than a month before I got
 2 fired. And they got their 311 bucks.
 3 Q. Who did?
 4 A. KNR.
 5 Q. What do you mean, KNR got it?
 6 A. They took it from my bonus.
 7 Q. Well, how did KNR get the money?
 8 A. Instead of paying it to me, they took it.
 9 Q. And gave it to whom?
 10 A. Themselves.
 11 Q. They paid it to Preferred Capital?
 12 A. Right. To pay themselves -- they paid themselves
 13 back. They had already written the check to
 14 Preferred Capital.
 15 Q. Okay. They weren't taking money from you for
 16 themselves, it was money --
 17 A. They paid themselves back --
 18 Q. But they had --
 19 A. -- with my money.
 20 Q. -- advanced the 311 to Preferred Capital
 21 themselves, true?
 22 A. The issue I had with that, as I explained
 23 already, was that, you know, I really felt like
 24 it was Megan's responsibility to put it in the
 25 file that it had been paid. And I complained

411

1 about Megan and that's one of the other e-mails I
 2 produced was Matt saying that the settlement --
 3 Matt who they like -- saying the settlement
 4 portfolio that she prepared was worthless and
 5 he's without words as how to explain it and all
 6 that kind of stuff and I had to eat the 300
 7 bucks.
 8 Q. It was your job to crosscheck the settlement
 9 memorandum with the expenses, true?
 10 A. Crosscheck the settlement memo with the expenses,
 11 true, but it wasn't in the expenses.
 12 Q. Look at the second page --
 13 A. It wasn't in the expenses.
 14 Q. -- look at the second page.
 15 A. Okay.
 16 Q. Second sentence, "I just didn't crosscheck the
 17 settlement memo when I disbursed to see if it's
 18 on there."
 19 A. And it was not --
 20 Q. Did I read that correctly?
 21 A. -- clearly it was not.
 22 Q. Did I read that?
 23 A. You did, but you forgot the most important part,
 24 it wasn't on there.
 25 Q. Did I -- I'll get there.

412

1 A. Okay. Go ahead.
 2 Q. Did I --
 3 A. Yes, I said that. Yes, you read it correctly.
 4 Q. Okay. Well, we're going to go again, so you
 5 don't mess up this record --
 6 A. I'm not messing it up.
 7 Q. -- which you're trying to do.
 8 A. You're being difficult, Tom.
 9 Q. "I just didn't cross check the settlement memo
 10 when I disbursed to see if it was on there."
 11 Did I read that correctly?
 12 A. Yes.
 13 Q. And clearly it was not, true? Is that what it
 14 says?
 15 A. That is what I wrote.
 16 Q. But if you would have cross checked it and you
 17 would have looked at the file because you knew
 18 about the loan, you would have been talking to
 19 them about it, true? If you would have cross
 20 checked it, you would have found it?
 21 A. No, it wasn't on it, that's what that sentence
 22 means --
 23 Q. It says --
 24 A. -- that's how I read it.
 25 Q. -- I knew about the advance --

1 A. I did know about it because I -- and I described
 2 this already, I'm not trying to be evasive or
 3 difficult, it seems as though you are, I said I
 4 made arrangements for it. I tried to talk the
 5 guy out of it, I made arrangements for it. I
 6 knew it was there, but at that point you've got
 7 400 or 500 clients who are calling you all the
 8 time, but you do it, the paperwork comes in, you
 9 shuffle it across and that's what happened.
 10 Q. But you do agree it was your duty to crosscheck
 11 the expenses on the settlement memorandum, true?
 12 A. Yes. It's her duty to put it in there so I can
 13 see it so I don't have --
 14 Q. It's your duty to crosscheck it?
 15 A. And then my duty to look at what she put in
 16 there. And she didn't put it in there is what
 17 I'm trying to say. At least that's the way I
 18 remember it and that's what this seems to
 19 support --
 20 Q. But it is your --
 21 A. -- but that's a minor point --
 22 Q. -- but it is your duty to crosscheck those
 23 expenses, true?
 24 A. Right, yes. And it appears I did that.
 25 Q. And that means all the expenses on the settlement

1 memorandum, true?
 2 A. Yes. Yes.
 3 MR. MANNION: Okay. I don't have
 4 anything further.
 5 - - - -
 6 EXAMINATION OF GARY M. PETTI
 7 BY MR. RUBIN:
 8 Q. All right? Sir, my name is Ryan Rubin. I
 9 represent Dr. Ghoubrial. I just have some
 10 follow-up questions for you, okay?
 11 A. Sure thing.
 12 Q. I think I heard you testify earlier that many
 13 clients, especially for those without insurance,
 14 it could be hard for them to find a medical
 15 doctor?
 16 A. That's right.
 17 Q. You met Dr. Ghoubrial when you worked at Slater &
 18 Zurz?
 19 A. Yes.
 20 Q. You never personally referred a client to Dr.
 21 Ghoubrial?
 22 A. I don't think so.
 23 Q. And to your knowledge, Dr. Ghoubrial provided
 24 care to some of your clients at Slater & Zurz?
 25 A. I don't think any of my personal clients. Slater

1 & Zurz clients, yes. Gary Petti clients, no.
 2 Q. To your knowledge, was Dr. Ghoubrial involved in
 3 treating any of your clients at KNR?
 4 A. Don't have any independent recollection of that.
 5 Q. In the nine or so months that you worked at KNR,
 6 you don't personally recall reviewing any
 7 settlement memorandum or charges from Dr.
 8 Ghoubrial, do you?
 9 A. I don't have any specific recollection of it, no.
 10 Q. But to your knowledge, Dr. Ghoubrial would
 11 provide care and treatment to patients who did
 12 not have insurance?
 13 A. To my recollection, yes.
 14 Q. And referrals to Dr. Ghoubrial, to your
 15 knowledge, came from either chiropractors or
 16 other medical providers?
 17 A. To my knowledge. I know I never referred
 18 anything to him.
 19 Q. And you are not personally aware of any direct
 20 referral from KNR to Dr. Ghoubrial, correct?
 21 A. I'm not personally aware of such a referral.
 22 Q. Most of your work at KNR involved clients seeing
 23 chiropractors, not doctors like Dr. Ghoubrial?
 24 A. That's my recollection.
 25 Q. And you'd agree of course you're not a doctor or

1 a chiropractor?
 2 A. That's correct.
 3 Q. And you're not qualified to offer any medical
 4 opinions or chiropractic opinions?
 5 A. I'm not qualified to do that.
 6 Q. I believe you said your caseload was typically
 7 400 or 500 cases with KNR?
 8 A. An absolute guess. A lot.
 9 Q. Are you aware, given your years of work in the
 10 personal injury industry, that insurance company
 11 adjusters would likely often times even have far
 12 more than 400 or 500 cases on their dockets?
 13 A. I never heard anybody say that. And I did have a
 14 couple of conversations with claims
 15 representatives, typically downtime at a
 16 mediation or something like that, they'd be
 17 complaining about their caseload. And honestly
 18 my recollection is that none of them ever had as
 19 many cases as I thought I had.
 20 Q. But is it your recollection that many that did
 21 motor vehicle accidents did at least have a
 22 significant caseload?
 23 A. They -- yeah, I believe they're busy.
 24 Q. Given your interactions with insurance adjusters
 25 over the years, do you generally know that these

417

1 insurance adjusters are looking to verify certain
 2 facts before they put money on a case?
 3 A. Yeah.
 4 Q. Like, for example, how the accident occurred,
 5 they want to know that?
 6 A. Sure.
 7 Q. They want to know whether or not their insured is
 8 negligent?
 9 A. Right.
 10 Q. Whether or not their insured's negligence caused
 11 an injury?
 12 A. Yes.
 13 Q. Insurance adjusters then want to potentially look
 14 at what the magnitude of damage may be?
 15 A. Yes.
 16 Q. And then in support of damages, insurance
 17 adjusters, it's typically important, to your
 18 knowledge, for them to get medical records and
 19 medical bills?
 20 A. Yes, absolutely.
 21 Q. Once insurance adjusters get proof that they
 22 need, to your knowledge, they then set a reserve
 23 on how much money they need to potentially settle
 24 a case?
 25 A. That's my understanding.

418

1 Q. And in litigation you know that insurance
 2 adjusters often consider whether or not the
 3 opposing party, like the plaintiff, has an expert
 4 report?
 5 A. In litigation -- typically, of course in
 6 litigation you're going to require an expert
 7 report by the trial order -- by the court's
 8 pretrial orders. So I suppose if you didn't have
 9 one that would work against you, but typically by
 10 the time you get to litigation, you're going to
 11 have one. You know you need one.
 12 Q. Right. So it's mandatory?
 13 A. Yeah. But I'm not looking at it -- and I don't
 14 know, I can't speak for everybody, but you're not
 15 doing that at that point because your -- it
 16 relates to the offer necessarily but because if
 17 you don't produce a report, your expert is not
 18 going to be able to testify.
 19 Q. Do you know whether or not possession of an
 20 expert report increases potential value of a
 21 case?
 22 A. It could.
 23 Q. Did you ever hire experts while at Slater & Zurz?
 24 A. Yes. Yep. Yes.
 25 Q. Have you ever paid more than \$200 for an expert

419

1 report?
 2 A. Frequently.
 3 Q. Have you ever paid more than \$1,000 for an expert
 4 report?
 5 A. Yes. Well, the firm has.
 6 Q. How about has Slater & Zurz ever paid more than
 7 2,000 for an expert report?
 8 A. On one of my cases probably, but I don't remember
 9 specifically.
 10 Q. Mr. Mannion previously gave you a stack of
 11 medical records related to Thera Reid?
 12 A. I seem to recall that.
 13 MR. MANNION: You said the firm
 14 did it.
 15 Q. Let me jump back to a prior question.
 16 When you were at Slater & Zurz and the firm
 17 spent several hundred or several thousand dollars
 18 on expert reports, did they charge that to the
 19 client as an expense on the case?
 20 A. Yeah, they charge it back to the extent they
 21 recover -- that we recover -- we did recover.
 22 They didn't -- sometimes they would -- their
 23 contingency fee contract had a provision in it
 24 where they -- in litigation they could require
 25 the client to pay it in the cost of the

420

1 litigation?
 2 Q. Even if you lost?
 3 A. Yep, in advance. It was leverage that they used
 4 to get people to settle. If they had somebody
 5 who was unreasonable, you know, if they got a
 6 good offer, but somebody wanted triple what the
 7 offer is, they'd say, all right, well, if you
 8 want to gamble, let's gamble with your money.
 9 Q. So Slater & Zurz would sometimes leverage
 10 expenses against their clients to achieve a
 11 settlement?
 12 A. Yep. Yes.
 13 Q. Do you have that stack of medical records related
 14 to Thera Reid?
 15 A. I think you're referring to Defendant's Exhibit
 16 D?
 17 Q. I am.
 18 A. I do have it.
 19 Q. How long do you think it would take you to give
 20 me a comprehensive summary of the patient's
 21 global care from all of those records?
 22 A. I'm out of practice; however, I don't know, an
 23 hour.
 24 Q. Okay. And in terms of prognosis, I presume it
 25 would take a while for you to give a

421

1 comprehensive assessment of Ms. Reid's entire
 2 prognosis based on all of those records?
 3 A. Yeah, it would take a while.
 4 Q. And to get a comprehensive summary of all
 5 treatment she received in all the pages contained
 6 in those records, it would take a while as well,
 7 fair?
 8 A. That's fair.
 9 Q. Wouldn't you agree, it's a lot easier for a busy
 10 insurance adjuster to look at a single page or
 11 maybe two pages as opposed to reviewing all of
 12 those records for an hour or more as you just
 13 said?
 14 A. It would be easier, yes -- well, I don't know.
 15 Maybe, maybe not. It's hard to say. I mean, it
 16 would be easier, but, you know, in this business
 17 people are -- you know, you've got to be trusting
 18 if you're going to read the narrative report and
 19 not read all the notes because you're only going
 20 to get the highlights, so maybe you've got to
 21 read both, almost certainly you've got to read
 22 both, to make sure that the report -- you know,
 23 the items contained in the report are supported
 24 by what's in the records. So I don't think it's
 25 a short cut.

422

1 Q. But if you read both and verify that the report
 2 is supported by the records --
 3 A. Uh-huh.
 4 Q. -- then it would be a quick reference for an
 5 insurance adjuster to go back?
 6 A. Reference later on, yeah, sure, but you know they
 7 have to do -- they have all kinds of summaries
 8 and stuff like that that they have to generate on
 9 their own, which I've seen some of them. I
 10 assume that maybe others will, you know,
 11 dependent on what the protocol is for each
 12 carrier, they may allow them to use a medical
 13 record instead of something that they generate
 14 themselves.
 15 Q. The -- I'm not going to re-ask questions
 16 Mr. Mannion already asked about all the different
 17 components contained in Ms. Reid's narrative
 18 report that's not in those medical records --
 19 A. Uh-huh.
 20 Q. -- but I presume you wouldn't be surprised if
 21 there's plenty more items that you didn't even
 22 address in the questions with Mr. Mannion that
 23 are not contained in the medical records?
 24 A. That's fair.
 25 Q. Given that it would take you, I think you

423

1 estimated an hour of time, to read and summarize
 2 just those records, you would agree it would
 3 presumably take anyone preparing a narrative
 4 report summarizing those medical records some
 5 period of time?
 6 A. Some period of time for sure. You know, like I
 7 mentioned, there are the programs and things like
 8 that and whether he prepared them himself or
 9 delegated that to someone, I have no way of
 10 knowing.
 11 Q. You wouldn't expect a medical professional to
 12 generate such work product summarizing medical
 13 records for free, would you?
 14 A. No, I wouldn't expect it.
 15 Q. You haven't compared narrative reports from
 16 several different KNR clients at any point in
 17 time in the last seven years, have you?
 18 A. No, I have not.
 19 Q. So you can't testify as to whether or not they're
 20 identical or different?
 21 A. Right, I don't know.
 22 Q. You can't say whether or not they're simple or
 23 complex?
 24 A. You're correct.
 25 Q. If preparation of a narrative report is delegated

424

1 to some staff member of a chiropractor, that
 2 staff member still is working and getting paid
 3 for their job, fair?
 4 A. Yes, that's fair.
 5 Q. And then you would expect if a professional like
 6 a chiropractor is putting their name on a
 7 narrative report, even if one of their staff
 8 member prepares the narrative, that that
 9 chiropractor should read over and verify that
 10 they can support the contents of the narrative
 11 report, fair?
 12 A. That's what they should do, yes.
 13 MR. RUBIN: All right. Thank you,
 14 sir. I have nothing further.
 15 - - -
 16 EXAMINATION OF GARY M. PETTI
 17 BY MR. KEDIR:
 18 Q. Hello, Mr. Petti.
 19 A. Hi there.
 20 Q. My name is Attorney Shaun Kedir. I represent Dr.
 21 Floros.
 22 A. Nice to meet you, Shaun.
 23 Q. Nice to meet you, too. First of all, have you
 24 talked to Dr. Floros on the phone before?
 25 A. There's a likelihood that I have. I can't say

425

1 that I recall it specifically though. You know,
 2 I've been aware of Dr. Floros for however many
 3 years he's been there, so I never dealt with him
 4 much though.
 5 Q. You didn't deal with him much. So would that be
 6 over the -- how many months did you work at KNR
 7 was it?
 8 A. I worked at KNR only for nine months, but at
 9 Slater & Zurz I worked there for 15 years --
 10 Q. Okay.
 11 A. -- and I did have -- before Floros started at
 12 Akron Square, I did have a relationship with
 13 chiropractors, multiple, who were there, and then
 14 I don't think any, once Floros started, but maybe
 15 one or two, because who can remember such things.
 16 Q. So between the time you were at KNR, would you
 17 estimate that you talked to Floros maybe 30
 18 times?
 19 A. Oh, I wasn't even thinking of that. Yeah, if
 20 they call and say there's somebody here. You
 21 mean that kind of talk to him?
 22 Q. Whatever -- just if you ever talked to him.
 23 A. Probably less than that.
 24 Q. Less than that?
 25 A. I was doing a lot of intakes, that much is clear.

426

1 Q. What's the procedure if, say, Floros or Akron
 2 Square calls over and they want to get ahold of
 3 you?
 4 A. I think it went to the intake department first
 5 and then the intake department would hit the
 6 special ringer button and whoever answers it,
 7 usually the doctor would be on the other line and
 8 they'd say, you know, I'm here with Mrs. Smith
 9 and Mrs. Smith was in an accident, they want to
 10 talk to you about representation.
 11 Q. Okay. And would they ever talk to you -- only
 12 during that intake was the only reason they would
 13 call or would they ever call you for other
 14 reasons?
 15 A. I think that's probably the only time I ever
 16 spoke to Floros while I was at KNR, just two
 17 seconds on the phone, whereas he hands it off to
 18 somebody else.
 19 Q. Okay. And did Floros, did he ever give
 20 information to your paralegal, Jennings, that she
 21 related to you?
 22 A. No, not that I can recall.
 23 Q. That you can't recall?
 24 A. Right. It's possible.
 25 Q. Okay. Did you ever mention when you talked to

427

1 Floros about narrative -- his narrative reports?
 2 A. No.
 3 Q. Did you ever talk about narrative fees?
 4 A. Nope.
 5 Q. So you mostly just talked about the intake?
 6 A. Yeah. Just a little bit. I mean, sometimes, if
 7 I remember correctly, sometimes he would say a
 8 little bit about the nature of the crash or the
 9 underlying facts. You know, this is a big
 10 accident, multiple parties in it. He'd try to
 11 give you the heads up that there are more people
 12 here, potential clients, potential patients, than
 13 the person whom you're speaking with at that
 14 moment, but very, very limited conversation with
 15 Dr. Floros.
 16 Q. Limited? But that sounds a little bit more
 17 involved though if he's trying to give the
 18 background information on it.
 19 A. Not really the background. I mean, 30 seconds.
 20 Q. Thirty seconds?
 21 A. I'm guessing. I mean, again, there wasn't a lot
 22 to talk about. You know, here they are, do what
 23 you do.
 24 Q. How many cases did you have where Floros was the
 25 treating doctor?

428

1 A. No idea. Not a lot. I kind of found that odd
 2 that, you know, he referred a bunch and
 3 statistically it was true, but I didn't get -- in
 4 the limited amount of intakes I was doing, he did
 5 not seem to be a high percentage. For whatever
 6 reason I would get Dr. Briggs at Valley Spine it
 7 seemed like quite a bit and then the Cincinnati
 8 guy, Maurer, that's who that was, Jason Maurer,
 9 at Werkmore and Vernon Place, but I didn't hit
 10 Floros very much.
 11 Q. Would you estimate more than ten?
 12 A. It would be a pure guess, but I would say
 13 probably, yes, more than ten, but not -- I mean,
 14 if you said 30, I would say, no. So again, I'm
 15 just guessing. That was never any significance
 16 to me. You know, I have no -- I would have no
 17 reason to recall that even tomorrow on where the
 18 cases came from.
 19 Q. Okay. So your experience with Floros was a lot
 20 more limited compared to some of the other chiros
 21 that you dealt with --
 22 A. Yeah --
 23 Q. -- at KNR?
 24 A. -- it just seemed like I ended up speaking to --
 25 I never got the close ones when the phone rang.

429

1 And as far as I know, it was just random. You
 2 know, I got Toledo, Dr. Lee-Seyon out there and
 3 Dayton and Cincinnati often. Not hardly any
 4 Canton or Akron.
 5 Q. Okay. We're going to go back to I guess your --
 6 I guess it's Exhibit 1, the affidavit --
 7 A. Uh-huh.
 8 Q. -- Plaintiff's Exhibit. Can you pull that back
 9 out?
 10 A. Yeah, let me see if I can find it.
 11 Q. Okay. I just want to verify paragraph two, if
 12 you can go to that.
 13 A. Yep.
 14 Q. You mentioned, while I was working for Slater &
 15 Zurz, I first learned that KNR paid kickbacks to
 16 certain chiropractors in the form of narrative
 17 fees?
 18 A. Right.
 19 Q. Do you have any evidence that Floros, Dr.
 20 Floros --
 21 A. Yeah, he was a big referral source. That's --
 22 Q. Well, did they mention Dr. Floros when they
 23 said --
 24 A. Yeah.
 25 Q. -- that there was a kickback?

430

1 A. It was really -- you know, John Lynett's
 2 affidavit is not shocking because he has to
 3 defend his own behavior, but John Lynett dealt
 4 with Dr. Floros all the time and they absolutely
 5 referred to it in terms substantially similar to
 6 a kickback.
 7 Q. Well, how do you define "kickback"?
 8 A. It is payment in return for -- an illicit payment
 9 in return for something.
 10 Q. In return for something?
 11 A. In this case, you know, they're paying Dr. Floros
 12 200 bucks for referrals, and I know as we already
 13 covered they do it either way, but that's what it
 14 is.
 15 Q. And you heard John Lynett tell you that he pays
 16 illicit payments for referrals?
 17 A. Substantially similar language to that, yes.
 18 Q. Can you state the exact language that he used --
 19 A. I cannot say it, no. I mean, now we're talking
 20 about things that whenever this whole procedure
 21 first started, ten, 12 years ago, whenever Rob
 22 invented the narrative report thing, according to
 23 Brandy. So, no, I don't remember.
 24 But I absolutely remember crystal clear that
 25 they resented the fact that they had to do that,

431

1 but that was the cost of doing business,
 2 otherwise it would all go to KNR.
 3 Q. So you only heard this from John Lynett though,
 4 you didn't hear this from Floros?
 5 A. No, I don't know that I ever had a direct
 6 face-to-face conversation with Floros in my life.
 7 Q. So any speculation you have here about Floros,
 8 the kickback, is a speculation because you
 9 haven't actually talked about it with him?
 10 A. He certainly never admitted to me that he was
 11 accepting or soliciting kickbacks from people.
 12 MR. PATTAKOS: I'm going to object
 13 to speculation. There's a difference
 14 between -- you guys keep using speculation
 15 as to refer to reasonable inferences, so
 16 I'm just going to object to that.
 17 MR. MANNION: No, you're just
 18 trying to coach the witness, Peter, so call
 19 it what it is.
 20 MR. PATTAKOS: Okay.
 21 BY MR. KEDIR:
 22 Q. Next it says -- let's see here, I'm trying not to
 23 go over some of the questions we already talked
 24 about here --
 25 MR. PATTAKOS: When the Court has

432

1 to construe all reasonable inferences in
 2 the plaintiff's favor --
 3 MR. MANNION: Would you stop it?
 4 MR. PATTAKOS: -- are you going to
 5 accuse the Court --
 6 MR. MANNION: Stop it.
 7 MR. PATTAKOS: -- of speculating?
 8 MR. MANNION: Stop it.
 9 MR. PATTAKOS: It will be your
 10 appeal brief.
 11 BY MR. KEDIR:
 12 Q. Lets go to actually paragraph three.
 13 A. Okay.
 14 Q. It says I always understood that narrative
 15 reports were properly used to allow medical
 16 professionals to explain why plaintiff's injuries
 17 were different or more challenging than they
 18 might appear from the contents of the medical
 19 records --
 20 A. Uh-huh.
 21 Q. -- and in doing so provides information that was
 22 not included in the records?
 23 A. Oh, yeah, that's fair.
 24 Q. Who told you this?
 25 A. Pardon me?

433

1 Q. Who told you this?
 2 A. That's based on my experience in litigation.
 3 Q. Just your experience?
 4 A. Seminars, stuff like that. I mean, based on the
 5 sum total of my experience. So a conversation
 6 with other lawyers, my personal experience. All
 7 that stuff. I mean at Slater & Zurz until they
 8 started paying what's his name, Floros, you know,
 9 it was a thoughtful consideration before you do a
 10 narrative report. You know, why do I need it?
 11 What is it going to accomplish? Is it going to
 12 benefit the client in relation to the amount of
 13 money that we're spending. And that's why -- I
 14 mean, Slater & Zurz and KNR, they don't pay
 15 anybody else narrative report fees. They don't.
 16 Not routinely. You can scoff all you want, but
 17 show me that, you know, Dr. Tubbs of Cuyahoga
 18 Falls is getting narrative report fees every time
 19 he -- every time they have a case with him. Show
 20 me that Dr. Favor at Akron Injury on V Odom is
 21 getting a narrative report fee every time they
 22 have a case with him. They're not.
 23 Q. And if they did get a referral fee you would
 24 assume -- speculate or --
 25 A. Well, if they did it every now and then, I would

434

1 suspect that there was reasonable grounds for it.
 2 If they were doing it every time, then it's a
 3 kickback.
 4 MR. PATTAKOS: You said "referral
 5 fee", did you mean narrative fee?
 6 MR. MANNION: Yeah, you did say
 7 referral fee.
 8 THE WITNESS: Yeah, and I'm --
 9 MR. KEDIR: Narrative fee. Yeah,
 10 I'm sorry, narrative fee.
 11 A. And I answered your question, I should have
 12 clarified it. I heard --
 13 Q. Yeah, I should have -- I messed --
 14 A. -- I assumed that that's what you were referring
 15 to.
 16 MR. PATTAKOS: You assumed he was
 17 referring to narrative fee?
 18 THE WITNESS: Narrative fee, yes,
 19 yes.
 20 MR. RUBIN: But he did say referral
 21 fee.
 22 THE WITNESS: Right. Right.
 23 BY MR. KEDIR:
 24 Q. But you just talked about earlier that these
 25 reports are beneficial for other purposes just

435

1 than that -- this, correct? Then this then --
 2 for where the injuries are challenging and
 3 difficult?
 4 A. There can be circumstances, sure, but that's a
 5 case by case base determination that you have to
 6 make. You can't just blanket say, we're doing
 7 them all the time. That's ridiculous. Because
 8 they don't do it all the time.
 9 If it's valuable all the time in Plambeck
 10 ones, why isn't it valuable all the time in
 11 Dollison Chiropractic out of Cambridge cases?
 12 I mean you're going to have to convince
 13 someone of that, if not me, that either every
 14 case needs one or every case doesn't. What makes
 15 -- what makes Dr. Floros and the Plambeck guy so
 16 special.
 17 Q. So you think every case should be treated --
 18 follow the same format and the same --
 19 A. No --
 20 Q. -- medical care?
 21 A. -- everyone should be on its own facts. And once
 22 you do virtually -- and because you're doing
 23 virtually every one the same, then to me that --
 24 well, there's more than that. I've already
 25 explained all the reasons why I think it's a

436

1 kickback or why it is a kickback. It just is.
 2 Q. Well, you're calling it a kickback, but you also
 3 testified that he puts time and effort into these
 4 reports?
 5 A. He does, but I don't know how much. And frankly
 6 the fact is 200 bucks to me suggests also that
 7 it's not that valuable. I mean, if it was really
 8 valuable, he'd charge for it. I mean, he barely
 9 -- a real doctor, a regular doctor, you can't get
 10 a narrative report for 200 bucks, you know, MDs,
 11 DOs.
 12 Q. Do you have any proof or is this speculation?
 13 A. It's not speculation. It's based on my 15 years
 14 of litigation experience, conversations with
 15 other lawyers, CLEs, all that kind of stuff.
 16 Nobody charges 200 bucks for a narrative report,
 17 not nobody, but that's hyperbole. The amount of
 18 people, it's got to be tiny.
 19 And I don't understand how suddenly it went
 20 from -- and I'm sure there's evidence out there
 21 that supports this -- KNR went none, none, none,
 22 none with Dr. Floros, none with Dr. Floros and
 23 all of a sudden it's like a switch, all of them.
 24 MR. MANNION: Objection.
 25 A. Or virtually all of them.

437

1 MR. MANNION: Objection. Move to
 2 strike.
 3 A. I'm speculating like crazy right there.
 4 Q. I'm glad you're speculating.
 5 A. It's a little bit frustrating because I mean -- I
 6 probably shouldn't say this --
 7 Q. Say it.
 8 A. Some of you in this room are being obtuse
 9 because it's your job. It's a kickback. And
 10 that I'm trying to push water up hill when you're
 11 essentially paid to not believe me or paid --
 12 when I was a defense lawyer, I used to say I made
 13 -- I was a lemonade manufacturer. Life gives you
 14 lemons, you make lemonade. So it doesn't matter
 15 what people tell you, you twist it, squeeze it,
 16 add a little sugar to it, now it's something I
 17 can use. So to be in this setting where I really
 18 believe in the -- that some of you in this room
 19 know what I'm saying is true, but you can't just
 20 say it because you're getting paid to do
 21 something else.
 22 Q. So you think all of the other attorneys that work
 23 on these cases and accept --
 24 A. Some of those guys -- oh, you should finish your
 25 question.

438

1 Q. -- and accept the narrative fee payment, that all
 2 of those cases are people engaged in kickback
 3 schemes, all of those attorneys?
 4 A. The ones at KNR who do that.
 5 Q. Any attorney who does it?
 6 A. If you have a procedure where you're paying a
 7 chiropractor over and over and over -- a certain
 8 group of chiropractors and no others on virtually
 9 every instance that you're paying a narrative
 10 report fee to that doctor, then there's a strong
 11 possibility that it's a kickback. I'm just
 12 guessing. I don't have any personal experience
 13 with that. In this case I do.
 14 You know, Brandy said the thing about Rob
 15 inventing the narrative report thing, that's when
 16 business really took off. They're all the things
 17 I talked about. The other chiropractor telling
 18 me that, you know, look, if you want any cases
 19 out of me, you've got to give me -- essentially,
 20 you're going to have to get a narrative report
 21 fee every time.
 22 Q. But this was not Dr. Floros that told you that?
 23 A. No, it was not. It was -- 90 percent certainty
 24 it was the West Tusc guy, but I don't remember
 25 who. That was prior to me starting there, at

439

1 KNR.
 2 Q. Do you think Dr. Floros would have any reason to
 3 know that he should have additional information
 4 in his narrative reports to make it more valuable
 5 as you would call it?
 6 A. Would he have any reason to know? No, probably
 7 not.
 8 Q. Because he doesn't practice law, correct?
 9 A. Correct.
 10 Q. And he doesn't submit it to the insurance
 11 company?
 12 A. He doesn't, nope.
 13 Q. In fact, he doesn't submit it to the client
 14 either, correct?
 15 A. That's -- the client has no use for it, that I'm
 16 aware of.
 17 Q. So it's just an exchange between him and the
 18 attorney?
 19 A. Yep. He sends it to the lawyer, the lawyer does
 20 with it whatever they do.
 21 Q. And the attorney doesn't have to necessarily
 22 collect that from the client?
 23 A. Collect what?
 24 Q. The narrative fee.
 25 A. No, no. The law firm could eat that cost.

440

1 Q. And sometimes they don't collect it from the
 2 client, correct?
 3 A. I don't know that.
 4 Q. Well, if the case isn't settled then they have to
 5 eat that cost, correct?
 6 A. Yeah, yeah.
 7 Q. You said a narrative fee is paid on every case
 8 that Floros sends him?
 9 A. No, not -- virtually every, I think was the words
 10 I used.
 11 Q. Virtually every?
 12 A. Yes. I know they had a prohibition against doing
 13 it for minors, stuff like that, but to me that
 14 was -- that's only because typically they -- you
 15 barely treat minors. Insurance companies don't
 16 like soft-tissue injuries on minors, as you guys
 17 probably know. So they expect them to heal
 18 better with very little treatment. So if a guy
 19 goes for -- or a kid, eight-year-old kid goes for
 20 six visits to a chiropractor, the bill is only
 21 going to be 300 bucks, the settlement is going to
 22 be 500, pay Dr. Floros 200. How are you going to
 23 get that case settled? You're not. So no
 24 narratives for little kids because Floros isn't
 25 going to treat them.

441

1 Q. Would Floros charge a narrative if the patient
 2 stopped treating early, if you know?
 3 A. I don't know.
 4 Q. Let's go to -- let's go to paragraph four.
 5 A. Yes.
 6 Q. You said I soon learned that these narrative
 7 reports ordered by KNR were very different from
 8 narrative reports I was customarily using --
 9 A. Uh-huh.
 10 Q. -- and were essentially worthless, containing no
 11 information that was not already apparent from
 12 the client's medical records.
 13 A. Right.
 14 Q. We already went through this before, but it's --
 15 do you stand by that statement?
 16 A. Yeah. I don't think even these ones have much
 17 value. You know, he repeats the studies and
 18 stuff like that that --
 19 Q. Yeah, let me clarify it. That contains
 20 information readily -- already apparent from the
 21 client's medical records?
 22 A. It does contain some. These are better than the
 23 ones that I historically had seen --
 24 MR. PATTAKOS: You're -- just to
 25 be clear, you're referring --

442

1 MR. MANNION: Stop it. He's in
 2 the middle -- stop it --
 3 MR. PATTAKOS: You're referring to
 4 --
 5 MR. MANNION: -- he's in the
 6 middle of an answer.
 7 MR. PATTAKOS: -- you're referring
 8 to Monique Norris and Thera Reid's
 9 narrative reports?
 10 THE WITNESS: Yes.
 11 MR. MANNION: Peter, this is
 12 craziness. He was in the middle of an
 13 answer.
 14 THE WITNESS: As it turns out he's
 15 exactly correct.
 16 MR. MANNION: But he has to wait
 17 until you stop and then he can try to
 18 clarify.
 19 A. Nonetheless --
 20 MR. MANNION: Don't shake your
 21 head, you're not allowed to do that.
 22 A. -- the narratives that I've seen today, I have
 23 not seen before today. And as I said, they seem
 24 to have evolved. I have a mental image of what
 25 they used to look like way back when and they

443

1 were ridiculous. And maybe Slater & Zurz's are
 2 different, maybe he did a different one for
 3 Slater & Zurz. I'm not sure. And maybe those
 4 are the ones I have in my head where it's
 5 essentially fill in the blank, yes/no, yes/no, I
 6 don't know that because I never -- I would only
 7 have seen them incidentally.
 8 And then the ones I saw at KNR, at least the
 9 ones I handled, again, seemed to be different.
 10 My recollection is anyhow seemed to be different
 11 than the ones I've seen here today.
 12 Q. Okay. But the ones you see here today --
 13 A. Those are more advanced.
 14 Q. They're more advanced. And they contain
 15 information that is not from the medical records?
 16 A. They do. Nonetheless I would still contend that
 17 they have no value.
 18 Q. And it would take you, I think you approximated,
 19 maybe an hour to go through Thera Reid's --
 20 A. Yeah.
 21 Q. -- and have a similar --
 22 A. -- an hour.
 23 Q. Do you know how much Dr. Floros gets paid per
 24 hour when he testifies?
 25 A. When he testifies, no, I do not. My recollection

444

1 is they cut separate deals on those, it depends
 2 on who you're -- what law firm you were with.
 3 Q. If I told you a doctor would charge \$500 per hour
 4 for testimony, do you think that's unusual?
 5 A. I think that's more than what my recollection is
 6 for Dr. Floros with a friendly law firm, but as
 7 far as like an MD, a specialist, something like
 8 that, then I'm not surprised by that at all. And
 9 I'm certain there are some that would charge more
 10 than 500 an hour.
 11 Q. Okay. And it's your belief that when he produced
 12 this narrative report, he should have done it for
 13 free?
 14 A. No, I don't think the narrative report was
 15 necessary. That's my perspective. I don't think
 16 the narrative was necessary. I think the
 17 narrative report is a pretense for a kickback.
 18 Q. But when they request Floros, he should be able
 19 to get compensated for his work, correct?
 20 A. I don't really know how to answer that question.
 21 I don't think it's worth 200 bucks because most
 22 of these soft-tissue injury cases you don't need
 23 one at all, which is why KNR doesn't get one from
 24 any other chiropractor not affiliated with
 25 Plambeck.

445

1 Q. I'm just saying, the fact when they order it from
 2 Floros, Floros is allowed to charge for work he
 3 performs, correct?
 4 A. Yeah. If you do work, you should get paid for it
 5 as a general principle. But you understand the
 6 distinction that I'm trying to make that, you
 7 know, they're really not valuable to the case so
 8 it shouldn't have been ordered in the first
 9 place.
 10 Q. I'm looking at it from Floros' position, he put
 11 work --
 12 A. Right --
 13 Q. -- and put time into this.
 14 A. -- I understand. I understand.
 15 Q. They weren't just paying him for doing nothing
 16 whether you think it's valuable for the end of
 17 the case, Floros was putting --
 18 A. Yeah, he did some kind of work.
 19 Q. And up to an hour is what you estimated on --
 20 A. Well, I don't know how long it would take him. I
 21 said I'm out of practice and all that kind of
 22 stuff, so --
 23 Q. It's just your guess it was?
 24 A. Yeah.
 25 Q. I think you said the narrative report provided --

446

1 next in that same paragraph you said the
 2 narrative report provided by Dr. Minos Floros for
 3 Akron Square Chiropractor, a Plambeck-owned
 4 clinic in Akron, were especially bad and the
 5 worst narratives I've ever seen.
 6 A. Yeah.
 7 Q. Who had better narrative reports?
 8 A. Everybody.
 9 Q. Everyone.
 10 A. You know, regular MDs, DOs, stuff like that. I
 11 mean, you can really get -- and sometimes they're
 12 a very important tool to, you know, explain what
 13 somebody's future is going to hold with respect
 14 to future medical care.
 15 And even the blurb he put in the example that
 16 we used today, you know, \$5,000, well, \$5,000 for
 17 what? What kind of treatment are they going to
 18 need? When are they going to need it? How often
 19 is that going to be? Where is this \$5,000 number
 20 coming from?
 21 Those are the kind of things that you see in
 22 a typical narrative report. He's going to need
 23 rehabilitative care. He's probably going to have
 24 to go -- I'm speculating as to what might be in
 25 another more valuable report, but what kind of

447

1 treatment it is, why he's going to need it, not
 2 just, oh, he's going to need 5,000, so an
 3 insurance company is not going to pay for that.
 4 Q. Those narrative reports you're talking about, the
 5 other ones you see, what doctors?
 6 A. I don't recall any names. I mean, we're
 7 talking--
 8 Q. You don't recall any. Okay. Were they medical
 9 doctors?
 10 A. Yeah, I almost never get a chiropractor.
 11 Q. How much do they charge for those reports?
 12 A. Significantly more, way more?
 13 Q. Significantly more.
 14 A. Yep. Way more.
 15 Q. On a smaller case that went to litigation, would
 16 you want to charge an expert report for that --
 17 A. No --
 18 Q. -- significantly more than \$200?
 19 A. -- definitely not. I won't pay the 200 bucks on
 20 a little case.
 21 Q. But you talked about how if it goes to court you
 22 need an expert report?
 23 A. Yeah, once it goes to litigation, I need an
 24 expert report.
 25 Q. And sometimes cases don't go to -- aren't filed

448

1 to go to court for like two years, until the
 2 statute of limitation --
 3 A. Exactly.
 4 Q. And then sometimes --
 5 A. So you have plenty of time to settle without
 6 spending the 200 bucks.
 7 Q. Sometimes it doesn't go to trial say for another
 8 six months or three months?
 9 A. Yes, absolutely.
 10 Q. You think it's better to get a report then --
 11 A. Yes.
 12 Q. -- two and a half years later?
 13 A. Yes. The doctor -- if the doctor is going to
 14 testify, he or she is going to need to be fresh
 15 about what the treatment was, what the medical
 16 record was, they typically do a review. So
 17 getting the report is absolutely, especially the
 18 expensive one, better later than early.
 19 Q. But the less expensive one if you're going to
 20 have a chiro testify, chiropractor testify --
 21 A. Uh-huh.
 22 Q. -- and the treatment was just chiropractic
 23 treatment they received, wouldn't it be better to
 24 have him do the -- prepare the report right after
 25 he got done treating her so he can add in other

449

1 things that are not in the medical that he
 2 realized about the case?
 3 A. He or she has an obligation to put in the
 4 relevant stuff in the medical records. I mean
 5 that's part of the doctor's --
 6 Q. Right, but we're talking about expert reports
 7 here --
 8 A. Right --
 9 Q. -- narrative reports.
 10 A. -- but he -- anything that's relevant, he or she
 11 is going to be able to look at later and get out
 12 of the medical records. He's not going to store
 13 relevant information about a particular patient
 14 in his head and then write in down in a narrative
 15 report in the event he's asked.
 16 Q. But he might be able to spend less time on it if
 17 he just finished treating the patient, correct?
 18 A. That's possible. He may be able to do it without
 19 consulting the medical records because it's all
 20 fresh in his or her memory, sure.
 21 Q. And that might reflect a lower fee than say if he
 22 had to do it two and a half years --
 23 A. It might. It might.
 24 Q. Next you said they appear to follow a basic
 25 formula of a few sentences where Floros merely

450

1 filled in the blanks with information that was
 2 readily apparent from the medical records.
 3 A. Uh-huh.
 4 Q. I won't -- we won't go through this again as far
 5 as the difference between what's in the narrative
 6 report and the medical records, but I think you
 7 agreed, at least for Thera Reid, although --
 8 maybe if you really want to, real quick, glance
 9 at Monique Norris --
 10 A. Which is -- which letter is she?
 11 Q. I think you already have her narrative report.
 12 And I'll turn these in as an exhibit.
 13 THE WITNESS: What letter is she,
 14 do you guys know, or number or where she
 15 came from?
 16 MR. KEDIR: I got another copy
 17 here of the narrative.
 18 THE WITNESS: I think it is here.
 19 I just don't know what letter --
 20 MR. PATTAKOS: I've got Exhibit 12
 21 for Monique Norris.
 22 THE WITNESS: So it's a numbered
 23 yellow.
 24 MR. PATTAKOS: It's Plaintiff's
 25 Exhibit 12.

451

1 THE WITNESS: Okay.
 2 MR. PATTAKOS: Here it is.
 3 THE WITNESS: Okay.
 4 A. Yes, I have it in front of me now.
 5 MR. KEDIR: All right. And her
 6 medical records haven't been introduced as
 7 an exhibit yet, right? Correct?
 8 MR. MANNION: I can't remember if
 9 we did Norris or not.
 10 MR. PATTAKOS: Monique's medical
 11 records?
 12 MR. KEDIR: Yeah.
 13 MR. PATTAKOS: They were exhibits
 14 to previous depositions, but not this one.
 15 MR. KEDIR: Okay. I know I have
 16 other copies. Let me just give you that.
 17 We'll mark that --
 18 THE WITNESS: Those are the
 19 records that correspond with the report
 20 apparently.
 21 MR. PATTAKOS: Can I have a copy,
 22 Shaun?
 23 MR. KEDIR: Yeah, I'm looking
 24 for --
 25 - - - -

452

1 (Thereupon, Defendant's Exhibit N was marked
 2 for purposes of identification.)
 3 - - - -
 4 Q. I apologize for that delay. Can you just review
 5 those medical records and the narrative report.
 6 A. Is there anything in particular I'm looking for?
 7 Q. I just want, similar to Thera Reid's --
 8 A. Oh, okay.
 9 Q. -- is there information that's in the narrative
 10 report that is not in the medical records? Or
 11 does the narrative report contain the same
 12 information that's in the medical records?
 13 A. No airbag, red light, left shoulder -- not much
 14 immediately comes to mind as being contained in
 15 the report versus the medical record. I mean he
 16 does give an opinion that probably would be
 17 inadmissible in court with respect to permanent
 18 opinion -- or permanent injury because he just
 19 says any trauma can cause it.
 20 Q. I'm not -- I don't want you to evaluate the
 21 report necessarily, I'm just asking if it
 22 contains the same information as the medical
 23 records or is it different?
 24 A. They're largely the same. What her complaints
 25 were, what he did, what his diagnosis was, it's

453

1 largely the same.

2 Q. That's contained in the medical --

3 A. Correct.

4 Q. -- report?

5 A. Yes.

6 Q. Where in the report does it say, in my opinion,

7 upon reasonable -- sorry. Where in the medical

8 records does it say, in my opinion, based on

9 reasonable chiropractic probability, the injuries

10 that Monique Norris sustained were due to motor

11 vehicle --

12 A. I didn't see that. Like I said, it's largely the

13 same.

14 Q. You say largely, but there's several things that

15 are --

16 A. Yeah.

17 Q. Like what is the same that you see in there

18 that's in the medical records?

19 A. The complaints that she had, the treatment that

20 he performed. What her -- the fact that she went

21 to the emergency room. What she complained of at

22 the emergency room. The fact that the low back

23 was not an issue at the emergency room, which she

24 states alternatively is -- it was a gradual onset

25 or something like that he said. He opines as to

454

1 the possibility of chronic conditions which that

2 is different. There's no reason to say that in

3 the medical record. The postural stuff being out

4 of align, that's reflected in the medical

5 records. I'm sure there's more.

6 Like I said it's large -- to me -- and I

7 suppose is relative and subjective and all that,

8 but to me it's largely the same.

9 Q. But it does contain different language?

10 A. It does, it does, granted.

11 Q. Okay. Back to the affidavit --

12 A. Uh-huh.

13 Q. -- paragraph -- what is it, four? It says it was

14 clear that virtually no time or effort could have

15 been expended on this worthless narrative --

16 A. Uh-huh.

17 Q. -- certainly no effort --

18 A. Yes.

19 Q. -- remotely justified for the fees being paid.

20 I know we already discussed at least Floros

21 would be entitled to getting paid for producing

22 these narrative reports, correct?

23 A. Yes.

24 Q. And he might have spent, as you estimated, almost

25 an hour, correct?

455

1 A. Well, like I said, I believe that there was an

2 evolution of what the narrative reports look

3 like. And the ones that I can recall seeing, but

4 of course don't have any examples of, those ones

5 are, you know, zero time, in 30 seconds.

6 MR. MANNION: Objection.

7 A. I'm sure Dr. Floros -- well, I don't know. I

8 would suspect Dr. Floros has copies of his older

9 ones.

10 THE REPORTER: Has what?

11 THE WITNESS: Copies of his older

12 narrative reports or perhaps no.

13 MR. PATTAKOS: I think he's

14 required by law to hang on to those.

15 MR. MANNION: The law by Peter

16 Pattakos.

17 MR. PATTAKOS: You saying the Ohio

18 Revised Code doesn't apply there, Tom? We

19 are lawyers. You think it's --

20 MR. MANNION: Well, the rules by

21 Peter Pattakos. He doesn't think it's

22 property of contention in interrogatories

23 even though it says you can't object on

24 that basis, he does.

25 BY MR. KEDIR:

456

1 Q. And on paragraph six --

2 A. Yes.

3 Q. -- you state I told her that I am the lawyer so

4 I'm the one that gets to advise the client as to

5 whether a narrative report is a justifiable

6 expense.

7 A. That's correct. I feel strongly about that.

8 Q. That's your individual lawyer's choice, correct?

9 A. That is correct.

10 Q. And every fact that every case be different as

11 far as attorneys --

12 A. Yeah --

13 Q. -- it stops with the attorney, the attorney makes

14 the choice.

15 A. Again, that's among a number of things that

16 demonstrate clearly that it's a kickback is

17 there's always over and over and over and over

18 and over again there's narrative reports when in

19 other, I'm sure, factually-similar cases with

20 other chiropractors, there is no narrative

21 report. For example, Town & Country doesn't

22 produce reports with that level of frequency and

23 they do lots of soft-tissue cases.

24 Q. Do you ever handle any breach of fiduciary duty

25 cases?

457

1 A. No.

2 Q. Are you familiar with a breach of fiduciary duty?

3 A. Probably not.

4 Q. Probably not?

5 A. Yeah.

6 Q. Can you cite to any evidence showing that Dr.

7 Floros breached the fiduciary duty to his

8 patients?

9 A. No, I'm only vaguely familiar with fiduciary

10 duty.

11 Q. Okay. You said if the cases are settled pre-lit,

12 you have to file it, correct?

13 A. Yeah, I mean as a technical matter, you know,

14 you're going to talk to your client about that

15 first and the client -- I did have a client once

16 who she had social anxiety disorder and she would

17 not file it.

18 Q. And in those cases, did they -- did they usually

19 get higher settlements?

20 A. If you file? That's the goal, but whether or not

21 they usually do, I don't know.

22 Q. Did you have experiences where they gave no

23 offer --

24 A. Yeah --

25 Q. -- and you filed it?

458

1 A. -- I've definitely had experiences where, you

2 know, on the plaintiff's side I had a trial where

3 there's a low offer before trial. I took it to

4 trial, we litigated it, and I lost. And in an

5 act of God injured a pastor --

6 Q. But have you had other cases where you filed --

7 there's zero offer then you filed it and then the

8 insurance company settled --

9 A. Oh, sure. Sure.

10 Q. -- or they offered money?

11 A. Yes, yes.

12 Q. And those cases a narrative report would be

13 involved?

14 A. It was -- again, in most -- as I'm sure you know

15 and I wouldn't disagree with -- in most instances

16 when you're litigating a case, at some point the

17 judge says, you know, we're going to exchange

18 expert witness reports by whatever day and you

19 need one from whoever your testifying witnesses

20 are.

21 Q. But if you already have an expert report, that's

22 helpful than not having an expert report once

23 it's filed, that they know that?

24 A. Yeah. For argument's sake, yeah, it's helpful,

25 but --

459

1 Q. Because otherwise you'd have to pay -- they might

2 think that you have to pay for an expert report

3 and there's extra costs with that?

4 A. Yeah, but you pay for it one way or the other,

5 right?

6 Q. But they already know that you already have those

7 costs --

8 A. Oh, yeah, if they're going to leverage you --

9 yeah, I guess, I suppose sometimes we would do

10 that to people on the defense side is, you know,

11 if it's a little case, they're not going to spend

12 the money on this case, so let's push them to

13 trial.

14 Q. And you have no facts or evidence beside

15 speculation that Dr. Floros knew his reports

16 were --

17 A. No, I don't know anything about Dr. Floros and

18 what he knew. I don't know that he's ever seen

19 anybody else's narrative reports, if he had

20 anything to compare it to.

21 Q. And if you knew an attorney was defrauding a

22 client, would you report them?

23 A. No, no. Not in every case.

24 Q. And --

25 A. It would depend on the circumstances. I mean,

460

1 defrauding, I mean, that's strong language. I

2 mean, if what you're suggesting is stealing money

3 from somebody, yes, of course. But, you know,

4 outright -- you know, an estate case taking

5 money, yeah, I would do that.

6 Q. And you no longer --

7 A. But if what you're suggesting too here without

8 saying it is because I didn't report this, do I

9 think that it was okay? No, I don't think this

10 was okay.

11 Q. Okay. And you said that -- I know you no longer

12 -- you still have your law license, but you no

13 longer practice law?

14 A. Yeah, I don't actively practice law. I mean,

15 very seldom. Occasionally I'll get a DUI that I

16 do as a favor to someone.

17 Q. Okay. And do you ever -- you refer cases still

18 though?

19 A. Yeah, yep. If I have -- people still call me

20 from time to time with injuries and I refer them

21 to people who actively practice.

22 Q. Do you take a cut from the referral fee from

23 that?

24 A. Not always. Sometimes.

25 Q. Sometimes.

461

1 A. Yeah.

2 Q. Do you do any work in those cases?

3 A. Yes.

4 MR. KEDIR: Okay. No further

5 questions.

6 - - - -

7 RE-EXAMINATION OF GARY M. PETTI

8 BY MR. PATTAKOS:

9 Q. Just a few minutes I hope.

10 Do you recall telling me in our previous

11 conversations that a Plambeck chiropractor in the

12 Columbus area told you that Mr. Nestico had lunch

13 with him one day and told him about the narrative

14 fees --

15 MR. MANNION: Objection.

16 Q. -- and the narrative reports?

17 A. I told you about a non-Plambeck doctor --

18 Q. Ah.

19 A. -- who had lunch with Rob Nestico and Rob brought

20 up the idea of narrative report fees paid on

21 cases to him.

22 Q. What do you remember about that?

23 A. That that doctor declined to be involved.

24 Q. What did the doctor tell you about his

25 conversation with Mr. Nestico?

462

1 A. That he had lunch with Rob and Rob brought up the

2 narrative report and if he wanted to get

3 narrative reports -- or produce narrative reports

4 as part of their relationship and he said, no.

5 Q. Who was that chiropractor?

6 A. Kabin Carder. K-a-b-i-n, C-a-r-d-e-r. Now, as I

7 told you in that conversation -- in that

8 conversation, without naming Dr. Carder, he will

9 deny -- he will say he remembers no such thing.

10 He told me that very directly.

11 Q. Why is that?

12 A. Because he doesn't want to be involved. Same

13 reason why he didn't take the narrative report

14 fee in the first place.

15 Q. Is he still practicing?

16 A. He does.

17 Q. Is he a friend of yours?

18 A. We are acquaintances.

19 Q. When was the last time you talked to him?

20 A. Sometime in 2018. He was in the area. His kids

21 do karate, something like that, martial arts. We

22 didn't meet, but he asked me some questions about

23 getting around up here.

24 Q. Let's look back at Exhibit H -- and I'll just

25 show you my copy so you don't have to go digging.

463

1 This is where John -- what did you say his last

2 name was, the investigator?

3 A. Jon Thomas.

4 Q. Jon Thomas.

5 A. Uh-huh.

6 Q. Where Brandy e-mails you and says good call on

7 sending Jon to look for that guy?

8 A. Right.

9 Q. Do you know whether Jon was paid separately for

10 this task?

11 A. I don't know. I have no recollection of that

12 happening.

13 Q. You don't know that he wasn't paid separately --

14 MR. MANNION: Objection.

15 Q. -- for the task either, do you?

16 MR. MANNION: Objection.

17 A. No, I don't know.

18 Q. You don't know either way?

19 A. Right.

20 Q. Exhibit K -- which one -- where is this? Do you

21 have Exhibit K in front of you? Here, I'll just

22 give you my copy.

23 Mr. Mannion was asking you questions about

24 this document --

25 A. Right.

464

1 Q. -- and he suggested that this document was

2 evidence that KNR didn't actually take every

3 case.

4 A. Uh-huh.

5 Q. Is it not clear from this document that the

6 reason the firm didn't take the case in this

7 instance is because there was quote, no insurance

8 coverage anywhere?

9 A. Yeah, there was absolutely no possibility of

10 recovery.

11 Q. So the firm would never take those type of cases,

12 right?

13 A. Correct.

14 Q. And those cases were rare, correct?

15 A. Yes.

16 Q. Exhibit J -- again, I can give you my copy.

17 A. It's here somewhere --

18 Q. I just want to ask you, this e-mail that you sent

19 on June 27th at 12:54 p.m. you write, now I see

20 why people send an e-mail every time they do

21 something.

22 A. Yeah, there was all that cover your rear.

23 Q. What did you mean by that?

24 A. The pervasive at KNR was lots -- like I mentioned

25 earlier, there was an environment of sort of

465

1 snitching and tattletaling and, you know, all
 2 that kind of stuff, so it was a lot of cover your
 3 butt kind of thing going on. If you did
 4 something, you've got to make sure you tell so
 5 everybody knows and later they don't doubt that
 6 it happened or there's less doubt that it
 7 happened.
 8 Q. Okay.
 9 A. There was -- I mean, it was a ruse, and would
 10 complain about all the e-mails that went around.
 11 Why do we need -- why do we need to say this?
 12 Q. Okay. On the phone message -- or the phone
 13 conversation that Tom played the recording of --
 14 A. Yes.
 15 Q. -- one of the things you said on that phone call
 16 -- and I'm certainly not going to ask Tom to
 17 replay it -- but you discussed one of the
 18 benefits of working with a big firm --
 19 A. Right.
 20 Q. -- you said one of the benefits is we'll go to
 21 trial.
 22 A. Uh-huh.
 23 Q. Is that something you were coached or trained to
 24 say?
 25 A. No, I can't recall that, but, again, I know and

466

1 it had already come up, that, you know, when --
 2 that they review the calls that it doesn't --
 3 that don't go well. So I'm, to the extent my
 4 personality will allow it, I'm trying to sell the
 5 guy.
 6 Q. You're performing?
 7 A. Yes.
 8 MR. MANNION: Objection. Move to
 9 strike.
 10 Q. And you said earlier that you weren't aware that
 11 any of the hundreds of cases you handled at KNR
 12 ever went to trial, correct?
 13 A. I don't believe any did.
 14 Q. Okay. When we -- strike that.
 15 You've been testifying all day at various
 16 points about the narrative reports for Monique
 17 Norris and Thera Reid, Exhibits, I believe
 18 they're 12 and 13. And you said that it would
 19 probably take an hour to summarize all the
 20 information from Ms. Reid's records to put it in
 21 a one-page report or summery.
 22 Assuming it was worth it to the client for
 23 someone to do that, if you did that work as the
 24 KNR attorney, the client wouldn't get charged for
 25 it separately, would they?

467

1 A. No, they wouldn't.
 2 Q. It would be --
 3 A. Yes.
 4 Q. -- covered under the contingency fee, fair?
 5 A. And often you really have that. I mean, what
 6 they produce in terms of, you know, of a cover
 7 page gives you -- and I'm just calling it a cover
 8 page, I don't know what they call it, but there's
 9 a -- you know, as part of the settlement demand
 10 or package, there's sort of a, you know, date of
 11 the accident, visit to this emergency room,
 12 follow-up with this doctor, not every day, but
 13 you get a thumbnail of, you know, this was the
 14 accident and this is what the treatment was, who
 15 it was with and what it all cost.
 16 Q. What do you mean you get a thumb -- what are you
 17 referring to here?
 18 A. Something that -- well, when they create it --
 19 Q. When who creates what?
 20 A. When the paralegal creates whatever KNR calls
 21 it -- settlement package I think is what they
 22 call it -- as part of that, of course, there's
 23 sort of like an index, so you get, you know,
 24 these are the reports -- you can see all the
 25 different places they've gone for care. You can

468

1 see when the accident was, what the first medical
 2 visit was, how long the treatment in total
 3 lasted, how long it lasted at each of the
 4 providers. You don't see on that the parts of
 5 the body that are necessarily injured, but that's
 6 easy enough to look at. You know, you look at
 7 and go, okay, it was a shoulder injury, neck
 8 injury. Prognosis, you know, on the last page.
 9 She's 90 percent recovery. Discharge maximum
 10 medical improvement, done. That kind of thing.
 11 Once you have that summary it is that fast. It's
 12 30 seconds.
 13 Q. You -- so, you know, when you say it would take,
 14 probably take you about an hour to summarize all
 15 the information from Ms. Reid's medical records,
 16 you would agree that it would also take a
 17 well-trained, smart paralegal, the same amount of
 18 time, correct?
 19 A. Yeah -- well, probably less, again, because I'm
 20 out of practice and how to do it, and they're
 21 keeping track of it as it goes so they've got
 22 some familiarity with where the treatment has
 23 already been. You know, they're -- typically
 24 they're pounding on medical providers because
 25 they've got stuff that they're waiting on. You

469

1 know, records of bills that they can't get from
 2 the Cleveland Clinic so by the time it comes in,
 3 they know it.
 4 Q. And KNR has a lot of paralegals, don't they?
 5 A. Yeah, it was one to one when I was there. One
 6 paralegal for each pre-lit lawyer.
 7 Q. Mr. Mannion was asking you about how Dr. Floros'
 8 narrative reports would include an opinion as to
 9 how much it would cost to stabilize the client's
 10 condition. You recall?
 11 A. I do.
 12 MR. MANNION: I'm going to object.
 13 I didn't say Dr. Floros. I was talking
 14 about a specific report.
 15 Q. You would expect, wouldn't you, that that amount
 16 would correspond with the sweet spot that you
 17 identified earlier in terms of what the typical
 18 --
 19 MR. MANNION: Objection.
 20 Q. -- course of treatment on a soft-tissue case
 21 would be, wouldn't you?
 22 MR. MANNION: Objection --
 23 A. I really didn't understand that part of the
 24 narrative report as I read it. You know, I'm not
 25 talking -- I wasn't sure -- it seemed to be

470

1 suggesting that he was talking about some kind of
 2 future care beyond what he had already done. But
 3 I already criticized that, when I was talking
 4 earlier about, well, what's it for? Why? You
 5 know, she had various different parts of her body
 6 that were injured. Which ones are going to need
 7 treatment? What kind of treatments are those?
 8 Why is it five grand and not six or ten or two?
 9 Those are lacking I think.
 10 Q. That information wasn't included in the narrative
 11 reports?
 12 A. Right.
 13 Q. To John Lynett's affidavit --
 14 A. Yeah.
 15 Q. -- you testified that he understood the narrative
 16 report was a kickback and he paid it anyway.
 17 MR. MANNION: Objection. Move to
 18 strike.
 19 Q. He made that clear to you, but you don't remember
 20 the exact words?
 21 MR. MANNION: Objection. Move to
 22 strike.
 23 A. Yeah. John and I were not close, John would
 24 agree to that. I don't think he actively
 25 dislikes me or disliked me. I certainly didn't

471

1 actively dislike him, but it was a big enough
 2 issue around Slater & Zurz that I was well aware
 3 that's how they regarded it. And, in fact,
 4 they -- Slater & Zurz told me that if I wanted to
 5 offer the same thing to the chiropractors who
 6 referred me cases, that they would be willing to
 7 do that.
 8 Q. This is while you were at Slater & Zurz?
 9 A. Correct.
 10 Q. Okay. John Lynett has been handling -- oh, I'm
 11 sorry, strike that.
 12 John Lynett handles a lot of personal injury
 13 cases, correct?
 14 A. As the far as I'm aware.
 15 Q. He deals with a high volume of cases?
 16 A. Yep. Yes.
 17 Q. Fair to call him a workhorse who makes a lot of
 18 money for his firm?
 19 MR. MANNION: Objection.
 20 A. He works an awful lot. At least he did when I
 21 was there.
 22 MR. MANNION: Do you know him,
 23 Peter?
 24 Q. It's --
 25 MR. MANNION: For you to slam him

472

1 is ridiculous.
 2 MR. PATTAKOS: How is it slamming
 3 him to call him a workhorse who makes a lot
 4 of money for his firm?
 5 MR. MANNION: No --
 6 MR. PATTAKOS: Do you want to
 7 explain that?
 8 MR. MANNION: -- I know what
 9 you're implying -- yeah. What you're
 10 implying here. You just talked about
 11 kickbacks and him knowing it, it's BS and
 12 you know it.
 13 BY MR. PATTAKOS:
 14 Q. John likes his job, right?
 15 A. He's a partner I think. I don't know what he
 16 does, honestly. Again, John and I weren't close.
 17 He was very protective of his stuff and, again,
 18 it was a different business model at Slater &
 19 Zurz than it was at KNR. You know, you cultivate
 20 a referral source, that's yours. So, you know, I
 21 didn't have much of anything to do with -- that's
 22 why I didn't have anything to do with Floros.
 23 Prior to Floros showing up -- Akron Square, I
 24 dealt with Akron Square and I dealt with the
 25 doctors who were there and we never paid any

473

475

1 narrative reports. Sometime after Floros showed
2 up, they started paying narrative reports. And I
3 didn't -- I didn't -- I never, I don't think,
4 ever met Floros. I think John was the first guy
5 to go there so that became John's referral source
6 instead of mine.

7 So, he was sort of his own guy. And, you
8 know, John inserted himself in this litigation
9 for whatever reason, so if he has any hard
10 feelings about me talking about it, it's his
11 fault.

12 But he used to be closer with some of the
13 lawyers there. When I first started there, we'd
14 all go to lunch and John would be included but at
15 that point he had some kind of power struggle
16 where he played himself off the other two
17 partners who were there at the time, the other
18 two junior partners, and however that resolved,
19 after that there was no more everybody goes out
20 to lunch, John kept to himself.

21 MR. MANNION: Nobody likes him
22 anymore, huh?

23 THE WITNESS: Well, I don't know
24 about if anybody likes him --

25 MR. MANNION: Oh, come on.

1 are they paying it then? Tell me.

2 MR. MANNION: Because these
3 doctors spend good time doing it and it
4 increases --

5 THE WITNESS: Why are they asking
6 for it?

7 MR. MANNION: -- the value of
8 their cases.

9 THE WITNESS: It does not. Then
10 why don't they do it in every case?

11 MR. MANNION: They would get them
12 in every case if the doctors would agree.

13 THE WITNESS: And doctors are
14 refusing?

15 MR. MANNION: No, because it takes
16 a lot of time. They make more money seeing
17 patients.

18 THE WITNESS: That's baloney and
19 you know it.

20 MR. MANNION: You are
21 unbelievable.

22 THE WITNESS: I'm very believable.
23 This is exactly what happened.

24 MR. MANNION: Yeah, right.

25 THE WITNESS: I was there, you

474

476

1 THE WITNESS: -- I just -- Tom --

2 MR. MANNION: This is ridiculous.

3 THE WITNESS: Tom, you're
4 mischaracterizing what I said. I said I do
5 not dislike John.

6 MR. MANNION: You've already
7 called him a liar. I'm not
8 mischaracterizing anything. I'm ashamed of
9 you.

10 THE WITNESS: You don't know
11 him --

12 MR. MANNION: Yeah, I --

13 THE WITNESS: -- and you know the
14 truth --

15 MR. MANNION: No, I don't.

16 THE WITNESS: -- I'm ashamed of
17 you.

18 MR. MANNION: I know the truth and
19 you know --

20 THE WITNESS: I'm ashamed of you
21 because you know it's a kickback and know
22 --

23 MR. MANNION: Oh, that's such
24 bullshit --

25 THE WITNESS: You know it is. Why

1 weren't. You're calling me a liar and
2 you're expecting me to be civil.

3 MR. MANNION: No, I'm not saying
4 you're lying. I'm saying --

5 THE WITNESS: You are, you are --

6 MR. MANNION: -- you come to a
7 speculative conclusion --

8 THE WITNESS: -- that's the
9 wonderful thing about --

10 MR. MANNION: -- a speculative
11 conclusion --

12 THE WITNESS: I was there. I was
13 there. I heard John Lynett. I heard the
14 other lawyers at Slater & Zurz. So, again,
15 now you're calling me a liar because
16 there's no speculation, I'm telling you I
17 heard it.

18 MR. MANNION: Okay.

19 BY MR. PATTAKOS:

20 Q. Mr. Petti, is --

21 THE WITNESS: Don't shake your
22 head -- well, you can shake your head all
23 you want, it doesn't change the truth and
24 you know the truth --

25 MR. MANNION: I know --

477

1 THE WITNESS: -- but you're
 2 getting paid, you're getting paid.
 3 BY MR. PATTAKOS:
 4 Q. Mr. Petti --
 5 MR. MANNION: You have an ax to
 6 grind, is that all it is today?
 7 THE WITNESS: I don't have an ax
 8 to grind.
 9 MR. MANNION: Why did you insert
 10 yourself in this litigation?
 11 THE WITNESS: I didn't insert
 12 myself at all.
 13 MR. MANNION: You're talking about
 14 John inserting himself.
 15 THE WITNESS: I didn't insert
 16 myself at all. Your defense lawyers called
 17 me before anything.
 18 MR. MANNION: Unbelievable.
 19 THE WITNESS: Every defense lawyer
 20 who's ever called me, I called them back.
 21 MR. MANNION: You don't even --
 22 THE WITNESS: I met with you --
 23 MR. MANNION: -- consider --
 24 THE WITNESS: -- we had lunch --
 25 MR. MANNION: -- you don't even

478

1 review records to consider the value of the
 2 client's case.
 3 THE WITNESS: Here's why you know
 4 it's a kickback, because when we had lunch,
 5 Nestico was suggesting it was something
 6 other than value. You said it was --
 7 MR. MANNION: What?
 8 THE WITNESS: -- you said Nestico
 9 was telling you it was some kind of
 10 prepayment of the medical bills.
 11 MR. MANNION: What?
 12 THE WITNESS: Yeah.
 13 MR. MANNION: No.
 14 THE WITNESS: Yes. And now you're
 15 lying.
 16 MR. MANNION: Okay. I'm lying,
 17 too?
 18 THE WITNESS: Yes.
 19 MR. MANNION: We're all lying. It
 20 was prepayment for medical bills.
 21 THE WITNESS: Not everybody, not
 22 everybody. Yeah, that's what Nestico was
 23 telling you. You asked me, you said,
 24 Nestico said, is that possible? And I
 25 said, no, absolutely not, that's not

479

1 possible.
 2 BY MR. PATTAKOS:
 3 Q. I'll ask you about your lunch with Tom. I want
 4 to get back to John --
 5 A. Okay.
 6 Q. -- thanks --
 7 MR. MANNION: Oh, my god, I was
 8 nothing but cordial to you.
 9 THE WITNESS: I didn't say you
 10 weren't, but that's what -- that came up in
 11 our lunch.
 12 MR. MANNION: Oh, my lord. That
 13 is outrageous.
 14 THE WITNESS: That's the truth.
 15 BY MR. PATTAKOS:
 16 Q. Well, if it's true, as you said -- as you've
 17 testified that KNR is leading the race to the
 18 bottom --
 19 A. Right.
 20 Q. -- it's fair to say that John Lynett is just
 21 running that race, right?
 22 MR. MANNION: Objection.
 23 A. Yeah -- well, I think you get caught up in it.
 24 If you want referrals from Dr. Floros, who
 25 clearly does a lot, 30 in one month, then you've

480

1 got to play the game.
 2 Q. If you look at paragraph ten of his affidavit
 3 where he says, in the normal course of business I
 4 request written narrative reports from Dr. Floros
 5 once the physician has completed treating one of
 6 my clients.
 7 It doesn't say there that he does it on every
 8 case, does it?
 9 A. No.
 10 Q. Do you think he does?
 11 A. No, I don't.
 12 Q. Every case with Floros?
 13 A. Virtually every case with Floros I think he
 14 probably does. And then the other health
 15 providers probably settle them after his analysis
 16 of the case determines it is justified.
 17 Q. Okay.
 18 MR. POPSON: Objection.
 19 Q. You testified in response to Mr. Mannion's
 20 questioning earlier that to determine whether a
 21 narrative report added value to a case, you'd
 22 have to look at the specific facts of that
 23 particular case?
 24 A. Yeah.
 25 Q. Do you recall that?

481

1 A. Yeah.

2 Q. You would also agree, wouldn't you, that on a

3 soft-tissue case that never gets filed where the

4 attorney's fee is going to be \$2,000 or less,

5 that it's extremely unlikely that a narrative

6 report added any value no matter what was in it?

7 A. Yes.

8 MR. MANNION: Objection.

9 A. Yes, I would agree.

10 MR. MANNION: And say that without

11 looking at one thing on the case? You're

12 unbelievable.

13 Q. You can say with near certainty that a narrative

14 report wouldn't add any value to a case like

15 that, wouldn't you?

16 MR. MANNION: Wow.

17 A. Yes. That's why nobody gets them. That's why

18 KNR doesn't get them from anybody else. And \$200

19 is an arbitrary number. What number would be

20 fair? If you said -- if you paid doctors enough,

21 they're willing to do it. 250? 300? 500?

22 What's the number? You tell me, Tom.

23 Q. Even if the narrative report did have some value

24 in any given case at KNR, is there any doubt in

25 your mind that it was intended to and did

482

1 function as a kickback?

2 MR. MANNION: Objection.

3 Speculation.

4 A. No, there's no doubt in my mind.

5 Q. How did your lunch with Tom go? What else did

6 you talk about?

7 A. It was pleasant. He was cordial, I was cordial.

8 We met at the Courtyard in Brecksville and he

9 asked me whatever questions he wanted to ask and

10 I answered every one of them. I didn't hide

11 anything. I told him substantially similar stuff

12 to what I said today. More facts are known

13 today, put at some point he -- you know, I was

14 very direct, as I was today, about my belief that

15 the narrative report is a kickback and he said

16 something to the effect of what Nestico said that

17 it's essentially prepayment for medical bills --

18 I can't remember your exact words -- is that

19 possible? And I said, no, of course it's not

20 possible.

21 Q. Prepayment for the preparation of medical records

22 too, could that be something Tom said?

23 A. It could have been something like that.

24 Q. Well, do you believe that's possible?

25 A. No, no. Because they still -- no. It's not what

483

1 they call it.

2 Q. Do you remember anything else that Tom told you

3 on that lunch that was new information to you

4 that you haven't testified to today?

5 A. No, I don't.

6 Q. And other than the call that is reflected in your

7 affidavit when Brian Roof called you --

8 A. Uh-huh.

9 Q. -- do you recall any other communications with

10 the defendants or defense counsel in connection

11 with this case?

12 A. Just some texts.

13 Q. Texts from Tom?

14 A. Yes.

15 Q. About your deposition and scheduling?

16 A. About the deposition. And I think at one point

17 he asked me to clarify something -- oh, Judge

18 Cosgrove, there was an issue -- and I don't

19 understand that because I didn't make any issue

20 about -- I didn't make any representation about

21 Judge Cosgrove, but at one point you said -- you

22 asked me if I ever heard whether Nestico said

23 that, you know, essentially he had Judge Cosgrove

24 in his pocket and I said, no, I never heard such

25 a thing, and I wouldn't have believed it and he

484

1 said he wouldn't either. So that's really it.

2 MR. PATTAKOS: Okay. I have no

3 further questions.

4 - - - -

5 RE-EXAMINATION OF GARY M. PETTI

6 BY MR. MANNION:

7 Q. Gary --

8 A. Yes.

9 Q. -- do you recall what I actually said was that

10 the narrative fee includes the cost of the

11 medical records?

12 A. I don't recall that.

13 Q. Okay. Well, that's a little different than

14 saying it's prepayment for medical bills, true?

15 A. That would be true. And --

16 Q. Have you ever seen a settlement memorandum where

17 Dr. Floros or Akron Square charged for the

18 medical records and a report?

19 A. I can't say that I have.

20 Q. Okay. And that's because the cost of the medical

21 records is included in the cost of the report,

22 true?

23 A. I don't know --

24 Q. Okay.

25 A. -- but, you know --

485

1 Q. So you may have misunderstood --

2 A. Some providers -- some providers particularly

3 given the age of digital stuff, many of them,

4 especially chiropractors, they do business with

5 over and over again don't charge the copy fee

6 because they just hit a button and it's e-mailed.

7 Q. You may have misunderstood what I said, fair?

8 A. It's possible. It's possible.

9 Q. Okay. Now, you don't render medical opinions

10 yourself, do you?

11 A. Only to my children --

12 Q. Or chiropractic opinions?

13 A. No, no, of course not.

14 Q. Neither do paralegals?

15 A. Not that I'm aware. They shouldn't.

16 Q. Okay. And, in fact, the expert reports that you

17 get, those include some of the medical facts that

18 are directly from the records, true? They don't

19 just state all opinions --

20 A. That's true.

21 Q. -- they have to talk about the facts?

22 A. Well, they have to have a foundation for the

23 conclusions of the facts.

24 Q. And so the facts in the reports that you saw were

25 the foundation for his conclusions along with the

486

1 research, true?

2 A. Yeah, that's how it's presented.

3 Q. That's how these reports are set out, just like

4 your reports are set out, true?

5 A. Yeah, yeah.

6 Q. You have a difference of opinion as to whether

7 they're valuable or not, but other lawyers

8 disagree with you, fair?

9 A. That's the tip of the iceberg, yes.

10 Q. Now, you said that you were told that Rob Nestico

11 invented the narrative report?

12 A. Yes.

13 Q. Do you realize that Dr. Floros was doing

14 narrative reports for Slater & Zurz before KNR?

15 A. No.

16 Q. Then he wouldn't have invented it, would he?

17 A. I'm just telling you what Brandy said.

18 Q. Would he have invented it then?

19 A. It doesn't sound like it --

20 Q. Okay.

21 A. -- but, again, I'm not testifying as to the truth

22 of what Brandy told me, I'm just telling you

23 that's what Brandy told me. And all those

24 people -- not all those people. It was not

25 unusual during my time at KNR, because they of

487

1 course knew that I came from Slater & Zurz for

2 them to, it seemed to me, try to shame Slater &

3 Zurz. You know, we're the new guys, we've only

4 been at this a little time, Slater & Zurz is down

5 here, we're way up here.

6 Q. What did that have to do with my question about

7 who invented narrative reports?

8 A. Well, because Brandy exaggerating what the truth

9 may have been, you know, claiming that Rob --

10 Q. Brandy is a liar, too?

11 A. I'm sure she is -- claiming -- well, I don't know

12 what she testified to, that's a ridiculous

13 question.

14 Q. But you're willing to say she's a liar without

15 knowing what she's testified to?

16 A. No, what I'm willing to say is that's what she

17 told me. You're the one telling me that Floros

18 did it for Slater & Zurz beforehand.

19 Q. Well, if they did then KNR didn't invent it,

20 true?

21 A. That seems true, yes.

22 Q. Now, how much would an MD or a DO have charged

23 for a report for Thera Reid?

24 A. More than 200 bucks.

25 Q. 1,000? 1,500?

488

1 A. Probably. Again, I haven't done it for -- I

2 haven't requested a narrative report in ten years

3 so I don't know.

4 Q. And do you know what Thera Reid's case settled

5 for?

6 A. No, I have no idea.

7 Q. Her relative said the report was worth \$80. Dr.

8 Floros charged 200 counting giving the medical

9 records --

10 A. Uh-huh.

11 Q. -- but you can't tell us what value that report

12 had to her case, can you?

13 A. I already answered that question and I said "no".

14 Q. Okay. And do you know whether other chiros would

15 agree to give these reports for \$200? Take the

16 time to sit down and do these --

17 A. Other guys do reports, sure.

18 Q. But would they agree to do it on every case for

19 \$150 to \$200? Do you know if they would?

20 A. I don't know. I never asked a chiropractor for a

21 report.

22 Q. Now, explain to me why a chiropractor would want

23 to make less money taking his time writing a

24 report then he could treating patients?

25 A. Well, as I understand, Plambeck is a corporate

489

1 entity so they're not dollar for dollar getting
 2 paid on the bills that they generate, but those
 3 narrative reports are getting paid directly to
 4 the doctor. So they are getting all of that 200
 5 bucks versus some portion of the fees that the
 6 clinic generates after other costs.
 7 **Q.** How much does Floros make?
 8 **A.** I have no idea.
 9 **Q.** Okay. You don't know what Plambeck clinics paid
 10 him or whatever clinic he was with at the time,
 11 right?
 12 **MR. PATTAKOS:** I can tell how much
 13 he made, I've got his tax returns.
 14 **MR. MANNION:** Would you stop it.
 15 **MR. PATTAKOS:** Do you want to
 16 know?
 17 **MR. MANNION:** Stop it now. Stop
 18 it.
 19 **MR. PATTAKOS:** I didn't know if he
 20 knew or not.
 21 **MR. MANNION:** Stop it.
 22 **MR. PATTAKOS:** Tom, you don't have
 23 to yell.
 24 **MR. MANNION:** Stop doing this.
 25 **BY MR. MANNION:**

490

1 **Q.** Do you know who owns Akron Square now?
 2 **A.** No. I don't care at all.
 3 **Q.** Okay. And do you know how much time Dr. Floros
 4 spent on those reports?
 5 **A.** No, I don't.
 6 **Q.** Do you also know that whoever his employer was at
 7 the time he was paid, agreed that he would be
 8 paid personally?
 9 **A.** No, of course not. How would I know that?
 10 **Q.** Okay. Well, you understand that if you spend
 11 time as a doctor, that you should be paid for the
 12 reasonable value of your services?
 13 **A.** Yeah, these are the questions Shaun asked me.
 14 **Q.** Do you agree?
 15 **A.** I did agree. You were listening.
 16 **Q.** Okay. And what if that took three --
 17 **A.** I'm just getting tired. I mean, if you're going
 18 to ask the same questions --
 19 **Q.** I'm not going to ask the same questions, but I'm
 20 trying to clarify here.
 21 **A.** Okay.
 22 **Q.** Why would Dr. Floros spend two, three hours,
 23 going through records, writing a report, and
 24 doing all that, for \$200 minus --
 25 **A.** If it's not worth it, why does he do it?

491

1 **Q.** -- minus -- minus whatever the medical records
 2 cost to give, why would he spend his time doing
 3 that?
 4 **A.** I have no idea, but I presume it's worth it
 5 otherwise he wouldn't do it, right?
 6 **Q.** Well, if he's spending his time doing it and he's
 7 --
 8 **A.** Then it's got to be worth it financially if he's
 9 making money off it.
 10 **Q.** -- if he's getting paid for his professional
 11 time --
 12 **A.** Right.
 13 **Q.** -- that's not a kickback.
 14 **A.** If he -- like I said, I think it's a kickback --
 15 **Q.** You think it is.
 16 **A.** -- I had lots of reasons to believe it's a
 17 kickback, I've offered them to you --
 18 **Q.** But that's your opinion?
 19 **A.** -- they upset you, but that's fine --
 20 **Q.** Let me ask you this --
 21 **A.** -- it is what it is. You're making lemons.
 22 **Q.** Is a doctor entitled --
 23 **MR. MANNION:** Well -- okay. And
 24 you can scoff all you want too as well,
 25 Peter.

492

1 **Q.** But would you agree that lying in pleadings is
 2 improper?
 3 **A.** Yeah -- well --
 4 **Q.** Would you agree -- do you not agree?
 5 **A.** I said yeah.
 6 **Q.** Do you agree that suborning perjury with your
 7 witnesses is wrong?
 8 **A.** Yeah, of course.
 9 **Q.** Okay. Do you agree that if there's no evidence
 10 of an allegation that you should not continue on
 11 with that allegation?
 12 **A.** Yeah. I'm sure that's how it goes.
 13 **Q.** Do you think it's proper to have a witness
 14 represent a class when they haven't even read the
 15 Complaint and said if they had read the Complaint
 16 they would have told the lawyer that he pled it
 17 improperly, that he didn't have the right facts
 18 in there? You're not a class action expert?
 19 **A.** I'm not an expert at anything, hardly.
 20 **Q.** Apparently, you're trying to make yourself an
 21 expert on the value of reports.
 22 **A.** No, you're trying to be confrontational. I
 23 already stated my opinion, you're giving me
 24 yours. I understand what you're doing, you've
 25 got a job to do.

493

1 Q. Really?

2 A. Yeah.

3 Q. So how much does Town & Country charge for a

4 report when they're asked?

5 A. No idea. I never asked them.

6 Q. Maybe they're not willing to take the time to

7 prepare these reports for only 150 or 200, do you

8 know that?

9 A. 225, are they worth it?

10 Q. I'm asking you: Do you know whether they're

11 willing to spend the time?

12 A. I never asked them because chiropractic reports

13 aren't valuable.

14 Q. You don't think they're valuable, right?

15 A. You're right.

16 Q. But other lawyers think they're valuable, true?

17 A. I disagree.

18 Q. Okay. You think all lawyers who get a narrative

19 report from a --

20 A. No, I didn't say that --

21 Q. -- chiropractor --

22 A. -- I already said if you do it over and over and

23 again for a certain group of chiropractors and

24 you don't do it for other people, then yeah, that

25 strongly suggests it's a kickback if you --

494

1 Q. In your mind?

2 A. No -- yeah, in my mind, of course, I don't speak

3 for anybody else.

4 Q. Now, you said earlier that the reports you saw

5 would take 30 seconds to do because they're

6 answering yes or no.

7 A. Right.

8 Q. Are you suggesting that doctors are just

9 answering those questions automatically without

10 looking at the records and making sure it's their

11 opinion?

12 A. The narrative reports that I saw were all -- and

13 it makes more sense now if you're saying Slater &

14 Zurz invented it because perhaps those are the

15 ones I'm referring to --

16 Q. I didn't say invented it.

17 A. Or that they did it first. Because maybe those

18 are the ones I saw, maybe those are the ones I'm

19 referring to, but they were yes or no, that you

20 have to answer yes or you --

21 Q. Why do you have to answer --

22 A. -- or you shouldn't have treated them. Because

23 it was, you know, did they sustain a cervical

24 injury as a result of the accident? Well, he

25 treated him for a cervical injury. Yes. Did

495

1 they sustain a lumbar injury? Yes.

2 Q. Those are medical opinions, correct?

3 A. Right. But those are all things, like I said,

4 that they were framed in such a way that it

5 required no work.

6 Q. Okay. Kabin Carder you're saying he won't do the

7 report?

8 A. He refused Rob's overture, yes.

9 Q. And do you know whether --

10 A. I am so tangled in this thing, sorry.

11 Q. But you're saying he would deny that?

12 A. That's what he told me, yes.

13 Q. Really?

14 A. Yes.

15 Q. Okay. The fact is that it would take time to do

16 those reports for him. Who's he employed by?

17 A. He owns it.

18 Q. So he owns it?

19 A. Uh-huh.

20 Q. So he would make more money seeing patients than

21 doing reports, fair?

22 A. He doesn't treat.

23 Q. Okay. Well --

24 A. Kabin is a friend of mine -- as an acquaintance

25 --

496

1 Q. Okay.

2 A. -- we used to be friends. He told me this --

3 Q. What do you mean, he doesn't treat?

4 A. He's the owner.

5 Q. Okay. So other people treat?

6 A. Yeah. He's got -- well, he's got other

7 chiropractors and employees.

8 Q. Okay. And but he --

9 A. So the guys I mentioned earlier, the names that I

10 tried to remember and come up with, those are the

11 people that work for him.

12 Q. Well, do you know that chiropractors --

13 A. Because I didn't want to mention him because I

14 didn't want to betray him.

15 Q. -- do you know that they do reports for \$200

16 there?

17 A. Pardon me?

18 Q. Do you know they do reports for \$200 --

19 A. No, I don't know. I don't know.

20 Q. So he's getting kickbacks, too?

21 A. I don't know. Like I said, I'm not familiar with

22 it. If they do it on every case, again, that's

23 suggestive.

24 Q. You actually brought cases from Slater & Zurz to

25 KNR that had Dr. Floros on them already, didn't

497

1 you?

2 A. Not that I recall, no.

3 Q. You didn't do that?

4 A. I don't recall it. Like I said, John was Floros'

5 guy, Floros was John's guy. I don't know how you

6 want to look at it.

7 MR. PATTAKOS: John?

8 THE WITNESS: Lynett.

9 A. So there's some possibility that someone who was

10 -- came to me through word of mouth was already

11 treating with Dr. Floros, but Dr. Floros never

12 referred me anyone.

13 Q. I didn't ask that. You brought cases to KNR --

14 A. I wouldn't know. Like I said, I brought hundreds

15 of them, so --

16 Q. And some of those had Dr. Floros on those

17 already --

18 A. Some?

19 Q. -- didn't they? Isn't that true?

20 A. I answered that. I don't have any recollection

21 of that. It's possible.

22 Q. Now, you're not trying to say, are you, that Town

23 & Country only agreed to give referrals because

24 their bills weren't being cut, are you?

25 A. To me, no. I don't know what conversation Rob

498

1 had with them.

2 THE REPORTER: Go off.

3 THE VIDEOGRAPHER: Off the record.

4 - - - -

5 (Off the record.)

6 - - - -

7 (Thereupon, Defendant's Exhibit O was marked

8 for purposes of identification.)

9 - - - -

10 BY MR. MANNION:

11 Q. Handing you what has been marked as Exhibit --

12 what is that, O?

13 A. Yes, that's what it said.

14 Q. Okay. This is a settlement memorandum on a --

15 looks like Safe Auto Insurance was the insurance

16 company. Is that your handwriting at the bottom?

17 A. Yeah, that's my handwriting and my initials.

18 Q. And the reason you wrote these things at the

19 bottom is when Mr. Nestico or somebody looked at

20 this, you wanted them to have some information

21 about the case to put your proposed reductions in

22 context, right?

23 A. Correct.

24 Q. Okay. Can you -- now, when you say, "we referred

25 to them", in other words, the chiropractor didn't

499

1 have to spend -- they didn't get that case from

2 their telemarketing efforts which cost money,

3 true?

4 A. Yes.

5 Q. Therefore they might be willing to take a bigger

6 cut, true?

7 A. Yeah, that's absolutely --

8 Q. That's why you wrote that, true?

9 A. Yep. Yes, that's a distinction.

10 Q. "Decent impact" meaning, hey, it's a good impact,

11 insurance companies look at that --

12 A. Uh-huh.

13 Q. -- true?

14 A. Yeah, that's what it says.

15 Q. But it also says, 31 days before first

16 treatment --

17 A. Yeah, that's a problem --

18 Q. -- why did you write that?

19 A. -- that's a problem.

20 Q. Insurance companies won't like that, true?

21 A. Correct.

22 Q. That's why you want to get on the case right

23 away, true? And get them seeking treatment to

24 get healed and for the case, true?

25 A. Yeah.

500

1 Q. If you look there, your recommendation was to cut

2 Town & Country from 5,396 to 2,975. That's your

3 writing, true?

4 A. No, 2,975 is not my writing.

5 Q. Okay. Well, actually if you look, was that 3,975

6 your writing -- under the scribbles? Can you see

7 that?

8 A. That appears more similar to my writing, yes.

9 Q. Okay. And what about the 2,000 on Kisling,

10 Nestico, you weren't proposing a cut on the fee,

11 true?

12 A. That's what it looks like.

13 Q. Okay. And if this was approved then Town &

14 Country took about a 45 percent cut?

15 A. I'm not doing the math in my head, I'm too tired,

16 but yeah, I'll take your word for it.

17 Q. And you see that Jon Thomas was paid \$25? Do you

18 see that?

19 A. Yeah.

20 Q. It was your duty to crosscheck that expense,

21 wasn't it?

22 A. Sure.

23 Q. What did he do on that file, do you know? Did he

24 go hunt somebody down to get them to agree to

25 settle it?

501

1 A. I have no recollection.
 2 Q. You have no idea, right?
 3 A. None.
 4 Q. You'd have to look at the file, true?
 5 A. And if that would show it, I don't know.
 6 Q. You'd have to talk to him if he remembered?
 7 A. Yeah. I don't know, I don't know how you'd
 8 figure it out.
 9 - - - -
 10 (Thereupon, Defendant's Exhibit P was marked
 11 for purposes of identification.)
 12 - - - -
 13 Q. Okay. I really hope there's no names. If so,
 14 we'll redact. Exhibit P.
 15 MR. PATTAKOS: How does this
 16 relate to my redirect? I mean, this is
 17 just -- you're just adding new stuff. This
 18 is not --
 19 MR. MANNION: I don't have to go
 20 just on yours. There were other people
 21 asking questions. I'm allowed to redirect
 22 on theirs.
 23 MR. PATTAKOS: Well, I just love
 24 that you guys don't produce any documents
 25 and then you show up with all these

502

1 documents at your deposition. There's just
 2 an endless stream of secret documents.
 3 MR. MANNION: You won't even tell
 4 us your evidence. Your witness said he had
 5 the documents on his counter.
 6 MR. PATTAKOS: The evidence is
 7 right here with Mr. Petti --
 8 MR. MANNION: That's laughable --
 9 MR. PATTAKOS: -- and Mr. Nestico
 10 and --
 11 MR. MANNION: -- that's laughable.
 12 MR. PATTAKOS: -- Rob Horton and
 13 Kelly Phillips --
 14 MR. MANNION: Rob Horton denied
 15 everything.
 16 MR. PATTAKOS: -- and all the
 17 exhibits --
 18 MR. MANNION: Rob Horton said he
 19 --
 20 Q. Okay. Let me ask you this, sir -- let me ask you
 21 this --
 22 MR. PATTAKOS: Rob Horton said you
 23 intimidated him, Tom.
 24 MR. MANNION: No, he didn't.
 25 MR. PATTAKOS: He sure did.

503

1 MR. MANNION: That is an
 2 out-and-out lie.
 3 MR. PATTAKOS: Boy --
 4 MR. MANNION: That's an
 5 out-and-out lie.
 6 MR. PATTAKOS: Well, Tom, the
 7 record speaks for itself. Why don't you
 8 move on, it's --
 9 MR. MANNION: Well, stop lying.
 10 MR. PATTAKOS: -- we're creeping
 11 up on 7:30 here, Tom.
 12 MR. MANNION: Well, maybe if you'd
 13 stop interrupting.
 14 MR. PATTAKOS: Uh-huh.
 15 BY MR. MANNION:
 16 Q. So, showing you Exhibit P. If you look at the
 17 second page, do you see in here where you had
 18 some recommendations on the cuts on this bill?
 19 A. Yeah.
 20 Q. And down at the bottom, you have some of the
 21 things you wanted either Mr. Nestico or whoever
 22 to take a look at when they considered those,
 23 true?
 24 A. It was always Nestico, but, yeah --
 25 Q. That's your handwriting?

504

1 A. That's my handwriting.
 2 Q. Why did you write "Allstate"?
 3 A. Because Allstate is notoriously difficult in
 4 terms of settlement offers --
 5 Q. No matter who the provider is --
 6 A. -- and willing to litigate.
 7 Q. -- true?
 8 A. Yeah, probably.
 9 Q. And you say Toledo Spine referred to us, meaning
 10 what, they might not be willing to take as big of
 11 a cut?
 12 A. Right.
 13 Q. Because they spent marketing money to get the
 14 case?
 15 A. Yes.
 16 Q. It says heavy PD which was good, right?
 17 A. Yes.
 18 Q. It says ER two days later, chiro six days later.
 19 Those are things adjusters consider, true?
 20 A. Yes.
 21 Q. Then it says changed chiros on his own.
 22 A. Yeah.
 23 Q. Why did you write that?
 24 A. No idea.
 25 Q. Because insurance companies sometimes look down

505

1 on changing doctors, true?

2 A. Yeah, that's probably it, but I don't see any

3 other doctor in there, so I don't know what I

4 did.

5 Q. And it also says prior history of back surgery?

6 A. Yes.

7 Q. So there's preexisting injuries?

8 A. Yes.

9 Q. And there's also an 18-day gap between the two

10 chiro offices, right?

11 A. Right. Yeah, that's a potential problem.

12 Q. All things you knew Allstate might say were a

13 problem?

14 A. Not just Allstate. All things that in -- you

15 know, we talked how you value cases and stuff

16 like that and that's part of it. All those

17 things are things that are important to me if

18 we're going to have a trial.

19 Q. If you turn to the front page, it looks like that

20 all of the recommendations by you were accepted,

21 true?

22 A. No. Again, the 1,550 is not my handwriting and

23 the 2,200 is not my handwriting -- it doesn't

24 appear to be my handwriting.

25 Q. Okay. So the 1,550 on Kisling, he reduced

506

1 Kisling -- KNR's fee even more than you

2 recommended?

3 A. Yeah, that's what it looks to me.

4 Q. Okay. And your suggestion on Team Chiropractic

5 was taken?

6 A. Yeah. Team Chiropractic, yeah, it looks like it.

7 Q. Okay. And then you see you had 2,500 next to the

8 Toledo Spine, your initial, one was that they

9 should get 2,500 under --

10 A. Yeah, but then that 2,000 might be mine.

11 Q. You don't know if that --

12 A. No --

13 Q. Okay.

14 A. -- but that --

15 Q. The 2,500 was, right?

16 A. And it's scratched out well enough that I really

17 can't tell.

18 Q. Most likely?

19 A. Most likely. Those twos look the same.

20 Q. And, in fact --

21 A. But that 2,200 isn't mine and I would never link

22 my zeros like that.

23 Q. Okay. But the 2,200 was less than your original

24 2,500?

25 A. Yeah.

507

1 Q. And that's what was accepted?

2 A. That looks like it.

3 Q. And then if you look at the last two pages.

4 There was a narrative report. Do you know this

5 chiropractor?

6 A. Doctor -- only by name.

7 Q. Okay. Are you -- and this is a settlement

8 memorandum and a settlement package that you

9 submitted, correct, August 8th, 2012?

10 A. If that's when it was submitted -- no, that's the

11 -- the settlement memorandum I --

12 Q. Yeah.

13 A. -- submitted, but I didn't submit the settlement

14 package.

15 Q. It would have been a little prior to that, true?

16 You don't know how far.

17 A. As many as several months.

18 Q. Okay. But it would have been, you would have had

19 to go over the settlement memorandum with the

20 client and cross check all these expenses, true?

21 A. True.

22 Q. And only agree to have the client be charged for

23 reasonable and necessary expenses, true?

24 A. Yeah, true. Are you going to let me explain

25 after we're done or should I insert it?

508

1 Q. Well, I mean, do you recall this particular case

2 and those negotiations --

3 A. No, absolutely --

4 Q. -- with the insurance company?

5 A. -- do not recall this particular case. And

6 there's some possibility -- some possibility -- I

7 don't know what the likelihood is -- but there's

8 some possibility -- what's the date of this

9 accident?

10 Q. December 3rd, 2011.

11 A. Yeah, so I wasn't working there, was I?

12 Q. Okay.

13 A. Right. So somebody else did the intake. It's

14 possible that it got transferred to me after

15 somebody else approved the narrative report.

16 Q. You're talking about a lot of possibilities, but

17 it's also possible that they --

18 A. Well --

19 Q. -- stopped treatment while you were the attorney

20 of record for --

21 A. It's possible --

22 Q. Okay.

23 A. -- but it's not likely.

24 Q. So you're saying that -- you don't know when you

25 got this case, do you?

509

1 A. No, I would have no way of knowing.
 2 Q. Well, if the settlement memorandum is August 8th,
 3 do you know when they stopped treating?
 4 A. No, I have no idea.
 5 Q. Okay. And, in fact, you did -- you did agree
 6 that this expense should be on the settlement
 7 memorandum. You never told the client it was --
 8 A. No, I wouldn't have done that. That's firm
 9 policy so that's their decision.
 10 Q. Wait a minute though --
 11 A. So those --
 12 Q. -- you have a duty to clients --
 13 A. -- those lawyers --
 14 Q. Do you have a duty to your client, sir?
 15 A. You can yell --
 16 Q. Do you have a duty to your client?
 17 MR. PATTAKOS: Tom, stop shouting.
 18 A. Of course, yeah.
 19 Q. Do you have a duty to your client?
 20 A. You can yell at me all you want, it's not going
 21 to change my answer.
 22 Q. I'm asking, do you have a duty to your client?
 23 A. I already answered it, yes, of course.
 24 Q. Okay. Did you fulfill your duty to the client in
 25 going over this settlement memorandum --

510

1 A. I have --
 2 Q. -- with your client?
 3 A. -- no independent recollection of that
 4 whatsoever.
 5 Q. Well, I thought you told me earlier that you
 6 always fulfilled your duties to the client.
 7 A. You're asking me very specific questions, I'm
 8 telling you I do not remember going over this.
 9 Q. Okay. But it would have been your duty to go
 10 over this and fulfill your duty going over this
 11 with your client?
 12 A. Assuming that this was my case.
 13 Q. Okay. And are you going to sit here and say that
 14 you lied to the client?
 15 A. Am I going to sit here and say I lied to the
 16 client?
 17 Q. Yeah, did you lie to this client?
 18 A. About what?
 19 Q. Anything.
 20 A. Not that I can recall, but I don't remember
 21 speaking to this client.
 22 Q. And you don't remember lying to any client, do
 23 you?
 24 A. I have no recollection of telling untruths to
 25 clients.

511

1 Q. Okay. And this is, in fact, a two-page expert
 2 report by somebody other than Dr. Floros, true?
 3 A. Right. It's a Plambeck doctor, Dr. Lee-Seyon.
 4 THE REPORTER: Doctor who?
 5 THE WITNESS: Lee-Seyon. She's
 6 Korean. So Lee, L-e-e hyphen S-e-y-o-n it
 7 appears.
 8 BY MR. MANNION:
 9 Q. It includes a history of the accident, true?
 10 A. Yeah.
 11 Q. Examination, clinical impression, treatment,
 12 prognosis and a summary?
 13 A. Yep.
 14 Q. And medical opinions about reasonable degree of
 15 chiropractic certainty, true?
 16 A. Yeah, it has those things.
 17 Q. And if you were the attorney of record that
 18 submitted this settlement demand package to the
 19 insurance company, including this expert
 20 report --
 21 A. Uh-huh.
 22 Q. -- you wanted the insurance company to consider
 23 this, didn't you?
 24 A. I would not have ordered this. I don't believe I
 25 did order it --

512

1 Q. You don't know that, do you?
 2 A. I don't know what the -- I'm just asking. I
 3 don't know what the mechanism is at KNR for
 4 requesting a narrative report because I never did
 5 it. I don't even know that there is one. There
 6 was procedures for lots of things.
 7 Q. Okay. My point isn't whether you ordered this
 8 report, okay?
 9 A. Right.
 10 Q. That's not the issue --
 11 A. Okay.
 12 Q. -- okay? The report could have been ordered
 13 before you got there, that's not the issue.
 14 A. Uh-huh.
 15 Q. If you submitted this to the insurance company in
 16 a settlement demand package, you wanted them to
 17 consider it, true?
 18 A. Sure.
 19 Q. Okay. So even if this report was ordered before
 20 you got there, you were handling the case,
 21 submitted it to the insurance company, you wanted
 22 them to use it to increase the value of the case,
 23 fair?
 24 A. In the off chance that they would increase the
 25 value of a case, sure, why not.

1 Q. But you don't remember the negotiations of this
 2 client?
 3 A. You're right. I'm speaking in generalities and
 4 you're asking me too because I told you several
 5 times I don't remember any of it, but yet you're
 6 asking me specific questions.
 7 - - - -
 8 (Thereupon, Defendant's Exhibit Q was marked
 9 for purposes of identification.)
 10 - - - -
 11 Q. Showing you Exhibit Q --
 12 MR. PATTAKOS: Another random
 13 settlement memorandum.
 14 THE WITNESS: I was right about
 15 that, it adds to my credibility. I told
 16 you I always got Toledo cases.
 17 MR. PATTAKOS: It would be nice if
 18 we could see all the settlement memorandum
 19 and all the narrative reports, but they
 20 just want to show us selective ones.
 21 MR. MANNION: Would you stop it.
 22 THE WITNESS: I agree with you
 23 though --
 24 MR. PATTAKOS: Isn't that true,
 25 Tom?

1 THE WITNESS: -- I told you I was
 2 always getting Toledo ones. You see that,
 3 right?
 4 MR. PATTAKOS: You've got the
 5 client's name on this again.
 6 MR. MANNION: Where at?
 7 MR. PATTAKOS: Narrative report,
 8 paragraph one, under history of accident.
 9 MR. MANNION: I thought we agreed
 10 today that we were going to redact all
 11 this.
 12 MR. PATTAKOS: That's fine, I'm
 13 just letting you know.
 14 MR. MANNION: Where?
 15 MR. POPSON: Right here
 16 (indicating).
 17 MR. MANNION: Ah, they redacted it
 18 everywhere else, but there.
 19 BY MR. MANNION:
 20 Q. So in this particular case, sir --
 21 A. Yeah.
 22 Q. -- do you see that on the second page?
 23 A. Second page is the settlement memo.
 24 Q. Yes. It says referred by them to us --
 25 A. Right.

1 Q. -- and then roundtabled.
 2 A. Yeah.
 3 Q. What does that mean?
 4 A. That's where you try and convince John and the
 5 rest of the litigation people to take the awful
 6 cases off your hands and file lawsuits.
 7 Q. And --
 8 A. They said no.
 9 Q. And it also says 500 is unacceptable to the
 10 client?
 11 A. Right.
 12 Q. And roundtable result was to see me, meaning Rob?
 13 A. Yeah, that's my --
 14 Q. Okay. And in this case --
 15 A. And this is very -- just so we're on the same
 16 page --
 17 Q. Yeah.
 18 A. -- this is very clearly not one that I did an
 19 intake in. The auto accident was in 2011 at some
 20 point --
 21 Q. Sure.
 22 A. -- the narrative report was created some time
 23 well before I started working there.
 24 Q. But August 9th, 2012 you would have been the
 25 attorney of record --

1 A. This is no doubt one of the unfortunate cases
 2 that got passed to me when the other guy got
 3 fired that I already described --
 4 Q. Okay. And in order to put --
 5 A. -- that nobody else wanted.
 6 Q. -- in order to put money in the client's pocket,
 7 KNR's fee was reduced and Toledo Spine & Rehab's
 8 fee was reduced, right?
 9 A. Right.
 10 Q. Toledo Spine went from 3,921 and you recommended
 11 to 2,000. And that was accepted, true?
 12 A. No, those are not my numbers.
 13 Q. Okay.
 14 A. That's not my handwriting.
 15 Q. Okay. But --
 16 A. Again, I do not link my zeros like that, so --
 17 Q. But it was reduced almost in half, right?
 18 A. That's Rob's writing, so I went to the roundtable
 19 -- I assume that's Rob's writing -- I went to the
 20 roundtable, tried to get litigation to take it.
 21 Litigation wouldn't take it, they told me to go
 22 see Nestico. I took this file to Nestico and
 23 said, what do you want me to do with it? And he
 24 wrote up those numbers and it was settled on that
 25 basis, not mine.

1 Q. And, so Toledo Spine & Rehab, their bill was cut
 2 almost 50 percent and KNR's was cut 450 or so
 3 dollars and that enabled the client to get \$1,000
 4 in their pocket, true?
 5 A. Yeah.
 6 Q. And that's more than what KNR got and that was
 7 the policy, the client never got less than KNR,
 8 true?
 9 A. I don't remember that, but I'm not disputing it.
 10 MR. PATTAKOS: Well, what did the
 11 client get here? Where does it show where
 12 the client got it? It says net amount due
 13 minus --
 14 MR. MANNION: What are you talking
 15 about? 1,000.
 16 MR. POPSON: On the front page.
 17 A. The front was the one that was actually done.
 18 MR. PATTAKOS: I see it.
 19 A. Yeah, some of those notes are mine, but like I
 20 said, that's surely what happened is I tried to
 21 get someone else to get it litigated.
 22 Q. And --
 23 MR. PATTAKOS: Can I just ask a
 24 question, Tom, just to understand what's
 25 going on here? These settlement memoranda

1 in Exhibit Q, this is all for the same case
 2 and this is drafts?
 3 THE WITNESS: Yes.
 4 MR. PATTAKOS: Okay. And that's
 5 the same with Exhibit P?
 6 THE WITNESS: Yes.
 7 Q. Of Gary Petti's?
 8 A. No, not in that one, that was not mine.
 9 Q. Exhibit --
 10 A. This handwriting at the bottom of the second page
 11 of Exhibit Q is mine. The reductions that were
 12 made --
 13 Q. Right.
 14 A. -- were all somebody other than me.
 15 Q. I was talking about your cases.
 16 A. Well, they were my cases all right.
 17 - - -
 18 (Thereupon, Defendant's Exhibit R was marked
 19 for purposes of identification.)
 20 - - -
 21 Q. What exhibit is that?
 22 A. It appears to be R, but your handwriting is
 23 difficult.
 24 Q. True. And on this particular one, do you see
 25 what Dr. Ghoubrial's charges were on the front

1 page -- on the second page?
 2 A. Dr. Ghoubrial on page two --
 3 Q. 1,130?
 4 A. Yes.
 5 Q. And if you turn to the next page, it was only
 6 \$500 that he actually got. Cut by more than
 7 half, true?
 8 A. Right, that's what it looks like.
 9 Q. And KNR cut theirs about \$1,533 as well. Do you
 10 see that?
 11 A. Where is that at?
 12 MR. POPSON: There's a 3,333 and
 13 it's slashed out and then it says 1,800
 14 next to it.
 15 THE WITNESS: Are we on page one
 16 or two, I'm sorry?
 17 Q. You have to look at both to see it. Do you see
 18 that?
 19 A. Oh, yeah, there it is, yes.
 20 Q. And then if we look at Akron Square, their bill
 21 was cut from 3,409 to 2,500?
 22 A. Right.
 23 Q. Were those your recommendations? Is that your
 24 writing?
 25 A. Those do appear to be my writing, yeah.

1 Q. And they were accepted, true?
 2 A. I don't know that it was accepted.
 3 Q. Well, do you see that the client signed it on the
 4 next page with the numbers you recommended?
 5 A. Yeah, but I don't know what that other writing
 6 is.
 7 Q. What other writing?
 8 A. On the next page. I only have two pages.
 9 Q. Yeah. I don't know what you're talking about.
 10 A. So this one (indicating) has got writing off to
 11 the side.
 12 MR. PATTAKOS: Which one? What
 13 page?
 14 THE WITNESS: Page one. So I
 15 don't know what that is.
 16 Q. I'm sorry, that's my -- that's my handwriting,
 17 yeah.
 18 A. Okay.
 19 Q. That's where that went. There you go. Take a
 20 look at that. So your recommendations were
 21 accepted, correct?
 22 A. Yeah. Is there a reason that my signature is
 23 blacked out on these?
 24 Q. I don't know. I have no idea.
 25 A. Okay. Because, I mean, that on the page prior

521

1 does look like mine, my handwriting for sure.
 2 Q. And it is your handwriting at the bottom, too,
 3 right?
 4 A. Yeah, that's my writing.
 5 Q. And you see there that the client --
 6 A. But there's not -- like there's a solid line down
 7 there --
 8 Q. Okay. I understand that.
 9 A. -- and the Y in Gary typically is going to drop
 10 below that --
 11 Q. That's fine.
 12 A. -- so I'm not sure that's mine.
 13 Q. But you see that the client signed it?
 14 A. Yeah, but I'm not sure I was there with that
 15 client. MS --
 16 Q. That's not what I asked. Did I see that the
 17 client signed --
 18 A. I'm trying to remember these things. You're
 19 asking me about things that happened in 2012.
 20 Q. Did you see that the client signed it?
 21 A. I see there's blank out right there.
 22 Q. Do you see -- do you see where you can see some
 23 of the client's signature on there, underneath
 24 there?
 25 A. Yeah, somebody signed it.

522

1 Q. And perhaps maybe you weren't there that day when
 2 the settlement memorandum was done, who knows?
 3 A. Yeah, I don't know.
 4 Q. Okay. But those were your recommendations on the
 5 second page, correct?
 6 A. Yeah. Yep, that was it.
 7 Q. And they were accepted, true?
 8 A. It looks like it, yep.
 9 Q. And the person who got the big percentage cut was
 10 Dr. Ghoubrial, fair?
 11 A. Without doing the math --
 12 Q. You can't look --
 13 A. -- the math speaks for itself.
 14 Q. Well, you would agree that his cut was more than
 15 50 percent, fair?
 16 A. What was his original bill? Ghoubrial, 1,100.
 17 Yeah, he got more than 50 percent off.
 18 Q. And neither of the other two were cut more than
 19 50 percent, were they?
 20 A. That looks correct.
 21 Q. Okay. So he had the biggest cut of all?
 22 A. That's what you said.
 23 Q. Okay. And you're not aware of any kickbacks
 24 between Dr. Ghoubrial and Rob Nestico, are you?
 25 A. No.

523

1 MR. MANNION: That's all I have.
 2 - - - -
 3 RE-EXAMINATION OF GARY M. PETTI
 4 BY MR. RUBIN:
 5 Q. Couple follow up. In relation to summarizing
 6 records, Mr. Pattakos mentioned well-trained
 7 smart paralegals. Do you remember that
 8 testimony?
 9 A. Yeah, I didn't know any of those. Megan didn't
 10 qualify as one. Some of them were great though.
 11 Some of them were great. John had a great one.
 12 I can't remember her name. I saw her at Walmart
 13 in Wadsworth, too.
 14 Q. And there's some attorneys that can summarize
 15 medical records, too?
 16 A. Absolutely.
 17 Q. In fact, when you were at KNR, you could have
 18 summarized some medical records?
 19 A. Yeah, I think that was -- I was strong.
 20 Q. But you'd agree internal summary of medical
 21 records by well-trained paralegals, average
 22 paralegals or lawyers, that would all be internal
 23 work product, right?
 24 A. Yeah, that wouldn't be anything you'd share with
 25 the insurance company.

524

1 Q. You'd agree as part of a settlement demand
 2 package, it's more authoritative, credible, and
 3 persuasive to submit an opinion regarding medical
 4 care, causation and damages on a report signed by
 5 a medical professional rather than by a plaintiff
 6 attorney or a paralegal, right?
 7 A. In theory, sure. If you're starting from the
 8 proposition that such a thing is necessary, then
 9 having the smartest guy do it, sure.
 10 Q. Right. Because you would want such an opinion
 11 signed by a medical professional?
 12 A. Yes. If I wanted one -- you know, if I've got a
 13 cranial injury, I want the guy at the Cleveland
 14 Clinic who gives surgery to the sheiks in Saudi
 15 Arabia to write the opinion.
 16 Q. Right. You're not going to send over a report by
 17 a paralegal?
 18 A. No, ideally not. I know of lawyers and law firms
 19 that do that. They have their paralegals
 20 summarize it and even do a lit bit of advocacy
 21 when they do it and put that as part of their
 22 settlement package, but neither of the two firms
 23 I ever did personal injury work did that, to my
 24 knowledge.
 25 Q. That would be lower quality work, in your mind,

525

1 it sounds like.

2 A. Honestly, unnecessary. Most of the stuff,

3 low-impact, soft-tissue stuff, is very, very

4 simple. People are use to seeing it. You know,

5 there are a million of them. It's not all that

6 different.

7 Q. But you don't dispute an opinion from a medical

8 professional regarding a medical issue is better

9 than from a nonmedical professional --

10 A. Yeah.

11 Q. -- correct?

12 A. Yeah, I wouldn't dispute that.

13 MR. RUBIN: All right. Nothing

14 further.

15 - - - -

16 RE-EXAMINATION OF GARY M. PETTI

17 BY MR. PATTAKOS:

18 Q. Just real quick. Looking at Exhibit R -- I'm

19 sorry, looking at Exhibits P and Q. I just want

20 to be clear that on Exhibit P --

21 A. Right.

22 Q. -- the client ended up walking away with about

23 \$1,917?

24 A. That's the total amount they received. They had

25 not been previously paid anything, so, yeah, I

526

1 think that's right.

2 Q. And the chiropractors got, if you total it up,

3 3,200 plus another 200 for the narrative fee, so

4 \$3,400 went to chiropractors, correct?

5 A. That's what it looks like, yeah.

6 Q. And then on Exhibit Q it looks like the client

7 ended up taking \$1,000 and Dr. Lee-Seyon took

8 \$2,200, correct?

9 A. The final one she took two.

10 Q. 2,000?

11 A. Yeah.

12 Q. Plus the narrative fee for 200?

13 A. Oh, right. Yeah.

14 Q. So --

15 A. And the client got 1,000 and the firm got

16 whatever it got, 800 bucks, \$855.45.

17 MR. PATTAKOS: Okay. I have no

18 further questions.

19 THE VIDEOGRAPHER: Off the record

20 at 7:36.

21 - - - -

22 (The reading and signing of the

23 deposition was expressly waived by the witness

24 and by stipulation of counsel.)

25 - - - -

527

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Brian A. Kuebler, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed by computer-aided technology under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action; that I am not, Norris is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____ A.D. 20 _____.

Brian A. Kuebler, Notary Public, State of Ohio
55 Public Square, Suite 1332
Cleveland, Ohio 44113
My commission expires June 12, 2022

The State of Ohio,)
County of Summit.) SS:

IN THE COURT OF COMMON PLEAS

Member Williams, et al.,

Plaintiffs;

vs.

No. CV-2016-09-3928

Judge James Brogan

Kisling, Nestico &
Redick, LLC, et al.,

Defendants.

- - - -

Videotaped deposition of ROBERT PAUL HORTON, one
of the Defendants herein, taken before Mary Lou Mellinger,
a Registered Professional Reporter and Notary Public within
and for the State of Ohio, at the offices of Thomas A.
Skidmore Co., L.P.A., One Cascade Plaza, 12th Floor,
PNC Center Building, Akron, Ohio, commencing at 9:09 A.M.,
Monday, February 25, 2019, pursuant to notice of counsel.

- - - -

Magna Legal Services
866-624-6221
www.MagnaLS.com

Page 2

1 APPEARANCES:
 2 Peter Pattakos, Esq.
 Rachel Hazelet, Esq.
 3 The Pattakos Law Firm, LLC
 101 Ghent Road
 4 Fairlawn, Ohio 44333
 330.836.8533
 5 peter@pattakoslaw.com
 rhazelet@pattakoslaw.com
 6 and
 Joshua R. Cohen, Esq.
 7 Cohen Rosenthal & Kramer LLP
 The Hoyt Block Building, Suite 400
 8 Cleveland, Ohio 44113
 216.815.9500
 9 jcohen@crklaw.com
 On behalf of the Plaintiffs;
 10
 11
 12 Thomas P. Mannion, Esq.
 Lewis Brisbois Bisgaard & Smith LLP
 13 1375 East Ninth Street, Suite 2250
 Cleveland, Ohio 44114
 14 216.344.9422
 tom.mannion@lewisbrisbois.com
 15 and
 James M. Popson, Esq.
 16 Sutter O'Connell
 1301 East Ninth Street
 17 3600 Erieview Tower
 Cleveland, Ohio 44114
 18 216.928.2200
 jpopson@sutter-law.com
 19
 20 On behalf of Defendants Kisling Nestico &
 Redick, LLC, Alberto R. Nestico and
 21 Robert Redick;
 22
 23
 24
 25

Page 4

1 EXAMINATION INDEX
 2 By Mr. Mannion page 5
 3 By Mr. Pattakos page 190
 4 ----
 5 EXHIBIT INDEX
 6 Defendants' Exhibit
 7 A page 14 M page 75 Y page 152
 B page 17 N page 75 Z page 152
 8 C page 17 O page 75 AA page 157
 D page 36 P page 75 BB page 158
 9 E page 37 Q page 75 CC page 160
 F page 39 R page 75 DD page 161
 10 G page 41 S page 101 EE page 162
 H page 42 T page 117 FF1 page 164
 11 I page 44 U page 121 FF2 page 166
 J page 57 V page 145 GG page 167
 12 K page 58 W page 146 HH page 170
 L page 58 X page 150
 13
 14 ----
 15 Plaintiffs' Exhibit
 16 1 page 216 11 page 268 21 page 300
 2 page 216 12 page 268 22 page 308
 17 3 page 228 13 page 274 23 page 317
 4 page 231 14 page 277
 18 5 page 234 15 page 282
 6 page 237 16 page 283
 19 7 page 258 17 page 285
 8 page 265 18 page 287
 20 9 page 267 19 page 291
 10 page 268 20 page 299
 21
 22 ----
 23
 24
 25

Page 3

1 APPEARANCES:
 2 Thomas A. Skidmore, Esq.
 Thomas A. Skidmore Co., L.P.A.
 3 One Cascade Plaza, 12th Floor
 PNC Center Building
 4 Akron, Ohio 44308
 330.379.2745
 5 thomasskidmore@rrbiznet.com
 6 On behalf of Defendant Robert Horton;
 7
 8 Bradley J. Barmen, Esq.
 Lewis Brisbois Bisgaard & Smith LLP
 9 1375 East Ninth Street, Suite 2250
 Cleveland, Ohio 44114
 10 216.344.9422
 brad.barmen@lewisbrisbois.com
 11
 On behalf of Defendant Dr. Sam Ghoubril;
 12
 13 David M. Best, Esq.
 4900 W. Bath Road
 14 Akron, Ohio 44333
 330.666.6586
 15 dmb@dmbestlaw.com
 16 On behalf of the Defendants.
 17
 18 ----
 19 ALSO PRESENT:
 20 John J. Reagan, Esq.
 21 Jim Torok, Videographer
 22 ----
 23
 24
 25

Page 5

1 THE VIDEOGRAPHER: We're on the record.
 2 The time is 9:09. Please swear the witness.
 3
 4 ----
 5 ROBERT PAUL HORTON, of lawful age,
 6 one of the Defendants herein, called by
 7 Defendants Kisling, Nestico & Redick, LLC,
 8 Alberto R. Nestico and Robert Redick for the
 9 purpose of examination, as provided by the
 10 Ohio Rules of Civil Procedure, being by
 11 me first duly sworn, as hereinafter
 12 certified, deposed and said as follows:
 13
 14 ----
 15 EXAMINATION OF
 ROBERT PAUL HORTON
 16 BY MR. MANNION:
 17 Q Good morning.
 18 A Hi.
 19 Q Could you please introduce yourself?
 20 A Robert Horton.
 21 Q And you used to work with KNR?
 22 A I did.
 23 Q Who do you work with now?
 24 A Slater & Zurz.
 25 Q Do you know most of the folks around here, or at

Page 6	Page 7
1 least who they are?	1 A A little bit -- mostly University of Akron. I did
2 A I do now, yes.	2 one year at Ohio State.
3 Q Mr. Pattakos is one of your good friends?	3 Q Okay. And then you went to law school at Akron?
4 A He is.	4 A I did.
5 Q How did you first meet him?	5 Q Graduated in '08?
6 A Peter?	6 A Yes.
7 Q Yeah.	7 Q Tell me a little bit about your employment history
8 A Oh, God. In high school.	8 after you left the University of Akron.
9 Q Okay.	9 A Well, after I left the University of Akron, worked in
10 A How exactly I can't tell you.	10 a restaurant until I got licensed in November of that
11 Q Right; right; right.	11 year. I think I did a little concrete work in the
12 A It was 20-some odd years ago.	12 meantime, too, pouring driveways and whatnot.
13 Q Okay. And we've met what, I think on two occasions?	13 Got licensed. The market for jobs was not
14 A Yeah.	14 fantastic. Continued to look for legal work, still
15 Q One?	15 pouring driveways, still working in the restaurant.
16 A About that.	16 Springtime of 2009 or so, kind of started
17 Q One or two?	17 working on my own a little bit taking criminal
18 A Yeah.	18 appointments, doing domestic work, still pouring
19 Q Anything that -- I mean, I know you know the rules of	19 driveways, still working in the restaurant.
20 a deposition. Anything you need to know before we	20 Started working for Perantinides & Nolan I think
21 get started or anything like that?	21 in late 2010. I'd been using an office in their
22 A I don't think so.	22 building while I was working on my own. Worked there
23 Q Okay. So tell me a little bit just about your	23 for a year and a half-ish.
24 educational background before we get into it. Where	24 Q Okay.
25 did you go to undergrad?	25 A And then went to work at KNR, worked there for about
Page 8	Page 9
1 three years.	1 Q It was different than Slater and KNR, though, the
2 And then went to work -- I'm sorry, after that I	2 Perantinides experience there, or was it similar?
3 went to work at a company called National Interstate,	3 A Yeah; yeah, because I was -- I mean, I was more of a
4 it was an insurance company, worked there for about	4 clerk than an attorney. I don't know if that's a
5 three months.	5 good way to put it. But I was always like the
6 And then I went to work at Slater & Zurz, and	6 secondhand guy on stuff, and always -- you know, you
7 that's where I'm at today.	7 do a lot of, not busywork -- it's tough to explain.
8 Q Is that the trucking insurance company?	8 Q Okay.
9 A I think they do -- I was in -- I can't remember what	9 A You do a lot of research and writing and things like
10 the specific name of the division was, but I did all	10 that, but --
11 commercial, buses, trucks, RTAs, things like that.	11 Q And you started at KNR when?
12 Q Okay. When you were at Perantinides & Nolan, you did	12 A 2012 at some point in time, early 2012, I believe.
13 a little PI work there, or all PI?	13 Q How many PI cases do you think you handled before you
14 A A little bit of everything. Well, yes, a little bit	14 got to KNR?
15 of everything, still doing some criminal things,	15 A I have no idea.
16 still doing a few domestic things, mostly getting	16 Q Are we talking dozens or hundreds?
17 into the PI at that point in time.	17 A Oh, yeah, in the dozens range, I mean, if that. Not
18 Q When you did PI at the Perantinides office, was it	18 a lot. I worked a lot -- like they did a lot of med
19 primarily the case had already been signed up and	19 mal, so I did a lot of support work on the med mal
20 given to you to work on, or did you also deal with	20 cases, you know, drive around to doctor's
21 sign-ups back then?	21 depositions, you know, filing things, doing research.
22 A You know what, I can't recall specifically. I would	22 Working my own PI cases, I mean, it might be
23 say because I was new, you know, I remember sitting	23 less than two dozen. I don't know. I mean, it's
24 in on a couple of times getting the clients signed	24 been a long time, but not a lot.
25 up, but I can't tell you for sure.	25 Q When you started at KNR, was there any one person

Page 10	Page 11
1 that you either shadowed or trained with, or anything	1 just seems like second nature. It was a learning
2 like that, more than the others?	2 experience for sure, for sure.
3 A Paul Steele --	3 Q And on those files that you took over, you became the
4 Q Okay.	4 attorney for those clients?
5 A -- probably.	5 A Yes.
6 Q He was up in the Akron office at the time?	6 Q And would you agree that in the entire time that you
7 A He was.	7 were at KNR, for all the clients you represented, you
8 Q Okay. How long do you think you did that? How long	8 always acted with the clients' best interests in
9 did the, quote, training or shadowing take?	9 mind?
10 A I don't recall specifically. I don't know. I don't	10 A My job was to do the best I could for my client for
11 know. A week, two weeks. I can't tell you.	11 sure.
12 Q And you just sort of watched how he did things or --	12 Q You always kept their best interests in mind, true?
13 A Yeah, for the most part. I believe so. I don't know	13 A True.
14 if I was a special circumstance or not, but I kind of	14 Q Okay. And when you saw other lawyers, you always saw
15 jumped in with my feet, just jumped right in. I took	15 them, to the extent you saw them handle any cases,
16 over a full docket on my first day because I replaced	16 taking the clients' best interests at hand, true?
17 a guy who had left on a Friday. So I didn't have a	17 A Very -- it's a difficult question because there was
18 ton of time to figure things out. It was "Here's a	18 not a ton of interaction with the other attorneys --
19 boatload of files. Go watch Paul for a little bit,	19 Q Okay.
20 and then go do it."	20 A -- for the most part.
21 Q And when you say "figure things out," you knew how to	21 Q I see. So you couldn't say one way or another, you
22 handle a PI case when you came there?	22 didn't really watch how they handled their cases?
23 A Roughly, I would say. You know, they all kind of	23 A No. I mean, we would tell stories back and forth
24 have the same flow, and I don't know if I'm saying	24 about cases that we had, but we don't -- we did a lot
25 this now after doing it for eight to ten years, it	25 of work. I couldn't tell you sitting across the hall
Page 12	Page 13
1 from Josh, you know, the things that he was doing	1 A Yeah, that was it.
2 versus what I was doing, in terms of how he	2 Q Championship year or a different year?
3 approached it with his clients I guess. I don't know	3 A No, it was this past year, wasn't it? It was like
4 if that's a good answer.	4 three weeks ago, maybe, four weeks ago.
5 Q So at least it's safe to say you never observed	5 Q No.
6 anybody acting against the clients' best interests,	6 A No? That wasn't you? Then I had the wrong guy.
7 fair?	7 Q No, I haven't been to a Cavs' game this year.
8 A Fair.	8 A Then it wasn't you. Then it was your twin.
9 Q Now, we mentioned earlier that you and I had met	9 Q Wait. Did I have a 13 year old with me?
10 twice to talk. Both times your counsel,	10 A Yes.
11 Mr. Skidmore, was there?	11 Q It was me.
12 A Correct.	12 A Okay. There you go.
13 Q And you've never talked to me outside the presence of	13 Q I went to one game this year. I don't -- God, I
14 counsel, fair?	14 just -- it must have been a real in passing.
15 A One time.	15 A It was in passing. I walked down and said hi and I
16 Q You did? I don't remember it.	16 walked back up to my seat, the security wouldn't let
17 A I saw you at the basketball game.	17 me get that close.
18 Q Oh. Did we say hi?	18 Q You know, I looked on the website on Slater & Zurz,
19 A We said hi.	19 and it said KNR, when you were at there, it expanded
20 Q Okay.	20 your knowledge and experience in PI claims; you
21 A We said hi, we shook hands and said, you know, "Hope	21 certainly agree with that?
22 you're enjoying the game." That was it.	22 A Yeah, true.
23 Q Cavs' game?	23 Q And even after you left KNR, you kept in touch with
24 A Yeah.	24 Rob Nestico for a little bit?
25 Q I don't even remember it.	25 A A brief period of time.

Page 14

1 Q Do you recall in, like, May 2016 there was an OAJ
 2 meeting in Columbus?
 3 A I do.
 4 Q And that was probably about a month or so before this
 5 lawsuit was initially filed in Cuyahoga County?
 6 A Yes.
 7 Q Okay. You didn't talk to anybody there about the
 8 lawsuit --
 9 A No.
 10 Q -- or anything like that, correct?
 11 A No.
 12 Q And you sat around and you mingled with and had
 13 drinks with the KNR folks who were there?
 14 A I did.
 15 Q Okay. Now, we all know that you've given an
 16 affidavit in this case.
 17 A Yep.
 18 Q And so let's just get that out now. Now, it has an
 19 exhibit sticker.
 20 MR. MANNION: Here you go, guys,
 21 everybody.
 22 If you could mark this, please.
 23 ----
 24 (Thereupon, Defendants' Exhibit A was
 25 marked for identification.)

Page 16

1 Q And you weren't coerced into signing this, were you?
 2 A No.
 3 Q You weren't intimidated into signing this, were you?
 4 A No.
 5 Q And in fact, you were represented by counsel at all
 6 times and went over this at great length with counsel
 7 before signing it, true?
 8 A I did.
 9 Q Okay. If you see Exhibit A to the agreement, that
 10 would have been the confidentiality agreement you
 11 signed at KNR when you started there?
 12 A Yes.
 13 Q Okay. And if you look at paragraph two of the
 14 affidavit, can you read that out loud?
 15 A "I have --" excuse me. "I have personal knowledge of
 16 the statements made in this affidavit and all
 17 statements are made to the best of my knowledge."
 18 Q Okay. And that's true then and it's true today?
 19 A Yes.
 20 Q Okay. And if you look at paragraph 45, the last
 21 paragraph of the Affidavit, can you review that, read
 22 that?
 23 A "I have reviewed this affidavit with my attorney and
 24 voluntarily agree to provide this Affidavit, which is
 25 truthful to the best of my knowledge."

Page 15

1 ----
 2 Q And, Mr. Horton, this has -- the first page is an
 3 exhibit page because it was part of a motion or
 4 something like that on the docket, but if you flip to
 5 the second page, just take a look, if you could tell
 6 me if this is your affidavit, and let me know if
 7 those are your initials at the bottom of each page
 8 and your signature before the notary public.
 9 A Yep, it looks to be.
 10 Q And just for the record, because there will be a
 11 jury, can you tell them what an affidavit is?
 12 A It's just a sworn statement under oath.
 13 Q So there would have been a court reporter there, or
 14 was it your counsel who swore you?
 15 A It was counsel.
 16 Q Attorney Skidmore?
 17 A I believe so, yeah.
 18 Q And you obviously knew the importance of an affidavit
 19 and telling the truth obviously?
 20 A Yes.
 21 Q And only putting in things that you had personal
 22 knowledge of, correct?
 23 A Yes.
 24 Q And you did tell the truth?
 25 A I did.

Page 17

1 Q And was that true then?
 2 A Yes.
 3 Q And there was, shortly after this affidavit --
 4 ----
 5 (Thereupon, Defendants' Exhibit B was
 6 marked for identification.)
 7 ----
 8 THE WITNESS: Is this for me, Dave?
 9 Q Yes. If she marked it, yes. And if you turn to page
 10 three -- well, first, do you recognize this as an
 11 article that was either on Cleveland.com or something
 12 of that nature?
 13 A Yeah, it looks like that.
 14 Q And if you turn to page three, in the third
 15 paragraph, "Pattakos said in an interview Tuesday
 16 that the lawsuit against Horton and the affidavit,"
 17 quote, "is the product of KNR's effort to intimidate
 18 and bully him;" did I read that correctly?
 19 A Yes.
 20 Q And you already had testified earlier that you were
 21 not intimidated into signing this. I'd like to show
 22 you something else on that right now.
 23 ----
 24 (Thereupon, Defendants' Exhibit C was
 25 marked for identification.)

Page 18	Page 19
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
Page 20	Page 21
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25

Page 22	Page 23
<p>1 A Um-um.</p> <p>2 Q During your time at KNR, was there ever a time that</p> <p>3 you would have a perspective client tell you on an</p> <p>4 intake call -- and let's stop right there. What's an</p> <p>5 intake call at KNR?</p> <p>6 A A new client calls in and wants to potentially get</p> <p>7 signed up with you.</p> <p>8 Q Okay.</p> <p>9 A It's the call where you basically do your information</p> <p>10 gathering and try and get them to sign up with you as</p> <p>11 a client.</p> <p>12 Q And I assume, but I've never worked there so I don't</p> <p>13 know, I assume there's all types of different calls</p> <p>14 you might get, the accident was a long time ago, the</p> <p>15 accident was yesterday, the accident was weeks ago?</p> <p>16 A Excuse me. Generally speaking most of the -- for the</p> <p>17 most part, a great majority, it was accidents that</p> <p>18 were recent. Not -- you got remote, you got calls</p> <p>19 about, you know, remote accidents from way back when,</p> <p>20 particular periods of time, you know, they hadn't</p> <p>21 gotten an attorney, they were unhappy with their</p> <p>22 attorney, things like that, but generally speaking</p> <p>23 they were all fairly recent accidents.</p> <p>24 Q And other than generally being fairly recent</p> <p>25 accidents, each intake conversation was a little bit</p>	<p>1 different, depending on the client and the lawyer</p> <p>2 talking to them, fair?</p> <p>3 A I would say probably, you know, we all had our own</p> <p>4 way of mixing it up a little bit, but we generally</p> <p>5 had the same, the same idea went behind the call; you</p> <p>6 gather information, you try and get them to sign up</p> <p>7 as a client, you know. That's why -- I said I sat</p> <p>8 and listened to Paul do intakes. I think -- I don't</p> <p>9 know -- I had a couple people sit and listen to me do</p> <p>10 intakes, you know. We went over intakes in quarterly</p> <p>11 meetings, things like that.</p> <p>12 Q There was no script that you were given, though, to</p> <p>13 do intakes, true?</p> <p>14 A I don't recall ever being given like a paper script,</p> <p>15 but there were definitely guidelines or suggestions</p> <p>16 made on, you know, the things you should do and the</p> <p>17 things you should say I guess.</p> <p>18 Q For example?</p> <p>19 A Get all the information, you know, tell them the</p> <p>20 benefits of having an attorney to represent them</p> <p>21 against the insurance company, things like that.</p> <p>22 Q Talk about the contingency fee agreement?</p> <p>23 A Yes.</p> <p>24 Q Okay. But there wasn't some type of flowchart that</p> <p>25 if the prospective client says X, here's what you</p>
Page 24	Page 25
<p>1 say, if they say this, here's what you say, and you</p> <p>2 had to follow a script and go by it, true?</p> <p>3 A Yeah. Yeah, nothing on paper like that, no, no</p> <p>4 script.</p> <p>5 Q And you certainly never followed a script in doing</p> <p>6 your intakes, true?</p> <p>7 A No. After you do a thousand of them, it's kind of in</p> <p>8 your head, but, yeah.</p> <p>9 Q But they're all a little bit different, depending on</p> <p>10 the accident, the person, fair?</p> <p>11 A You're still gathering the same information. We know</p> <p>12 when the accident took place, where the accident took</p> <p>13 place, how the accident happened, we know where they</p> <p>14 went for treatment. Those things, yes, they're</p> <p>15 different for sure, and everybody has their own, you</p> <p>16 know, attitude, and what they're looking for on the</p> <p>17 other end of the call, so you have to kind of address</p> <p>18 that, too, but --</p> <p>19 Q And you're talking about the prospective client?</p> <p>20 A Yeah.</p> <p>21 Q For example, some might have more questions about the</p> <p>22 contingency fee than others?</p> <p>23 A Yes.</p> <p>24 Q Okay. What would you generally tell prospective</p> <p>25 clients about the contingency fee arrangement?</p>	<p>1 A Well, you can tell them it's a contingency fee, all</p> <p>2 the things that I, you know, suppose the Supreme</p> <p>3 Court would like us to say about them, I guess. If</p> <p>4 I'm remembering correctly, because I've seen it a</p> <p>5 million times and they all basically look the same,</p> <p>6 you know, we -- to the best of our ability, we're</p> <p>7 going to represent you, it may not be me, we're going</p> <p>8 to get help from the people in the office.</p> <p>9 We had -- the contingency fee was one-third. We</p> <p>10 only got a recovery if they got a recovery. If we</p> <p>11 didn't get them a recovery, they wouldn't owe us</p> <p>12 anything.</p> <p>13 Case expenses, we advance case expenses. If we</p> <p>14 got a recovery, we paid ourselves back, which was</p> <p>15 separate from the fee. If we didn't get a recovery,</p> <p>16 just like the fee, we weren't going to bill them for</p> <p>17 those things.</p> <p>18 And then if after a reasonable investigation it</p> <p>19 appeared that we could not do anything to help them</p> <p>20 out, we reserved the right to withdraw from the case.</p> <p>21 Q Okay.</p> <p>22 A That's basically it. They all kind of look the same.</p> <p>23 Q And some prospective clients had questions about</p> <p>24 those individual matters and some didn't?</p> <p>25 A Right.</p>

Page 26	Page 27
1 Q Okay. And your conversation, the flow of your	1 chase down a client who didn't want to be
2 conversation sort of depended on the interaction with	2 represented?
3 the prospective client?	3 A No.
4 A Yeah.	4 Q That never happened, did it?
5 Q Okay.	5 A No.
6 A I mean, you got -- if you got -- I don't know if I	6 Q You didn't do that to Ms. Norris, did you?
7 was good at it or not, but you kind of -- you asked	7 A I did not.
8 the questions to guide them through the process, and	8 Q Would you even send an investigator out to meet with
9 then when you get to a point you say "Do you have any	9 people if they had not already told you that they
10 questions?"	10 wanted to be represented?
11 They say "Yes," "No, everything is great" or "I	11 A That's correct.
12 have these questions," whatever.	12 Q So, in other words, you would be on the phone with a
13 Q I assume that after you hear the same question so	13 prospective client --
14 often you just tell them up front about that, rather	14 A Yes.
15 than make them ask it, you get better at it?	15 Q -- and they would agree to the representation, true?
16 A Yeah, probably.	16 A Yes.
17 Q Okay. I assume that you don't remember your specific	17 Q You had already explained the contingency fee
18 conversations with Ms. Norris, Monique Norris, in	18 agreement, true?
19 the -- before she agreed to become a client?	19 A Yes.
20 A Not at all.	20 Q And then what would you tell about an investigator
21 Q Okay. But you do know what you would have done as a	21 and signing the agreement?
22 matter of course --	22 A "We're going to send somebody out to come see you to
23 A Yes.	23 sign our paperwork," and "What time would you like
24 Q -- true?	24 them to be there," I mean, that's the basic gist of
25 And would you ever send an investigator out to	25 it.
Page 28	Page 29
1 Q Now, Ms. Norris testified you said that you were	1 what's not. Maybe the third or the fourth one. I
2 going to send an investigator out. Did you use the	2 don't know.
3 word "investigator" sometimes, and sometimes you	3 Q You didn't send investigators out to discuss the
4 didn't?	4 contingency fee agreement with the client, as far as
5 A Yeah, maybe, maybe not, it depended. "I'm going to	5 the terms and conditions and how it works?
6 send Aaron" or "Mike" or "I'm going to send	6 A No. I always went over it on the phone with
7 somebody." I mean, I don't recall specifically,	7 everybody.
8 but --	8 Q Okay. Would you tell them usually that "Hey, once
9 Q Okay. But you certainly would not do that unless the	9 you see it and read it, if you have any questions,
10 folks had agreed to have the person come out, true?	10 the investigator can put me on the phone," or what
11 A Correct, yes.	11 would you say?
12 Q You didn't have investigators chase down anybody, did	12 A No, I don't think so, because I think at that point
13 you?	13 it's "Do you have any questions," and if they say no,
14 A No.	14 then everything is okay, you know, they understood --
15 Q Okay. You wouldn't do that to sign a contingency fee	15 you presume they understood everything you went over.
16 agreement, would you?	16 The investigators, though, if they did go out,
17 A No.	17 they did call if the people had questions, they would
18 Q Did you read the Amended Complaints in this case, the	18 call in and get you on the phone.
19 Fifth Amended Complaint?	19 Q If they had questions about either the contingency
20 A I have not.	20 fees or the arrangement whatsoever with KNR?
21 Q What's the last version of the Complaint you read?	21 A Yeah.
22 A I don't think I've ever read any of them, except some	22 Q So you didn't expect the investigators to have that
23 of the early ones. I don't think I've ever read them	23 discussion with the prospective client, you expected
24 in their totality. I've read bits and pieces here	24 them to get somebody on the phone to make those -- an
25 and there. I couldn't tell you what's different and	25 attorney on the phone to make those decisions?

Page 30	Page 31
1 A I'd say that's a fair statement, yes.	1 A Yeah, I don't know the answer to that question.
2 Q And you never saw anybody else at KNR send	2 Q Okay. That's not something you observed, true?
3 investigators out to chase down people that did not	3 A No, correct.
4 agree to be represented already, did you?	4 Q Okay. You also never saw any other lawyers using a
5 A Not that I know of, no, I never did.	5 script during intakes, true?
6 Q I mean, did you ever see anybody at KNR send	6 A I don't -- I don't --
7 investigators chasing prospective clients?	7 Q One way or another.
8 A No, I don't think so, not to my recollection.	8 A Yeah, I don't think so. I don't recall. I don't
9 Q But you don't remember a single one, fair?	9 think ever anything was actually put on paper. There
10 A Fair.	10 was just everybody was told how to do it and then you
11 Q Okay. Do you have any --	11 did it, I guess. I don't know.
12 A Well, I don't remember them going out and seeing	12 Q Everybody was told generally what you need to do, but
13 anybody who hadn't been scheduled, we hadn't had them	13 you already knew as a lawyer what you had to talk
14 on the phone, they hadn't said "We're going to send	14 with to a prospective client about, fair?
15 somebody out to see you" and they say "Okay," you	15 A Yeah, for the most part.
16 know what I mean? Do you understand the difference?	16 Q And then everybody developed their own style?
17 Q Sure. That's not chasing somebody down, is it?	17 A Their own style within the parameters of how we were
18 A Right. I would say not, right.	18 supposed to do it, yes.
19 Q Okay. Do you have any idea where Attorney Pattakos	19 Q Okay. Explain that.
20 or any of the Plaintiffs got the idea that	20 A Well, like I said, we had particular bits of
21 investigators were sent to chase prospective clients	21 information we had to get. We had particular things
22 down?	22 that, and I guess my experience was, we had to go
23 MR. SKIDMORE: Objection.	23 over the contingency fee agreement and then answer
24 You can answer.	24 questions, and then get them to sign up, you know, I
25 Q If you know.	25 don't know if "make a sale or not" is the best way to
Page 32	Page 33
1 put it, but tell them the things that, you know, the	1 inkling of what she potentially has said, I guess. I
2 things that we could do to help them out to get -- to	2 don't know.
3 become their representation.	3 Q Okay. You certainly never swindled anybody into
4 Q Sort of the same thing you do now at Slater?	4 signing a contingency fee agreement, did you?
5 A Yeah. I mean, it's the job of an attorney, you want	5 A No.
6 to get the clients, so you answer their questions,	6 Q Not at KNR or anywhere else?
7 you answer their questions and tell them how it	7 A No.
8 works.	8 Q And so if she testified -- let me just take a step
9 Q To know what was said in any one conversation,	9 back. Monique Norris also testified that during the
10 though, between a prospective client who eventually	10 first phone call with you, that she told you that she
11 signed with KNR, to know what was said in any one	11 wasn't sure whether she wanted KNR to represent her
12 conversation you'd have to ask that lawyer and that	12 or not, and that you really didn't talk about the
13 client, fair?	13 one-third fee or really go over the contingency fee
14 A That lawyer and that client, yeah. I know -- well,	14 agreement much, and you said "I'll send out the
15 yeah, you would have to ask that lawyer and that	15 investigator to discuss that with you." Is that
16 client.	16 something that would have happened?
17 Q Are you aware that Monique Norris testified under	17 A No.
18 oath that you swindled her into signing the	18 Q Not even close, is it?
19 contingency fee agreement?	19 A No, never.
20 MR. PATAKOS: Objection. Objection,	20 Q Okay. And she further stated that -- testified, I
21 that misstates her testimony.	21 should say, that when the investigator came out, he
22 MR. BEST: That's the word, just in	22 told her that the document she was signing was just a
23 case --	23 release so she could talk to you guys, and never told
24 A I am vaguely familiar with -- I don't know what was	24 her it was a contingency fee agreement, and she knew
25 under oath and what was not under oath. I have an	25 nothing about the contingency fee agreement until she

Page 34

1 called you the next day. Is that something that
 2 would happen?
 3 A Listen, I wasn't there, so I can't say whether it did
 4 or did not happen.
 5 Q Have you ever heard of that happening?
 6 A No.
 7 Q Okay. And you had already told her about the
 8 contingency fee agreement before he went out there,
 9 the investigator, true?
 10 A Based on how I did things I would presume that I told
 11 her about the contingency fee agreement before
 12 anybody went to see her, yes.
 13 Q You're a hundred percent certain on that, aren't you,
 14 sir?
 15 A I don't think I've ever done a phone call where I've
 16 talked to somebody and haven't gone over the fee
 17 agreement before they went out to see them.
 18 Q And Monique Norris further testified that when they
 19 called you the next day and said "Well, I'm still
 20 thinking about having you guys represent us," you
 21 said "Oh, no, you signed the contingency fee
 22 agreement, and if you want to get out of it now,
 23 you're going to have to pay us."
 24 A I don't remember Monique Norris, so I don't know if I
 25 did talk to her the next day or not. I know we had

Page 36

1 A No.
 2 -----
 3 (Thereupon, Defendants' Exhibit D was
 4 marked for identification.)
 5 -----
 6 Q What exhibit letter is that?
 7 A D.
 8 Q Okay. And do you recognize Exhibit D?
 9 A I do.
 10 Q Okay.
 11 A Well, I can't say I recognize it, but I mean --
 12 Q It's yours?
 13 A Yeah. I have zero recollection of it, but it looks
 14 like it's an e-mail from me to Gary Kisling.
 15 Q Okay. And this was just you simply saying "Hey,
 16 Peter Pattakos is a good friend of mine. He's of
 17 counsel in Cleveland. He's a good guy, great lawyer,
 18 reasonably priced," in other words, you were saying
 19 "If we can refer business litigation to him, let's do
 20 it," fair?
 21 A I don't, I don't know if this was in response to
 22 something that Gary had made a request for. I don't
 23 think I would have affirmatively done that. I mean,
 24 I have no recollection of it. It's definitely
 25 something I would say about Peter, but I don't know,

Page 35

1 pretty strict requirements about when we were to talk
 2 to our clients.
 3 I would not have told -- the only thing I can
 4 say is that she maybe misconstrued a discussion.
 5 Again, the day after representation, it wouldn't even
 6 be anything, it would be a quantum meruit lien, but
 7 that's, that's it. I mean, I would not say "You owe
 8 us a fee for not representing you anymore." Does
 9 that make sense?
 10 Q Yeah. And you don't remember ever anybody calling
 11 you and not realizing they had signed a contingency
 12 fee agreement, do you?
 13 A No, I don't think so.
 14 Q And a quantum meruit discussion certainly wouldn't
 15 come up a day after signing?
 16 A No; no.
 17 Q Now, would you -- let me ask you this. Did you ever
 18 voluntarily tell clients or prospective clients about
 19 loans without them asking?
 20 A No.
 21 Q And if Monique Norris testified that early on in your
 22 representation you said "Hey, if you ever need a
 23 loan, we use Liberty Capital, that's who we use," is
 24 that something that you think you would do on your
 25 own?

Page 37

1 I don't know the context of it.
 2 Q And I'm not being critical of it, I'm just --
 3 A Yeah, no, because I don't know if Gary was looking
 4 for information or if I was just passing it along to
 5 Gary.
 6 Q You know, I noticed on the Slater & Zurz website, and
 7 I have a copy here but I don't think we need to mark
 8 it, there is a picture of the scales of justice.
 9 A Yep.
 10 Q And it's an individual against an insurance company
 11 without a lawyer, and then an individual with a
 12 lawyer against an insurance company; do you recall
 13 that on the website?
 14 A No. I mean, we've actually changed our website
 15 probably 20 times in the past six months or so. I'm
 16 not in charge of that.
 17 Q Okay.
 18 A I'll take your word for it.
 19 Q I'll just mark it, then.
 20 MR. MANNION: I don't know if I have
 21 copies of this for everybody or not.
 22 -----
 23 (Thereupon, Defendants' Exhibit E was
 24 marked for identification.)
 25 -----

Page 38

1 Q Do you recognize Exhibit E?
 2 A No. I mean, I don't.
 3 Q If I told you that's on your website, do you dispute
 4 that?
 5 A I would have no reason to.
 6 Q What is that trying to say to the general public, in
 7 your mind?
 8 A That you needed an attorney's help to get a fair
 9 recovery from an insurance carrier.
 10 Q And is one of the reasons because oftentimes the
 11 insurance company is calling the person who was
 12 injured in an accident even before they get a lawyer?
 13 A I don't know if that's what this is a representation
 14 of. This is a representation of needing help with
 15 your case. The timing of it I don't, I don't think
 16 has anything to do with that.
 17 Q But oftentimes if the insurance company calls and
 18 they're not represented, one of the dangers is that
 19 the person is not going to know all their legal
 20 rights, true?
 21 A True.
 22 Q And this is sort of a representation saying with a
 23 lawyer, you can be on a fair level playing field with
 24 the insurance company, true?
 25 A I would say that that's what that is intended for,

Page 40

1 of one of the investigators, is it?
 2 A I have no idea.
 3 Q Have you ever seen an investigator's handwriting look
 4 like that?
 5 A I have no idea.
 6 Q Okay. But on here, it says "Monique Norris" at the
 7 top, true?
 8 A Yes.
 9 Q Then it says "to represent," it says "myself," right?
 10 A Um-um.
 11 Q Yes?
 12 A Yes. Sorry.
 13 Q Puts in the date as well, July 29, 2013?
 14 A Correct.
 15 Q And at the bottom, it is signed as well?
 16 A It appears to be, yes.
 17 Q By Monique Norris?
 18 A Yep.
 19 Q Okay. So do you know whether or not Monique Norris
 20 ever asked you any questions about this?
 21 A I have no idea. I can't tell you yes or no.
 22 Q You know you explained it to her, though, before she
 23 signed it?
 24 A My normal procedure would have been to go over that
 25 before they signed it, yes.

Page 39

1 yeah.
 2 Q And that's one of the things that actually
 3 Mr. Nestico, you heard him talk about all the time,
 4 is fight for your clients against these insurance
 5 companies, true?
 6 A Yes.
 7 Q That was your job?
 8 A It is my job.
 9 Q It still is today, right?
 10 A Yep.
 11 Q That's a good thing, right?
 12 A I think so.
 13 -----
 14 (Thereupon, Defendants' Exhibit F was
 15 marked for identification.)
 16 -----
 17 A Thank you.
 18 Q And I'm not going to ask if you recognize this
 19 particular document as signed, but do you recognize
 20 Exhibit F generally as a contingency fee agreement
 21 with KNR?
 22 A Yes.
 23 Q And this particular one has Monique Norris on there?
 24 A It does.
 25 Q And the handwriting at the top is not the handwriting

Page 41

1 Q And never once did you ever have somebody sign one of
 2 these without going over it with them, true?
 3 A I don't think I ever had a client that signed it that
 4 didn't go over it.
 5 -----
 6 (Thereupon, Defendants' Exhibit G was
 7 marked for identification.)
 8 -----
 9 Q Do you recognize Exhibit G?
 10 A I do.
 11 Q What is this?
 12 A Another fee agreement.
 13 Q And this one is with Member Williams?
 14 A It appears to be.
 15 Q Former KNR client?
 16 A I believe so.
 17 Q And a Plaintiff in the current case?
 18 A Correct.
 19 Q Did you refer Member Williams to Attorney Pattakos?
 20 A Yes.
 21 Q And we'll talk more about that later. But prior to
 22 the time you came to KNR, did you represent Member
 23 Williams in another case?
 24 MR. SKIDMORE: Objection.
 25 Q Without telling us about the case.

Page 42	Page 43
1 A I don't recall.	1 September 2013.
2 Q Okay. Do you know how she came to KNR?	2 Q Tell me how this letter would come about and why you
3 A I think so. Do you want me to explain it to you?	3 would send it.
4 Q Sure.	4 A I believe it was a form letter that was automatically
5 THE WITNESS: Can I?	5 generated using the computer program that was sent to
6 MR. SKIDMORE: Yeah.	6 every new client in the firm.
7 A All right. She is my first paralegal's mother, and	7 Q And if you look at the contingency fee agreement, it
8 is a relation of somebody else who worked at KNR, and	8 was on the same date that the contingency fee
9 I think she came because of that other person, but	9 agreement was signed, correct?
10 then I ended up as her attorney because she also knew	10 A Yes.
11 me, if that makes sense.	11 Q I notice in the first paragraph of your letter to
12 Q Okay. And you would have explained the contingency	12 her, you indicate that you enclosed a copy of the
13 fee agreement to Member Williams as well, true?	13 contingency fee agreement for her records, true?
14 A Yes.	14 A That's what it says, yeah.
15 Q Any question in your mind about that?	15 Q You did that with all your clients, didn't you, at
16 A No.	16 KNR?
17 Q And I assume you don't remember that conversation?	17 A I don't know. Like I said, we actually didn't have
18 A I do not.	18 anything to do with sending these letters out. It
19 Q Okay.	19 was either the paralegal or the case opener, one of
20 ----	20 the two. I have no idea.
21 (Thereupon, Defendants' Exhibit H was	21 Q You expected the contingency fee agreement to be sent
22 marked for identification.)	22 to every client, true?
23 ----	23 A I mean, based on this I presumed it went out, yeah.
24 Q Do you recognize Exhibit H?	24 Q Well, you expected it to, didn't you?
25 A It looks like a letter to Ms. Williams from	25 A That's fair, yeah.
Page 44	Page 45
1 Q Would there also be case manager letters that would	1 It could have been anybody.
2 go out at times so that the clients knew who they	2 Q Okay.
3 were going to be dealing with at KNR?	3 A I don't recall. I know this is dated from July 2017,
4 A I don't know.	4 and I didn't even work there in 2017.
5 ----	5 Q Which I don't know why that says that up there. But
6 (Thereupon, Defendants' Exhibit I was	6 do you recall working with Jenna when you were at
7 marked for identification.)	7 KNR?
8 ----	8 A Um-um, yes. She was my paralegal for a while.
9 Q Exhibit I, had you seen letters like this at KNR?	9 Q And in fact, she did a good job for you, didn't she?
10 A Not to my recollection.	10 A She did.
11 Q Okay.	11 Q I see you're laughing a little bit. I just saw some
12 MR. PATTAKOS: Did we miss H?	12 e-mails where you said "Great job, thanks," and all
13 THE WITNESS: No, H was --	13 these great things to her.
14 MR. BARMEN: H was the last letter.	14 A Yeah, she was generally a good paralegal.
15 THE WITNESS: Yeah.	15 Q Okay. And what's a case manager at KNR?
16 MR. PATTAKOS: Sorry about that.	16 A I suppose that might be a synonym for a paralegal, I
17 Q So Exhibit I is a letter to Member Williams from	17 guess.
18 paralegal Jenna Wiley, indicating that she's a case	18 Q What would you expect of the paralegal on a case like
19 manager and that she would be assisting you with	19 Member Williams' case or Monique Norris' case when
20 Member Williams' personal injury case?	20 you were at KNR?
21 A That's what it appears to be.	21 A Keep up contact with the client, order medical
22 Q Do you recall that Jenna assisted you with the case?	22 records and bills, keep track of medical records and
23 A I -- no, I don't. I don't remember the time frame,	23 bills coming in, organize the file, get it ready to
24 who was my paralegal at the time. I don't think -- I	24 go out the door to the insurance company --
25 don't know if in 2013 Jenna was my paralegal or not.	25 Q Okay.

Page 46

1 A -- settlement memos and I guess communications, too,
 2 send out the letters that they're supposed to send
 3 out. Some of that stuff was not my call. It was
 4 protocol more than my call, I guess.
 5 Q What things?
 6 A Well, again, like the opening letter, and then
 7 these -- I guess a letter like this that would say
 8 I'm the person that is doing this. That was just a
 9 matter of course, I guess.
 10 Q These things were all available to you, when you were
 11 representing these clients, on the computer, true?
 12 A I believe so, yeah.
 13 Q And you had a system in place called Needles?
 14 A Um-um.
 15 Q What was Needles?
 16 A Case management software.
 17 Q Okay. What would you do basically with Needles?
 18 A Everything. Organize workflow, track case expenses,
 19 track client conversations, track negotiations, track
 20 adjuster conversations, case management. I mean,
 21 just you follow it along. It's the only way you
 22 could -- it's a great computer program. It's really
 23 the only way that you could do what we did, I guess.
 24 I don't know if that's --
 25 Q And it was a way for you to communicate, also, with

Page 48

1 with Member Williams on what was best for her and her
 2 case, true?
 3 A Yes.
 4 Q You didn't treat her different than you would have
 5 somebody else who came in that you didn't know, true?
 6 A True.
 7 Q So how would you make the determination on whether
 8 you were going to ask somebody if they needed to see
 9 a chiropractor if they asked you, or what type of
 10 doctor? How would that come about?
 11 A Can you say that again?
 12 Q Sure. So when you had discussions with the clients,
 13 a lot of them -- well, they were all injured, true?
 14 A Yes.
 15 Q You didn't do only property damage, fair?
 16 A We did no property damage.
 17 Q You might help them out if they had a PI claim get a
 18 rental or --
 19 A Yeah, the ancillary stuff.
 20 Q But they had to have an injury to represent them?
 21 A Yes.
 22 Q And would you say that the vast majority of your, if
 23 not all of your clients at KNR, also had treatment
 24 for their injuries?
 25 A Yeah. I mean, they had to have treatment to have an

Page 47

1 others at the firm, if you sent e-mails they'd
 2 eventually get in there?
 3 A I don't think so at the time. I don't think -- I
 4 mean, maybe if you cut and pasted them in there. I
 5 have no idea. Now I think it's integrated into the
 6 software. I don't know if it was at the time.
 7 Q Do you remember Member Williams' case?
 8 A Vaguely.
 9 Q Okay. And do you recall that she never saw a
 10 chiropractor in her care, true?
 11 A I don't think so. I don't have a recollection of it.
 12 I don't believe so.
 13 Q Okay. Why don't you take a look at your affidavit.
 14 I think that you addressed that issue in the
 15 affidavit.
 16 A I think the affidavit says I didn't refer her to one,
 17 that's accurate. Yeah, it says "Neither KNR nor I
 18 requested Member Williams to treat with any
 19 chiropractors as a result of the accident." Yeah, I
 20 don't --
 21 Q You never referred her to any physician, true?
 22 A I don't think so, no. To the best of my knowledge I
 23 would say that's true.
 24 Q And it wasn't because she was a friend of anyone at
 25 the firm, it's because you had to make a decision

Page 49

1 injury claim I guess.
 2 Q How would you decide whether you should recommend a
 3 chiropractor to someone or recommend a medical
 4 doctor, or, I mean, what process would you go
 5 through? For example, would you say "Do you have a
 6 primary care physician? Do you have a chiropractor
 7 already?" What would you do?
 8 A Um --
 9 Q And I'm not talking about which one you send them to
 10 yet, just how would you make the initial decision?
 11 A If they had a soft tissue injury, then we were to
 12 send them to a chiropractor. I don't think Member --
 13 I think she had a head injury, I vaguely, vaguely
 14 remember. I don't know. And if somebody came in and
 15 said, you know, "I've got a concussion," you know,
 16 I'm not going to send them to see a chiropractor.
 17 Q Or broken bones?
 18 A Right. Well, I mean, even if you have a broken leg,
 19 you can still have, you know --
 20 Q True.
 21 A -- a neck and back injury and still send them to see
 22 a chiropractor, so --
 23 Q So did you ever -- strike that.
 24 You would make a determination, though, talking
 25 with the client, a determination as to what type of

Page 50

1 care they might start out with, you and the client
 2 would talk back and forth?
 3 A Say that again.
 4 Q Sure. You never sent somebody to get care that they
 5 didn't agree to get, did you?
 6 A No.
 7 Q You would have had a discussion with them about the
 8 types of potential care, and you and the client
 9 together would talk about who they would go see,
 10 fair?
 11 A Yes.
 12 Q It's the same thing you do today, basically?
 13 A Yes.
 14 Q Okay. And so if you have somebody come in today at
 15 Slater & Zurz with soft tissue injuries, do you ask
 16 them "Do you have a primary care? Do you have a
 17 chiropractor?" What's the sort of process?
 18 MR. SKIDMORE: Objection. One thing I'm
 19 concerned about today is what he does at
 20 Slater & Zurz is really kind of off limits.
 21 MR. MANNION: Okay.
 22 MR. SKIDMORE: That's their proprietary
 23 information and I'd prefer you guys stay away
 24 from that.
 25 MR. MANNION: I will. No problem.

Page 52

1 have to ask the client if they took good care of
 2 them. We would recommend doctors to people, and, you
 3 know, you think they're going to get good care, you
 4 hope they're going to get good care, but that's a
 5 question for them.
 6 Q But those are doctors that you all had had experience
 7 with providing good care to your clients, fair?
 8 A We had experience with those doctors providing care
 9 to the clients, yes.
 10 Q Providing good care to the clients, fair?
 11 A Again, you're going -- that's a question that -- I
 12 presume they got good care because, you know, if they
 13 didn't get good care, then people would tell me and
 14 then we would address it with the clients, so --
 15 Q And you wouldn't be sending a client to somebody that
 16 you didn't think would provide good care, would you?
 17 Too many negatives?
 18 A Yeah.
 19 No, I guess it depends on how you define "good
 20 care." I mean, I think I see where you're going, but
 21 again, if they got good care or not while they were
 22 there from a subjective standpoint is something
 23 you're going to have to ask them.
 24 Q I totally agree. What I'm talking about is your
 25 mindset when you were talking to the client about

Page 51

1 Q So generally speaking, though, it's the same thing
 2 you do today?
 3 A I help my, I help my clients get the care that they
 4 need.
 5 Q And that's what you were doing at KNR?
 6 A Yes.
 7 Q You were helping them get the care they needed, true?
 8 A Yes.
 9 Q You didn't send somebody to a chiropractor or a
 10 medical doctor if you didn't think they were hurt,
 11 did you?
 12 A Everybody represented to me that they were hurt. So
 13 I mean, if somebody said "I'm not hurt," I'm not
 14 going to tell you to go anywhere.
 15 Q Okay.
 16 A I probably -- if they told me that they weren't hurt,
 17 I wouldn't -- I'd say "You're not going to be my
 18 client," I guess is the best thing to say.
 19 Q And certainly the people, either the chiropractors or
 20 physicians that you referred KNR clients to, you
 21 believed that those chiropractors and physicians
 22 would take good care of your clients, fair?
 23 A They would treat them, yes.
 24 Q They would take good care of them, fair?
 25 A I mean, I guess that's a question you're going to

Page 53

1 which chiropractor or physician to see. You would
 2 not recommend somebody if you thought that that
 3 physician or chiropractor was not going to provide
 4 good care, fair?
 5 A True. You know, you send a client to see somebody
 6 and they might hate that person, but then you have a
 7 person who really likes that person. So I mean, you
 8 use that to guide, I guess, a little. Does that make
 9 sense?
 10 Q Sure. And if they don't like the chiropractor or the
 11 physician, you can recommend somebody different?
 12 A Yes.
 13 Q That could potentially have ramifications with the
 14 insurance company if they switched doctors, true?
 15 A I don't know if that's true.
 16 Q Okay. Have you ever told anybody that?
 17 A I don't recall.
 18 Q Okay.
 19 A It's a possibility.
 20 Q Okay. It depends on the adjuster?
 21 A Yeah, probably.
 22 Q Okay. I mean, do you recall saying -- a little bit
 23 off track here -- that one of the things you told
 24 adjusters all the time is "Just because you say it,
 25 it doesn't make it true"?

Page 54

1 A Yes. I say that to my kids, too.
 2 Q So what did you mean by that as it relates to claims
 3 adjusters?
 4 A Well, I mean adjusters, listen, they have a job, and
 5 it's to devalue injury cases to pay people less money
 6 to make a profit for their business to do good at
 7 their jobs, I guess is the way to do it. And
 8 adjusters can pick up on particular things that are
 9 inconsequential or tangentially not related at all,
 10 and continue to use those things to maybe devalue a
 11 case and say bad things about your claim, and they
 12 just repeat it. It's like a mantra to them, they
 13 repeat it over and over, because they think it makes
 14 a difference to us, I guess. I don't know. Does
 15 that make sense?
 16 Q It does. And I guess it depends on the client and
 17 the individual case and the individual treatment, as
 18 to how much value you give to what the adjuster is
 19 saying?
 20 A Is it bad to say that I don't really put a lot of
 21 value on what the adjusters say?
 22 Q Okay. Why is that?
 23 A Because they have a job, and their job is to pay our
 24 clients less money. They make money by paying our
 25 clients less money. So they might have valid points,

Page 56

1 A There's a lot of -- some of it is provider specific,
 2 "We don't like this particular provider, we think
 3 they overtreat." But again, that's -- they think
 4 everybody overtreats, I guess. They question care,
 5 things being related or not.
 6 GEICO is real famous for us sending out
 7 causation letters where if there's not a lot of
 8 property damage you get a letter at the beginning of
 9 the case that says "We don't think your client could
 10 be injured at all" based on whatever cursory review
 11 they've done of the case at the time, and you got to
 12 argue about that from the get-go. Does that make
 13 sense?
 14 Q Yeah.
 15 MR. BEST: Get-go.
 16 THE WITNESS: Huh?
 17 MR. BEST: Get-go; get-go.
 18 THE WITNESS: Yeah.
 19 Q Okay. I had a question, it just totally escaped me.
 20 A That's okay.
 21 Q Absolutely completely escaped me.
 22 MR. PATTAKOS: Do you want to take a
 23 break, Tom? Maybe it will come back to you.
 24 MR. MANNION: Actually this is a good --
 25 how long have we been going?

Page 55

1 they've got a preexisting condition or, you know,
 2 there's \$200 in property damage or whatever.
 3 Sometimes those are arguments you have to deal with.
 4 But generally speaking, an adjuster's job is to pay
 5 as little money as possible.
 6 Q And your job is to fight for your client to get as
 7 maximum recovery that's fair that you can?
 8 A Yes.
 9 Q And that may be going back and forth with the claims
 10 examiner about whether treatment is related or not?
 11 A Yes.
 12 Q It may involve going back and forth with the claims
 13 examiner as to the cost of treatment?
 14 A Yes.
 15 Q And virtually every case you tried to settle, the
 16 claims examiner is in some way trying to devalue your
 17 client's claim, fair?
 18 A Every case ever, yes.
 19 Q Okay. Either saying they treated too much or they
 20 didn't treat soon enough or it's too expensive, or
 21 some combination of those?
 22 A For sure.
 23 Q Okay. What other types of things have you heard from
 24 the claims people to try to devalue your clients'
 25 claims?

Page 57

1 MR. PATTAKOS: About an hour.
 2 MR. MANNION: Okay. I'm good with a
 3 break now.
 4 THE VIDEOGRAPHER: Off the record.
 5 10:06.
 6 ----
 7 (Thereupon, a recess was had.)
 8 ----
 9 THE VIDEOGRAPHER: We're back on the
 10 record.
 11 ----
 12 (Thereupon, Defendants' Exhibit J was
 13 marked for identification.)
 14 ----
 15 A Is this my copy?
 16 Q It is. Do you recognize Exhibit J?
 17 A Yes.
 18 Q And this is a recorded statement you gave under oath?
 19 A Yes.
 20 Q Okay. I'm not going to ask you any questions yet
 21 about it, because I assume you've never actually read
 22 through this before?
 23 A I have not.
 24 Q Okay.
 25 MR. MANNION: Let's take a break.

Page 58

1 THE VIDEOGRAPHER: Off the record.
 2 10:07.
 3 -----
 4 (Thereupon, a recess was had.)
 5 -----
 6 THE VIDEOGRAPHER: We're back on the
 7 record. 10:27.
 8 -----
 9 (Thereupon, Defendants' Exhibit K and
 10 Defendants' Exhibit L were marked for
 11 identification.)
 12 -----
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 59

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 A [REDACTED]
 8 [REDACTED]
 9 Q Okay. During your representation of Member Williams
 10 before you left KNR -- and it didn't settle before
 11 you left KNR, fair?
 12 A Correct.
 13 Q Okay. But during the time that you represented
 14 Member Williams, the actions you took were what you
 15 thought were in her best interests, fair?
 16 A Yes.
 17 Q And you exercised your own independent professional
 18 judgment in representing her, true?
 19 A Yes.
 20 Q And those same questions are true for Ms. Norris as
 21 well, correct?
 22 A I would --
 23 Q Well, let me strike that. You settled her case?
 24 A Yes. I have no recollection of settling the case,
 25 but sure.

Page 60

1 Q Okay. But during the time you represented her and in
 2 settling it, you had her best interests at heart?
 3 A I tried to, yeah. I mean, yeah, you use your best
 4 professional opinion or judgment to help somebody get
 5 a recovery from the insurance company.
 6 Q And you used your best professional judgment in
 7 representing her, didn't you?
 8 A Yes.
 9 Q Now, I want to ask you a little bit about, we refer
 10 to them as loans, but I don't think that's the exact
 11 way we should refer to those. Do you remember the
 12 exact name of loans that go against the settlement?
 13 A We always called them loans. I mean, I don't --
 14 Q Do you know what they're officially called?
 15 A No.
 16 Q Like nonrecourse funding, something of that nature?
 17 A I mean, sure. I believe that they are nonrecourse,
 18 but I don't -- I mean, we always called them,
 19 everyone always just called them loans.
 20 Q Okay.
 21 A They might be, the function of them after that --
 22 Q While you were at KNR, what was your general practice
 23 with respect to discussing loans with clients?
 24 A They would -- clients would ask for them, you
 25 recommend against them, and then if they continued to

Page 61

1 ask for them, you gave them the information.
 2 Q And when you say "gave them the information," what is
 3 the information you would provide; the contact
 4 information?
 5 A The contact information, yeah.
 6 Q Okay. You never once, did you, said to a client on
 7 your own without being prompted "Hey, why don't you
 8 take a loan"?
 9 A I don't think so, not to my recollection I wouldn't.
 10 Q You certainly never did that with Monique Norris on
 11 your recollection, did you?
 12 A Not to my recollection. It would be out of course
 13 for me to do that.
 14 Q Okay. There would be no reason for you to do that,
 15 fair?
 16 A Correct.
 17 Q And what's one of the reasons -- strike that.
 18 What are some of the reasons that you try to
 19 discourage those loans?
 20 A They're expensive. They made it hard to settle cases
 21 sometimes. The cost of them, I mean, they're cost
 22 prohibitive, it's difficult, but -- they're very
 23 expensive.
 24 Q Sometimes your clients need them, though?
 25 A If you ask them, yes, they would say that they need

Page 62	Page 63
<p>1 them.</p> <p>2 Q The OAJ actually endorses, so to speak, one of the</p> <p>3 loan companies, do you know that?</p> <p>4 A I did not, no.</p> <p>5 Q Okay. What are some --</p> <p>6 A You know what, I think they do, because there's a</p> <p>7 company that's at OAJ on a regular -- well, not on a</p> <p>8 regular basis, but they go to the conventions and</p> <p>9 stuff like that.</p> <p>10 Q Preferred Capital?</p> <p>11 A Yes, yeah; yeah.</p> <p>12 Q At least the OAJ believes there's circumstances where</p> <p>13 loans are appropriate for clients?</p> <p>14 A I don't know.</p> <p>15 Q Okay. Are there any times you think a loan is</p> <p>16 appropriate for a client?</p> <p>17 A No, but I'm not them. I mean, if it happened to me I</p> <p>18 suppose I might need one, too. But they're just</p> <p>19 costly and make things difficult for them down the</p> <p>20 line.</p> <p>21 Q Do you try to counsel your clients to either borrow</p> <p>22 from a family member or try to get loans elsewhere?</p> <p>23 A I probably have. Not in every circumstance, but I</p> <p>24 may have. I couldn't tell you.</p> <p>25 Q Okay. Sometimes the clients are -- they need the</p>	<p>1 money for rent or a car payment before it gets</p> <p>2 repossessed or whatever, true?</p> <p>3 A I have no idea.</p> <p>4 Q Okay. So what generally speaking would you say to a</p> <p>5 client if they say "Okay. I want the contact</p> <p>6 information for a loan company," and they get it?</p> <p>7 What else would you tell the client?</p> <p>8 A Nothing. I would give them the contact -- I mean, at</p> <p>9 that point I've already talked to them, I would give</p> <p>10 them the contact information.</p> <p>11 Q You've already tried to discourage them you're</p> <p>12 saying?</p> <p>13 A Yeah.</p> <p>14 Q Okay. What if they get the contact information, it's</p> <p>15 sent to them, but then you talk to them about the</p> <p>16 loan. Do you try to discourage them still?</p> <p>17 A No, I think at that point they've made their</p> <p>18 decision. I don't -- not that I recall.</p> <p>19 Q Okay. And if, let's say they call in and they say</p> <p>20 "We're looking for a loan," and Jenna or somebody</p> <p>21 says "Well, here's some contact information for a</p> <p>22 couple loan companies," and then you talk to the</p> <p>23 client and you know they have that contact</p> <p>24 information. Do you still talk to them about the</p> <p>25 loan? I mean --</p>
<p>Page 64</p> <p>1 A I don't recall that specific circumstance ever taking</p> <p>2 place, it may or may not have. But --</p> <p>3 Q Okay.</p> <p>4 A -- I presume that I would have done what I normally</p> <p>5 do.</p> <p>6 Q To try to discourage them?</p> <p>7 A Um-um, yes. Sorry about that.</p> <p>8 Q Okay. And do you recall ever once where one of your</p> <p>9 clients took a loan and you had not already tried to</p> <p>10 discourage them?</p> <p>11 A Not specifically.</p> <p>12 Q Okay. And nothing comes to mind, does it?</p> <p>13 A No.</p> <p>14 Q You don't actually think that happened, do you?</p> <p>15 A I don't know. From my -- from me?</p> <p>16 Q From your end.</p> <p>17 A I don't think so.</p> <p>18 Q Okay. And when you did talk to a client about a</p> <p>19 loan, you didn't have a script that KNR gave you to</p> <p>20 follow, did you?</p> <p>21 A Again, it depends on how you define "script."</p> <p>22 Nothing was on paper, in terms of how to interact, I</p> <p>23 don't think anyways. I don't know if there's an</p> <p>24 e-mail or something. But everything was done within</p> <p>25 some sort of guideline, whether that was, you know, a</p>	<p>Page 65</p> <p>1 verbal communication or an instruction or something</p> <p>2 like that. There wasn't a script, if that makes any</p> <p>3 sense. But it was these are the steps to take when</p> <p>4 you're dealing with everything, I mean, everything</p> <p>5 that was there.</p> <p>6 Q I'm talking about loans in particular. Were you</p> <p>7 given a script with what to say to clients about</p> <p>8 loans?</p> <p>9 A To let them know that -- not to discourage them, but</p> <p>10 to let them the potential pitfalls of them I guess is</p> <p>11 a good way to put it.</p> <p>12 Q And most of your fellow colleagues at KNR, when you</p> <p>13 would talk with them, nobody really liked these</p> <p>14 loans, fair?</p> <p>15 A I don't know. I mean, disliked or liked the loans</p> <p>16 themselves, I mean, we all knew it made it harder to</p> <p>17 settle cases for sure.</p> <p>18 Q And generally speaking, your colleagues at KNR, you</p> <p>19 knew they were all trying to discourage clients from</p> <p>20 taking these loans, true?</p> <p>21 A I don't know. I mean, that's a question you would</p> <p>22 have to ask all of them.</p> <p>23 Q Okay. So whatever conversation any client who took</p> <p>24 out a loan had with their lawyer, you would have to</p> <p>25 ask that client and that lawyer?</p>

Page 66

1 A Yeah, or the notes in the computer should be
 2 sufficient enough, but, yeah.
 3 Q But you would have to go look at the notes for each
 4 case to determine what was said, fair?
 5 A I'd say that's fair.
 6 Q Okay. And you certainly never heard any of your
 7 colleagues at KNR encouraging someone to take out a
 8 loan, did you?
 9 A Not that I recall. I wouldn't be privy to those
 10 conversations, so it's not -- I can't say it did or
 11 did not happen.
 12 Q But you never heard it?
 13 A Right.
 14 Q And you certainly never encouraged somebody to take a
 15 loan, did you?
 16 A No, I don't think -- not that I recall I wouldn't.
 17 Q You certainly never directed someone to take a loan,
 18 did you?
 19 A No.
 20 Q You certainly never recommended that they take a
 21 loan, did you?
 22 A No.
 23 Q If you look at page 13 of your recorded statement,
 24 and I'm not impeaching you, I'm just trying to make
 25 this --

Page 68

1 And your answer was "Correct," true?
 2 A Correct.
 3 Q And "It would be different with each client?" Your
 4 answer?
 5 A "Yes."
 6 Q "So to look and see how a loan was handled for one of
 7 your clients, I'd really have to talk to that
 8 particular client and to you?"
 9 And then you said "How it was handled --"
 10 And I said "As far as the questions that you
 11 talked about, why they needed it, the various
 12 particulars of that loan."
 13 And your answer was "I would say yes."
 14 A Yeah, I mean, everybody wanted it for different
 15 reasons.
 16 Q Okay. By the way, if -- you never told anyone,
 17 including Attorneys Pattakos and Chandra, that Rob
 18 Nestico had an ownership interest in any of the loan
 19 companies, did you?
 20 A No, I do not know if he has an ownership interest in
 21 anything, other than KNR, maybe a bunch of property,
 22 that's all.
 23 Q You assume he owns --
 24 A KNR.
 25 Q -- KNR?

Page 67

1 A Page 13?
 2 Q Yeah.
 3 A I feel like you're going to impeach me when you say
 4 you're not going to impeach me.
 5 Q No; no, I'm really not. I just want to make sure
 6 these are true.
 7 So do you see at line eight, "Question: Okay.
 8 And you did not have a script, did you, of exactly
 9 how to question and talk to client about these
 10 loans?" And what was your answer?
 11 A Yeah, "Not that I can recall, no."
 12 Q "You never used a script?" And your answer?
 13 A Correct. Oh, "I never used one, correct."
 14 Q "Okay. You never saw a lawyer use a script for this,
 15 did you?"
 16 A "I don't believe so. And, again, if they did, you'd
 17 have to ask them."
 18 Q Okay.
 19 A I skipped the middle there.
 20 Q And then "And your conversation with each client,
 21 other than the fact that you discouraged them, the
 22 particulars in that conversation with each client
 23 would really be dependent on why that client needed
 24 the loan, how much they needed, and things of that
 25 nature?"

Page 69

1 A Right.
 2 Q Okay. But the question to you is a little different.
 3 You never told anyone, including Attorneys Pattakos
 4 and Chandra, that Rob Nestico had an ownership
 5 interest in any of the loan companies, did you?
 6 A No.
 7 Q And the same thing, you never told them that KNR or
 8 Mr. Redick or any of the Defendants had an ownership
 9 interest in any of the loan companies, fair?
 10 A I don't remember having that conversation, no. I
 11 mean --
 12 Q You didn't know that anybody did or didn't?
 13 A Right.
 14 Q Okay. You certainly were not aware of any ownership
 15 interest or kickbacks or anything of that nature
 16 between KNR, Nestico, Redick and Liberty Capital,
 17 fair?
 18 A Fair.
 19 Q And you certainly never would have told Attorney
 20 Pattakos or Attorney Chandra that Liberty Capital is
 21 providing kickbacks to Attorney Nestico, would you?
 22 A No.
 23 Q If you'd look at your affidavit, paragraph 35.
 24 A Paragraph 35?
 25 Q Yes.

Page 70

1 MR POPSON: Exhibit A for the record.
 2 Q "I never demanded any clients borrow from Liberty
 3 Capital Funding, LLC (hereinafter "Liberty Capital").
 4 While some of my clients borrowed from Liberty
 5 Capital, such transaction was only completed after I
 6 counseled the client against entering into the loan
 7 agreement;" did I read that correctly?
 8 A You did.
 9 Q And that was your sworn testimony back in 2017?
 10 A Correct.
 11 Q And it's accurate, true?
 12 A Yes.
 13 Q Did you have any personal benefit of having a client
 14 take a loan?
 15 A No.
 16 Q Do you know of any personal benefit KNR, Nestico or
 17 Redick had in a client taking a loan?
 18 A No.
 19 Q Are you aware of any quid pro quo relationship
 20 between Liberty Capital Funding and KNR, Nestico,
 21 Redick, or anybody who worked at KNR?
 22 A I'm not.
 23 Q Okay. And you're also not aware, I think we had --
 24 not only of any kickbacks, but any payments made by
 25 Liberty Capital to KNR, are you?

Page 72

1 five, maybe less than ten times somebody actually
 2 came into the office to sign loan documents.
 3 Q Okay. But they were still signed online?
 4 A So the early process, before EchoSign and DocuSign
 5 were around, the loan company gave the documents to
 6 clients somehow, I have no idea, faxed them, e-mailed
 7 them, did something, and then we would get ours
 8 e-mailed to us and then print them out and sign them,
 9 and then send them back to the loan company. And
 10 then EchoSign came around, so that kind of changed
 11 the process. I don't even remember if they did the
 12 EchoSign while I was there, that might even be after
 13 I left.
 14 Q Okay. So once EchoSign was there, though, and
 15 DocuSign was there, that was done electronically, not
 16 with papers?
 17 A Yes.
 18 Q Okay. And you're not aware of any information --
 19 strike that.
 20 You have zero information to suggest that Rob
 21 Nestico, Robert Redick or anyone at KNR had any
 22 financial or ownership interest in Liberty Capital,
 23 true?
 24 A I don't know if that's a fair question because
 25 you're, you're -- "suggest" is the operative word

Page 71

1 A No. I was thinking about the loan payment process,
 2 but --
 3 Q Well, the loan money doesn't come into KNR and you
 4 give it to the clients, it's the loan company gives
 5 it directly to the client?
 6 A Yeah. Yeah; yeah. And then we pay them when we're
 7 done, yeah.
 8 Q Okay. With the client's permission?
 9 A Yes.
 10 Q They'd already signed something on that?
 11 A Yes.
 12 Q Okay. So have you ever slid documents under a client
 13 and told them it's part of the settlement, when it
 14 was really a loan, and swindled them into taking a
 15 loan?
 16 A No.
 17 Q If somebody said that, would that be just a direct
 18 and outright fabrication?
 19 A Yes.
 20 Q In fact, you don't have the loan documents in front
 21 of you, they're usually DocuSign or -- what's the
 22 other one -- EchoSign?
 23 A Adobe Sign, yeah. I can probably -- and again, I
 24 don't know who it was, when it was, I couldn't even
 25 tell you, but I can probably say less than, less than

Page 73

1 there that I don't like.
 2 Q Look at paragraph 37 of your affidavit, please.
 3 A Um-um. I see "suggest."
 4 Q "I am not aware of the ownership structure of Liberty
 5 Capital, nor do I have information to suggest that
 6 Rob Nestico, Robert Redick, or anyone at KNR had any
 7 financial or ownership interest in Liberty Capital
 8 Funding, LLC;" did I read that correctly?
 9 A Yeah. I guess that's a fair statement.
 10 Q Okay. And you were under oath when you stated that
 11 and it was true?
 12 A Um-um.
 13 Q True?
 14 A True.
 15 Q And you still don't have any today, do you?
 16 A No.
 17 Q Okay. My statement was correct?
 18 A Yes.
 19 Q Thanks. Paragraph 38 of your affidavit, "During my
 20 time with KNR, I did not observe KNR ever forcing or
 21 requiring a client to take a loan with Liberty
 22 Capital or any other lender;" did I read that
 23 correctly?
 24 A Correct.
 25 Q Okay. Now I want to talk a little bit about Monique

Page 74

1 Norris' loan and show you a few documents.
 2 Did you ever have any conversations with
 3 Attorney Pattakos after he filed his Third Amended
 4 Complaint, or Second, whichever one added the Liberty
 5 Capital claim in? Have you ever talked to him about
 6 that claim?
 7 A Probably at some point. I don't remember when it
 8 was, but if I wasn't represented, I hadn't been sued
 9 yet, then I probably talked to Peter about something.
 10 I would say the answer to that question is yes to be
 11 safe.
 12 Q But you certainly never told Peter that you thought
 13 that his claims that he was alleging with respect to
 14 Liberty Capital were true, did you?
 15 A Can you say that again?
 16 Q Sure. You understand in the Complaint Attorney
 17 Pattakos alleges that there were either kickbacks
 18 from Liberty Capital to KNR or Nestico or Redick, or
 19 that somehow the KNR folks or Nestico or Redick had a
 20 financial interest in Liberty Capital?
 21 A I do not know that they have any financial interest
 22 in the loan company.
 23 Q You never told Attorney Pattakos that they had those,
 24 did you?
 25 A If I told him, if I told him anything I would qualify

Page 76

1 the -- let me get the right name this time -- the
 2 nonrecourse civil litigation advance agreement with
 3 Liberty Capital Funding and Monique Norris?
 4 A I'm sorry, say that again.
 5 Q Sure. Look at the top.
 6 A Yep.
 7 Q Is this the nonrecourse civil litigation advance
 8 agreement between Liberty Capital Funding and Monique
 9 Norris?
 10 A That's what it says.
 11 Q And do you see at the bottom, do you see initials for
 12 "MN"?
 13 A I do.
 14 Q You assume that's Monique Norris?
 15 A Yes. I guess. You're telling me.
 16 Q You've seen these before, haven't you?
 17 A Yeah, I mean, that's where the client would initial.
 18 Q Okay.
 19 A If you say this is Monique Norris', then I have to
 20 assume that's her initial.
 21 Q Okay. And if you look through, there were -- there's
 22 initials from her on every page, assuming they're
 23 hers; do you agree?
 24 A Sure.
 25 Q If you look at page six at the top, where it gives

Page 75

1 it and say "Listen, I don't know that these guys have
 2 an ownership interest in here or not." Does that
 3 make sense?
 4 Q Okay. But you never told him that you had facts that
 5 they had an ownership interest or received kickbacks,
 6 true?
 7 A Correct.
 8 Q You never told him you had facts that there was a
 9 quid pro quo, true?
 10 A Correct.
 11 Q And you still don't have any such facts to date, do
 12 you?
 13 A Correct.
 14 Q I take it you don't remember the loan transaction
 15 that Monique Norris had?
 16 A Not at all.
 17 - - -
 18 (Thereupon, Defendants' Exhibit M
 19 through Defendants' Exhibit R were marked for
 20 identification.)
 21 - - -
 22 Q So looking first at Horton M, do you recognize this,
 23 generally speaking?
 24 A Generally speaking, yes.
 25 Q Okay. Is this a copy of, in this particular case,

Page 77

1 her five days to cancel the agreement from the date
 2 she received funding?
 3 A Yes.
 4 Q Okay. And the next page, on page seven, there is an
 5 electronic signature --
 6 A Yes.
 7 Q -- you would assume?
 8 A Yep.
 9 Q And it says "Do not sign this contract before you
 10 have read it completely;" do you see that?
 11 A Yes.
 12 Q Okay. And on the very next page, page eight, there
 13 is an attorney acknowledgment. You certainly would
 14 have read this before you signed it, true?
 15 A Um-um. Yes. Sorry.
 16 Q And what's the purpose of this attorney
 17 acknowledgment of assignment of proceeds of claim?
 18 A The purpose of it?
 19 Q Um-um.
 20 A Well, to -- I don't know. I mean, I haven't read it
 21 for a very long time. It's basically to say that
 22 Monique Norris took a loan and she's instructing us
 23 to pay them back, I think.
 24 Q Okay. If you look at the bottom, four lines from the
 25 bottom --

Page 78	Page 79
1 A Um-um.	1 signed electronically, do you?
2 Q -- where it starts "While;" do you see that?	2 A No, it looks like it was, because the -- underneath
3 A Um-um.	3 the signature, there's a date stamp or a time stamp,
4 Q Just if you --	4 which has the person's name and then the date is in
5 A Oh, sorry. Yeah. Sorry. Forgot the rules.	5 parenthesis, and there's -- I just remember this
6 Q "While I am not endorsing or recommending this	6 because I still do it.
7 transaction," I read the first part of that	7 Q Sure.
8 correctly?	8 A There's a setting in there that when you, when you
9 A Yes.	9 send the documents to somebody, you can have that
10 Q Okay. And you didn't endorse or recommend it, true?	10 underneath their signature every time they sign it
11 A Correct.	11 electronically. You can take it off, it's a setting
12 Q "I have reviewed the contract and all costs and fees	12 in the program. But that's why that's there.
13 have been disclosed to my client;" did I read that	13 Q You didn't set the program?
14 correctly?	14 A No; no. Yeah, that comes from the lending company.
15 A Yes.	15 I just -- we just -- we use -- I use DocuSign for a
16 Q And that's because they're contained within here?	16 lot of stuff --
17 A Yes.	17 Q Okay.
18 Q In fact, in big bold right on the first page,	18 A -- and that's on there.
19 correct?	19 Q I think even buying houses you can do it sometimes.
20 A Correct.	20 A Cars, houses --
21 Q And also "including the annualized rate of return	21 Q Yeah.
22 applied to calculate the amount to be repaid by my	22 A -- anything.
23 client;" I read that correctly as well, right?	23 Q If you look at Exhibit N, please --
24 A Yes.	24 A Yeah.
25 Q Okay. And you don't dispute that this was actually	25 Q -- would you agree this is a Monique Norris contract
Page 80	Page 81
1 history that -- involving the contract between	1 candies at Christmastime.
2 Monique Norris and Liberty Capital?	2 Q They want to tell you about their services?
3 A That's what it looks like.	3 A Yeah.
4 Q And these are generally kept in the files, aren't	4 Q No different than if a court reporter was coming and
5 they?	5 saying "Hey, we do a lot more than court reporting,
6 A An electronic version of it I would assume, yeah.	6 we do litigation services and things like that" --
7 Q Okay.	7 A Right.
8 A I don't know if we ever put it in anything else,	8 Q -- that happens as well, true?
9 but --	9 A Yeah. I don't think, I don't think I've ever met the
10 Q And if you see at the top, on October 30, 2013, at	10 owner of another company. I don't know what Ciro's
11 2:56 P.M. is when it says apparently Ciro Cerrato --	11 involvement is with that company, but I do remember
12 did you know who he was?	12 meeting Ciro at some point.
13 A Um-um, yes.	13 Q Okay. Do you recall anything about the meeting or
14 Q Had you met him?	14 what he said or --
15 A At that particular time, I can't say yes or no. I	15 A No.
16 have met him. I don't know if I met him by this	16 Q Did you ever have any discussions with Rob Nestico or
17 time.	17 Robert Redick about Ciro Cerrato or Liberty Capital?
18 Q Give me the circumstances where you met him.	18 A I have no idea.
19 A He came into our office.	19 Q Okay.
20 Q Lunch or --	20 A If I did, I couldn't tell you.
21 A Brought lunch for the staff.	21 Q Nothing sticks out in your mind?
22 Q Same thing other loan companies have done?	22 A No.
23 A Probably. I have no specific recollection. I mean,	23 Q Okay. If you look at this contract history, it looks
24 these people, they show up at OAJ, they, you know,	24 like the document was e-mailed to you for signature.
25 bring cookies to you, they, you know, send you	25 A Um-um.

Page 82	Page 83
1 Q Which would have been that last page, correct?	1 A I mean, I'd have to default to what this says. I
2 A Right.	2 mean, I can't tell you if she had it open, if she
3 Q And then so it was viewed by you, e-signed by you,	3 went back, I mean, I don't know. But there's a
4 and then after you signed that last page, it was sent	4 period of time between when it was opened pursuant to
5 to Monique Norris according to this, correct?	5 this and when it was signed. That's the best I can
6 A That's what it looks like, yeah.	6 tell you.
7 Q Do you have any reason to dispute this?	7 Q And then the signed document was mailed both to
8 A No.	8 Monique and to you, correct?
9 Q This is EchoSign. I mean, you don't control	9 A That's what it says, yeah.
10 EchoSign, do you?	10 Q Now, this wasn't done at your office, to your
11 A No.	11 knowledge, was it?
12 Q In fact, Liberty Capital doesn't control EchoSign, do	12 A Did she sign it at the office?
13 they?	13 Q Electronically sign it at the office?
14 A I don't think so.	14 A I don't think so. I mean, I -- it would be rare, it
15 Q EchoSign --	15 would be odd if she did.
16 A I think it's an Adobe product.	16 Q And if you look, do you see --
17 Q Right. And then it looks like the document was	17 A Yeah, two different IP addresses.
18 viewed by Monique Norris starting at what time on	18 Q -- two different IP addresses?
19 October 30th?	19 A Yeah.
20 A It says 3:01 P.M.	20 Q Okay. So two different servers, correct?
21 Q How many minutes later did she e-sign it?	21 A Yep.
22 A Thirty-five-ish.	22 Q So she wasn't at your office at the time, was she?
23 Q So at least, according to this document, Monique	23 A I have no recollection. I can't tell you. If she
24 Norris had that open for 35 minutes, and after that	24 came in and signed it electronically at the office,
25 time, she initialed and signed it, true?	25 she did, or if she might have signed it somewhere
Page 84	Page 85
1 else. If one of those IP addresses is the KNR	1 A I would not have told her that she was getting money
2 server, then the answer to that question would be	2 early on her settlement. I don't recall meeting with
3 yes, she came in and signed it. But she would have	3 her. I don't think I would have met with her. It
4 had to schedule an appointment and know what she was	4 just -- it's not something I would do. How she's
5 coming in to sign for had she done that. I can't	5 explaining things is not something -- I don't think
6 tell you.	6 anybody would.
7 Q Okay. You certainly don't remember her coming in to	7 Q That didn't happen, did it?
8 sign it?	8 A No, it didn't.
9 A No.	9 Q And in fact, you would have clearly discussed the
10 Q Okay. And at least -- so I'll strike that.	10 fact that she was getting a loan --
11 And let me tell you that Monique Norris	11 A Yes.
12 testified that this wasn't -- she doesn't recall	12 Q -- at the time, correct?
13 signing electronically. What she recalls is calling	13 A Yes.
14 up and saying that she wanted her case to be done,	14 Q And when you did the settlement memorandum, you would
15 and you told her that you can get some money early	15 have had to talk to her about money being paid to
16 from her settlement. And that she came in and sat at	16 Liberty Capital as well, correct?
17 a table with you, and there were some papers out, and	17 A Yes.
18 she didn't really know what they were and you had her	18 Q Is there any way in your mind that Monique Norris
19 sign all these papers, and that she never knew she	19 could not have known she had a loan until earlier
20 entered a loan until the time she went to see	20 last year or the year before?
21 Attorney Pattakos to be involved in this lawsuit.	21 A No. I mean, unless she just forgot.
22 MR. PATTAKOS: Objection.	22 Q It's -- certainly her testimony is completely
23 Q That's her testimony.	23 inaccurate, fair, in that regard?
24 MR. PATTAKOS: Objection.	24 A Yes. If what you're telling me is her testimony,
25 Q And I'd like to know what your response to that is?	25 then yes.

Page 86	Page 87
1 Q And did you swindle her into taking this loan?	1 MR. MANNION: Okay. Yeah.
2 A No.	2 MR. PATTAKOS: They don't get to testify
3 Q Pretty serious allegation, isn't it?	3 at trial, Tom.
4 A Yes.	4 MR. BARMEN: Neither do you.
5 Q Does it bother you at all that your friend is making	5 MR. SKIDMORE: All right, guys, let's
6 that allegation against you?	6 go.
7 MR. PATTAKOS: Objection.	7 Q So looking at O, if you flip to the second page of
8 A No.	8 Exhibit O, and -- because that's how the e-mail chain
9 Q It doesn't?	9 starts, would you agree this is an e-mail from Ciro
10 A No.	10 Cerrato to you and to Jenna Wiley?
11 Q Okay. You certainly don't believe the allegation is	11 Does that refresh your recollection as to
12 true, though, do you?	12 whether Jenna was helping you on the case?
13 A I don't. I don't think it's -- he's not the one	13 A Yes.
14 making it, it's her, so --	14 Q Okay. And she was, correct?
15 Q Okay. If you would now look at O, please.	15 A Apparently, yeah. I hadn't --
16 MR. PATTAKOS: Objection. She's not	16 Q Now, this is Ciro Cerrato to you saying "The
17 making it, either.	17 aforementioned client has contacted us for an advance
18 THE WITNESS: Sorry.	18 on their settlement," did I read that correctly?
19 MR. MANNION: Well, she testified to it.	19 A Yes.
20 MR. PATTAKOS: Well, again, you keep	20 Q Okay. So do you have any reason to dispute that it
21 mischaracterizing the testimony.	21 was actually Monique Norris who contacted Ciro
22 MR. MANNION: Guys, did I	22 Cerrato?
23 mischaracterize a thing about that? She used	23 A No.
24 the word "swindle," right?	24 Q You didn't call Ciro Cerrato for her, did you?
25 MR. BARMEN: No, it was crystal clear.	25 A I did not. Well, I can't say that I did or did not,
Page 88	Page 89
1 because I don't remember, but I would not.	1 A I mean, I knew who he was, I know the name, but I
2 Q Okay.	2 don't know him.
3 A If that makes sense.	3 Q And you knew Oasis, true?
4 Q I mean, that's not something you did, is it?	4 A Um-um, yes.
5 A Correct.	5 Q And if you see after he says good morning and happy
6 Q Okay. And he asked for certain information, and	6 Monday, on the next page, can you read that first
7 clearly, once you knew Liberty Capital was getting	7 sentence?
8 involved, you had a discussion with Monique Norris,	8 A "Monique Norris called us looking for funding.
9 true?	9 Please e-mail me or call with the case details. Once
10 A I probably had a discussion with her before that, but	10 we have the details, we can review the file for
11 yeah.	11 funding."
12 Q Because you wouldn't send the information unless you	12 Q Okay. Now, this specifically states "Monique Norris
13 had a discussion with her, true?	13 called us looking for funding;" I read that
14 A Correct.	14 correctly?
15 Q Okay. If we now look at Exhibit P -- actually we're	15 A Yes.
16 going to go a little out of order here first. Go to	16 Q So according to Brian Moonin's e-mail to you, Monique
17 Exhibit R.	17 Norris called Oasis looking for funding, true?
18 A Yes.	18 A If this is accurate, yes.
19 Q And do you see at the bottom there, there's an e-mail	19 Q And so the previous exhibit we looked at, Monique
20 from Brian Moonin of Oasis Legal to Jenna Wiley	20 Norris had contacted Liberty Capital, and this
21 copying you?	21 e-mail, she also called Oasis looking for funding, if
22 A Yes.	22 these are accurate, true?
23 Q Okay. And did you know Brian?	23 A True.
24 A No.	24 Q And does that lead you to believe that if she asked
25 Q Okay.	25 for loan information, that Monique Norris was given

Page 90	Page 91
1 contact information for both Oasis and Liberty	1 Q So if we now fast forward to the time where you're
2 Capital?	2 trying to get this case settled, you know that
3 A I don't know. That's a possibility. Oasis is a	3 Liberty Capital is going to have to be paid off --
4 pretty big lender. They advertise on TV. So if she	4 A Yes.
5 didn't get it from me or somebody else there, she	5 Q -- true?
6 could have gotten it on television or something. I	6 Whatever the schedule says is what they're going
7 don't know.	7 to be owed from the loan documents, fair?
8 Q Okay. If Needles shows that she called in looking	8 A That's what the loan agreement says, yeah.
9 for a loan and it says "Gave her contact information	9 Q Okay. And if you look at Exhibit P from you to
10 for Oasis and Liberty Capital," would that be	10 Moonin --
11 consistent with these last two documents?	11 A P?
12 A It would, and that would be an accurate	12 Q Yes. The subject is "Did you guys ever fund Monique
13 representation of whoever made that note, what they	13 Norris;" did I read that correctly?
14 did.	14 A Yes.
15 Q Okay. And if you look, it's the same on this Exhibit	15 Q Pretty much she just forgot who she went with with
16 R, Jenna sent something to Brian saying she received	16 the loan?
17 a loan from Liberty Capital Funding on Friday	17 A No. A lot of times -- so what potentially this is,
18 morning; did I read that correctly?	18 I'm guessing, so don't quote me -- I guess I have to
19 A Yes.	19 be quoted -- a lot of times -- so if you go back and
20 Q Okay. So basically Liberty Capital got back to her	20 look at the notes, I might have caught that we, we
21 quicker, fair?	21 had been contacted or I did an e-mail search that saw
22 A Yes, or -- yeah. I don't know. Yeah.	22 she had been -- she had contacted or we had contact
23 Q If you now --	23 information from two different lending companies, and
24 A I don't know what Friday -- I need to look at the	24 I wanted to make sure that she didn't have -- get a
25 dates on them, but yeah.	25 loan from Oasis, somehow getting two loans.
Page 92	Page 93
1 Q Okay.	1 A Yes.
2 A Because if we miss a loan, it was --	2 Q So you would have looked at the loan documents?
3 Q So this e-mail from you would tell you that you knew	3 A Based on that I would say that I did look at them at
4 she had some contact with Oasis or you wouldn't have	4 that particular point in time to see what the payoff
5 sent this?	5 was.
6 A Presumably, yeah.	6 Q And then Ciro Cerrato responded cool, thanks, and he
7 Q That's how it would have worked, true?	7 agreed to reduce the fee interest, whatever you want
8 A Yeah.	8 to call it, by \$168.76, true?
9 Q And then if you look at Exhibit Q, turn to the second	9 A No. He said "Yes."
10 page first.	10 I said "Cool. Thanks."
11 A Yes. Second page first?	11 Q Oh, yeah; yeah, you're right. But he agreed --
12 Q Yeah. And the subject line, it looks like the	12 A Yes.
13 subject line from you was simply "Please provide a	13 Q -- to reduce it by \$168.76?
14 payoff for Monique Norris," and he responded and said	14 A Yeah, whatever the math is.
15 968.76, correct?	15 Q Okay. And you didn't have to call and go get
16 A Yes.	16 permission from Mr. Nestico to ask him that, did you?
17 Q Okay. You would have checked the loan documents to	17 A No.
18 make sure that was correct, wouldn't you?	18 Q And he didn't give you any fight back on that, did
19 A Probably, but --	19 he?
20 Q Well, flip the page --	20 A Who; Ciro?
21 A Yeah.	21 Q Ciro or Rob.
22 Q -- and I think it will become more clear. You	22 A I don't know. Rob presumably wasn't involved in this
23 responded to him "Can you guys take \$800? We're	23 transaction. But no, Ciro, I mean, it was a one word
24 right outside the original payoff;" did I read that	24 response, "Yes."
25 correctly?	25 Q Okay. And that was good for your client, wasn't it,

Page 94

1 to get that reduction?
 2 A Yes.
 3 Q Okay. If you look at Exhibit M, so if you see if she
 4 had paid it by April 30th, it was only going to be
 5 \$778?
 6 A Right.
 7 Q And once it passes that date, it's automatically
 8 968, correct?
 9 A That's what it says, yeah.
 10 Q Okay. And you were able to negotiate that back down
 11 to 800 because we're only a couple weeks past the
 12 prior date?
 13 A Presumably, yes.
 14 Q Okay. By the way, did Attorney Pattakos ever ask
 15 you -- I forget if I asked this earlier -- whether
 16 there were written scripts for people to follow at
 17 KNR?
 18 A I do not recall him asking. That's not to say that
 19 he did or did not, but I have no recollection of it.
 20 Q And you don't recall telling him that there were, do
 21 you?
 22 A I don't have a recollection of it. Again, "script"
 23 is a -- well, I've explained it.
 24 Q Well, if you look at page 17 of your recorded
 25 statement --

Page 96

1 individual lawyer about it," correct?
 2 A Yes.
 3 Q And you certainly never forced anybody to use a
 4 specific chiropractor, true?
 5 A Never forced anyone.
 6 Q You might have recommended somebody or referred
 7 somebody, true?
 8 A Yes.
 9 Q But you never said "No, this is your only choice, you
 10 have to go here or I'm not going to take your case,"
 11 anything like that, true?
 12 A True.
 13 Q Never forced that, true?
 14 A True.
 15 Q And never sent them to a chiropractor that you
 16 thought was going to do them harm or not provide good
 17 service, true?
 18 A True.
 19 Q And you represented over a thousand claimants, for
 20 which you negotiated settlements while you were at
 21 KNR?
 22 A It's probably higher, but yeah.
 23 Q Okay.
 24 A You said over a thousand, so --
 25 Q Okay. And in fact, some patients would come in that

Page 95

1 A Um-um.
 2 Q Of your recorded statement.
 3 A I know what it says.
 4 Q Okay. You already read it?
 5 A Yeah.
 6 Q Okay. So you agree, it says you didn't have a script
 7 for when you talked to clients, you said "A script?"
 8 "Yes."
 9 "Answer: No."
 10 And "You didn't take a written script with you
 11 when you met with clients, did you?"
 12 "No."
 13 And "My statement was correct?"
 14 A Yep, yes.
 15 Q Okay. "There was no written script of the questions
 16 you asked and how you interacted with a client with
 17 how you refer somebody to a chiropractor, fair?"
 18 Your answer was "Yeah, fair. Not that I recall.
 19 I didn't use one." True?
 20 A Correct, yes.
 21 Q And you didn't see anybody else use one either, true?
 22 A True.
 23 Q Okay. "To establish what treatment any one client
 24 would need, we'd have to look at that individual
 25 case, ask that individual client about it, ask that

Page 97

1 were already treating with either a family doctor or
 2 a chiropractor, and they continued to do that
 3 throughout the case, true?
 4 A True.
 5 Q And you never forced somebody, if they were with
 6 their family doctor, to go see somebody else, did
 7 you?
 8 A Never forced, no.
 9 Q Some primary care physicians, in fact, many of them
 10 didn't like getting involved in motor vehicle
 11 accidents, true?
 12 A Yes.
 13 Q And for that reason, you often had to recommend
 14 somebody, true?
 15 A Yes.
 16 Q Okay. And oftentimes it would be a chiropractor?
 17 A Most often.
 18 Q What are some of the things when you were at KNR that
 19 were important to you with respect to -- well, let me
 20 strike that.
 21 Would you agree that typically you would use
 22 chiropractors at KNR who would agree to letters of
 23 protection?
 24 A Yes.
 25 Q And why was that, do you know?

Page 98

1 A Just like you say with your primary care doctor, it's
 2 to make sure that they get care, I guess is the best
 3 way to describe it. A lot of -- this is one of the
 4 most frustrating things about what we do, is a lot of
 5 medical providers refuse to see you or want you to
 6 pay cash up front if you've been in an accident. Not
 7 getting care is not a good option and people don't
 8 have the money to pay doctors up front. So most of
 9 the chiropractors who actually do personal injury
 10 work work on letters of protection, so they'll see
 11 your patients or clients and get paid when they're
 12 done.
 13 Q It's a benefit to the client?
 14 A Yes.
 15 Q And when you say it's not good for them not to have
 16 treatment, you mean that, number one, they need to
 17 heal, and number two, if the insurance company sees a
 18 gap in treatment, there will be questions?
 19 A Yes.
 20 Q Okay. Another thing with the chiropractors, some of
 21 them provide transportation to their office, true?
 22 A Some of them do, yeah.
 23 Q That's a benefit to your clients as well, isn't it?
 24 A You would have to ask them, but I would assume it is.
 25 Q Well, you talked --

Page 100

1 Q It actually helps to become friends with some of
 2 these chiropractors in negotiating bills and things
 3 like that?
 4 A Oh, yeah. Yeah, for sure.
 5 Q They have trust between you?
 6 A Yep.
 7 Q And one of the reasons that Mr. Nestico negotiated
 8 some of the bills is because he knew some of the
 9 providers, true?
 10 A You would have to ask him. I would assume. I don't
 11 know.
 12 Q Okay. But Mr. Nestico would attempt to negotiate
 13 many times on your cases to reduce the bills from
 14 chiropractors and other medical providers?
 15 A I don't know what he did. We would just give him a
 16 file with recommendations for the bills, and we would
 17 get the file back, whether it was approved by him or
 18 not. So what he did, I can't tell you. I just know
 19 that I gave a file away with a particular number on
 20 it, I got it back, and it was either approved or not
 21 approved, or with instructions for us to call the
 22 chiropractor because it wasn't someone he knew.
 23 Q Okay. So if he knew them, he would try and call and
 24 use his relationship to get it reduced?
 25 A I don't know if he would call them or not, I have no

Page 99

1 A I mean, if you didn't have a car and you need to get
 2 somewhere, I mean, them coming to pick them up is --
 3 Q And you had clients who had difficulty with
 4 transportation, didn't you?
 5 A Yeah, a lot of them.
 6 Q And in fact -- strike that.
 7 It was also you liked to work with chiropractors
 8 who were willing to negotiate their bills when it
 9 came time to settlement?
 10 A Most of the doctors who do personal injury work
 11 negotiate their bills.
 12 Q That's something that you tried to do when you were
 13 with KNR, was to negotiate those bills down, correct?
 14 A I did not do the vast majority of negotiating the
 15 bills, but it's something that we did, yes.
 16 Q Okay. You would sometimes have Mr. Nestico do that?
 17 A He did it predominantly. He did -- there were
 18 particular ones that we would do, but then the vast
 19 majority of them he would do.
 20 Q Which ones would you do?
 21 A Like Doctor Miles out in Norton, we used to -- I used
 22 to call him up and negotiate his bill. He's
 23 really -- he's the only one I remember off the top of
 24 my head because he's a good guy, we're still friends.
 25 So that's all I remember.

Page 101

1 idea.
 2 Q Okay. But would you put on your suggested
 3 recommendation for the reduction?
 4 A Yes.
 5 Q Okay. Based on the client's best interests?
 6 A Yeah, trying to maximum what we could put -- I mean,
 7 trying to get the client enough money to be able to
 8 settle their case, yeah.
 9 Q Okay.
 10 ----
 11 (Thereupon, Defendants' Exhibit S was
 12 marked for identification.)
 13 ----
 14 Q Showing you an affidavit of John Lynett, that was
 15 sent last night by one of the attorneys who
 16 represents Doctor Floros.
 17 A Okay.
 18 Q And you obviously known John Lynett?
 19 A I do.
 20 Q Okay. And John Lynett was actually in my evening
 21 class at law school, graduated in '93, haven't really
 22 seen him for years. But this is somebody that you
 23 work with on a near daily basis?
 24 A Yes.
 25 Q Okay. Do you respect him?

Page 102	Page 103
1 A I do.	1 Q And you do that same thing, true?
2 Q Okay. Do you think he's a good lawyer?	2 A Yep.
3 A I do.	3 Q And you did that at KNR as well?
4 Q And you certainly think that he has his clients' best	4 A Yes.
5 interests at heart, don't you?	5 Q That's a benefit to the client, isn't it?
6 A I do.	6 A Yeah, to not have to worry about their bill when
7 Q If you look at, if we could just go through this, do	7 they're treating, yes.
8 you see number five, Attorney Lynett testifies, "Many	8 Q Okay.
9 of my clients do not have personal medical insurance,	9 A And to get them the treatment.
10 or the personal means that would allow them access to	10 Q If you look at number eight on the next page -- and
11 the care they needed without my help," fair?	11 you could feel free to read any of them.
12 A Fair.	12 A Yeah, I've never seen this.
13 Q And that describes the clientele both where you are	13 Q After you read --
14 at now and when you were at KNR, true?	14 A I'm sorry. Sorry.
15 A I think it's a general, it's a general statement,	15 Q That's okay. Now, eight, "I have also been
16 population, yeah.	16 recommended to clients by healthcare providers
17 Q He goes on in number six, "To provide the best	17 like --" is it Minas or --
18 possible service for my clients, I have recommended	18 A Minas.
19 to my clients doctors and facilities that will treat	19 Q Minas, I never remember that.
20 them for their injuries, with the understanding that	20 A Nobody does.
21 these providers will not try to collect payment for	21 Q "-- Minas Floros, DC, who are treating individuals
22 those services from my clients until my clients'	22 that are similarly situated to my clients, in that
23 claims have been settled or adjudicated;" did I read	23 they did not have personal medical insurance, or the
24 that correctly?	24 personal means that would allow them to get the care
25 A Yep.	25 they needed without the assistance of an attorney;"
Page 104	Page 105
1 did I read that correctly?	1 Q Yeah.
2 A You did.	2 A No, I'm not.
3 Q Okay. Do you have anything -- I mean, that's what	3 Q If you give me two, I give you one, or vice versa?
4 happens in the personal injury arena, isn't it, that	4 A I am not aware of conversations or agreements that
5 sometimes attorneys refer to chiropractors and	5 have been in place that I'm not privy to, if that
6 sometimes chiropractors refer to attorneys?	6 makes any sense.
7 A Yes.	7 Q Okay. Well, no one has ever told you -- I'll strike
8 Q And you were never aware of any quid pro quo	8 that.
9 relationship between Doctor Floros or any	9 You are not aware of any agreement between Akron
10 chiropractor and KNR, Nestico or Redick, were you?	10 Square Chiropractic and/or Doctor Floros and KNR,
11 A No.	11 Nestico and Redick, are you?
12 Q And you certainly don't have one now, do you,	12 A Correct.
13 yourself --	13 Q In fact, you use Doctor Floros, don't you?
14 MR. SKIDMORE: Objection.	14 A No.
15 Q -- at Slater & Zurz?	15 Q Never?
16 MR. MANNION: I mean, I know he doesn't.	16 A No. He doesn't like me.
17 Q I'm just getting it on the record that you don't, I	17 Q Oh. You used to use Doctor Floros?
18 mean, that's not something you did at KNR, it's not	18 A I wouldn't say "use." I would have as clients
19 something you saw KNR do, and it's not something you	19 patients of his, but --
20 would do, true?	20 Q Okay. You've defended --
21 A Can you rephrase that?	21 A Few and far between.
22 Q Sure. You're not aware of any quid pro quo	22 Q He's been your expert in a case at deposition before?
23 relationship?	23 A I have taken his deposition one time.
24 A Like an agreement between them to do a particular	24 Q Okay. And that was for one of your clients?
25 thing?	25 A It was.

Page 106	Page 107
<p>1 Q To your client's benefit?</p> <p>2 A Presumably, yeah.</p> <p>3 Q And obviously Doctor Floros and Akron Square work</p> <p>4 with John Lynett?</p> <p>5 A Yes.</p> <p>6 Q Okay.</p> <p>7 A Well, "work with," I mean, I don't like that.</p> <p>8 Q I agree. Let me rephrase that. Doctor Floros has</p> <p>9 treated patients of John Lynett's and Slater & Zurz?</p> <p>10 A Yes.</p> <p>11 Q And if you look at number nine, "Doctor Floros has</p> <p>12 told me that he recommends patients to me because he</p> <p>13 believes that I will represent his patient, now my</p> <p>14 client, well, and with my client's approval, I will</p> <p>15 pay Doctor Floros' bill or a portion thereof directly</p> <p>16 from the proceeds of any settlement and judgment;"</p> <p>17 did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q And you do that same thing with other chiropractors</p> <p>20 yourself, don't you?</p> <p>21 A Yes.</p> <p>22 Q You have chiropractors who refer cases to you?</p> <p>23 A I do.</p> <p>24 Q And you have -- you refer clients to those same</p> <p>25 chiropractors, don't you?</p>	<p>1 A Yes.</p> <p>2 Q Number 10 talks about narrative reports from Doctor</p> <p>3 Floros being helpful in negotiating with claims</p> <p>4 adjusters. And you certainly have seen narrative</p> <p>5 reports from Doctor Floros, true?</p> <p>6 A I have.</p> <p>7 Q According to the testimony of Attorney Lynett, the</p> <p>8 narrative "report explains the causal relationship</p> <p>9 between the motor vehicle accident in which my client</p> <p>10 was involved, and the injuries sustained. The plain</p> <p>11 language used by the healthcare provider in the</p> <p>12 narrative report makes it easy for a layperson to</p> <p>13 understand what caused the injury, what the injury</p> <p>14 was, what treatment was administered, and what the</p> <p>15 patient's" progress is; did I read that correctly?</p> <p>16 A You did.</p> <p>17 Q You agree with that, don't you?</p> <p>18 MR. SKIDMORE: Objection. Actually you</p> <p>19 said --</p> <p>20 MR. MANNION: I did say one thing wrong.</p> <p>21 MR. SKIDMORE: Yes, at the end it's</p> <p>22 "patient's prognosis."</p> <p>23 MR. MANNION: I said --</p> <p>24 MR. SKIDMORE: You said "progress."</p> <p>25 It's "prognosis."</p>
<p>Page 108</p> <p>1 MR. MANNION: Did I say "progress"?</p> <p>2 MR. SKIDMORE: Yes.</p> <p>3 Q Oh, "prognosis is." With that change did I read it</p> <p>4 correctly?</p> <p>5 A No -- I mean, yes, you --</p> <p>6 Q Okay. Do you agree with it?</p> <p>7 A I don't know. I mean, that's John's opinion. I</p> <p>8 don't deal with Akron Square. I don't see those</p> <p>9 things.</p> <p>10 Q But you did say, if we can go to your affidavit --</p> <p>11 A Somewhere in this pile, right?</p> <p>12 Q Um-um. Paragraph 39. Maybe keep that one out.</p> <p>13 A Which one, the affidavit?</p> <p>14 Q Yeah.</p> <p>15 A Paragraph 39. Yep.</p> <p>16 Q "The reports prepared by chiropractors or other</p> <p>17 healthcare providers served the purpose of</p> <p>18 documenting the injury. I sometimes used these</p> <p>19 reports to support the clients' claims during</p> <p>20 settlement negotiations with insurance companies;"</p> <p>21 did I read that correctly?</p> <p>22 A You did, and that's true.</p> <p>23 Q So you used reports like those that Doctor Floros</p> <p>24 prepares in negotiating with insurance companies to</p> <p>25 maximize your client's recovery, true?</p>	<p>Page 109</p> <p>1 MR. PATTAKOS: Objection.</p> <p>2 A True.</p> <p>3 Q And if you look at number 11 on Attorney Lynett's</p> <p>4 affidavit, "The narrative report that I ask Doctor</p> <p>5 Floros and other healthcare providers for is obtained</p> <p>6 for the benefit of my client in negotiating a</p> <p>7 settlement and/or for use in litigation. It is a</p> <p>8 cost of preparing the demand package to facilitate a</p> <p>9 settlement and/or in anticipation of litigation. It</p> <p>10 is not a part of the healthcare treatment my client</p> <p>11 received and therefore is a separate expense of</p> <p>12 litigation;" did I read that correctly?</p> <p>13 A You did.</p> <p>14 Q Do you agree with that?</p> <p>15 A I mean, I don't know. It is -- I mean, whether it's</p> <p>16 viewed as part of the healthcare treatment of his</p> <p>17 client, I mean, yeah, I guess.</p> <p>18 Q Is there anything about that paragraph you disagree</p> <p>19 with?</p> <p>20 A I mean, if that's what his -- if that's what he does,</p> <p>21 that's what he does. I mean, it's an opinion.</p> <p>22 Q But do you agree with it?</p> <p>23 A If he says that he is doing these things for the</p> <p>24 benefit of his client, I have no reason to dispute</p> <p>25 that.</p>

Page 110	Page 111
<p>1 Q Well, is that why you use those reports?</p> <p>2 A I don't -- I mean, yes. I mean, in the past from</p> <p>3 doctors and chiropractors, yeah, I would.</p> <p>4 Q Okay. Because you thought it was a benefit to your</p> <p>5 client?</p> <p>6 A Yes.</p> <p>7 Q Now, you're not aware of any attorney, owner or other</p> <p>8 employee of KNR conspiring with any chiropractors or</p> <p>9 any other third party vendors to inflate billings,</p> <p>10 are you?</p> <p>11 A No.</p> <p>12 Q Okay. You wouldn't condone that?</p> <p>13 A No.</p> <p>14 Q And you never heard anyone say that they were going</p> <p>15 to do that, did you?</p> <p>16 A No.</p> <p>17 Q You've had patients use TENS units, fair?</p> <p>18 A Yes.</p> <p>19 Q And clients I should say?</p> <p>20 A Yeah; yeah. Yeah. I think we all use those terms</p> <p>21 interchangeably.</p> <p>22 Q It's a patient of the doctor and a client of yours?</p> <p>23 A Yes.</p> <p>24 Q And you certainly have had patients who have had TENS</p> <p>25 units prescribed by their doctor, true?</p>	<p>1 A Yes.</p> <p>2 Q And perhaps used TENS units or electrical stimulation</p> <p>3 at the chiropractor's office?</p> <p>4 A Yeah, a lot of them do.</p> <p>5 Q And they report that it helps, some of them, true?</p> <p>6 A Some of them do, yeah.</p> <p>7 Q And if they tell you it's not helping, you tell them</p> <p>8 to stop it, I assume?</p> <p>9 A I don't know if I've ever had that conversation. I</p> <p>10 think they a lot of times will make the determination</p> <p>11 on their own if it's not helping to stop it. I</p> <p>12 don't -- I don't -- I don't -- I always -- well, I</p> <p>13 tell people, you know, get the care that you need,</p> <p>14 you know, if it works it works, and if it doesn't,</p> <p>15 don't do it, I guess.</p> <p>16 Q But the decision on whether a TENS unit is needed or</p> <p>17 not, that's a decision between the healthcare</p> <p>18 provider and the client, true?</p> <p>19 A I would say, yeah.</p> <p>20 Q At KNR you didn't tell people "Go get a TENS unit,"</p> <p>21 did you?</p> <p>22 A No, I don't think so.</p> <p>23 Q I mean, I'm saying you're not a doctor, right?</p> <p>24 A I'm not a doctor.</p> <p>25 Q Okay. Did you ever tell Monique Norris, or anybody</p>
Page 112	Page 113
<p>1 that you can recall, "Hey, I think you should go get</p> <p>2 a TENS unit"?</p> <p>3 A I would say "Follow your prescribed course of care."</p> <p>4 Q Okay.</p> <p>5 A And if that included getting a TENS unit, then that's</p> <p>6 what the doctor says.</p> <p>7 Q And to determine whether a TENS unit is required or</p> <p>8 reasonably necessary for any particular patient or</p> <p>9 client, you'd have to look at -- you'd have to talk</p> <p>10 to that particular medical doctor, look at those</p> <p>11 particular medical records, talk to that particular</p> <p>12 patient, true?</p> <p>13 A I would say, I guess.</p> <p>14 Q You can't just blanketly say that nobody should get</p> <p>15 TENS units?</p> <p>16 A I'm not a physician, I can't make that statement.</p> <p>17 Q Well, even as a lawyer you wouldn't say that, would</p> <p>18 you?</p> <p>19 A I would say whatever care the doctor prescribes is</p> <p>20 what the patient needs.</p> <p>21 Q And you would have to look at each individual case</p> <p>22 differently, true?</p> <p>23 A Again, it's a medical thing. It's beyond my capacity</p> <p>24 to say yes or no.</p> <p>25 Q Okay.</p>	<p>1 A You're asking me about the medical care between a</p> <p>2 doctor and a patient, and I can't tell you if what</p> <p>3 the doctor says or doesn't say -- I mean, I don't</p> <p>4 know if it's the doctor's policy to do it or because</p> <p>5 it's helpful, I don't know. That's an answer to the</p> <p>6 question I can't answer.</p> <p>7 Q Okay. For you to know whether or not something was</p> <p>8 reasonably medically necessary, you'd have to ask the</p> <p>9 doctor on each one of those cases?</p> <p>10 A I would have to -- the doctor would have to tell me</p> <p>11 that.</p> <p>12 Q And you've seen all sorts of different charges for</p> <p>13 TENS units I'm sure?</p> <p>14 A Yeah.</p> <p>15 Q Okay.</p> <p>16 A I mean, I couldn't tell you what they are, but --</p> <p>17 Q Sometimes claims people try to negotiate those down</p> <p>18 and sometimes they don't?</p> <p>19 A Claims adjusters?</p> <p>20 Q Claims adjusters.</p> <p>21 A Sometimes they'll tell you what they're going to pay,</p> <p>22 and sometimes they don't tell you what they're going</p> <p>23 to pay. I mean, it depends on the conversation.</p> <p>24 Q And sometimes when you settle a case, they don't</p> <p>25 necessarily break it down by hey, this much goes to</p>

Page 114	Page 115
<p>1 medical expenses and this much goes to pain and</p> <p>2 suffering, they talk more in general amounts</p> <p>3 typically?</p> <p>4 A It depends on the conversation I suppose. You know,</p> <p>5 you eventually develop some pretty good relationships</p> <p>6 with adjusters and they kind of give you -- at the</p> <p>7 end of the day it's about what you're getting from</p> <p>8 them. How it gets broken down on our end versus</p> <p>9 their end, it all depends. They'll -- usually a lot</p> <p>10 of times, depending on the insurance company, when</p> <p>11 we'll start negotiating a case, they'll say "This is</p> <p>12 what we're considering for medical expenses, and then</p> <p>13 this is what we're considering for general damages."</p> <p>14 And then after that point, you know, they've got</p> <p>15 their own case or claim handling style, I guess is</p> <p>16 the best way to put it. So how they manipulate the</p> <p>17 medical bills on their end and the pain suffering on</p> <p>18 their end is not -- I don't know.</p> <p>19 Q How an insurance company -- strike that.</p> <p>20 How the cost of a TENS unit impacts any</p> <p>21 individual case, you'd have to look at that</p> <p>22 individual case, talk to that individual claims</p> <p>23 examiner, that individual lawyer, true?</p> <p>24 A I don't know about all those being true, but you</p> <p>25 would have to talk to the adjuster to see what</p>	<p>1 they're considering and what they're not.</p> <p>2 Q You can't blanketly say that this is how TENS units</p> <p>3 impact cases, you'd have to look at each individual</p> <p>4 case separately, true?</p> <p>5 A I don't know. I -- again, you're asking me a</p> <p>6 question that's something -- a practice of somebody</p> <p>7 else, and I don't know.</p> <p>8 Q Well, you'd have to ask those people, true?</p> <p>9 A I guess.</p> <p>10 Q Okay.</p> <p>11 A You're asking me what I think a claims adjuster does</p> <p>12 on a particular file, and there are -- you know, I</p> <p>13 can't tell you.</p> <p>14 Q Let me -- strike that.</p> <p>15 When you worked at KNR --</p> <p>16 A Yes.</p> <p>17 Q -- let's say that you had cases with Doctor</p> <p>18 Ghoubrial.</p> <p>19 A Yes.</p> <p>20 Q Okay. And you had cases with Doctor Ghoubrial at</p> <p>21 Slater, true?</p> <p>22 A Yes.</p> <p>23 Q And sometimes he prescribed a TENS unit?</p> <p>24 A Yes.</p> <p>25 Q Okay. And different claims people handle that</p>
<p>Page 116</p> <p>1 different ways, true?</p> <p>2 A Yes.</p> <p>3 Q Okay. And to determine how it impacted any</p> <p>4 individual client, that TENS unit and the cost of it</p> <p>5 and how it impacted the cost of the settlement and</p> <p>6 the net to the client, you'd have to examine that</p> <p>7 individual case to determine that, wouldn't you?</p> <p>8 A I guess.</p> <p>9 Q I mean, you can't just blanketly say how it impacted</p> <p>10 the cases, can you?</p> <p>11 A I guess I don't know what you're trying to get at.</p> <p>12 Q Okay. Well, do you know, for example, in Monique</p> <p>13 Norris' case --</p> <p>14 A Yes.</p> <p>15 Q -- if the cost of a TENS unit being \$500 in her case,</p> <p>16 did that have a positive or negative impact on her</p> <p>17 settlement, do you even know?</p> <p>18 A I have no idea.</p> <p>19 Q And to see whether that had a positive or negative</p> <p>20 impact on any individual case, you'd have to look at</p> <p>21 that individual case to make that determination,</p> <p>22 fair?</p> <p>23 A Yes.</p> <p>24 THE VIDEOGRAPHER: I'll need to change</p> <p>25 media here in the next few minutes.</p>	<p>Page 117</p> <p>1 MR. MANNION: Okay. Here, let me mark</p> <p>2 this, then.</p> <p>3 THE VIDEOGRAPHER: Do you want me to do</p> <p>4 it now?</p> <p>5 MR. MANNION: Yeah.</p> <p>6 THE VIDEOGRAPHER: Thank you. We're off</p> <p>7 the record. 11:28.</p> <p>8 ----</p> <p>9 (Thereupon, a discussion was had</p> <p>10 off the record.)</p> <p>11 ----</p> <p>12 (Thereupon, Defendants' Exhibit T was</p> <p>13 marked for identification.)</p> <p>14 ----</p> <p>15 THE VIDEOGRAPHER: We're back on the</p> <p>16 record. 11:30. Tape number two.</p> <p>17 THE WITNESS: Tell him he only gets one</p> <p>18 more tape, that's it.</p> <p>19 Q Handing you what's been marked as Exhibit T for</p> <p>20 identification, and this has the patient's name</p> <p>21 redacted. This is a bill, received date of</p> <p>22 8-25-2011, and an explanation of medical payments</p> <p>23 date I guess of 9-7-2011 for treatment rendered by</p> <p>24 Analgesic Healthcare. Have you ever heard of</p> <p>25 Analgesic Healthcare?</p>

Page 118	Page 119
1 A I think so.	1 Q Okay. All over the board?
2 Q And this is from Allstate, do you see at the top?	2 A Yeah.
3 A I do.	3 Q And if I told you that Monique Norris was charged
4 Q Okay. Now, if you turn -- if you see where it says	4 \$500 for a TENS unit, you've seen that charge from
5 transcutaneous electrica, and it's sort of cut off,	5 numerous providers, haven't you?
6 and you see the 745?	6 A I can't say that I haven't. I have no specific
7 A Hold on real quick. You said the second page? First	7 recollection of it, but --
8 page?	8 Q That's not a charge that would shock you?
9 Q First page, transcutaneous electrica, one unit.	9 A No.
10 Billed amount was how much?	10 Q Okay.
11 A 745.	11 A I mean, shocking that it's so expensive, but it's not
12 Q And what was the covered amount?	12 something I haven't seen, if that makes sense.
13 A 745.	13 Q You've seen that kind of expense from Doctor
14 Q And if you look at the next page, at the bottom, you	14 Ghoubrial and from other providers, true?
15 see that \$745 was for a TENS unit?	15 A I have no specific recollection of it, but --
16 A Um-um, yes.	16 Q Of who --
17 Q And Allstate paid the entire \$745?	17 A Who charges what, yeah.
18 MR. SKIDMORE: Objection.	18 Q Okay. If you saw a charge that you thought was
19 A I don't know. I mean --	19 unreasonable in the medical bills of one of your
20 Q Do you see the covered amount?	20 clients when you were at KNR, wouldn't you have tried
21 A I mean, if that means they paid it, then they paid	21 to call that provider up and talked to them?
22 it.	22 A No.
23 Q Okay. So what are the typical ranges that you saw	23 Q Okay. Would you have submitted a charge if you
24 for TENS units throughout your career, do you know?	24 thought it was unreasonable?
25 A \$35 to apparently \$1562.	25 A Submitted a charge to who?
Page 120	Page 121
1 Q The insurance company.	1 true?
2 A I don't know if it's my -- if it would have been my	2 A Correct.
3 duty to make the determination of whether it was a	3 Q That's up to the medical provider and the client or
4 reasonable charge or not.	4 the patient?
5 Q That's up to the physician and the medical field,	5 A Correct.
6 true?	6 Q And you leave that to the medical judgment?
7 A Yes. I mean, now you're starting to get into	7 A Yes.
8 insurance company practices, you know, usual,	8
9 customary and reasonable charges, who makes that	9 ----
10 determination, blah, blah, blah. I don't know.	9 (Thereupon, Defendants' Exhibit U was
11 Q And different carriers handle it different ways?	10 marked for identification.)
12 A Yes.	11 ----
13 Q Okay. You've also had, certainly have had clients of	12 Q Showing you what's been marked as Exhibit U --
14 yours get trigger point injections, too, haven't you?	13 MR. PATTAKOS: Tom, I'm going to object.
15 A Yes.	14 I just want to register for the record,
16 Q And many of them tell you that they help quite a bit,	15 you're not -- you haven't identified whose
17 don't they?	16 bill this is, correct? Who actually received
18 A Yes.	17 this treatment, you're not identifying that
19 Q Do you know what the charges for those are?	18 on the record, are you, or have you?
20 A I do not. They're like TENS units, they're kind of	19 MR. MANNION: No, I redact patient
21 all over the board.	20 information.
22 Q And you never tell a client "Hey, I think you need	21 MR. PATTAKOS: Okay. So these are just
23 trigger point injections," do you?	22 random patients from Doctor Ghoubrial's
24 A No.	23 practice that you're not going to identify
25 Q You don't do that at KNR, and you don't do it now,	24 for us; is that correct?
	25 MR. MANNION: Look, I'm not going to get

Page 122	Page 123
<p>1 in a debate with you on the record here. I</p> <p>2 redacted the name of the patient. If you</p> <p>3 want to talk about this off the record later</p> <p>4 so we don't delay this, that's fine.</p> <p>5 MR. PATTAKOS: Okay. So as far as we</p> <p>6 know, though, this is just some random</p> <p>7 patient from Doctor Ghoubrial's practice</p> <p>8 right now, that's fair?</p> <p>9 MR. MANNION: I'm not answering your</p> <p>10 questions, okay?</p> <p>11 MR. PATTAKOS: Well, what is it?</p> <p>12 Q Showing you Exhibit U, Mr. Horton, and --</p> <p>13 MR. PATTAKOS: Object.</p> <p>14 Q And you see at the top it says Explanation of Review,</p> <p>15 Provider Copy?</p> <p>16 A Yes.</p> <p>17 Q And you see it says the Billing Provider, Clearwater</p> <p>18 Billing Services?</p> <p>19 A Yes.</p> <p>20 Q And do you understand that's where Doctor Ghoubrial</p> <p>21 and Doctor Gunning treat or practice?</p> <p>22 A This says Joshua Jones.</p> <p>23 Q Sure. But do you understand that Doctor Ghoubrial</p> <p>24 and Doctor Gunning are with Clearwater?</p> <p>25 A Yes.</p>	<p>1 Q Okay. And this particular provider was Doctor Joshua</p> <p>2 Jones. Do you know Doctor Jones?</p> <p>3 A I do.</p> <p>4 Q Okay. Have you used him, Doctor Jones?</p> <p>5 A In what sense?</p> <p>6 Q I mean, has he treated patients/clients of yours?</p> <p>7 A Yeah, I believe so.</p> <p>8 Q Okay. And you see down at the bottom where it says</p> <p>9 inject trigger points, an \$800 charge?</p> <p>10 A Yes.</p> <p>11 Q And can you tell us what Nationwide said as far as</p> <p>12 the provider reimburse?</p> <p>13 A Where does it say that?</p> <p>14 MR. SKIDMORE: Objection.</p> <p>15 A It says 800.</p> <p>16 Q So according to this, if it's correct, Nationwide</p> <p>17 reimbursed \$800 for the trigger point injections, the</p> <p>18 exact amount, true?</p> <p>19 A That's what it says.</p> <p>20 Q And if you look on the next page, it looks like</p> <p>21 Nationwide also reimbursed the total cost of \$500 for</p> <p>22 the TENS unit, true?</p> <p>23 MR. SKIDMORE: Objection.</p> <p>24 A That's what it says.</p> <p>25 Q According to this document?</p>
Page 124	Page 125
<p>1 A Yes.</p> <p>2 MR. PATTAKOS: Has anything else been</p> <p>3 redacted from here other than the patient</p> <p>4 name, Tom?</p> <p>5 MR. MANNION: No, of course not.</p> <p>6 A And this is all -- it appears to be medical payment</p> <p>7 coverage, which is -- I mean, it's a little bit</p> <p>8 different, but --</p> <p>9 Q Explain.</p> <p>10 A I don't know how insurance companies approach these</p> <p>11 things so I can't tell you, but there is a difference</p> <p>12 between med pay coverage and liability coverage.</p> <p>13 There's a contractual obligation on the part of the</p> <p>14 insurance company to do things.</p> <p>15 Q But --</p> <p>16 A And that I think, to avoid particular claims against</p> <p>17 them, take into consideration -- I mean, I don't</p> <p>18 know. You have to ask the insurance company. But</p> <p>19 from a practical standpoint, med pay is looked at</p> <p>20 differently than liability coverage.</p> <p>21 Q They still have to be reasonable and customary</p> <p>22 charges, true?</p> <p>23 A I don't know. You'd have --</p> <p>24 Q You're not sure?</p> <p>25 A You'd have to ask these guys.</p>	<p>1 MR. MANNION: Were you looking to take a</p> <p>2 break, Peter, or --</p> <p>3 MR. PATTAKOS: No, you know what, it's</p> <p>4 fine. I was just asking because he changed</p> <p>5 the tape, if everybody else is okay.</p> <p>6 MR. MANNION: What time do we have?</p> <p>7 MR. PATTAKOS: 11:39.</p> <p>8 THE WITNESS: Let's roll, keep going.</p> <p>9 Q So Monique Norris testified that she was treated by</p> <p>10 Doctor Ghoubrial, even though the records suggest</p> <p>11 Doctor Gunning. Are you aware that she testified to</p> <p>12 that?</p> <p>13 A No.</p> <p>14 Q The records seem to suggest that Doctor -- was it</p> <p>15 Floros in her case recommended, referred her to</p> <p>16 Doctor Ghoubrial, her chiropractor referred her to</p> <p>17 Doctor Ghoubrial.</p> <p>18 A Okay.</p> <p>19 Q Is that something you've seen before?</p> <p>20 A Yes.</p> <p>21 Q Okay. You don't make that determination, do you?</p> <p>22 A No.</p> <p>23 Q How many actual times did you actually refer a KNR</p> <p>24 client directly to Doctor Ghoubrial?</p> <p>25 A I have no specific recollection of it. I would tell</p>

Page 126

1 you that I don't know. I mean, I can't tell you. It
 2 wouldn't be of common practice.
 3 Q I mean, do you recall ever doing it?
 4 A I don't know. I can't say yes or no. I have no
 5 specific recollection of it now, but it was not
 6 something that would have normally been done, if that
 7 makes sense.
 8 Q That would usually come from another healthcare
 9 provider?
 10 A Yes.
 11 Q Okay. Would you tell a patient right at the
 12 beginning "I'm going to get you treating with Doctor
 13 Ghoubrial"?
 14 A I don't think so.
 15 Q Okay.
 16 A I mean, I can't think of a specific instance where I
 17 would or would not -- I mean, where I did that, but
 18 if somebody -- again, I'm completely guessing here, I
 19 have no clue. If somebody didn't want to go see a
 20 chiropractor, but wanted to go to a medical doctor
 21 and didn't have one, maybe in that circumstance, but
 22 I don't know.
 23 Q Okay. You don't recall doing that?
 24 A Correct.
 25 Q Oh, well -- do you agree you're not aware of any

Page 128

1 A Very rarely, with how the business works, you are
 2 taking a full fee on anything, but --
 3 Q Okay. And you would agree that almost every time
 4 that fee was enough to cover the cost of both the \$50
 5 investigation fee and the cost of a narrative report
 6 if there was one?
 7 A I couldn't tell you one way or the other. I mean,
 8 potentially, but --
 9 Q You never did an analysis like that?
 10 A No.
 11 Q But the fee usually wasn't a \$50 reduction, was it,
 12 it was usually more than that?
 13 A I would say that's accurate.
 14 Q You'd agree that usually the reduction in the fee was
 15 200 or more at least, usually?
 16 A Probably.
 17 Q Okay.
 18 A I mean, I can't say for certain, but --
 19 Q To know what it was in any case, of course you'd have
 20 to look at --
 21 A The specific reduction, yeah.
 22 Q Okay. When you went over settlement memorandums --
 23 if you would look at paragraph 24 and 25.
 24 A Of my affidavit?
 25 Q Of your affidavit.

Page 127

1 chiropractor, medical doctor or healthcare provider
 2 sending any payments to KNR, its employees or its
 3 owners, for referral of any claimant to that
 4 healthcare provider?
 5 A Correct.
 6 Q And you're certainly not aware of Akron Square
 7 Chiropractics or any other chiropractor or other
 8 healthcare provider making a payment or a kickback to
 9 KNR, Nestico or Redick, true?
 10 A Correct.
 11 Q Would you agree KNR voluntarily discounted their fees
 12 in the vast majority of the cases that you settled
 13 while working there?
 14 A I suppose it would depend on how you define "vast
 15 majority," but yes, we regularly reduced our fees.
 16 Q If you look at paragraph 33 of your affidavit, can
 17 you just read that?
 18 A Yeah, "vast majority of cases." I mean, if I handled
 19 1500 cases, if you define "vast majority" as
 20 predominantly, then, yeah.
 21 Q Probably over -- at least over a thousand of those?
 22 A Oh, yeah.
 23 Q Okay.
 24 A I guess almost on every case.
 25 Q Okay.

Page 129

1 A Yeah.
 2 Q "When discussing the distribution of settlement
 3 proceeds with my and KNR's clients, I obtained client
 4 approval before deducting those fees and costs from
 5 the settlement proceeds;" did I read that correctly?
 6 A Yes.
 7 Q And you did that with every case you settled at KNR,
 8 didn't you?
 9 A Yes.
 10 Q Number 25, "I only asked my and KNR's clients to sign
 11 the settlement memorandum if I believed the fees,
 12 expenses, and payments to the client were fair and
 13 reasonable and the client agreed to them," true?
 14 A True.
 15 Q And that's -- you stick by that today, don't you?
 16 A Yes.
 17 Q And that would have been true --
 18 A Well, hold on a minute. Okay. Yeah. I was just
 19 making sure it didn't --
 20 Q Okay.
 21 A -- there wasn't anything else in there.
 22 Q Okay. And so that statement you gave under oath back
 23 in 2017, and you agree with it today as well, true?
 24 A Yes.
 25 Q Okay. And you certainly would have done that same

Page 130	Page 131
1 thing when you went over the settlement memorandum	1 A Yeah.
2 with Monique Norris, true?	2 Q And sometimes they have a question and sometimes they
3 A Yeah. I have no recollection of it, but --	3 don't?
4 Q You wouldn't have changed your practice for her,	4 A Right.
5 would you?	5 Q To know what was discussed at any individual -- for
6 A No.	6 any individual client when they were signing their
7 Q Do you recall a single time where you thought	7 settlement memorandum, you'd have to look at the
8 something was not fair and reasonable and you had the	8 settlement memorandum, talk to that lawyer, and talk
9 client sign it anyway?	9 to that client, fair?
10 A No.	10 A Say that again.
11 Q I mean, you wouldn't do that, would you?	11 Q Sure. For example, do you think that how Member
12 A No.	12 Williams' settlement memorandum, the discussions with
13 Q I'm getting rid of some of these.	13 her were exactly the same as the discussions with
14 When you went over a settlement memorandum, you	14 Monique Norris?
15 certainly didn't have a script to follow when you did	15 A I didn't do Member's, so I have no idea.
16 that, either, did you?	16 Q You have no idea what happened with hers, do you?
17 A No. Not a written script, no.	17 A Correct.
18 Q Well, I mean, what was --	18 Q You would have to ask that individual lawyer and
19 A Well, there's a procedure when you're going	19 Member Williams, true?
20 through -- when you go over a settlement memorandum.	20 A You could not ask me, that's true.
21 Q And what's the procedure?	21 Q You have no idea what happened with Richard Harbour,
22 A "Here's your settlement memo. Here's what we got.	22 do you?
23 These are the case expenses. Here's the people we're	23 A I don't know who that is.
24 paying. Here's the money that goes to you."	24 Q And if Richard Harbour had four different discussions
25 Q "Do you have any questions" I assume you'd say?	25 with KNR for settling four different cases, just
Page 132	Page 133
1 based on your interactions at KNR, you can't tell us	1 before she came in with copies attached?
2 what those conversations were during those times, can	2 A I have no recollection of that.
3 you?	3 Q It sounds like something you might do, though?
4 A I cannot.	4 A I don't know; I don't know. No, it doesn't, but --
5 Q You'd have to look at each individual case	5 Q Okay.
6 differently?	6 A I mean, it might have been a specific circumstance.
7 A I suppose, yeah.	7 I think somebody had suggested she had a policy
8 Q The clients ask different questions at different	8 limits case, so I don't know, maybe it had to be
9 times, true?	9 done, because -- I have no idea. I couldn't tell
10 A Yeah, probably. I mean, I would assume that if he	10 you.
11 had four cases he'd probably know the drill by case	11 Q Okay. Do you remember anything about her case --
12 number two or something like that. I don't know.	12 A I remember --
13 Q Sure. But how you handled Monique Norris'	13 Q -- Monique Norris?
14 settlement, you don't know how his settlement was	14 A I remember nothing about her case. I apologize.
15 handled, do you?	15 Q No; no, that's okay. Did you ever have any of your
16 A I don't know who he is.	16 clients, when you were at KNR, ask you about the MRS
17 Q Okay. You also often sent a copy of the settlement	17 Investigations, Aaron's company or any other
18 memorandum with the expenses to the client before	18 investigator, ask you what that fee was for?
19 they came in, true?	19 A I don't know. I have no specific recollection of it.
20 A I don't know. There was a phone conversation about	20 Q Okay. What would you have told them if they asked,
21 the recovery. I don't know from specific practice	21 or you don't remember?
22 whether they saw a copy of the settlement memo before	22 A I don't recall. They were -- it was an investigator
23 they came in or not.	23 fee for something.
24 Q Okay. In the Monique Norris case, there was a letter	24 Q You were never told to tell them it was the cost of
25 that you sent to her outlining what her expenses were	25 securing the relationship, were you?

Page 134	Page 135
1 A No.	1 performed by the investigator, investigative firm, or
2 Q Okay. Have you ever even heard that phrase before?	2 third party vendor depended on the individual case;"
3 A No.	3 did I read that correctly?
4 Q Nobody at KNR ever told you to say that, did they?	4 A Yes.
5 A The cost of securing a relationship?	5 Q So for me to know what an investigator did on any
6 Q Yeah.	6 particular case, I'd have to go look through that
7 A No.	7 case file or talk to the investigator or talk to the
8 Q Okay. And you're certainly not aware of any case in	8 attorney on that case, true?
9 which a client did not agree to the fee, but KNR	9 A True.
10 charged it anyway, the investigator fee, are you?	10 Q You certainly have no independent memory of what any
11 A I couldn't tell you.	11 investigator did for Member Williams or Monique
12 Q You agree that investigators did different things on	12 Norris as you sit here, do you?
13 different cases?	13 A I remember nothing about Monique Norris, so I can't
14 A From time to time.	14 tell you one way or the other.
15 Q And well, look at paragraph 28. Would you agree --	15 And from a Member Williams' standpoint, during
16 A Twenty-eight?	16 my time there, I would say I never asked Mike or
17 Q Twenty-eight. "Third party vendors, such as MRS	17 Aaron to do anything, but I can't tell you after I
18 Investigations, Inc. and other independent	18 left.
19 contractors, would at times perform the following	19 Q Okay. And you don't know who obtained the police
20 functions --"	20 report in Member Williams' case, do you?
21 A Um-um.	21 A No, I don't think so.
22 Q "-- obtaining the accident report, periodically	22 Q Look at paragraph 19.
23 taking photographs of the vehicles involved in the	23 A Yeah. No, I think -- there was an e-mail about it,
24 accident, periodically taking photographs of injured	24 but I can't tell you specifically. Yeah.
25 claimants, or other activities. The amount of work	25 Q "I believe that the intake department at KNR sent me
Page 136	Page 137
1 a copy of the accident report/police report from the	1 to the client to document the damage, true?
2 Stow Police Department in Member Williams' case."	2 A Yes.
3 A Yes.	3 Q I mean, that's considered evidence, true?
4 Q "I do not know how the intake department obtained the	4 A Yeah.
5 accident report/police report;" did I read that	5 Q Taking photographs of injured claimants is evidence
6 correctly?	6 that you can submit to an insurance company if
7 A True.	7 there's visible injuries, true?
8 Q Certainly the police report/accident report is good	8 A True.
9 evidence for the case that you need to pursue the	9 Q And that's also a benefit to the client?
10 claim, true?	10 A Yes.
11 A I mean, it's evidence. I don't know if it's good	11 Q When -- if you look at paragraph 13 to refresh your
12 evidence, but it's evidence. It's useful.	12 recollection.
13 Q Well, it's useful for the client's benefit, true?	13 A Yes.
14 A Yeah.	14 Q It indicates you contacted Chuck -- how do you
15 Q The insurance company certainly wants to see it,	15 pronounce his last name?
16 true?	16 A I don't know.
17 A Yes.	17 Q Okay.
18 Q And you certainly -- it has information on it with	18 A DeRemar, DeRemar, something like that.
19 respect to witnesses, who was at fault, things of	19 Q "-- who I understood to work for third party vendor
20 that nature, that are useful to the case?	20 MRS Investigations. When I contacted this Chuck
21 A Correct.	21 DeRamar, and I knew that Kisling, Nestico & Redick
22 Q And obtaining the accident report is a benefit to the	22 would pay MRS Investigations;" did I read that
23 client?	23 correctly?
24 A Yes.	24 A Yes.
25 Q Likewise, taking photographs of vehicles is a benefit	25 Q Okay. And that ultimately was put on the settlement

Page 138	Page 139
<p>1 memorandum for Member Williams, true?</p> <p>2 A If it's on there, yeah. I don't know.</p> <p>3 Q Okay.</p> <p>4 A I presume so. I think it's floating around here</p> <p>5 somewhere.</p> <p>6 Q Have you ever read her deposition?</p> <p>7 A No.</p> <p>8 Q Have you ever talked to her about her discussions at</p> <p>9 the time she settled her case?</p> <p>10 A No.</p> <p>11 Q Or when she signed her settlement memorandum?</p> <p>12 A No.</p> <p>13 Q In her deposition, she was -- she said that she asked</p> <p>14 what that fee was for, and I think it was Kim Lubrani</p> <p>15 who handled that, and Kim said it was to obtain the</p> <p>16 police report and other items from the accident. Do</p> <p>17 you see anything wrong with what Ms. Lubrani said to</p> <p>18 her?</p> <p>19 A I don't know what Kim said to her. I mean --</p> <p>20 Q Okay.</p> <p>21 A -- if that's what she said, that's what she said.</p> <p>22 Q So you would agree, though, that if that's what was</p> <p>23 said to Member Williams, then at least she was told</p> <p>24 the purpose of that investigation fee, true?</p> <p>25 A I wasn't there. I can't tell you.</p>	<p>1 Q Okay.</p> <p>2 A I haven't read her deposition. I don't know the</p> <p>3 conversation.</p> <p>4 Q If that's what she testified to, then --</p> <p>5 A If Member testified that somebody told her something</p> <p>6 about that fee, I have no reason to dispute what was</p> <p>7 said in that deposition.</p> <p>8 Q Okay.</p> <p>9 MR. MANNION: What time we got?</p> <p>10 MR. PATTAKOS: 11:53.</p> <p>11 MR. MANNION: Why don't we take just a</p> <p>12 quick lunch break. I'm going to try to -- I</p> <p>13 think we will save time if we take it now, I</p> <p>14 could streamline this real quick and</p> <p>15 hopefully be done within 20 minutes after</p> <p>16 lunch.</p> <p>17 MR. PATTAKOS: Okay. Sounds good.</p> <p>18 THE VIDEOGRAPHER: We're off the record.</p> <p>19 11:52.</p> <p>20 - - - -</p> <p>21 (Thereupon, a luncheon recess was had.)</p> <p>22 - - - -</p> <p>23 THE VIDEOGRAPHER: We're back on the</p> <p>24 record. 1:15.</p> <p>25 Q Okay. We're back after the lunch break.</p>
Page 140	Page 141
<p>1 First, I have a couple things to clean up. One</p> <p>2 on the scripts -- I asked you about whether anybody</p> <p>3 had a script.</p> <p>4 A Um-um.</p> <p>5 Q And you said there's certain information that you</p> <p>6 have to gather from the client when you're talking to</p> <p>7 them initially, correct?</p> <p>8 A Yes.</p> <p>9 Q But KNR didn't tell you how to go about getting that</p> <p>10 information, telling you exactly what to say in order</p> <p>11 to get that, true?</p> <p>12 A Not exactly what to say, no.</p> <p>13 Q Well, I mean, you knew what information you had to</p> <p>14 gather, true?</p> <p>15 A Yes.</p> <p>16 Q Facts of the accident, contingency fee, those type of</p> <p>17 things?</p> <p>18 A So we used the computer, and there's an intake sheet</p> <p>19 in the computer and you go down the intake sheet. I</p> <p>20 mean, it's not necessarily a script, it's just a form</p> <p>21 box you fill in all the information. Does that</p> <p>22 make sense?</p> <p>23 Q It's not telling you what to say, is it?</p> <p>24 A No.</p> <p>25 Q Okay. It's the same type of information you get now,</p>	<p>1 fair?</p> <p>2 A Pertinent information, yeah.</p> <p>3 Q Okay. But KNR doesn't, either hand out a script or</p> <p>4 tell you "Hey, this is how you say it. This is how</p> <p>5 you talk them into it. This is what you do"?</p> <p>6 A Not that I recall, no.</p> <p>7 Q You never had that for you, right?</p> <p>8 A I don't think so. Listen, if there is, I don't</p> <p>9 remember it whatsoever, so --</p> <p>10 Q Okay. Well, there's not, I'm just making sure.</p> <p>11 A I don't know.</p> <p>12 Q Have you had any communications with Gary Petti about</p> <p>13 this lawsuit or any of the allegations?</p> <p>14 A I talked to Gary a long time ago, way before the</p> <p>15 lawsuit was ever even filed, and I think I talked to</p> <p>16 Gary one time over the phone like right after it was</p> <p>17 filed. But what the contents of that conversation</p> <p>18 was, I couldn't tell you.</p> <p>19 Q You don't really remember much of it?</p> <p>20 A No, it was in 2016, two-thousand -- whatever it</p> <p>21 was -- 2015.</p> <p>22 Q What about with Paul Steele?</p> <p>23 A No, I haven't talked to Paul -- wait. Say the</p> <p>24 question about Gary and then say Paul Steele's name.</p> <p>25 Q Okay. Have you had any conversations with Paul</p>

Page 142	Page 143
1 Steele about the allegations in the Complaint, either	1 maybe for a quarterly meeting or something. But, I
2 before or after it was filed, any of the allegations?	2 mean, he was a nice guy.
3 A No, I don't think so.	3 Q Same question for Amanda Lantz.
4 Q The same question for Kelly Phillips?	4 A I talked to Amanda, she actually got let go right
5 A No, I don't think so.	5 around the same time I did. Nothing after the
6 So before the lawsuit was filed, I did kind of	6 lawsuit got filed. The conversations with her, I
7 corres -- I talked to Paul periodically, when I'd go	7 don't necessarily know if they were specific, just
8 to Columbus I'd stay at his house and stuff like	8 our general feelings about our former employer I
9 that, but no talk of any of this stuff. And then	9 suppose would be the best way to put it.
10 after it got filed, I haven't talked to Paul about	10 Q Sour grapes type of --
11 anything.	11 A That's probably a light way of putting it, but, yeah,
12 Kelly, no, not after the lawsuit was filed.	12 sure.
13 Right after I got let go from KNR I talked to Kelly	13 Q Okay. But was it about the claims that are in the
14 Phillips, like maybe within like two weeks or a	14 lawsuit?
15 month, I don't know, whatever the time frame was, but	15 A I don't recall. There could be. There may be, but I
16 nothing about this.	16 don't specifically recall.
17 Q Not about the lawsuit?	17 Q Nothing that comes to your memory?
18 A No, it was well before any of this.	18 A Nothing that comes to my memory.
19 Q Do you recall any conversations before you got let go	19 Q Do you have memory of talking about any of the
20 with Kelly Phillips about any of the underlying	20 underlying issues with any former or current
21 matters?	21 employees of KNR, either before or after the lawsuit?
22 A No. Kelly wasn't there for that long. He didn't	22 A I didn't really talk to anybody at KNR after the
23 work in the same office as me. I saw him -- I think	23 lawsuit. I'm trying to think who I corresponded with
24 I met Kelly maybe once or twice in the course of	24 after I was gone, other than former employees.
25 working there when he was up doing training, and then	25 Well, Brian Zaber I still talk to on a regular
Page 144	Page 145
1 basis about the lawsuit, it's like "Hey, man, when's	1 I could ask him to do it.
2 your deposition?"	2 Q Okay. And you knew he was available to you
3 Like "It's coming up in like six months," or	3 throughout the remainder of the case, true?
4 whatever it is, but not specifics. He's just a buddy	4 A To do stuff?
5 of mine. You know Brian.	5 Q Yes.
6 Q Yeah.	6 A I suppose, yeah.
7 A I may have --	7 Q Either him or somebody else from MRS?
8 Q Nothing comes to mind?	8 A I don't know if there is anybody else from MRS, but
9 A Nothing specifically comes to mind.	9 yeah.
10 Q Okay. Did you ever have any communications with	10 Q Okay. And whether you needed him to do anything or
11 Mr. Nestico or Mr. Redick where you told them about	11 not, we'd have to look at the individual files to see
12 any of the underlying claims, there wasn't a lawsuit	12 that?
13 at the time, but when you worked at KNR, where you	13 A Probably.
14 said "Hey, Robert, hey, Rob, don't do this"?	14 - - - -
15 A Not that I recall.	15 (Thereupon, Defendants' Exhibit V was
16 Q Okay. And didn't send any e-mails like that, either?	16 marked for identification.)
17 A If I did, I don't remember them. I don't think so.	17 - - - -
18 Q Okay. When you retained MRS Investigations, when you	18 Q Okay. Now, I'm going to show you, the first exhibit
19 called Chuck up, you knew that you could ask Chuck	19 I'm going to show you I shouldn't have marked it
20 through the remainder of that case to do different	20 because it's shortly after you left, but just so that
21 activities for you if you needed them, true?	21 we don't miss an exhibit, I'm just going to identify
22 A Chuck was the weekend guy, so probably not Chuck.	22 this for the record as Exhibit V. This is June 3rd
23 Q Somebody from MRS?	23 of 2015, after you left, correct?
24 A As far as I know, the only other guy from MRS is	24 A Yes.
25 Mike. Yeah, I mean, if I wanted him to do something	25 Q So you probably didn't see this, true?

Page 146	Page 147
1 A I did not.	1 to when and if investigators got paid and how it was
2 Q Okay. So you could just set that aside and I	2 determined whether they got paid?
3 shouldn't have marked that, but I didn't want to have	3 A Do I have specific knowledge of it?
4 people wondering what happened here.	4 Q Yes.
5 A Do you want me to look at it or no?	5 A No.
6 Q It doesn't matter either way.	6 Q If you look at this, Exhibit W, do you see that it
7 -----	7 says on here "If this criteria is not met you will
8 (Thereupon, Defendants' Exhibit W was	8 not be paid;" do you see that?
9 marked for identification.)	9 A Yes.
10 -----	10 Q And this is to the investigators, correct?
11 Q I'll show you Exhibit W, which is something that you	11 A Yeah.
12 would have seen as a prelit attorney back in June of	12 Q "Good morning KNR investigators;" do you see that?
13 2014, correct?	13 A I was reading all the names.
14 A Presumably, yeah.	14 Q That's okay. So the first two we can skip over.
15 Q Okay. Do you remember other e-mails like this, or	15 Then three we have photo of insurance card.
16 just one way or another you don't know?	16 Photo of client from the chest up. Is that just
17 A I can't tell you one way or the other. I mean, I'm	17 so you know what they look like, or, what is that
18 sure -- we got an insane volume of e-mails about, you	18 for, do you know?
19 know, any number of things. So I can't tell you a	19 A No idea.
20 specific recollection, but I mean, I can tell you I	20 Q Okay. Photo of any visible injuries. We talked
21 have no reason to dispute that this was sent.	21 about that before. So if there's visible injuries
22 Q Okay.	22 when the investigator meets with them, they're
23 A So are you good enough?	23 required to take a photograph, true?
24 Q Did you know what the policy, procedure, practice,	24 A That's what this says.
25 whatever you want to call it, at KNR was with respect	25 Q And photos of the vehicle is required?
Page 148	Page 149
1 A That's what this says.	1 anything specific?
2 Q And photo of the police report if the client had --	2 A No, I don't. I remember discussions about the
3 or potential client had, had the police report and	3 investigators. Whether it actually took place at a
4 the direct mailer; do you see that?	4 quarterly meeting or not, I can't tell you.
5 A I do.	5 Q Okay. What do you remember?
6 Q Okay. Do you remember getting those from time to	6 A Just about the policy of using our investigators --
7 time?	7 Q Okay.
8 A What?	8 A -- to go sign people up, you know. Whether that was
9 Q Any of these photos of police reports, vehicles,	9 actually at a quarterly meeting or not, I don't know
10 visible injuries?	10 if it was.
11 A Oh, yeah. I mean, a specific recollection of it, no,	11 Q I got you.
12 but I can't say that it didn't come through.	12 A Okay.
13 Q You mean you don't remember a specific client, you	13 Q Anything else you remember about what was said, or
14 know you got them from time to time --	14 just that you should use the investigators?
15 A Yes.	15 A Well, we had, you know, standing instructions on how
16 Q -- but you can't say which client?	16 sign-ups I guess were supposed to take place, the
17 A Right.	17 time frame in which they were supposed to take place,
18 Q You'd have to look at each individual file, true?	18 and we were supposed to send the investigators to get
19 A Right.	19 them signed up.
20 Q Did you go through and check, when you did a	20 Q Okay. Did you ever go to a chiropractor's office to
21 settlement memorandum, to see if these things were	21 sign someone up?
22 done or not?	22 A I don't know. Maybe. We were generally glued to our
23 A No.	23 desks.
24 Q Okay. And do you recall discussions of the	24 Q Okay. Answering phones?
25 investigators at any of the quarterly meetings,	25 A Yeah. I may have, I can't tell you. I know I ate

Page 150	Page 151
<p>1 my -- I can't say no, but I also can't say yes. It's</p> <p>2 a possibility.</p> <p>3 -----</p> <p>4 (Thereupon, Defendants' Exhibit X was</p> <p>5 marked for identification.)</p> <p>6 -----</p> <p>7 Q Okay. Showing you what's been marked as Exhibit X</p> <p>8 for identification. Now, this was after you left,</p> <p>9 and I wanted to ask you some questions about it. And</p> <p>10 this is -- do you know Gary Monto?</p> <p>11 A I don't know him. I know who he is.</p> <p>12 Q One of the investigators?</p> <p>13 A Yes.</p> <p>14 Q Okay. Retired Toledo policeman, did you know that?</p> <p>15 A Maybe. Vaguely. It sounds familiar. I think -- I'm</p> <p>16 thinking one or two of our investigators might have</p> <p>17 had some sort of law background. I don't know.</p> <p>18 Maybe.</p> <p>19 Q So apparently in this one, Gary Monto sent something</p> <p>20 to Rob Nestico after KNR attorneys talked to some</p> <p>21 potential clients who said they wanted</p> <p>22 representation, they were at the hospital still, and</p> <p>23 so he went there to investigate and sign up the</p> <p>24 victims of the crash; do you see that?</p> <p>25 A Um-um.</p>	<p>1 Q Do you know what he -- yes?</p> <p>2 A I'm sorry, yes.</p> <p>3 Q And do you know what he meant by "investigate"? Was</p> <p>4 that interviewing them, or do you know what it was?</p> <p>5 A I have no idea.</p> <p>6 Q Okay. And do you see that he talked with whoever it</p> <p>7 was, Ms. Blank and her daughter at the hospital?</p> <p>8 A Um-um, yes.</p> <p>9 Q And talked with blank concerning the crash?</p> <p>10 A Yes.</p> <p>11 Q And whether those are witnesses or potential clients</p> <p>12 you personally don't know?</p> <p>13 A No, I have no idea.</p> <p>14 Q But you see then it says "I took photos and signed</p> <p>15 both victims up"?</p> <p>16 A Yes.</p> <p>17 Q And then he says below that, "I went to the Toledo</p> <p>18 Police Department Central Station and obtained a copy</p> <p>19 of the crash report," and then forwarded it to the</p> <p>20 office along with the paperwork; do you see that?</p> <p>21 A Yes.</p> <p>22 Q And so these are the types of things that</p> <p>23 investigators did, go into the police department at</p> <p>24 times to get police reports, taking pictures of</p> <p>25 visible injuries, things of that nature, true?</p>
<p>Page 152</p> <p>1 MR. SKIDMORE: Objection.</p> <p>2 Go ahead.</p> <p>3 A It's a possibility.</p> <p>4 Q Well, you know they did those type of things, you</p> <p>5 just don't know which cases they did it on and which</p> <p>6 they didn't, true?</p> <p>7 A Correct.</p> <p>8 -----</p> <p>9 (Thereupon, Defendants' Exhibit Y and</p> <p>10 Defendants' Exhibit Z were marked for</p> <p>11 identification.)</p> <p>12 -----</p> <p>13 Q Now, I'll show you Exhibit Y and Exhibit Z. Would</p> <p>14 you agree Exhibit Y is the settlement memorandum for</p> <p>15 Monique Norris?</p> <p>16 A It is.</p> <p>17 Q Is that your signature at the bottom?</p> <p>18 A I think so.</p> <p>19 Q Okay.</p> <p>20 A It looks --</p> <p>21 Q Close enough?</p> <p>22 A Close enough, yeah.</p> <p>23 Q You're not disputing it's your signature I take it?</p> <p>24 A I don't think I have any reason to.</p> <p>25 Q Okay. I just wanted you to, if you look now at Z,</p>	<p>Page 153</p> <p>1 and I wanted to go through here on the -- where it</p> <p>2 says Deduct and Retain to Pay to Others --</p> <p>3 A Yes.</p> <p>4 Q -- so that is where either money has to come out and</p> <p>5 be paid -- well, strike that. These are money that</p> <p>6 has to come out from the settlement dollars and be</p> <p>7 paid directly to these people, correct?</p> <p>8 A I'm sorry, to come out of the settlement dollars and</p> <p>9 be directly -- I'm sorry --</p> <p>10 Q Yeah.</p> <p>11 A -- directly paid to the people listed there?</p> <p>12 Q Listed there, yeah.</p> <p>13 A Yes.</p> <p>14 Q Okay. So if we first look at Akron Square</p> <p>15 Chiropractic --</p> <p>16 A Yes.</p> <p>17 Q -- and go three pages into the Exhibit Z --</p> <p>18 A Yes.</p> <p>19 Q -- and you see the actual amount of Akron Square was</p> <p>20 how much?</p> <p>21 A \$724.</p> <p>22 Q So that was discounted \$224?</p> <p>23 A Yes.</p> <p>24 Q And then if we look at Clearwater Billing, if you</p> <p>25 look at the second page of Exhibit Z, do you see that</p>

Page 154	Page 155
1 where it says 850?	1 A I didn't, but they took \$80.
2 A I do.	2 Q Who would usually call National Diagnostic?
3 Q And it was discounted to what?	3 A I don't know.
4 A The settlement memo says \$600.	4 Q Okay.
5 Q So \$250 discount?	5 A That was one of the ones that we put on the sheet and
6 A Sure.	6 it came back, fixed or not.
7 Q Now, do you know, there's an 850 charge, 350 for the	7 Q These would have been your recommendations most
8 visit, 500 for the TENS unit, but as far as where	8 likely?
9 that deduction came from, it wasn't split up between	9 A I don't know. I can't tell you. This is the one
10 that, was it?	10 that the client signed. The markup that led to this,
11 A I have no idea. I mean, it's -- we paid Clearwater	11 I can't tell you if I recommended those values or
12 \$600. How they --	12 not. It might have gone to Rob and then Rob marked
13 Q Okay. It wasn't \$600 for the TENS unit, was it?	13 it up and then it came back and we changed it after
14 A No, it would be \$600 in total for the bill.	14 he did the markups of it or not, I don't know.
15 Q Then if we look down, let's see, I think that CNS was	15 Q You would have had some recommendations?
16 paid the full amount, 260.	16 A Yeah, for sure.
17 Then we look at Liberty Capital, we already	17 Q And the Ohio Tort Recovery Unit, that's for --
18 talked about that, you had a discount on that one of	18 A Medicaid, health insurance.
19 168 or whatever it was, correct?	19 Q That's just a lien that's on the file, correct?
20 A Yep.	20 A Yep.
21 Q And National Diagnostic, if you look at the last page	21 Q Also, if you look at the fee, and I'm not going to
22 of Exhibit Z --	22 ask you to do it, but if you look at the very top
23 A Okay.	23 under the recovery, you obviously don't take a third
24 Q -- that was \$110, and you negotiated that down to	24 from the Liberty Capital money, correct?
25 30 -- I mean, you negotiated \$30 down to 80?	25 A Correct.
Page 156	Page 157
1 Q So if you take that off and you take a third of 6232,	1 A Both of them?
2 I'll represent it's approximately 2077.	2 Q Um-um.
3 A Sure.	3 -----
4 Q So the fee also was reduced, true?	4 (Thereupon, Defendants' Exhibit AA was
5 A Yes; yes.	5 marked for identification.)
6 Q Okay. And in fact, the amount of the fee reduction	6 -----
7 would be enough to cover both the MRS Investigations	7 Q I'll show you Exhibit AA. Okay. If you see at the
8 and the \$200 report of Doctor Floros, true?	8 bottom of Exhibit AA -- let me see that for a second.
9 A Yes.	9 I want to make sure I gave you the right one. I
10 Q And have some left over, fair?	10 didn't.
11 A Yes.	11 MR. MANNION: Sorry guys. We'll get to
12 Q And you went over this with Monique Norris, didn't	12 that one in a second. We'll go with this
13 you?	13 one.
14 A I presume I did.	14 MR. SKIDMORE: Is this still AA?
15 Q If she were to have asked you about any of these	15 MR. MANNION: This is AA right there.
16 individual bills, you could have pulled the file and	16 Q So you see at the bottom September 16, 2013?
17 talked to her about them, true?	17 A Um-um.
18 A Yeah.	18 Q State Farm --
19 Q In fact, wouldn't you have the file with you when you	19 A I'm sorry, on the first page?
20 went over it with her?	20 Q Yeah.
21 A Not specifically with me, but within walking	21 A Yeah.
22 distance.	22 Q State Farm called her?
23 Q You'd have access to it?	23 A Yes.
24 A Um-um, yes.	24 Q And that was the tortfeasor's insurance company?
25 Q You can set that aside.	25 A That's -- yeah.

Page 158

1 Q So as you see right here, shortly, right after this
 2 accident, State Farm is already calling her, correct?
 3 A I don't know when her accident was.
 4 Q And it says on the next page, "They asked her what
 5 happened, she told them. I told her not to talk to
 6 anyone from State Farm again"?
 7 A Correct.
 8 Q That was good advice, wasn't it?
 9 A Yes.
 10 Q Don't you think State Farm should have asked her if
 11 she was represented?
 12 A I don't know.
 13 -----
 14 (Thereupon, Defendants' Exhibit BB was
 15 marked for identification.)
 16 -----
 17 Q Okay. I'll show you Exhibit BB, and at the bottom
 18 it's an e-mail from you to Jill Gardner, who
 19 was at -- was she at Davis & Young by then?
 20 A I have no idea.
 21 Q If you look at the top, do you see where --
 22 A Oh, yes.
 23 Q Member Williams knew you were speaking with Jill
 24 Gardner, true?
 25 A Yes.

Page 160

1 -----
 2 (Thereupon, Defendants' Exhibit CC was
 3 marked for identification.)
 4 -----
 5 Q Showing you now Exhibit CC, would you agree this is a
 6 letter, at least on its face, from State Farm to you,
 7 dated January 14, 2015, discussing Member Williams'
 8 claim?
 9 A I'm sorry, say that again.
 10 Q Sure. This was a letter from State Farm to you,
 11 while you were at KNR, on January 14, 2015, regarding
 12 Member Williams' claim?
 13 A Okay.
 14 Q True?
 15 A Yes.
 16 Q Okay. And if you look in the middle paragraph --
 17 A Yes.
 18 Q -- do you see where they're willing to talk about
 19 medicals up to September 16, 2013; do you see that?
 20 A (Mumbling.)
 21 MR. SKIDMORE: You're killing the court
 22 reporter.
 23 THE WITNESS: Oh, sorry.
 24 A I don't see where it says "up to," but it just talks
 25 about resolution for a particular date of services.

Page 159

1 Q And she consented to that, true?
 2 A I would not think otherwise.
 3 Q Jill is the one who she was friends with or they're
 4 related to?
 5 A They're in-laws, yeah, they're related.
 6 Q Now, at the bottom you say property damage was about
 7 1700 with labor, and it is State Farm?
 8 A Um-um, yes.
 9 Q It seems like you were trying to say something by
 10 that. What did you mean by that?
 11 A Per they're a particularly -- well, they're all kind
 12 of difficult I guess, but if you list a few insurance
 13 companies, they're one of the ones that are a little
 14 bit more difficult to deal with, to get good value of
 15 claims on, I guess. I don't know.
 16 Q Okay. One of those --
 17 A Frankenmuth Mutual is great, State Farm is not.
 18 Q I've never heard of that company ever. So that's one
 19 of the companies you might have to fight a little
 20 harder to get a fair value for your client?
 21 A Yeah. You had to fight with all of them, you just
 22 you knew going into it with some of them they were
 23 going to be chinchier than others, I guess is the
 24 best way -- I don't know if it's a good way to put
 25 it, but --

Page 161

1 Q Isn't that how you --
 2 A "I have evaluated your client's claim based on the
 3 Wadsworth Rittman Hospital charges for date of
 4 service of 9-16-2013," so the single date of service.
 5 Q Do you know whether you submitted any bills that were
 6 subsequent to September 16, 2013 at that time?
 7 A From what -- at this time I don't know. I mean, it's
 8 2015, so I would assume that we did. Again, yeah, I
 9 think the answer to that question is yes. Member was
 10 a client for longer than only needing to go to the
 11 emergency room, and if they're only considering
 12 emergency room records, I would say that yes, the
 13 likelihood is they got more records than that, and
 14 bills.
 15 -----
 16 (Thereupon, Defendants' Exhibit DD was
 17 marked for identification.)
 18 -----
 19 Q And I'll show you Exhibit DD. If you could read that
 20 briefly to yourself.
 21 A Yep.
 22 Q Based upon your review of DD, does it appear that you
 23 had already sent her records for follow-up care from
 24 Selson Clinic?
 25 A Yes.

Page 162	Page 163
<p>1 Q And what you tell State Farm is "We don't care about 2 your position, we're not going to consider any offers 3 from you if you don't include the dates of treatment 4 after September 16th," true? 5 MR. PATTAKOS: Object. 6 A Yes, that's what it says. 7 Q Okay. And you're fighting for your client? 8 A Yes. 9 Q That's a good thing, right? 10 A I think she would think so. 11 Q Okay. But there were certain medical bills that 12 State Farm didn't want to attribute to the accident 13 or didn't want to pay, and you were trying to get 14 them to consider those, true? 15 A That's what this appears to be, yes. 16 Q And those weren't from Doctor Ghoubrial, were they? 17 A I don't think so. I don't think that they were 18 involved. 19 ---- 20 (Thereupon, Defendants' Exhibit EE was 21 marked for identification.) 22 ---- 23 Q Okay. I'll show you EE. I just wanted to ask you, 24 you know, apparently a Doctor McPherson had told 25 Member that he could no longer be her neurologist.</p>	<p>1 Now, you hadn't referred her to Doctor McPherson, 2 right? 3 A No, I don't think so. I don't know who Doctor 4 McPherson is. 5 Q And you pulled up -- I don't mean to embarrass you on 6 this -- you sent something to Jill saying "Those guys 7 are assholes. 100 percent." Do you remember what 8 you meant by that? 9 A Nope, but -- I don't know. 10 Q Sometimes it's difficult to work with certain 11 physicians who aren't used to working in the PI 12 field? 13 A I don't know if I was referring to those guys or 14 somebody else, but that can also be a true statement. 15 Q Okay. Well, if you look at the second page on this 16 and the first page, I don't see anybody referred to 17 other than that Doctor McPherson. 18 A Yeah, I don't know. I mean -- 19 Q Whatever you thought at the time, you -- 20 A Yeah, like I said, I could have been absolutely 21 referring to -- I hope Doctor McPherson doesn't see 22 this -- but I could have been referring to Doctor 23 McPherson, or this might be a couple of responses 24 sent together and responded, you know what I'm 25 saying, like there could have been a couple other</p>
<p>Page 164</p> <p>1 e-mails. I don't know if that's the case or not. 2 I'm speculating. I have no idea; I have no idea. 3 Q I mean, it looks like you're responding directly to 4 her about McPherson, true? 5 A Yes, it does. 6 Q Okay. Do you recall why you thought that at all? 7 A Probably because they wouldn't see her. 8 Q Okay. Fine. 9 A But that's a guess. 10 ---- 11 (Thereupon, Defendants' Exhibit FF-1 was 12 marked for identification.) 13 ---- 14 Q Showing you what's been marked FF-1, and I'll 15 represent to you that these are records we got from 16 Clearwater regarding Monique's treatment with 17 Clearwater. And if you turn in to, I think it's 18 seven pages in -- let me see, just a second, one, 19 two, three, four, five, six, seven -- yeah, seven 20 pages in, it looks like this. 21 A Yeah. Okay. Yeah. 22 Q Now, this wasn't a KNR form, was it? 23 A No. 24 Q This was a Clearwater form, true? 25 A It says Hanchrist, LLC at the top. I'm not really</p>	<p>Page 165</p> <p>1 sure if -- 2 Q Oh. Assignment of Payment Form, okay. But those are 3 the physicians from Clearwater? 4 A Yes. 5 Q And Monique Norris, true? 6 A Yes. 7 Q The First Date of Service, it says August 2, 2013; do 8 you see that? 9 A Yes; yes. 10 Q And who is the doctor that's circled as seeing 11 Monique Norris? 12 A Richard Gunning. 13 Q Any memory whatsoever one way or another who treated 14 Monique Norris as you sit here? 15 A I do not. 16 Q Based on this, it's pretty clear it was Richard 17 Gunning? 18 A That's what it says. 19 Q And if you turn two more pages in. 20 A Yep. 21 Q And in fact, do you see Monique Norris signed at the 22 bottom? 23 A I do. 24 Q And who is it that she authorized to release records, 25 what physician, "I hereby authorize --"</p>

Page 166	Page 167
<p>1 A Richard Gunning, M.D. 2 Q To release records to? 3 A "Florist." 4 Q And I assume she meant Floros? 5 A I can't tell you. 6 Q If she was treating with Floros, do you think that's 7 who she meant? 8 A You would have to ask Monique. I can make an 9 assumption. 10 Q Okay. And then if you look at the last page, Doctor 11 Gunning testified those were his handwritten notes. 12 You don't have any reason to dispute that, do you? 13 A Yeah, no, I couldn't tell you. 14 Q And you're not claiming somehow, are you, that he, 15 like, fabricated these, made them up after the fact, 16 are you? 17 A I'm not making any charges at all. 18 Q I didn't think so. 19 ---- 20 (Thereupon, Defendants' Exhibit FF-2 was 21 marked for identification.) 22 ---- 23 Q I'm going to hand you a copy of FF-2, that's this 24 one, and this is FF-2. This is the demand package 25 that you sent to Nationwide on behalf of Monique?</p>	<p>1 A Okay. 2 Q If you look at the first page. 3 A I think so, yeah. 4 Q Okay. And if you go five pages in -- 5 A Yes. Is that right? This one? 6 Q Yeah. And do you see the same handwritten notes that 7 you just saw from Doctor Gunning from the previous 8 exhibit we just looked at? 9 A Yeah, that's what it looks like. 10 Q Okay. So as of January 28, 2014, these were sent to 11 Nationwide in this particular form, true? 12 A Sure. I don't have no reason to doubt that. 13 Q Okay. 14 ---- 15 (Thereupon, Defendants' Exhibit GG was 16 marked for identification.) 17 ---- 18 Q Now, showing you Exhibit GG, is this an e-mail from 19 you to Monique Norris, dated May 16, 2014? 20 A It appears to be. 21 Q And do you see the attachments, it says final 22 settlement memorandum.docx, is that what that means? 23 A Yes. 24 Q And so you would have been sending her a copy of the 25 settlement memorandum that had the breakdown of the</p>
<p>Page 168</p> <p>1 expenses and how much she got, true? 2 A Yes. 3 Q And in fact, she's already produced copies of what 4 was sent to her as well. But let me ask you, would 5 you have talked with her before sending this about 6 whether she would accept the settlement offer based 7 upon how much she netted in her pocket? 8 A Presumably, yeah. 9 Q You wouldn't just create this and send it without 10 talking to her, would you? 11 A No. 12 Q And if you look down here, it talks specifically 13 about various liens, and you're talking, you're 14 advising Monique that hey, there's some money we have 15 to hold for the liens, and we try to keep it tight, 16 there might be a little bit left? 17 A Yes. 18 Q But also, in that final settlement memorandum, are 19 you aware that you also -- well, strike that. 20 The settlement memorandum that you sent her, 21 presuming it's similar to the one that you looked at 22 earlier, would have had Liberty Capital on there, 23 correct? 24 A Um-um, yes. 25 Q Would have had MRS Investigations on there, correct?</p>	<p>Page 169</p> <p>1 A Yes. 2 Q Would have had all the expenses that we saw listed on 3 there, correct? 4 A Yeah. 5 Q And you told her to call with questions, true? 6 A I did. 7 Q Do you recall if she did? 8 A I don't. 9 Q You would have probably documented that in the file 10 if she did? 11 A Probably. I can't guarantee it, but I probably 12 would. 13 Q Most likely? 14 A Yeah. 15 Q And then it was -- what was the date of that 16 settlement memorandum, do you have it there? It was 17 Y, Exhibit Y, I think. 18 A 5-25-14. 19 Q So she had this for about nine days before she came 20 in and signed? 21 A Depending on when she opened her e-mail, yeah. 22 Q Okay. And you certainly sent it to her at the time, 23 right? 24 A Yes. 25 Q And you would have talked to her and told her it was</p>

Page 170

1 coming I assume?

2 A I probably had the conversation with her beforehand

3 that said I'm going to send you this stuff. She

4 probably asked for it and I sent it to her. I don't

5 know. I mean, I don't recall the conversation.

6 Q That's most likely what happened, fair?

7 A Probably.

8 Q And then when she came in, you would again have had

9 that settlement memorandum there to talk with her

10 about it and answer any questions, true?

11 A True.

12 Q Okay. You didn't try to hide the MRS Investigations

13 fee, did you?

14 A No.

15 Q The Liberty Capital fee?

16 A No.

17 Q Did you try to hide any of the fees from her?

18 A No.

19 - - - -

20 (Thereupon, Defendants' Exhibit HH was

21 marked for identification.)

22 - - - -

23 Q If you look now at Exhibit HH --

24 MR. MANNION: And this is the one I

25 handed out earlier that I said AA by

Page 172

1 did I read that correctly?

2 A Yes.

3 Q You would want to know who the chiro was and whether

4 it could be beneficial or detrimental to the client's

5 claim before advising them whether to switch, true?

6 A I would want to know who it was for sure.

7 Q And then it's certainly up to the client who they

8 treat with, but you would give them advice as to

9 whether you thought it could hurt their claim or not

10 hurt their claim?

11 A I don't know about "hurt their claim or not hurt

12 their claim."

13 Q Let me ask it a different way. If you thought that

14 either that particular chiro or that particular

15 circumstances of switching was detrimental to their

16 claim, would you have told them?

17 A Probably.

18 Q That would be the right thing to do, wouldn't it?

19 A Right.

20 Q And if you look then at the first page of this,

21 Tuesday, September 17th, it said they wanted a new

22 doctor, and if they can't go to a new doctor, then

23 they're going to have to probably get a new attorney.

24 Do you even recall that?

25 A I don't think that's to me. I think that's to Rob.

Page 171

1 accident.

2 Q If you look at the second page --

3 MR. PATTAKOS: What are we making this

4 as? HH you said?

5 MR. MANNION: Yes.

6 Q If you look at the second page first. So this is

7 something from Jenna Wiley to you regarding Monique

8 and blank, redacted name, "They found another chiro

9 that Monique's mom went to that they'd like to try;"

10 do you see that?

11 A Yes.

12 Q And what Jenna explained was insurance companies

13 don't like to see multiples of the same type of

14 treatment?

15 A Correct.

16 Q Do you agree with that generally speaking?

17 A They don't want you seeing two chiropractors at the

18 same time for sure.

19 Q And they were asking for a meeting, but they had some

20 school issues, true?

21 A Yes.

22 Q And then at the bottom it says "I told them they

23 needed to get me the name/number of the new chiro

24 they want to go see before we could advise of them

25 switching, told her to call back with the info ASAP;"

Page 173

1 Q I under -- yeah, but -- I understand that. But do

2 you recall, you were on the file, do you recall

3 hearing anything about that?

4 A No, I don't -- no, no specifics.

5 Q Okay. And it says --

6 A Maybe that was to me.

7 Q This is to you.

8 A Oh, yeah, maybe that is to me.

9 Q That is to you, right?

10 A Yeah, because she's referencing the last e-mail.

11 Q And it says "I'm assuming you never followed up with

12 them." Is that just maybe you forgot to call them or

13 whatever?

14 A Probably, if that's true.

15 Q And what was your response?

16 A I have no idea.

17 Q Well, it says "She wants to go to her PCP;" do you

18 see that?

19 A Um-um, yes.

20 Q And what did you tell her?

21 A That's Jenna telling her.

22 Q Yeah, I'm sorry, what did Jenna tell her?

23 A "I told her that's fine if the chiro isn't helping."

24 Q And she said it was making her feel worse?

25 A Correct.

Page 174	Page 175
<p>1 Q So you weren't -- Jenna wasn't trying to keep her 2 with the chiro, was she? 3 MR. SKIDMORE: Objection. 4 A I don't know, I mean, you'd have to ask Jenna. 5 Q You were advising her that was fine if the chiro 6 wasn't helping? 7 A That's what the e-mail says. 8 Q You agree with that advice? 9 A Yes. 10 Q And then she requested a copy of the fee agreement, 11 and Jenna asked if she had received it with our 12 letter when she first hired us, and she said "Oh, 13 that's it? Yeah, I got it." 14 "Monique, did you?" 15 "Yeah, we got it;" do you see that? 16 A I do. 17 Q So they acknowledged getting the fee agreement, true? 18 A It appears so, yes. 19 Q Before this lawsuit was filed, approximately how many 20 conversations with Attorney Pattakos or Attorney 21 Chandra did you have? Before you answer, I'm not 22 trying to, like, trick you on the number, I know you 23 don't have an exact count, and I know I asked you 24 that question in your recorded statement. 25 A Um-um, yes.</p>	<p>1 Q So I'll tell you I think you told me between 10 and 2 50 in that. So I'm not trying to trick you here on 3 the number. 4 A It's probably still accurate. 5 Q As you sit here, do you have any memory of that? 6 A I don't. 7 Q Okay. How did this sort of happen that you were 8 talking to them about all this? 9 A Define "How did this sort of happen." 10 Q Okay. 11 A Be a little more specific. 12 Q Let's take a step back. 13 A Yep. 14 Q After you got -- after you were let go -- 15 A Um-um. 16 Q -- from KNR, did you have -- what were your plans 17 when you were first let go from KNR? 18 A Nothing. Find a new job. 19 Q Okay. Were you looking to perhaps either start your 20 own practice, or go somewhere else and see if you 21 could work there? 22 A Not start my own practice for sure. Get a job 23 anywhere I could really. If I could go work 24 somewhere else, great. I needed to work. 25 Q Did you go to any of the local Akron firms and say</p>
Page 176	Page 177
<p>1 "Hey, I know how Nestico does it. I could do that 2 here"?) 3 A No, I didn't say "I know how Nestico does it" -- 4 Q Okay. 5 A -- because his, his approach isn't very different 6 from a lot of other attorneys, in terms of getting 7 clients, and I suppose I don't know if that's an 8 accurate statement or not. I knew how to do that, 9 it's not specific to Nestico, but I knew how to do 10 that and I thought I could be an asset somewhere. 11 Q Okay. I got you. Do you recall who you went to? 12 A Perantinides & Nolan, because I had been there 13 before, I kind of wanted to go back. That's my only 14 specific recollection. I don't know about anybody 15 else. 16 Q Okay. 17 A I don't know anybody else who does PI. I don't know 18 if I sent my resume anywhere else or not, in terms of 19 attorneys' offices. 20 Q That's fine. 21 A I probably sent my resume to like 25 different 22 places. 23 Q Okay. And we know that certain documents obviously 24 were taken and some were given to Attorney Pattakos 25 later, but what was the circumstances behind having</p>	<p>1 some of those documents? And again, not to trick 2 you, I think in your recorded statement you said 3 something about you were working at home and some of 4 them got downloaded automatically without you 5 knowing. 6 A Yep. 7 Q Okay. 8 A So basically, I don't know if it was everybody, but 9 the majority of the attorneys who worked there had -- 10 excuse me -- on their phones or their home computers 11 could hook up through their e-mail connected to the 12 Outlook server for work, because we were working 13 24/7, not -- 24/7 is an exaggeration, but -- and I 14 did not know -- so like you check your e-mail on your 15 home computer, you'd go through your e-mails and 16 you'd delete your e-mails, I did not know that those 17 were actually machine specific. I assumed everything 18 was done through the server of whatever you're 19 getting into. 20 So my iPad -- or, not iPad, the computer I had, 21 the MacBook or whatever it was, I don't know when or 22 how I found them, I just happened to open it up, and 23 I think I was maybe changing over from my Outlook 24 being a KNR Outlook to like a new Outlook, and you 25 had to do something from a technical sense to close</p>

Page 178	Page 179
<p>1 one account, I don't know what it was, and realized</p> <p>2 that those were still on my computer.</p> <p>3 Q It was accidental?</p> <p>4 A Oh, yeah. It was a happenstance I came across those.</p> <p>5 Q When you -- at one point before that you had returned</p> <p>6 a thumb drive to KNR, Mr. Nestico, with what you</p> <p>7 thought was all the documents.</p> <p>8 A Yes. A hundred percent, yeah.</p> <p>9 Q And it didn't include those on your computer?</p> <p>10 A It did not, because I did not know those existed.</p> <p>11 Q How did it come, then, that you gave some of those</p> <p>12 documents to Attorney Pattakos or Chandra?</p> <p>13 A I had talked to Peter about Member and before I found</p> <p>14 any of that stuff, and I gave them to him thinking</p> <p>15 that they could be useful to him and them.</p> <p>16 Q Okay. And then how many times, approximately -- did</p> <p>17 you meet between 10 and 50, then, to go over those</p> <p>18 documents?</p> <p>19 A Yeah, something like that. I couldn't tell you for</p> <p>20 sure.</p> <p>21 Q Do you recall those conversations?</p> <p>22 A Specifics, specifics, no. The general gist of them,</p> <p>23 yeah, maybe.</p> <p>24 Q I mean, are we talking about, this was over beers or</p> <p>25 in an office or both?</p>	<p>1 A Both --</p> <p>2 Q Okay.</p> <p>3 A -- home and having a beer.</p> <p>4 Q Did -- during those conversations, you never told</p> <p>5 Attorney Pattakos or Chandra, did you, that there was</p> <p>6 a quid pro quo relationship with any chiropractors or</p> <p>7 loan companies?</p> <p>8 A I don't know that there is. You know, I can't say</p> <p>9 that I have seen the communications between anyone to</p> <p>10 say that there is. All I did was present particular</p> <p>11 things and say this is what the appearance is, if</p> <p>12 that makes any sense. I don't know if -- I don't</p> <p>13 know why they send cases back and forth to each</p> <p>14 other.</p> <p>15 Q Okay. Well, have you ever asked Randy or Rob why</p> <p>16 they sent some of those e-mails?</p> <p>17 A No.</p> <p>18 Q Have you ever looked at their depositions to see?</p> <p>19 A No -- well, I can't -- Rob's isn't anywhere you can</p> <p>20 see it, so I don't think so.</p> <p>21 Q True.</p> <p>22 A And I read bits of Brandy's, but I don't recall that</p> <p>23 particular conversation.</p> <p>24 Q Okay. You actually would get e-mails at times</p> <p>25 telling you to send cases to chiropractors other than</p>
Page 180	Page 181
<p>1 Akron Square, true?</p> <p>2 A Yes.</p> <p>3 Q And then the next month it might be send them to</p> <p>4 Akron Square, true?</p> <p>5 A Well, there were -- particular cases were supposed to</p> <p>6 go to Akron Square regularly. At other times,</p> <p>7 those -- there were additional instructions to go</p> <p>8 there. Does that make sense?</p> <p>9 Q You don't know what --</p> <p>10 A I have no idea why.</p> <p>11 Q Okay.</p> <p>12 A I mean, I am not privy to any --</p> <p>13 Q Okay. And you didn't tell Attorney Pattakos or</p> <p>14 Attorney Chandra that you had any facts to support</p> <p>15 any quid pro quo, did you?</p> <p>16 A As it relates to any kind of -- like being privy to</p> <p>17 facts of conversations or agreements between Rob and</p> <p>18 the chiropractors, no.</p> <p>19 Q And you certainly didn't tell them that you thought</p> <p>20 there was something wrong between Nestico, KNR and</p> <p>21 Liberty Capital, did you?</p> <p>22 A Again, I'm not privy to any communications or any</p> <p>23 relationship or agreement that exists between those</p> <p>24 people, no.</p> <p>25 Q Did you tell him about the investigators being</p>	<p>1 required to do certain things before they got paid?</p> <p>2 A Well, I don't know if I actually knew about that. I</p> <p>3 don't know. I can't tell you that.</p> <p>4 Q Okay. What were some of the things that Attorney</p> <p>5 Pattakos was asking you during those conversations?</p> <p>6 A I don't recall. I -- probably what some of these --</p> <p>7 what the investigators did, the policy for signing up</p> <p>8 clients maybe. A lot of it was going over the things</p> <p>9 that I was giving to him. What the specific</p> <p>10 questions were I can't tell you.</p> <p>11 Q One of the things that we saw in the Cleveland.com</p> <p>12 article is that Attorney Horton will verify that the</p> <p>13 allegations in the Complaint are true." Are you</p> <p>14 going to sit here and tell us that the allegations in</p> <p>15 this Complaint are true?</p> <p>16 A On which Complaint? I don't, I don't know.</p> <p>17 Q On any of them.</p> <p>18 A I can't sit here and tell you what the Complaint says</p> <p>19 right now. I mean, if you want me to read the</p> <p>20 Complaint and go over it, I don't know if we have</p> <p>21 that kind of time, but I don't know.</p> <p>22 Q You're not here to give any opinions on this, true?</p> <p>23 A I'm not here giving opinions.</p> <p>24 Q Okay. And did you talk with Attorney Pattakos at all</p> <p>25 about potentially joining him or his law firm?</p>

Page 182

1 A No.

2 Q You certainly haven't been promised anything, I take

3 it?

4 A Nope.

5 Q Any other conversations with Attorney Pattakos or

6 Chandra that you can recall, other than what you've

7 told me, about KNR, the allegations in the

8 Complaints?

9 A No.

10 Q I guess what I'm saying is, if Attorney Pattakos

11 starts asking you "Well, don't you remember telling

12 me this and don't you remember me telling you that,"

13 I want to know what you remember.

14 A Yeah, I mean, listen, if he asks me those questions,

15 I mean, it's going to -- if he has notes about it

16 then I can specifically refresh my memory, and I'm

17 going to be honest about it, but I don't recall the

18 specifics of the conversation. Does that make sense?

19 Q When is the last time you communicated with anybody

20 from the Plaintiffs' side on this case about any of

21 the allegations?

22 A Over two -- well, not over two years ago. About two

23 years ago I would say.

24 Q Okay.

25 A Whenever, whenever -- in May, whenever I got sued,

Page 184

1 even read it, he said I bullied and intimidated you

2 into signing it, without even looking at it or

3 reading it.

4 MR. PATTAKOS: I still feel that way,

5 Tom.

6 MR. MANNION: Would you stop it?

7 MR. PATTAKOS: I'll just --

8 MR. MANNION: Stop it. Stop now. Don't

9 wink at me.

10 Q You never told him that, did you?

11 A No, I don't think so.

12 Q And in fact, is there anything in that affidavit that

13 isn't true?

14 A No, I don't think so.

15 Q Okay.

16 A I hope not.

17 Q I certainly never asked you or tried to intimidate

18 you into saying anything that wasn't true, did I?

19 A Not to my recollection.

20 Q You don't recall that, do you?

21 A No.

22 Q Okay. One second.

23 MR. MANNION: Just a quick five minute

24 break, guys. I'm almost done.

25 THE VIDEOGRAPHER: Off the record.

Page 183

1 and shortly after I got sued and I got Tom I stopped

2 talking to everybody.

3 Q And you never again, I think we established but I

4 want to make sure, you never talked to Attorney

5 Pattakos about your affidavit, true?

6 A True.

7 Q So you never told Attorney Pattakos that it was

8 carefully worded, did you?

9 A Not to my recollection.

10 Q And again, you went over it with counsel?

11 A Yes.

12 Q It was voluntary?

13 A Yes.

14 Q You were not coerced, true?

15 A Correct.

16 Q And I didn't intimidate you into signing that, true?

17 A Correct. Getting sued is never fun.

18 Q Sure.

19 A When you're facing down the barrel of, you know, tens

20 of thousands of dollars in legal fees, and you're --

21 you know, you got to qualify that. No, you didn't

22 intimidate me into doing anything, but not being sued

23 is great. Being sued is a scary proposition.

24 Q But I guess my question is that, you know, when I

25 first handed this to Attorney Pattakos, before he

Page 185

1 2:02.

2 ----

3 (Thereupon, a recess was had.)

4 ----

5 THE VIDEOGRAPHER: We're back on the

6 record. 2:04.

7 Q You talked about a lawsuit being intimidating, but

8 the fact that you were sued doesn't change the truth

9 of that affidavit, true?

10 A That's accurate.

11 Q Okay. So whether there was a lawsuit or not a

12 lawsuit, the information in that affidavit is

13 accurate?

14 A Yes.

15 Q Okay. That's all I have. Thanks.

16 A You weren't kidding.

17 Q I know.

18 THE VIDEOGRAPHER: We're off the record.

19 2:04.

20 ----

21 (Thereupon, a recess was had.)

22 ----

23 (Thereupon, the following colloquy was

24 had off the video recording.)

25 ----

Page 186

1 MR. MANNION: So we have a copy of the
 2 confidential settlement agreement between KNR
 3 and Robert Horton. The form we have it in,
 4 Tom Skidmore has copies that Rob Horton
 5 signed and notarized, and then I have the
 6 signature page for KNR.
 7 MR. PATTAKOS: That's fine.
 8 MR. MANNION: We obviously -- this is
 9 subject to the protective order in this case,
 10 attorneys' eyes only. If it goes to trial,
 11 you're certainly permitted to approach the
 12 court and ask them to, you know, have you use
 13 this if needed for impeachment in any way or
 14 however you want to approach the court at
 15 that time, but we're not waiving the
 16 underlying confidential nature of the dispute
 17 that was between us and the actual
 18 settlement, other than providing this.
 19 Tom?
 20 MR. SKIDMORE: Yeah. It's my
 21 understanding that in this case that we're
 22 here on for Horton's deposition, that there
 23 is a protective order that allows for a
 24 provision in which this document is being
 25 produced for attorneys' eyes only. And so I

Page 187

1 would like an acknowledgment on the record of
 2 each person that's here that's getting a copy
 3 of this to acknowledge that they recognize
 4 that it's under that protective order and for
 5 attorneys' eyes only. I understand that it
 6 is potentially discoverable, depending upon
 7 what the court's rulings would be later.
 8 And then, Mr. Pattakos, you have a right
 9 later to petition the court to use it subject
 10 to that protective order.
 11 MR. PATTAKOS: Okay.
 12 MR. BEST: My concern about that is it's
 13 not attorneys' eyes only. What happens is he
 14 just puts on his Facebook page what it says.
 15 So he does not show it to anyone, he just
 16 says this is what it says, and he puts it on
 17 his Facebook page and does it every day.
 18 MR. PATTAKOS: Subject to the
 19 protective -- I understand that it's being
 20 produced subject to the protective order
 21 attorneys' eyes only, and that if anyone else
 22 is going to see it outside of that, we will
 23 have to get a court order first; is that
 24 fair?
 25 MR. BEST: See it --

Page 188

1 MR. SKIDMORE: Well, yeah, so I guess --
 2 MR. BEST: -- and don't say what's in
 3 it.
 4 MR. PATTAKOS: Or describe the contents
 5 of it. This is just simply not true what
 6 he's saying. Sure, it will not be disclosed,
 7 the contents will not be disclosed, it will
 8 remain confidential unless and until we
 9 obtain a court order under the provisions of
 10 the protective order that allow us to do
 11 that.
 12 MR. MANNION: And as counsel for Doctor
 13 Ghoubrial, Brad, I obviously need your
 14 agreement on that.
 15 MR. BARMEN: I agree.
 16 MR. SKIDMORE: Everybody is in agreement
 17 of that?
 18 MR. POPSON: Yes.
 19 MR. PATTAKOS: Josh?
 20 MR. COHEN: Yes.
 21 MR. PATTAKOS: Rachel, do you agree?
 22 MS. HAZELET: Yes, I agree.
 23 MR. MANNION: Okay. Thank you.
 24 [REDACTED]

Page 189

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]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 190	Page 191
1 again subject to the same provisions of the 2 protective order.	1 A You are more than welcome.
3 MR. MANNION: And same agreement, one 4 week after the transcript --	2 Q Thank you. Just to confirm, you and I haven't spoken 3 about this case in almost two years, correct?
5 MR. PATTAKOS: Sure, yeah.	4 A Correct.
6 MR. MANNION: -- the entirety of it.	5 Q I haven't sent any documents for you to review, 6 correct?
7 MR. SKIDMORE: Okay. Good deal. Sorry.	7 A Correct.
8 MR. PATTAKOS: Yeah, so one week after 9 we get the transcript, then everybody can 10 make their designations, typically it's the 11 Defendants, but then you can participate in 12 this process as well.	8 Q Whether directly or through your attorney or through 9 any representatives, correct?
13 MR. SKIDMORE: Great. Appreciate it.	10 A If you sent them to my attorney, he didn't tell me 11 about them, so --
14 ----	12 Q Or if I sent them to anyone else, your wife, a mutual 13 friend, you haven't seen anything from me, correct?
15 (Thereupon, the video recording recommenced.)	14 A Correct.
16 ----	15 Q You haven't read any of the deposition testimony in 16 this case, correct?
17 THE VIDEOGRAPHER: We're back on the 18 record. 2:25. Tape number three.	17 A I read snippets of Brandy's, not in its entirety by 18 any stretch, and I think that's the only one that's 19 available.
19 ----	20 Q Just maybe from the docket?
20 EXAMINATION OF 21 ROBERT PAUL HORTON	21 A Yeah, from the docket.
22 BY MR. PATTAKOS:	22 Q Okay. You looked at what we summarized in a brief 23 maybe of Brandy's testimony?
23 Q Good afternoon, Rob.	24 A No, I didn't really -- I don't really read the 25 briefs.
24 A Hello.	
25 Q Do you mind if I call you Rob?	
Page 192	Page 193
1 Q Have you looked at Doctor Gunning's testimony at all?	1 recently -- your employment with KNR was recently 2 terminated, and you were certainly upset about it; is 3 that fair?
2 A No, I don't think so.	4 A Yes.
3 Q Okay. Well, that's on the docket as well.	5 Q And you were telling me about it, and you said, 6 "Peter, someone really has got to look at what's 7 going on at that place."
4 A Yeah, I don't think I read it.	8 A Okay.
5 Q Okay. So I do have much more of a memory of when you 6 came to me to speak about this case than you do.	9 Q Is that fair? Does that sound like what you said to 10 me?
7 A Sure.	11 A It could be. I'm not going to dispute it.
8 Q Do you recall that my wife made a Facebook post about 9 having some toys for her daughters that she wanted to 10 get rid of?	12 Q Okay. And you suggested that if someone were to sue 13 that firm, that there would be various class cases 14 that could -- that might be able to be certified if 15 people looked closer at the business practices of 16 this firm; you believed that at the time when we 17 first spoke, correct?
11 A Vaguely, maybe.	18 MR. MANNION: I'm going to object. 19 Go ahead.
12 Q And you responded and you said, "Oh, my kids would 13 love that," or "My son would love those toys," so you 14 came and met us at my house and picked up those toys?	20 A I don't -- various classes, I don't know if that is 21 on point or not. But the suggestion might be that 22 there was a potential class action of some kind 23 there, yes.
15 A Possibly, yeah.	24 Q Okay. Do you recall I was very skeptical?
16 Q And that that was the first time that we ever spoke 17 about this case?	25 MR. MANNION: Objection.
18 A Could be. I'm not going to dispute it.	
19 Q Okay. Do you recall that you suggested that you 20 believed that there might be liability the first time 21 we talked about your experience at KNR?	
22 A Liability in what sense?	
23 Q Well --	
24 A Liability for me?	
25 Q No. As I recall the conversation, you had	

Page 194	Page 195
<p>1 A You probably were.</p> <p>2 Q We talked probably -- strike that.</p> <p>3 At some point you came up and met me at my</p> <p>4 office at the Chandra firm, correct?</p> <p>5 A Correct.</p> <p>6 Q And at that point you brought some documents with</p> <p>7 you, correct?</p> <p>8 A I probably did. I can't say that I didn't.</p> <p>9 Q And you had brought me some documents before that</p> <p>10 suggesting that this was maybe a lawsuit worth</p> <p>11 pursuing on behalf of at least certain KNR clients,</p> <p>12 including Member Williams, correct?</p> <p>13 MR. MANNION: Objection.</p> <p>14 A Correct.</p> <p>15 MR. MANNION: Move to strike his</p> <p>16 testimony.</p> <p>17 A Right. I would say yes.</p> <p>18 Q And by the time we had this meeting at the Chandra</p> <p>19 Law Firm, we had been speaking about this matter for</p> <p>20 approximately one year; is that fair?</p> <p>21 A I don't know. I remember coming up there. I don't</p> <p>22 remember when it was.</p> <p>23 Q Do you remember that we went to a baseball game?</p> <p>24 A Yep.</p> <p>25 Q Do you remember that it was Francisco Lindor's first</p>	<p>1 career home run?</p> <p>2 A No, but I remember making a comment about Jason</p> <p>3 Kipnis' change in his swing, but I don't remember it</p> <p>4 was Lindor's home run.</p> <p>5 Q It was an afternoon game, correct?</p> <p>6 A Yes.</p> <p>7 Q I believe it was against the Twins, do you remember</p> <p>8 that?</p> <p>9 A I don't remember that, no.</p> <p>10 Q Okay. Well, why did you come talk to me about KNR in</p> <p>11 the first place?</p> <p>12 A Because I did have a, a concern I suppose about some</p> <p>13 of the things that they did, some of their, their</p> <p>14 practices.</p> <p>15 Q Let's look at Exhibit J, the sworn statement. What</p> <p>16 practices --</p> <p>17 A Oh, you said J?</p> <p>18 Q Yeah, J. Sorry, Rob, first let me ask you, when you</p> <p>19 say you were concerned about some of the firm's</p> <p>20 practices, what practices specifically were you</p> <p>21 concerned about?</p> <p>22 A I think the reason, the first reason I came and</p> <p>23 talked to you is about that investigator fee. I</p> <p>24 mean, there are other things that developed I suppose</p> <p>25 over time that came to play out, but originally it</p>
<p>Page 196</p> <p>1 was about to come talk to you about that investigator</p> <p>2 fee.</p> <p>3 Q And what else? The investigation fee wasn't the only</p> <p>4 thing you were concerned about, was it?</p> <p>5 A No is an accurate answer. There were other things</p> <p>6 that were questionable I would say would be the best</p> <p>7 way to put it. I don't recall specifically initially</p> <p>8 if it was beyond the investigator fee, but -- because</p> <p>9 we had a number of conversations over a period of</p> <p>10 time. To be honest with you, I don't recall</p> <p>11 specifically early on.</p> <p>12 MR. MANNION: Before you go on, I'm</p> <p>13 going to make one objection. The court has</p> <p>14 ruled we're not allowed to ask about ethical</p> <p>15 violations, only conduct. So I just want to</p> <p>16 make sure the witness is aware of that and</p> <p>17 that you're not asking questions about</p> <p>18 ethical violations. There's a court order in</p> <p>19 this case on that.</p> <p>20 Q What was it about the investigation fee that</p> <p>21 concerned you?</p> <p>22 A That investigators were getting paid regardless of</p> <p>23 performing services or not.</p> <p>24 Q Do you believe that happened at the firm?</p> <p>25 A Investigators got paid on, from -- I believe on every</p>	<p>Page 197</p> <p>1 case, every case that was in the firm. I can't tell</p> <p>2 you that they did things on every single case.</p> <p>3 Q So you believe that -- you believe sitting here today</p> <p>4 that investigators at KNR were paid on cases where</p> <p>5 they didn't do any work, correct?</p> <p>6 MR. SKIDMORE: Objection. That's not</p> <p>7 what he just said.</p> <p>8 A They got paid on every case. Whether they did work</p> <p>9 or not on it is -- yes. Let me phrase this the right</p> <p>10 way. They got paid on cases that they may not have</p> <p>11 done any work on, correct.</p> <p>12 Q When you first provided me documents about this case,</p> <p>13 you didn't just provide me documents about the</p> <p>14 investigators, correct?</p> <p>15 A I don't recall if -- maybe. Possibly.</p> <p>16 Q You also provided me documents about chiropractic</p> <p>17 referrals, correct?</p> <p>18 A Probably.</p> <p>19 Q And you also provided me documents about Liberty</p> <p>20 Capital, correct?</p> <p>21 A On the first time, I don't know. At some point, at</p> <p>22 some point I did.</p> <p>23 Q Before the chiropractor and Liberty Capital claims</p> <p>24 were ever pled in this lawsuit --</p> <p>25 A Yes.</p>

Page 202	Page 203
1 arranged at an insurance company, an insurance	1 me and said come back in for another interview.
2 brokerage firm, through a friend of mine, but instead	2 So I went back in, and Rob, Rob and a couple
3 of going to Chicago I stayed here.	3 other people were in the room, but I don't remember
4 Q So you applied for a job opening?	4 who else. It might have been John again or Redick or
5 A I did.	5 somebody. I don't know.
6 Q And who did you interview with?	6 Q Rob Nestico?
7 A Talked on the phone with Brandy, and I think my first	7 A Yes.
8 interview was actually with John Reagan. And I don't	8 Q How did that interview go?
9 remember if anybody else was in the room or not.	9 A I got the job.
10 Q You talked on the phone with Brandy first?	10 Q Sure. Do you remember anything about it?
11 A I believe so, yeah.	11 A No. Friendly. Not really, nothing specific.
12 Q She was interviewing you?	12 Q Do you remember anything that anyone said to you at
13 A No, not an interview, just scheduling me to come in,	13 that interview telling you what the job would be
14 asked me some basic questions about my employment I	14 like?
15 think, telling me about my resume. The only reason I	15 A No, I don't think so. They might have said at that
16 remember that is because I was at Portage County, out	16 point it was a prelitigation position. I don't
17 in Portage County on a case and I had to leave to	17 recall. Probably. I don't, I don't think I would
18 take the call, because I saw the number and	18 have walked in there for my first day of work not
19 recognized it, I guess. But the specifics of the	19 knowing that, and I don't -- they probably told me it
20 conversation I don't remember.	20 was for a prelitigation position at that point.
21 Q So how many interviews -- did you speak with anyone	21 Q What was your starting salary?
22 after Mr. Reagan?	22 A I think \$40,000 plus bonuses.
23 A Yeah, after I left, they called me back, and I don't	23 Q And the bonuses depended on how many cases you
24 remember who called me, it might have been John, it	24 settled, correct?
25 might have been Rob, I don't know. Somebody called	25 A Fees, fees were generated, yeah.
Page 204	Page 205
1 Q Okay. We'll talk about that. What was the time	1 responsible ultimately for dictating those orders?
2 period of your employment at the firm?	2 MR. MANNION: Objection.
3 A Early 2012 to early-ish 2015.	3 A I don't think so. I can't say yes or no for certain,
4 Q So about three years?	4 but if Brandy told us we had to do something, the
5 A Um-um, yeah, just over, I think.	5 presumption was that Rob, somebody above her, which
6 Q What was your understanding of the chain of command	6 would be Rob or Robert until a particular point,
7 at KNR?	7 would have told people what to do.
8 MR. MANNION: Objection.	8 Q Did you ever become aware of an example where Brandy
9 Go ahead.	9 e-mailed an instruction or instructed someone to do
10 A Rob was in charge. Redick was a partner at the firm.	10 something and it was not something that Nestico had
11 I don't remember, I think right around that time Gary	11 instructed her to do?
12 was transitioning out, but he wasn't around too	12 A No.
13 terribly much. So Rob was really in charge, and then	13 MR. MANNION: Objection.
14 it would have been Redick, in terms of the attorneys	14 A I couldn't tell you.
15 in charge, and then Brandy was the office manager, so	15 Q Kelly Phillips testified on Friday. One of the
16 she was in charge.	16 things he said was that Rob Nestico ruled the firm
17 Q Did you feel that Brandy was your boss in a way?	17 with an iron fist. Do you agree with that?
18 A A hundred percent.	18 A To a particular extent. He had -- listen, he ran an
19 Q A hundred percent?	19 efficient business for sure, things had to be a
20 A Yeah.	20 particular way. It was a very efficient place to
21 Q When Brandy gave orders, you understood you had to	21 work. But if you didn't do things, you know, how
22 follow them, correct?	22 they were regimented to a particular degree, your
23 MR. MANNION: Objection.	23 approach had to change. I don't know if that's a
24 A Yes.	24 good way to put it.
25 Q Was there any doubt that Nestico was the one	25 Q Or else what?

Page 206	Page 207
1 A It never happened to me, but I know people got put on	1 Q He approved the final numbers that would be submitted
2 probation and then potential termination. I don't	2 ultimately to the clients for acceptance, correct?
3 know. It never happened to me, so --	3 A Correct.
4 Q Kelly Phillips testified that he was told that Rob	4 Q You had to obtain his approval before these numbers
5 Nestico was the attorney on every case that the firm	5 could be submitted to the client, correct?
6 handled, and that that's why Rob's signature had to	6 A Anytime that there was a -- particular
7 be on the fee agreement on every case. Was that your	7 circumstances -- let me -- I don't know if I can
8 understanding as well?	8 explain it or not. So on the reduction in the bills,
9 A I don't know. I thought Robert signed a lot of the	9 as I testified earlier to Tom, you make your
10 fee agreements. I know we never did, individual	10 recommendations, you put the file on an assistant's
11 attorneys, and if everybody else was doing it, it	11 desk, they walk them in to Rob, Rob does his thing,
12 wasn't me, then nobody told me about it. But I	12 gives it back to the assistant, and we end up back
13 thought Robert signed everything, but I might be	13 with it. What goes on between there I can't tell
14 wrong. I don't know.	14 you. We get the things back with Rob's initials on
15 Q Do you know whose signature -- let's just look at	15 them or not.
16 Exhibits F and G, it's the fee agreements. I can	16 Anytime -- I think anytime we had to do that or
17 give you the copies I have, if you'd like. Do you	17 there was -- if it wasn't somebody that he would deal
18 know whose signature that is?	18 with, if it was some random person or there wasn't,
19 A I do not. I don't think it's Rob's.	19 you know, somebody that he knew on there, if we were
20 Q Do you think it could be Mr. Redick's?	20 taking a cut in our fee, he still had to approve the
21 A It could be. I have no idea. It's not mine.	21 cut in fee. Does that make sense?
22 Q Okay. And you said that, you testified that	22 Q Yes.
23 Mr. Nestico handled the negotiations with the	23 A Yeah.
24 providers on nearly every case; is that true?	24 Q You testified that there were pretty strict
25 A Generally speaking, yes.	25 requirements about when you were permitted to talk to
Page 208	Page 209
1 clients; did I understand that correctly?	1 Q Do you remember that you were not supposed to tell
2 A Not permitted to talk to clients, yeah.	2 clients if an attorney who had worked on their case
3 Q What were the pretty strict requirements about how to	3 was no longer with the firm?
4 talk to clients? Is that what you meant?	4 A Vaguely. I can't say yes or no. It seems like a
5 A Like how to do an intake. They're not strict, but	5 recollection, but I can't tell you.
6 there were -- everything kind of had a guideline to	6 Q Do you have any recollection of why that was the
7 it, like a parameter to it. I know we did our	7 case?
8 intakes, we had to get particular information because	8 MR. MANNION: Objection. He just said
9 it helped open up the cases and things like that.	9 he can't remember if that was the case.
10 And then, you know, suggestions to be made -- I mean,	10 A No.
11 suggestions to be made how to talk to the people to	11 Q Okay. You testified that you took on a whole
12 get them to sign up as clients.	12 boatload of cases when you started working at KNR?
13 Q Any other requirements that you can remember?	13 A Yes.
14 A As it related to talking to the clients?	14 Q How many?
15 Q Yeah.	15 A On my first day, probably about 200, maybe 225. It's
16 A Like things that we were supposed to say to them?	16 a guess.
17 Q Or not say.	17 Q And these cases were assigned to you on your first
18 A No. I mean, I always went over my fee agreements	18 day and you were told these are yours, and then you
19 with everybody on the phone, and I thought that was a	19 were to watch, shadow Paul Steele for a couple weeks
20 requirement. I don't know if it actually is or not.	20 to learn how to handle them?
21 Not specifically.	21 A So the context is there was an attorney who was there
22 Q You recall that you weren't supposed to say, tell a	22 before me and he quit slash something on a Friday,
23 client that an attorney who was handling their case	23 and I came in on a Monday and I basically walked into
24 got fired or was no longer with the firm?	24 his office and took over his docket.
25 A Say that again.	25 Q Had you already been scheduled to start?

Page 210	Page 211
1 A Yes. Yeah, I had.	1 consistent with your experience?
2 Q Who is this attorney? What was his --	2 A Yes, except new ones, there was a break-in period.
3 A Kevin Sandel.	3 Q Right.
4 Q When you say "quit slash something" --	4 A But generally it was \$100,000 a month.
5 A He was -- he had put in his notice I think to go work	5 Q Right. So you'd start with a lower requirement, but
6 somewhere else, and I don't know if -- I don't know	6 then within, say, a few months, you would be expected
7 the rest of that.	7 to bring in \$100,000 in fees to make, to get a bonus
8 Q Okay. How many cases did you handle as you became	8 payment; is that correct?
9 experienced at the firm? How many cases did you have	9 A No, you got bonus on everything. So even if you only
10 at any given time?	10 brought in 20,000 in fees, you still got bonused on
11 A So there were two classifications of cases. There	11 it. But your goal was to get \$100,000.
12 were submitted and un-submitted cases. When they	12 Q And as you reached certain benchmarks of fees, your
13 were un-submitted, they were still our cases, but in	13 bonus percentage gets higher, correct?
14 our paralegal's name from a computer standpoint, and	14 A They did it two different ways. When I first
15 then once they got submitted to the insurance	15 started, it was five percent of anything we put in
16 company, then they got flipped into our names, and	16 the bank. At some point they switched to a graded
17 generally those numbers floated between about 200 to	17 scale, and, you know, the more fees you put in, the
18 250 a piece. So generally speaking, somewhere in the	18 higher it got. And then I can't remember if that's
19 neighborhood of four or 500, and that's a guess.	19 how it was when I left or not, I don't know. I don't
20 Q Okay.	20 know if they went back to the five percent, I have no
21 A I think that's accurate.	21 idea. But, yes, those two situations existed.
22 Q I understand from testimony given by other witnesses	22 Q So when you took on this job for a starting salary,
23 in this case, that prelitigation attorneys were	23 starting base salary of 40,000, there was an
24 ultimately expected to bring in \$100,000 in	24 expectation on your part that there would be a
25 attorneys' fees to the firm each month. Is that	25 significant, substantial bonus payment, correct?
Page 212	Page 213
1 A I didn't know when I -- I hesitated to take the job	1 A Generally, I think after the first two months. First
2 because that wasn't terribly much more than what Paul	2 couple months I did not, and then from the third
3 was paying me, but I was given assurances that it	3 month on I did.
4 would more than make up for it. Specific numbers	4 Q Every single month?
5 were not discussed. But then once I got in there and	5 A I think so. Pretty close to it.
6 started working, I realized that there was money to	6 Q By then were you getting at least five percent of
7 be made there, I guess.	7 that?
8 Q Well, did you know when you started that there would	8 A Yes, or until the pay structure changed, then you had
9 be an expectation that you were eventually to bring	9 to -- you know, the first couple months of your pay
10 in \$100,000 in fees every month?	10 change, you got whatever the percentage was, and then
11 A No.	11 it went up as you went on.
12 Q You did not know that?	12 Q So if you were to take five percent on a hundred
13 A No.	13 thousand each month, that's five percent of
14 Q Nobody said that to you throughout the interview	14 1.2 million would be 60,000, correct?
15 process?	15 A Um-um, yes.
16 A No, and to be honest with you, I don't even know when	16 Q So if you hit your numbers, you would make about a
17 I first started if that was a thing, or it developed	17 hundred thousand; is that fair?
18 as I -- in the early stages of me working there. So	18 A Yes.
19 like the rules changed as things went on, I guess. I	19 Q Did you understand that that -- was that in your
20 don't know if it was an absolute requirement to	20 general understanding when you took the job?
21 start, and then it turned into like an absolute	21 A No.
22 requirement. I mean, listen, if you didn't make your	22 Q Did you have any expectation of what bonus you -- I
23 100, you know, Brandy was going to come in your	23 mean, for example, you go home and tell your wife,
24 office and talk to you about it.	24 "Look, honey, I took this job, it's only 40,000, but
25 Q Did you always make your 100?	25 if all goes well I'm going to earn X amount"?

Page 214	Page 215
<p>1 A No, I don't think so. Just them knowing at some 2 point in the conversation me saying that I only made 3 \$30,000 working for Paul, I was going to do better 4 than that, it would be worth the change is how I 5 think it was proposed to me. The specifics were not, 6 but -- 7 Q Well, did you work more hours at KNR than you did for 8 Paul? 9 A Yes. 10 Q Was it twice as many hours? 11 A Not twice as many. 12 Q But significantly more? 13 A I would say, yeah. 14 Q What would you estimate? 15 A I don't know. I don't remember what time we had to 16 be there, like 8:15, and then I -- if I left before 17 6:00 it was rare. 18 Q But you didn't have to keep track of billable hours, 19 correct? 20 A No, and then you take a 10 or 15 minute break in the 21 middle. 22 Q Was that typical, to just take a 10 or 15 minute 23 lunch break? 24 A Yes. 25 Q For everyone?</p>	<p>1 A I don't know. I don't know, I can't tell you. We 2 were encouraged to be at our desks more than we 3 weren't, because we took all the incoming calls. 4 Q The phones were ringing and someone had to be there 5 to answer them? 6 A Correct. 7 Q And if you didn't answer the phones, you weren't 8 going to get the objective injury cases, correct? 9 A At some point -- there was always a competition to 10 see who could do the most intakes, and those persons, 11 those people got better things than other people, I 12 guess. 13 Q Got assigned the better cases? 14 MR. MANNION: I'm going to object. Are 15 we going to get done with this today, or are 16 you going to go on about business practices 17 like this? This has zero to do with the 18 class action, nothing. 19 MR. BEST: We're trying to learn how to 20 compete. 21 MR. MANNION: It's going to be 5:30, and 22 we're going to have to go all day tomorrow, 23 too, because of this. 24 MR. BEST: I know. That's what he's 25 trying to figure out, how to compete, because</p>
<p>Page 216</p> <p>1 he doesn't know how to do it himself. 2 MR. PATTAKOS: Are you guys done? 3 MR. MANNION: Well, get to something. 4 MR. PATTAKOS: Okay. 5 Q Let's take a look at a couple documents. 6 ---- 7 (Thereupon, Plaintiffs' Exhibit 1 was 8 marked for identification.) 9 ---- 10 MR. PATTAKOS: We might as well mark 11 Exhibit 2 as well. 12 ---- 13 (Thereupon, Plaintiffs' Exhibit 2 was 14 marked for identification.) 15 ---- 16 Q So do you recognize this Exhibit 1, this e-mail from 17 Brandy? 18 A Specific recollection of it, no, but it's not -- I 19 mean, it says it's from Brandy to the prelit group. 20 I can't say that she did not send it. 21 Q And you have -- strike that. 22 What's your understanding of this e-mail? 23 A It is titled "November intakes," and it says "Intake 24 during business hours for November." There's a list 25 of the prelit guys at the time, how many cases</p>	<p>Page 217</p> <p>1 they -- how many intakes they did, what percentage of 2 the intakes that was, and then "Just a reminder that 3 objective cases will be assigned to the attorneys who 4 are doing intakes! Great job, Josh," signed Brandy 5 Lamtman. 6 Q Okay. So it says "From now on, objective injuries 7 will not be distributed evenly. These cases will be 8 distributed to the prelit attorneys that are doing 9 intakes by percentage from the month before." 10 A Oh, that's on a different -- 11 Q I'm looking at Exhibit 2. I'm sorry. 12 A Yeah, I'm sorry. 13 Q No, I'm sorry, that was my mistake. 14 A Because I was looking at 1. 15 Q Well, let's look at 2. Did you receive this e-mail? 16 A If it was sent to prelit attorneys, then yes. 17 Q So it's your understanding that the prelit attorneys 18 were assigned objective injury cases based on the 19 percentages of the intake calls that they handled, 20 correct? 21 A Yes. 22 Q As of November 9, 2012? 23 A Yes. 24 Q So that was a -- within about nine months of you 25 starting, correct?</p>

Page 218	Page 219
<p>1 A Yes.</p> <p>2 Q And did that ever change after that?</p> <p>3 A I don't know.</p> <p>4 Q Okay.</p> <p>5 A Well, I guess -- I don't know. I can't say. I don't</p> <p>6 know.</p> <p>7 Q What did you think of this policy?</p> <p>8 MR. MANNION: Objection.</p> <p>9 A I mean, I kind of liked it because I did a lot of</p> <p>10 intakes.</p> <p>11 Q You answered the phone a lot?</p> <p>12 A I did.</p> <p>13 Q So if we look at Exhibit 1, this is just a reminder</p> <p>14 that the objective cases will be assigned according</p> <p>15 to the number of intakes someone takes, correct?</p> <p>16 A Yeah, I think so.</p> <p>17 Q And from these e-mails, it shows you were about the</p> <p>18 third, third highest intake of the six folks listed</p> <p>19 here, correct?</p> <p>20 A Yeah, yep.</p> <p>21 Q And Josh is Angelotta?</p> <p>22 A Yes.</p> <p>23 Q Okay. What was your impression of how Josh was able</p> <p>24 to handle so many intakes? Do you remember watching</p> <p>25 him work?</p>	<p>1 A Vaguely. He was a high energy guy, was there a lot,</p> <p>2 just hustled. I mean, he did a ton of work for sure.</p> <p>3 Q Okay.</p> <p>4 A I don't -- I mean, specifics I can't tell you, but --</p> <p>5 Q Is there any doubt in your mind that the firm's goal</p> <p>6 was to take in as many cases as possible?</p> <p>7 MR. MANNION: Objection.</p> <p>8 A They had a significant goal of getting in as many</p> <p>9 cases as they could. It was -- so there were a lot</p> <p>10 of contests and goals that we had to do, I don't know</p> <p>11 if "do" is the right word. But number of new cases</p> <p>12 was a constant thing.</p> <p>13 Q Constant goal?</p> <p>14 A Yeah.</p> <p>15 Q It was communicated from management to the employees</p> <p>16 correct?</p> <p>17 A Yes.</p> <p>18 Q Did you ever witness any example where the firm</p> <p>19 turned down a case for lack of capacity?</p> <p>20 A You mean like not being able to take it?</p> <p>21 Q Yeah, not having the capacity to handle a case?</p> <p>22 A Not that I know of.</p> <p>23 Q Is it fair to say that if a client came to KNR</p> <p>24 claiming any type of injury, and the crash report</p> <p>25 showed that someone else was liable, then the firm</p>
<p>Page 220</p> <p>1 would take the case, no matter how small?</p> <p>2 MR. MANNION: I'm going to object.</p> <p>3 You're saying he knows every case and every</p> <p>4 client? That's ridiculous.</p> <p>5 MR. PATTAKOS: Noted.</p> <p>6 A Can you say that again?</p> <p>7 Q Tom is going to keep doing this.</p> <p>8 A Yeah, listen --</p> <p>9 MR. MANNION: The problem is --</p> <p>10 MR. SKIDMORE: Come on, guys.</p> <p>11 MR. MANNION: -- you haven't asked</p> <p>12 anything with the class action yet.</p> <p>13 Q Is it fair to say that if -- Tom has a lot of</p> <p>14 opinions, too, you'll notice.</p> <p>15 MR. SKIDMORE: All right.</p> <p>16 Q Is it fair to say that if a client came to KNR</p> <p>17 claiming any type of injury, and the crash report</p> <p>18 shows that someone else was liable, the firm would</p> <p>19 take the case, no matter how small the injury?</p> <p>20 MR. MANNION: I'm going to object, lack</p> <p>21 of personal knowledge.</p> <p>22 A I mean, yeah, I don't know specifically, but we took</p> <p>23 everything that we could, I guess. I don't know.</p> <p>24 Q What's your estimate of how many cases were settled</p> <p>25 for less than \$10,000?</p>	<p>Page 221</p> <p>1 A I have no idea.</p> <p>2 Q Was it more than half?</p> <p>3 MR. SKIDMORE: Objection.</p> <p>4 MR. MANNION: Objection. How is he --</p> <p>5 MR. SKIDMORE: Wait a minute. Can we</p> <p>6 put a parameter around it?</p> <p>7 MR. PATTAKOS: During his time at the</p> <p>8 firm, the cases that he handled.</p> <p>9 MR. SKIDMORE: Like a percentage, are</p> <p>10 you going monthly, yearly?</p> <p>11 Q Just estimate total what percentage of the cases is</p> <p>12 your best estimate that settled for more than -- or,</p> <p>13 settled for less than \$10,000?</p> <p>14 A All right. This is a complete guess.</p> <p>15 MR. MANNION: Object.</p> <p>16 A I can't give you an answer on that, but I have an</p> <p>17 idea that what the average fee was generally, and</p> <p>18 that might have been around 2000 bucks, with fee</p> <p>19 reductions and things like that. And again, that</p> <p>20 might have been just numbers tossed around the office</p> <p>21 or mentioned at one point in time or another, so I</p> <p>22 can't say for sure. A lot of cases under \$10,000, I</p> <p>23 can't say no, but --</p> <p>24 Q Okay.</p> <p>25 A Does that make sense?</p>

Page 222	Page 223
1 Q Yes. How many of your cases went to trial?	1 MR. BEST: We're chatting for crissakes.
2 A Mine, I don't know. The cases when I had them, zero.	2 We've got all this money sitting at this
3 Q Did you ever become aware of any case that was your	3 table, and you're chatting.
4 case that ended up going to trial?	4 MR. PATTAKOS: Nobody told the
5 A Yes.	5 Defendants to hire a dozen different
6 Q How many?	6 attorneys.
7 A One, just because I kind of kept track of the guy,	7 Q Any other case that you became aware of that you
8 and it actually went to trial after I didn't work	8 handled that ended up going to trial?
9 there anymore, so. I don't know if that makes sense.	9 A Once it was out of my hands I never really paid
10 Q What do you remember about it? What's so funny about	10 attention to it.
11 it?	11 Q So Mr. Nestico testified that when a case switched
12 A No, he's a good guy. His name is (redacted.)	12 from prelit to the litigation department, that the
13 MR. SKIDMORE: Objection, move to	13 prelit attorney had the option to stay on the case.
14 strike.	14 Do you recall that that -- that being the case?
15 THE WITNESS: I'm sorry; I'm sorry.	15 A No.
16 MR. SKIDMORE: I don't want to talk	16 Q He said that there was always a roundtable discussion
17 about clients that are KNR clients.	17 when there was a -- when the case shifted from
18 THE WITNESS: I'm sorry.	18 prelitigation to litigation.
19 Q I'm not interested in who it was. I'm just -- if	19 A Yes, that's true.
20 there was some sort of particular reason --	20 Q And you would participate in those roundtables as a
21 MR. BEST: I object. This has nothing	21 prelitigation attorney, correct?
22 to do with class action. There's got to be	22 A We actually did the presentation. So we would have
23 some parameter here that relates to this	23 our cases that were -- couldn't settle, problematic,
24 case.	24 whatever reason we had, those cases that wouldn't
25 MR. PATTAKOS: Save it for the judge.	25 settle. We would on a -- I can't remember the
Page 224	Page 225
1 frequency of it, we all had a scheduled time period	1 A Something like that.
2 where we would go in and present the cases to, I	2 Q Okay. How many cases did you settle every year would
3 don't know who was consistently in the meetings,	3 you say?
4 so -- I can't remember, but it would -- I think it	4 A Somewhere between 30 and 50 a month, averaged.
5 was Rob, Robert and John, and maybe one other	5 Q Did you ever see any data or any documents showing
6 litigation attorney. I don't know. On that rotating	6 that that was the case?
7 basis somehow present the facts of the case and see	7 A I'm sure I did at one point.
8 what we want to do.	8 Q And it's your understanding that an objective injury
9 Q So if you were a prelitigation attorney and a case	9 is something more than a soft tissue; is that fair?
10 went into -- went to litigation department, and	10 A Yeah, broken bone or a surgical case or something
11 eventually resolved --	11 like that.
12 A Um-um.	12 Q Concussion?
13 Q -- would you still get credit for those fees --	13 A I don't know if we ever would classify a concussion
14 A No.	14 as an objective case.
15 Q -- in terms of your bonus?	15 Q Okay.
16 A No.	16 A Maybe a more significant -- a TBI would definitely be
17 Q Okay. So it disappears from your bonus calculation?	17 an objective case.
18 A Yes.	18 Q And what's TBI?
19 MR. MANNION: Objection,	19 A Traumatic brain injury.
20 misrepresentation.	20 Q Okay. Bulging disc, is that an objective?
21 Q How many of your cases went into litigation?	21 A If it was non -- I don't know. If it was
22 A I don't know. Ten percent, maybe.	22 non-surgical, probably not.
23 Q Okay.	23 Q Okay. So if there was a surgery, then it would --
24 A Average, I think. I don't know.	24 then something like that would be considered an
25 Q Okay. About ten percent is your best guess?	25 objective?

Page 226	Page 227
1 A Yeah, probably.	1 might have been another guy, I don't know. I don't
2 Q Or a herniated disc?	2 remember if his name was Brian or not. I don't know.
3 A Yeah.	3 Q Rob said that it was, but -- and I think that we have
4 Q Okay. Otherwise, objectives, we're talking about	4 an e-mail that said --
5 broken bones, correct?	5 A Yeah.
6 A That's the most common one, yeah.	6 Q -- there was someone named Brian. But those are the
7 Q Okay. Generally speaking?	7 only two people that Mr. Nestico could remember, and
8 A Yes.	8 those are the only two people that I've seen. So did
9 Q Okay. You were aware that KNR advertised that it	9 you understand that Ciro owned the company?
10 could get its clients cash advances, correct?	10 A I believe, yeah, he was put forth as being the owner
11 A I believe so. It was on the marketing materials.	11 or purported to be the owner. He was the guy in
12 Q And this was happening throughout your period of	12 charge.
13 employment with the firm?	13 Q No one ever told that Ciro was just the manager of
14 A I think so. I don't -- at some point when I was	14 Liberty Capital?
15 there. When they started it and if they continued to	15 A Not that I know of, no.
16 do it, if they stopped or not, I don't know. But at	16 Q He was the one with the skin in the game, did you
17 some point, you know, I seen the marketing materials.	17 understand that?
18 Q What do you remember about Liberty Capital?	18 MR. MANNION: Objection.
19 A They were a lending company. Ciro was in charge.	19 A I don't know. I can make the assumption if he's the
20 Q Ciro Cerrato?	20 guy who owns the company, his skin is in the game.
21 A Yes. There was another guy who answered the phone	21 Q Okay.
22 when you called.	22 A What his exact role is -- I mean, listen, I guess I
23 Q Named Brian?	23 suppose he might not have even been the owner. But
24 A I don't remember. And I think those were the only	24 he was the face -- not the face of, but it was Ciro,
25 two people we ever had any interactions with. There	25 it was Liberty Capital, if that makes any sense.
Page 228	Page 229
1 Q Understood. Let me find a document here, okay?	1 A I wouldn't say exclusively. There are companies,
2 What specifically was it about Liberty Capital	2 like we talked a little bit earlier, like Preferred
3 that prompted you to provide documents to me about	3 Capital, they are part of -- not part of OAJ, but
4 the company?	4 they're at OAJ, they're endorsed by, you know, the
5 A There was -- I think it developed through our	5 Ohio Association for Justice, whatever, and then
6 conversations about the case potential. I don't know	6 Oasis was another one that was just around all the
7 if that's a good way to say it or not. They were a	7 time.
8 lending company that we were given specific	8 Q Did you ever become aware of Liberty Capital
9 instructions to use and that seemed like an issue.	9 servicing loans for other law firms or other clients
10 Q It wasn't just that you were given specific	10 outside of KNR clients?
11 instructions to use this company, it was that you	11 A No.
12 were given instructions to use this company	12 Q Do you recognize this e-mail?
13 exclusively, correct?	13 A Yes.
14 A Over periods of time, yeah.	14 Q Did you receive this e-mail?
15 Q During certain points in time you were given	15 A Yes.
16 instructions by Rob Nestico to send all clients to	16 Q It's Rob Nestico on Wednesday, May 2, 2012, e-mailing
17 Liberty Capital for cash advances, correct?	17 all KNR attorneys and staff, "Anyone have a copy of
18 A Yes.	18 the questionnaire sent to us when a client asks for a
19 - - - -	19 loan. Either from Oasis or Preferred Capital?
20 (Thereupon, Plaintiffs' Exhibit 3 was	20 Please scan it and send me a blank copy." Do you
21 marked for identification.)	21 recall that the firm was recommending its client use
22 - - - -	22 Oasis or Preferred Capital at the time this e-mail
23 Q During your time at KNR, was there any other time	23 was sent?
24 when you were directed by Mr. Nestico or anyone to	24 A So qualify "recommend" a little bit. "Hey, go get a
25 use a loan company exclusively?	25 loan with these people," no. If somebody needed a

Page 230	Page 231
<p>1 loan, Preferred Capital and Oasis, those are the only</p> <p>2 two that I know of, and I think there's like one</p> <p>3 other one, but I think they might have even been more</p> <p>4 expensive than Oasis and Preferred Capital. But</p> <p>5 those are the people that I recognize the names of.</p> <p>6 Does that make sense?</p> <p>7 Q Sure. Now, I want to back up a little bit. You</p> <p>8 testified that KNR would advertise to clients "We can</p> <p>9 get you a cash advance," correct?</p> <p>10 A Yes; yes.</p> <p>11 Q And I don't have a copy with me, but you recall an ad</p> <p>12 mailer that had a fake dollar billion on it that said</p> <p>13 "Get cash now. We can get you a cash advance," et</p> <p>14 cetera?</p> <p>15 A Something like that.</p> <p>16 Q Okay. So even though, as you testified, individual</p> <p>17 attorneys might be -- might advise clients not to</p> <p>18 take out these loans, the firm was certainly</p> <p>19 advertising its ability to obtain these loans,</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q And many clients wanted them, correct?</p> <p>23 A Yes.</p> <p>24 Q Would you say most of the clients wanted them?</p> <p>25 A A large portion of them probably did.</p>	<p>1 Q About half?</p> <p>2 A I don't know. Probably.</p> <p>3 Q Probably at least that many?</p> <p>4 A It would be a guess.</p> <p>5 Q What do you recall about this e-mail being sent?</p> <p>6 What happened at the firm after it was sent;</p> <p>7 anything?</p> <p>8 A I do not recall responding to this e-mail. I don't</p> <p>9 know if anybody did respond to the e-mail.</p> <p>10 Q Did you call anybody wondering why it was sent out?</p> <p>11 A No.</p> <p>12 Q Sorry about that.</p> <p>13 MR. PATTAKOS: Let's mark the next</p> <p>14 exhibit.</p> <p>15 ----</p> <p>16 (Thereupon, Plaintiffs' Exhibit 4 was</p> <p>17 marked for identification.)</p> <p>18 ----</p> <p>19 Q Did you receive this e-mail while you were employed</p> <p>20 at KNR?</p> <p>21 A Yes.</p> <p>22 Q And it's Rob Nestico forwarding to all attorneys an</p> <p>23 e-mail from Ciro Cerrato, and Rob is sending the</p> <p>24 e-mail on May 10, 2012, Ciro's e-mail was from</p> <p>25 May 9th, and Ciro says "Rob, thanks for giving</p>
Page 232	Page 233
<p>1 Liberty Capital Funding the opportunity to offer your</p> <p>2 clients pre-settlement funding," et cetera. Nestico,</p> <p>3 when he forwards this, says "For any Plambeck</p> <p>4 patients only please use the below company for cash</p> <p>5 advances. Thanks." Do you recall anything about</p> <p>6 this e-mail?</p> <p>7 A No. I mean, I know it's an e-mail that we all got,</p> <p>8 and it would be -- I mean, it's instructions on what</p> <p>9 lending company to use.</p> <p>10 Q Did you ever have any understanding of why he wanted</p> <p>11 you to use this company?</p> <p>12 A No.</p> <p>13 Q The next day he clarified this instruction, stating</p> <p>14 "Sorry, applies to all cases, not just Plambeck." Do</p> <p>15 you recall that that was the case?</p> <p>16 A That that was the follow-up e-mail, or the --</p> <p>17 Q That you received that instruction?</p> <p>18 A Specifically, no, I don't, but if we got the e-mail,</p> <p>19 then I saw it at the time and --</p> <p>20 Q Did you ever have any understanding of why</p> <p>21 Mr. Nestico wanted you to use this loan company?</p> <p>22 MR. MANNION: Objection.</p> <p>23 A No.</p> <p>24 Q Did you ever speak with anyone at the firm about this</p> <p>25 at the time?</p>	<p>1 A Possibly, with the other prelit guys.</p> <p>2 Q But you don't remember?</p> <p>3 A A specific conversation, no, but I can't tell you</p> <p>4 that it didn't happen. We probably got the</p> <p>5 instruction and complained about it or something. I</p> <p>6 don't know.</p> <p>7 Q Why would you have complained about it?</p> <p>8 A Because we were being micromanaged.</p> <p>9 Q It was clear to you and your colleagues in prelit</p> <p>10 that during the time periods when this instruction</p> <p>11 was in effect, you were required to send your clients</p> <p>12 to Liberty Capital when they wanted cash advances,</p> <p>13 correct?</p> <p>14 MR. SKIDMORE: Objection. He can</p> <p>15 testify as to his understanding, but not his</p> <p>16 colleagues.</p> <p>17 Go ahead and answer.</p> <p>18 A Yes, based on the boss of the firm saying please do</p> <p>19 this, it was my understanding that we had to do that.</p> <p>20 Q Did you understand this as an instruction, or just a</p> <p>21 suggestion?</p> <p>22 A An instruction.</p> <p>23 Q Did you ever become aware of an instance where</p> <p>24 Liberty Capital denied funding to a KNR client?</p> <p>25 MR. MANNION: Objection.</p>

Page 234

1 A I don't know. I can't tell you yes or no.
 2 Q Did that ever happen with you?
 3 A I don't recall specifically.
 4 Q You can't recall a single example where that ever
 5 happened?
 6 A No. I mean, listen, not to say it didn't, but I
 7 don't have a recollection of it.
 8 Let me back that up, okay, if I can qualify that
 9 a little bit. A lot of times people went back for
 10 second loans. I would say all the lending companies
 11 would be suspicious or would be hesitant to give a
 12 second loan on a case, depending on the circumstances
 13 of the case. So it wouldn't be uncommon for any of
 14 these guys to decline a loan on a second go-around,
 15 if that makes any sense, because they're hanging
 16 themselves out a little bit more. But from an
 17 initial standpoint, I can't say one way or the other.
 18 Q You don't have any memory of Ciro rejecting a second
 19 loan for someone?
 20 A Not a specific memory, but that I can tell you more
 21 likely than not did happen.
 22 Q Just because all the loan companies were more likely
 23 to reject the second request?
 24 A Yes.
 25 Q Okay. Well --

Page 236

1 A I don't know. I can tell you, I mean, I would ask
 2 him to take reductions on loans for sure.
 3 Q Well, on some cases Ciro would take a bigger fee, and
 4 on others he would give a bigger write-off, correct?
 5 A Probably true.
 6 Q If we take a look at, I think it's Exhibit Q, take a
 7 look from your pile, Exhibit Q, it's an e-mail with
 8 you and Brandy and Ciro, it's two pages.
 9 A Right.
 10 Okay. Go ahead.
 11 Q And Ciro ends an e-mail to you, you know, what's the
 12 pay-off amount, "Please provide a pay-off for
 13 Monique."
 14 Ciro says "968.76."
 15 You then ask Ciro "Can you take 800?"
 16 He says "Yes."
 17 "Cool. Thanks." This was a typical exchange
 18 with Ciro Cerrato, was it not?
 19 A Probably.
 20 Q If I represent to you that I have a number of e-mails
 21 where KNR attorneys have similar exchanges, you have
 22 no reason to believe that's not the case, correct?
 23 A I don't.
 24 Q And here, you know, it was a \$500 loan, Ciro was
 25 entitled to \$468.76 in fees and interest, so it was

Page 235

1 -----
 2 (Thereupon, Plaintiffs' Exhibit 5 was
 3 marked for identification.)
 4 -----
 5 Q So here's an exchange between Brian Zaber and Ciro
 6 and Mr. Nestico, where Rob writes to Ciro at the
 7 bottom of the page, "Ciro, can we get this client an
 8 advance of 250 more? Please let me know. Don't want
 9 to lose this client."
 10 Ciro says "K. Thanks, Rob," and it looks like
 11 they got the extra loan. Do you agree this is --
 12 well, strike that.
 13 Was this something that, in your experience,
 14 happened at the firm, to use a cash advance to keep a
 15 client happy so that they stay engaged with the firm?
 16 A It definitely kept them happy, because a lot of them,
 17 you know, they wanted a loan.
 18 To stay with the firm or not, can I tell you
 19 that a client didn't say "If I don't get a loan I'm
 20 going to quit," I can't say that they didn't say
 21 that. I don't know.
 22 Q It's true that the firm was constantly bargaining
 23 with Ciro about whether he would take a write-off on
 24 the amounts owed to him on any given case, correct?
 25 MR. MANNION: Objection.

Page 237

1 relatively easy for him to take that write-off to
 2 800, correct?
 3 MR. SKIDMORE: Objection.
 4 A That's a question you've got to ask Ciro.
 5 Q Sure. But that's -- you were certainly within normal
 6 practice to ask him to take a write-off like this,
 7 correct?
 8 A Yes.
 9 Q Because it's just a loan, right?
 10 MR. MANNION: Objection.
 11 A What do you mean?
 12 Q Well, I mean, it's just interest and fees on a \$500
 13 loan, so instead of taking \$468.76, it's easy enough
 14 for Ciro to take \$300?
 15 MR. SKIDMORE: Objection.
 16 Q Is that fair?
 17 MR. SKIDMORE: Objection.
 18 MR. MANNION: That's per Ciro.
 19 A Yeah, that's -- I mean, on the raw math of it it
 20 makes sense, but I can't tell you one way or the
 21 other.
 22 Q Okay.
 23 -----
 24 (Thereupon, Plaintiffs' Exhibit 6 was
 25 marked for identification.)

Page 238	Page 239
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
<p style="text-align: center;">-----</p> <p>Q So here's on November 30, 2012, Rob sends an e-mail to everyone, "Please use Liberty Capital until further notice."</p> <p>Brandy says "I've been working with Ciro today. Trying to get everything up to date in our system. So far Gary P has closed two cases without paying and Ken one case." Do you have any memory of this?</p> <p>A No, I don't think I was on this.</p> <p>Q I don't think you were either. But you don't have any memory of it?</p> <p>A No.</p> <p>Q Did you understand that if cases were closed without you paying, without you as the handling attorney making sure that Liberty Capital was paid, that it would come out of your paycheck?</p> <p>A That is true.</p> <p>Q That is true. How did you come to that understanding?</p> <p>A Not paycheck, bonus money, is a more accurate statement. There were particular circumstances in which that money would be taken out of our bonus money, and missing subrogation was one of them.</p> <p>Q Okay.</p> <p>A Can I tell you that it happened on every</p>	<p>circumstance, I can't. Sometimes it would happen, sometimes it wouldn't, but it was a possibility.</p> <p>Q When Brandy says "Trying to get everything up to date in our system, working with Ciro," what do you think that means?</p> <p>MR. SKIDMORE: Objection.</p> <p>A I don't know. I can guess to make sure that they got into the case management software. That's as far as I can go.</p> <p>Q The loans?</p> <p>A Yeah, or the provider information. But that's a guess.</p> <p>Q So you agree that this e-mail reflects an instance where Brandy is telling Mr. Nestico that Gary Petti and Ken Zerrusen closed cases and distributed settlement funds to clients without paying what was owed to Liberty Capital?</p> <p>MR. SKIDMORE: Objection.</p> <p>A I mean, that's what it looks like. I can't --</p> <p>Q And they couldn't go back to the client and ask them for the money because the case was already closed, correct?</p> <p>MR. SKIDMORE: Objection.</p> <p>A I don't know.</p> <p>MR. MANNION: Ask who for the money; the</p>
Page 240	Page 241
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
<p>client?</p> <p>MR. PATTAKOS: Yes.</p> <p>A Well, I don't know. I can't tell you. I mean, I guess everybody could have. But was it a practice, I don't think so.</p> <p>Q Well, do you see here that -- where Brandy says "at some point we will need a favor from Ciro and need him to waive," so that's why the firm made Gary and Ken pay?</p> <p>A I do see that.</p> <p>Q Do you know what she means by "need a favor from Ciro"?</p> <p>MR. SKIDMORE: Objection.</p> <p>A I don't. She does say "and need him to waive," which we can presume maybe take a hit on a loan or something.</p> <p>Q Well, it's true as a KNR attorney, you wanted to get Ciro bigger payoffs when you could so that he could retain his flexibility in giving bigger write-offs when needing to get a case settled, correct?</p> <p>MR. MANNION: Objection. That's a mischaracterization.</p> <p>A My goal was not to get Ciro paid. My goal was to get the case resolved.</p> <p>Q Sure.</p>	<p>A And if you can pay everybody back in full, that's what you're going for. I never approached it as my obligation is to Ciro first, beyond the client. That's -- I asked Ciro to take less money, so you can get more money for the rest of the case to get it resolved, if that makes any sense.</p> <p>Q Well, the firm is sending clients to Liberty Capital for high interest loans, and his decision to take a write-off is going to be based in part on whether he was able to get a larger payment from another one of the firm's clients, correct?</p> <p>MR. MANNION: Objection.</p> <p>A I don't know. That's, that's -- based on this, that's between the writer of this e-mail and Rob and Ciro.</p> <p>Q Well, it stands to reason, doesn't it?</p> <p>MR. MANNION: Objection.</p> <p>MR. SKIDMORE: Objection.</p> <p>MR. MANNION: You can smirk all you want, Peter, all you want.</p> <p>Q Isn't that why Brandy made Gary and Ken pay him, because she knew that the firm would need a, quote, unquote, favor from him?</p> <p>MR. MANNION: Objection.</p> <p>A Based on this e-mail, that's what she is saying here,</p>

Page 242	Page 243
<p>1 I think.</p> <p>2 Q And this trading of favors was simply a routine</p> <p>3 aspect of the relationship, wasn't it?</p> <p>4 MR. SKIDMORE: Objection.</p> <p>5 A That I don't know. I mean, I don't know how --</p> <p>6 listen, we asked for reductions on a regular basis to</p> <p>7 get reductions. I can't tell you how often that we</p> <p>8 were -- or, KNR or any of the attorneys there were</p> <p>9 paying Ciro on cases that, you know, we missed, like</p> <p>10 making up for that. I don't know.</p> <p>11 Q Well, how can you say for certain that the firm is</p> <p>12 not essentially bargaining its own clients against</p> <p>13 one another to preserve its own interests in the</p> <p>14 benefit of the relationship with Ciro?</p> <p>15 MR. SKIDMORE: Objection.</p> <p>16 MR. MANNION: Objection. That makes</p> <p>17 zero sense, not to mention you're asking</p> <p>18 about an ethical violation now, and you are</p> <p>19 prohibited from doing that. You can shake</p> <p>20 your head all you want. I'll tell you what,</p> <p>21 I want to start having this limited to his</p> <p>22 knowledge. You can shake your head all you</p> <p>23 want. Do you want him to go outside his</p> <p>24 knowledge?</p> <p>25 MR. PATTAKOS: Tom, I'm shaking my head</p>	<p>1 at your speaking objections. Your objection</p> <p>2 is noted.</p> <p>3 MR. MANNION: Oh, this is ridiculous.</p> <p>4 MR. PATTAKOS: I know you have your</p> <p>5 opinions, Tom. Thank you.</p> <p>6 MR. MANNION: You have no idea --</p> <p>7 MR. SKIDMORE: All right, guys. All</p> <p>8 right, guys. Let's keep going here.</p> <p>9 Can you read the question --</p> <p>10 MR. MANNION: Well, maybe if the witness</p> <p>11 keeps to his own personal knowledge and not</p> <p>12 conjecture into somebody else's mind. We are</p> <p>13 going to be here all day tomorrow, that's</p> <p>14 what we'll be.</p> <p>15 MR. SKIDMORE: Can we read the question</p> <p>16 back, please?</p> <p>17 MR. PATTAKOS: I'll read it back.</p> <p>18 A All right.</p> <p>19 Q By engaging in this type of bargaining with Ciro, how</p> <p>20 can you say the firm isn't bargaining its own clients</p> <p>21 against one another --</p> <p>22 MR. MANNION: Objection.</p> <p>23 Q -- to preserve its own interests in having a flexible</p> <p>24 relationship with Ciro?</p> <p>25 MR. MANNION: Objection.</p>
Page 244	Page 245
<p>1 MR. SKIDMORE: Objection. The first</p> <p>2 part of that is you're saying -- what's the</p> <p>3 first part of that question? There's some</p> <p>4 kind of engaging in something. You're going</p> <p>5 to have to --</p> <p>6 MR. PATTAKOS: Bargaining.</p> <p>7 MR. SKIDMORE: You're going to have to</p> <p>8 define that.</p> <p>9 MR. MANNION: And then you say how can</p> <p>10 you not say.</p> <p>11 Q Well, on some cases Ciro takes a large fee, on some</p> <p>12 cases he takes a smaller fee --</p> <p>13 MR. MANNION: Objection.</p> <p>14 Q -- Brandy says "We're going to need a favor from Ciro</p> <p>15 one of these days," and this is routine, is it not?</p> <p>16 MR. MANNION: Objection.</p> <p>17 Q It's routine for Ciro to give favors, and then the</p> <p>18 firm gives favors back?</p> <p>19 MR. SKIDMORE: Objection.</p> <p>20 A Listen, if I ask Ciro to take a hit on a case, I'm</p> <p>21 not asking -- I'm asking him -- that's not a favor.</p> <p>22 Q I'm not asking about your intention, but you can</p> <p>23 see --</p> <p>24 MR. BEST: Let him answer the question.</p> <p>25 MR. SKIDMORE: Let him answer the</p>	<p>1 question.</p> <p>2 Q You can see how --</p> <p>3 MR. MANNION: Hey, stop it. Peter, stop</p> <p>4 it. He was in the middle of an answer.</p> <p>5 You're not going to do this again.</p> <p>6 MR. PATTAKOS: Tom --</p> <p>7 MR. MANNION: No. You tried to do this</p> <p>8 to Nestico. You're not going to do it to</p> <p>9 him.</p> <p>10 MR. PATTAKOS: -- calm down.</p> <p>11 MR. MANNION: Let him answer the</p> <p>12 question. You know that what you're doing is</p> <p>13 wrong.</p> <p>14 MR. PATTAKOS: No, Tom.</p> <p>15 MR. MANNION: Yes, you do.</p> <p>16 MR. SKIDMORE: All right. Both of you</p> <p>17 stop. He's allowed to answer.</p> <p>18 MR. MANNION: It's ridiculous.</p> <p>19 MR. SKIDMORE: He's allowed to answer</p> <p>20 the question. You did cut him off in the</p> <p>21 middle of his answer.</p> <p>22 So answer the question.</p> <p>23 A I can't tell you how they saw the transaction. I can</p> <p>24 tell you that when I asked Ciro to take a reduction</p> <p>25 on a case, I wasn't, I wasn't doing it as to garner</p>

Page 246

1 favor for the next time around.

2 Q I understand it wasn't your intent, but can you

3 understand that from a third party's perspective

4 looking at these documents --

5 MR. MANNION: Objection.

6 Q -- can you understand how a third party could see

7 that Ciro gets exclusive access to the clients to

8 sell them high interest loans, and in exchange for

9 that exclusive access, the firm gets a high degree of

10 control over him, in terms of which clients get big

11 write-offs and which clients don't?

12 MR. SKIDMORE: Objection.

13 MR. MANNION: It's crazy.

14 A I don't know if I know how to answer that question.

15 I mean --

16 Q You can't say that's not the case, can you, sir?

17 MR. MANNION: Objection.

18 A I can say it's not the case.

19 Q And the firm's clients have no idea that their

20 interests are being bargained for between the firm

21 and Ciro in this way, do they?

22 MR. BEST: You mean that the witness is

23 being bargained this way?

24 MR. MANNION: And you can't say that

25 Peter is not making this all up, can you?

Page 248

1 also be -- the firm would also be more incentivized

2 to work for the best possible deal for the clients on

3 every case, instead of giving some of them a good

4 deal, and balancing that out by giving the loan

5 company a break at the client's expense?

6 MR. MANNION: Objection.

7 MR. SKIDMORE: I don't think he's --

8 MR. MANNION: If you answer that

9 question, I am going to go ballistic.

10 That's ridiculous.

11 MR. SKIDMORE: Wait a minute. First of

12 all, I'm his attorney here, okay, so --

13 MR. MANNION: This is crazy.

14 MR. SKIDMORE: First, it's an objection.

15 Second, it's a rambling question that has

16 multiple pieces and parts to it. And

17 thirdly, you're asking him to express an

18 expert opinion, and he's a lay witness in

19 this case. He has not been qualified as an

20 expert, nor will he testify as such.

21 MR. PATTAKOS: I'm asking him to provide

22 his own opinion as an attorney who handled

23 these cases.

24 MR. MANNION: No.

25 MR. SKIDMORE: And he is not here to

Page 247

1 It's ridiculous.

2 MR. SKIDMORE: Testify from your

3 knowledge.

4 MR. MANNION: Get to some facts; get to

5 some facts.

6 A The interactions between Brandy and Rob and Robert

7 and the people who were in charge and the loan

8 company, I can't tell you about.

9 I can tell you what is on here. If they used

10 our actions that way, I mean, I don't -- it's a -- I

11 can't answer that question because I don't know if

12 that's how they used it. I don't know if that makes

13 any sense or not.

14 I didn't ask -- I asked Ciro to take a cut on a

15 case because I wanted to get the case resolved,

16 without the speculation of a future higher payment.

17 I mean, like I said, you try and pay everybody you

18 can to the extent that you can get the case resolved

19 and make the client happy. But I don't know.

20 Q Well, do you agree that if the loan companies the

21 firm was working with were more independent and were

22 competing with one other, that would not only benefit

23 the firm's clients, in terms of the loan companies

24 wanting to stay competitive against one another by

25 offering competitive rates and write-offs, but you'd

Page 249

1 give opinions. He is a fact witness in this

2 case. He is not here to give opinions. So

3 move on.

4 MR. PATTAKOS: You're telling him not to

5 answer that question?

6 MR. SKIDMORE: I am.

7 Q Mr. Horton, when you put in your affidavit, paragraph

8 37, that you're not aware of any information to

9 suggest that Nestico, Redick or anyone at KNR had any

10 financial or ownership interest in Liberty Capital,

11 that's just because you didn't connect the dots in

12 this particular way; isn't that fair?

13 MR. SKIDMORE: Objection.

14 MR. MANNION: Come on.

15 MR. BEST: Objection.

16 MR. BARMEN: Unbelievable.

17 A I don't know how to answer that question.

18 MR. SKIDMORE: Then don't. Have him

19 pose it correctly.

20 MR. BARMEN: And, Peter, if you've

21 connected those dots, you certainly owe us

22 some production on that.

23 MR. MANNION: Yeah, we haven't seen it

24 yet.

25 MR. PATTAKOS: Look at -- review all the

Page 250

1 deposition exhibits in this case. It's all
 2 there for you.
 3 MR. BARMEN: Which one points to an
 4 ownership interest?
 5 MR. PATTAKOS: Brad, please.
 6 MR. MANNION: There's no -- we've been
 7 asking.
 8 Q Well, when Mr. Mannion asked you to confirm that you
 9 had zero information suggesting that they have any
 10 ownership interest in Liberty Capital, you hesitated
 11 and said "'Suggest,' well, I'm not sure if that's
 12 fair." Why did you say that?
 13 A I suppose it comes down to your interpretation of
 14 "suggest." Do I know that Rob or anybody has an
 15 ownership interest, you know, and I've seen some sort
 16 of statement otherwise, like an agreement or a tax
 17 form or something like that, no, I can't. The only
 18 thing that I've got in front -- the only thing that I
 19 ever had in front of me were the e-mails that were
 20 sent within the firm.
 21 Q You weren't aware of a specific agreement?
 22 A Correct.
 23 Q But you didn't mean to say that a person couldn't
 24 infer that an agreement exists, correct?
 25 MR. MANNION: Objection. What person?

Page 252

1 suggest an ownership in Liberty Capital is accurate
 2 in that I have no information beyond the
 3 documentation that's already been provided and
 4 everybody has already seen to suggest that there is
 5 an ownership interest. I don't know if that
 6 qualifies it or clarifies it or not. I haven't seen
 7 a tax form, I haven't -- you know, how you interpret
 8 that I guess is -- or how anyone would interpret that
 9 I suppose is up to their interpretation. I don't
 10 know if that's a good answer or not, but --
 11 Q Well, you testified that this is -- you testified
 12 that you provided e-mails to me about Liberty Capital
 13 and the chiropractors.
 14 A Yes.
 15 Q Even if you didn't know for sure there was a quid pro
 16 quo because, as you said, this is what the appearance
 17 is?
 18 A Okay.
 19 Q Do you recall saying that?
 20 A Yeah.
 21 MR. BEST: Just like he does every day
 22 still.
 23 Q So you agree that there are facts about Liberty
 24 Capital and the chiros that create the appearance of
 25 a quid pro quo, correct?

Page 251

1 MR. SKIDMORE: Objection. We're not
 2 going to speculate and ask questions that he
 3 has no knowledge on, so let's move on.
 4 MR. PATTAKOS: He's the one who executed
 5 an affidavit giving very specific statements
 6 about this, and I'm trying to understand what
 7 he meant by those statements.
 8 MR. SKIDMORE: I appreciate that.
 9 You're asking a lot of questions about what
 10 other people think and what other people's
 11 opinions are, and he doesn't know. It's not
 12 an appropriate question, so move on.
 13 MR. PATTAKOS: Maybe he shouldn't have
 14 executed the affidavit if he doesn't know.
 15 MR. BEST: You mean to tell the truth?
 16 MR. MANNION: The affidavit are facts.
 17 MR. BEST: He told the truth. He said
 18 that today, he told the truth today and in
 19 the affidavit.
 20 MR. PATTAKOS: I think the affidavit
 21 is --
 22 MR. SKIDMORE: All right. Keep going.
 23 MR. PATTAKOS: -- is opinions, is what
 24 it sounds like.
 25 A The answer in the affidavit about information to

Page 253

1 MR. SKIDMORE: Objection.
 2 MR. BEST: Objection.
 3 MR. SKIDMORE: I don't think that's what
 4 he said.
 5 A If the, if the information that is -- has been made
 6 exhibits in all of these things, if you interpret
 7 them that way --
 8 MR. BEST: Then you're nuts.
 9 MR. MANNION: Then I guess you would
 10 have turned somebody in reading these e-mails
 11 at the time, wouldn't you?
 12 MR. BEST: You sure would have.
 13 A I don't know how to answer that question. I can't
 14 say that there's anything other than, you know, the
 15 things that sit in front of me today suggest that
 16 it's up for interpretation. I don't know if that's a
 17 good way to answer it or not.
 18 Q If that's your answer, that's your answer.
 19 Well, the same goes for when you testified that
 20 you weren't aware of a quid pro quo with Doctor
 21 Floros or any other provider; just because you
 22 weren't aware of it doesn't mean that you weren't
 23 aware of facts that would support an inference that
 24 that existed, correct?
 25 MR. SKIDMORE: Objection.

Page 254	Page 255
<p>1 MR. MANNION: Objection.</p> <p>2 MR. SKIDMORE: It's really speculative.</p> <p>3 A Yeah, it is. I mean, listen -- I don't know how to</p> <p>4 answer that question.</p> <p>5 MR. SKIDMORE: Then don't. Ask him to</p> <p>6 pose another question.</p> <p>7 Q When you testified that you weren't aware of a quid</p> <p>8 pro quo with Doctor Floros or any other provider,</p> <p>9 that doesn't mean the quid pro quo doesn't exist,</p> <p>10 right?</p> <p>11 MR. BEST: Objection.</p> <p>12 MR. MANNION: Objection.</p> <p>13 A True.</p> <p>14 Q And when you testified that you're not aware of any</p> <p>15 KNR attorneys conspiring with doctors and</p> <p>16 chiropractors to inflate billings, that doesn't mean</p> <p>17 it didn't happen, correct?</p> <p>18 MR. BEST: Objection.</p> <p>19 MR. MANNION: Objection.</p> <p>20 MR. SKIDMORE: Objection.</p> <p>21 A The same thing, I would have no knowledge of it,</p> <p>22 correct.</p> <p>23 Q Okay. And the same goes for when you state you were</p> <p>24 not aware of any payments from medical providers or</p> <p>25 not aware of any kickbacks between KNR and medical</p>	<p>1 providers, you're not saying that this didn't happen,</p> <p>2 correct?</p> <p>3 MR. BEST: Objection.</p> <p>4 MR. MANNION: Objection.</p> <p>5 A Correct.</p> <p>6 Q Tom -- when Tom asked you you always did the best for</p> <p>7 your clients, you always acted in their interests,</p> <p>8 you hesitated before answering the question.</p> <p>9 MR. MANNION: Objection to the</p> <p>10 characterization.</p> <p>11 MR. PATTAKOS: It's on video.</p> <p>12 MR. MANNION: I could care less whether</p> <p>13 it's on video he hesitated.</p> <p>14 MR. PATTAKOS: Maybe you should care</p> <p>15 more.</p> <p>16 MR. BEST: Hopefully he told the truth.</p> <p>17 Q Do you recall this?</p> <p>18 A Yeah.</p> <p>19 Q Is it fair to say that you hesitated because there</p> <p>20 were certain requirements imposed on you by KNR</p> <p>21 management that made it impossible to really say you</p> <p>22 were fully acting in the clients' best interests?</p> <p>23 MR. BEST: Objection.</p> <p>24 MR. MANNION: Objection.</p> <p>25 MR. SKIDMORE: Objection.</p>
<p>Page 256</p> <p>1 MR. BEST: Boy, I hope that's not true.</p> <p>2 Wow.</p> <p>3 A We had particular ways that we were supposed to</p> <p>4 handle a case. I always did my best to have my</p> <p>5 clients' best interests in mind.</p> <p>6 Q Why did you hesitate when you answered that question?</p> <p>7 MR. MANNION: Objection,</p> <p>8 mischaracterization.</p> <p>9 A I don't know. How the question was formed, maybe. I</p> <p>10 don't know.</p> <p>11 Q Maybe that you were given certain instructions and</p> <p>12 parameters that you had to work with that you weren't</p> <p>13 entirely comfortable with, correct?</p> <p>14 MR. MANNION: Objection.</p> <p>15 MR. BEST: Objection.</p> <p>16 MR. SKIDMORE: Objection. He just</p> <p>17 answered the question. You're asking it</p> <p>18 again.</p> <p>19 A To the best of my ability, I always tried to do what</p> <p>20 was in the best interests of my client.</p> <p>21 Q But there were parameters and restrictions put on you</p> <p>22 that you weren't entirely comfortable with, correct?</p> <p>23 MR. BEST: Objection.</p> <p>24 A I guess let me think if there's a better way to say</p> <p>25 it. I presumed while I was there that the things</p>	<p>Page 257</p> <p>1 that I was doing were in the best interests of my</p> <p>2 client. I was taking the advice of, you know, people</p> <p>3 above me, people parallel to me, handling cases on a</p> <p>4 daily basis, that I tried to do the -- in the best</p> <p>5 interests of my client. Does that help at all? I</p> <p>6 don't know.</p> <p>7 Q Well, if you didn't have any concern at all, you</p> <p>8 wouldn't have communicated with me about it in the</p> <p>9 first place, correct?</p> <p>10 MR. SKIDMORE: Objection. Concern with</p> <p>11 what?</p> <p>12 Q Over these practices.</p> <p>13 MR. BARMEN: He didn't identify any that</p> <p>14 were a problem.</p> <p>15 Q The provider referrals, the investigator fee, Liberty</p> <p>16 Capital, if you didn't have some concern about these</p> <p>17 practices of the firm, then you wouldn't have</p> <p>18 communicated about them with me in the first place,</p> <p>19 correct?</p> <p>20 A After the fact, yeah.</p> <p>21 Q After you left the firm?</p> <p>22 A Um-um, yes.</p> <p>23 MR. PATTAKOS: Okay. We can take a</p> <p>24 break.</p> <p>25 THE VIDEOGRAPHER: We're off the record.</p>

Page 258	Page 259
<p>1 3:46. 2 ---- 3 (Thereupon, a recess was had.) 4 ---- 5 THE VIDEOGRAPHER: We're back on the 6 record. Tape number four. 4:01 P.M. 7 ---- 8 (Thereupon, Plaintiffs' Exhibit 7 was 9 marked for identification.) 10 ---- 11 Q Okay. I want you to take a look at the document 12 that -- the e-mail here in the middle from Brandy 13 Brewer to staff, subject, legal funding companies, 14 importance, high, where Brandy writes "Please be sure 15 to offer two different companies to your clients only 16 if they request a loan." Do you recall receiving 17 this e-mail? 18 A Not specifically, but it's an e-mail that we would 19 get. 20 Q Do you recall that this policy was instituted to 21 recommend two different loan companies? 22 A Vaguely. 23 Q Do you remember anything about this? 24 A Just that Oasis and Preferred Capital are two of the 25 common lenders that we would give the information to</p>	<p>1 clients for. 2 Q Well, she writes at the top, "Just to clarify, we are 3 back to working with both lending companies. For new 4 loans, please offer both." Do you agree that this 5 reflects that the company was just using Liberty 6 Capital until this e-mail was sent? 7 MR. BEST: Objection. 8 A I don't know. I don't know if this was a consequence 9 of a Liberty Capital or something -- I don't know. I 10 can't say. I don't know when anybody stopped using 11 Liberty Capital or not. 12 Q Did you ever talk with anyone about why the company 13 was, why KNR was going back to using two loan 14 companies? 15 A No, not to my recollection. 16 Q No, you don't recall any conversations with any of 17 your co-workers about this? 18 A No. Liberty Capital shut down at some point in time, 19 I don't remember when or why, I think anyways. I 20 don't know. 21 Q Why do you think that? 22 A I think they stopped being in existence. I don't 23 know. 24 Q Do you remember any problems with Liberty Capital? 25 A I do not.</p>
Page 260	Page 261
<p>1 Q There are e-mails where Brandy or Rob say, you know, 2 "Hold off on using Liberty Capital, we're still 3 ironing out some glitches." Do you have any 4 recollection of what those glitches were? 5 A I do not. 6 Q Is it possible that Monique Norris misunderstood what 7 was going on with her Liberty Capital loan? 8 MR. BEST: Objection. 9 A I don't know. 10 Q Well, suppose that Monique Norris or any client says 11 that they want their case to be wrapped up quickly -- 12 A Yes. 13 Q -- that they're tired of the case and so they call 14 and tell their KNR attorney that, that they just want 15 to be done, and as the attorney, you might say "Look, 16 we'll try to wrap up your case as soon as we can, but 17 it's going to take a certain amount of time for us to 18 do it right, but we can get you a cash advance that 19 you only have to pay back if and when we recover." 20 MR. BEST: Objection. 21 Q That would happen -- 22 MR. BEST: He never testified to that. 23 He said the opposite. 24 MR. MANNION: Yeah, Monique didn't say 25 that.</p>	<p>1 Q That's something that would happen, correct? 2 MR. MANNION: Objection. 3 A That's nothing that I did. I can't tell you what 4 anybody else did. 5 Q Okay. So let's talk about the firm's relationship 6 with healthcare providers, firm's relationships I 7 should say. You understood that it was the firm's 8 policy to direct clients to treat with certain 9 healthcare providers, correct? 10 MR. BEST: Objection. 11 MR. BARMEN: Objection. 12 MR. MANNION: Objection as well. What 13 do you mean by "direct"? 14 A Yes. 15 Q And how did you come to that understanding? 16 A Well, we were told, I mean, Brandy would tell us who 17 the doctors were that we were to recommend or refer 18 clients to. 19 Q Those were instructions, correct? 20 A Yes. 21 Q They were not suggestions, correct? 22 A Strong suggestions. 23 Q Okay. You understood that unless you had a really 24 good reason, that you were to send the clients to the 25 healthcare providers that Brandy or anyone else in</p>

Page 262	Page 263
<p>1 management would instruct you to do, correct?</p> <p>2 A We were told to make referrals to particular</p> <p>3 providers, and there were some exceptions I think</p> <p>4 that were communicated at one point in time or</p> <p>5 another. Specifically what they were, I don't</p> <p>6 recall. If somebody showed me I could remember it.</p> <p>7 But, yes.</p> <p>8 Q What kind of exceptions?</p> <p>9 A Oh, they already had a chiropractor that they were</p> <p>10 treating with and they liked them, you know, you</p> <p>11 wouldn't tell them to go somewhere else, at least I</p> <p>12 wouldn't. If they absolutely didn't want to see a</p> <p>13 chiropractor, like in Member's case, she didn't need</p> <p>14 a chiropractor, things like that.</p> <p>15 Q Do you believe there's a shortage of doctors and</p> <p>16 chiropractors in the State of Ohio who are willing to</p> <p>17 treat personal injury victims?</p> <p>18 MR. BEST: Objection. He's not an</p> <p>19 expert here.</p> <p>20 MR. MANNION: Objection.</p> <p>21 MR. SKIDMORE: Objection.</p> <p>22 A That's a difficult question. A lot of medical</p> <p>23 providers won't see injured parties. We touched on</p> <p>24 it a little bit earlier.</p> <p>25 Q Well, plenty of them will, right?</p>	<p>1 MR. BEST: Objection.</p> <p>2 MR. MANNION: Objection to "plenty."</p> <p>3 A Yes.</p> <p>4 Q It's not unusual for a client in a personal injury</p> <p>5 case to have their own medical insurance and go see</p> <p>6 their own doctor and be treated by their own doctor,</p> <p>7 correct?</p> <p>8 A It happens, yes, correct.</p> <p>9 Q It's not unusual for it to happen, either, is it?</p> <p>10 A No.</p> <p>11 Q Mr. Nestico testified that most KNR clients did not</p> <p>12 have health insurance. Do you believe that's true?</p> <p>13 MR. MANNION: Objection.</p> <p>14 A My recollection is that we had a lot of Medicaid and</p> <p>15 Medicare patients, a smaller percentage of private</p> <p>16 health insurance patients, and then -- the ratio of</p> <p>17 people who didn't have health insurance I couldn't</p> <p>18 tell you.</p> <p>19 Q It wasn't most of your clients, was it?</p> <p>20 MR. MANNION: Objection. His or the</p> <p>21 firm's?</p> <p>22 MR. PATTAKOS: His.</p> <p>23 A I would say probably not.</p> <p>24 Q What would you estimate, what percentage of your</p> <p>25 clients didn't have health insurance?</p>
Page 264	Page 265
<p>1 A I don't know. I mean, it wasn't a very high</p> <p>2 percentage, but specifically I couldn't tell you.</p> <p>3 Q When you say it wasn't a very high percentage, do you</p> <p>4 mean it was somewhere between 10 and 20?</p> <p>5 MR. SKIDMORE: Objection.</p> <p>6 A That's a guess, yeah.</p> <p>7 Q Was it more like 40?</p> <p>8 A No. A lot of our patients have subsidized health</p> <p>9 insurance, a lot of our clients.</p> <p>10 Q But it was rarely an issue for you because the firm</p> <p>11 worked mostly with providers who would not accept the</p> <p>12 client's health insurance, correct?</p> <p>13 A Can you say that again?</p> <p>14 Q Whether the client had insurance or not wasn't really</p> <p>15 an issue for you, because most of the providers that</p> <p>16 you worked with at KNR did not accept the client's</p> <p>17 health insurance, correct?</p> <p>18 MR. SKIDMORE: Objection.</p> <p>19 A I don't know if they accepted health insurance or</p> <p>20 not. I don't believe that they did. But a lot of</p> <p>21 our clients went to the emergency room and their</p> <p>22 health insurance would be involved on some level.</p> <p>23 Q But then when they went to see, say, Doctor Ghoubrial</p> <p>24 or Doctor Floros, Floros and Ghoubrial never accepted</p> <p>25 their health insurance, correct?</p>	<p>1 MR. SKIDMORE: Objection.</p> <p>2 A I don't believe so.</p> <p>3 Q You don't recall a single instance where that</p> <p>4 happened, do you?</p> <p>5 A I have no recollection of it, but I can't say that it</p> <p>6 didn't happen, either.</p> <p>7 Q Of course. Okay. Let's take a look at some e-mails.</p> <p>8 -----</p> <p>9 (Thereupon, Plaintiffs' Exhibit 8 was</p> <p>10 marked for identification.)</p> <p>11 -----</p> <p>12 Q This is an e-mail from Brandy, June 23, 2014,</p> <p>13 chiropractor referrals, going out to all prelit</p> <p>14 attorneys, importance high. She writes "I have sent</p> <p>15 this e-mail several times. Please pay attention to</p> <p>16 the chiro referral e-mail Sarah or I send out and</p> <p>17 also, the board.</p> <p>18 "Referrals are not up for negotiation. I spend</p> <p>19 a lot of time tracking referrals and working with</p> <p>20 doctors. If you have an issue, please let me know."</p> <p>21 What is your understanding of this e-mail?</p> <p>22 A This was the e-mail that Brandy sent out telling the</p> <p>23 prelit attorneys where to refer patients to, clients.</p> <p>24 Q When she writes "referrals are not up for</p> <p>25 negotiation," do you agree that that was the case at</p>

Page 266

1 the firm?

2 A Yes. Well, with the exceptions that I've mentioned

3 already.

4 Q Where if a client, really, really didn't want to go

5 to a chiropractor, then you would make an exception?

6 A Or had one or the injury didn't warrant it.

7 Q But the default position was to send them to the

8 chiropractors as instructed by Brandy or other firm

9 management, correct?

10 A Yes.

11 Q When Brandy writes "I spend a lot of time tracking

12 referrals and working with doctors," you have no

13 reason to believe that's not true, correct?

14 A Yeah, I don't -- that would be a question for Brandy.

15 Q When you write in your affidavit at paragraph 23 "I

16 did not force a claimant to ever use a specific

17 chiropractor," that doesn't mean you did not

18 routinely direct them to treat with certain

19 chiropractors based on the instructions your KNR

20 supervisors gave you, correct?

21 MR. BEST: Object to form.

22 MR. MANNION: Yeah, I object to form.

23 I'm not sure I understand it, but --

24 A I would never say "You have to treat at this

25 particular doctor. You absolutely have to go here or

Page 268

1 A Yes.

2 Q She says "I just noticed that we've sent two cases to

3 A Plus Accident & Injury Center when these cases

4 could've gone to Shaker, who sends us way more

5 cases." Do you agree this reflects a decision to send

6 cases to a chiropractor because that chiropractor

7 sends the firm more cases?

8 MR. MANNION: Objection.

9 MR. SKIDMORE: Objection.

10 MR. BEST: Objection.

11 MR. MANNION: State of mind of another.

12 A Yeah, I mean, that's -- I mean, Brandy wrote what she

13 wrote, and --

14 Q Do you have any other understanding of why she would

15 have written that, other than "Send cases to this

16 chiropractor because they send us way more cases"?

17 MR. BEST: Objection.

18 MR. MANNION: I'm going to object. He

19 said he didn't read her deposition.

20 A I do not.

21 ----

22 (Thereupon, Plaintiffs' Exhibits 10,

23 11 and 12 were marked for identification.)

24 ----

25 Q So if you look at Exhibit 10, Brandy says "Please

Page 267

1 we're not going to represent you" or whatever. But

2 we would suggest the doctor to the particular person,

3 to the client on the phone. Is that what you're

4 asking?

5 Q Yes.

6 A Yeah.

7 Q Based on --

8 A And who it was was based on e-mails like that.

9 Q From Brandy?

10 A Yes.

11 Q Or other firm managers?

12 A Yes.

13 Q Including sometimes Mr. Nestico, correct?

14 A Possibly. I can't say no, but I can't say yes.

15 Q I'll show you, I'll show you a document.

16 MR. MANNION: Let him finish before you

17 start asking another question.

18 ----

19 (Thereupon, Plaintiffs' Exhibit 9 was

20 marked for identification.)

21 ----

22 Q So Brandy is writing to prelit attorneys on

23 October 17, 2012, "Please make sure you refer intakes

24 there," and the subject line is Shaker Square.

25 That's a chiropractor's office, right?

Page 269

1 do not --" I'm sorry, the subject is A Plus Injury.

2 That's a chiropractic clinic, right?

3 A I believe so, yep.

4 Q She writes "Please do not send any more clients there

5 this month. We are six to one on referrals." What

6 do you take that to mean?

7 MR. SKIDMORE: Objection.

8 MR. BEST: Objection.

9 Q What was your understanding of this e-mail?

10 MR. BEST: Objection.

11 MR. MANNION: Objection.

12 A We were to send cases over to A Plus Injury Center.

13 They had sent us six cases and we had -- or, no. We

14 had sent them six cases and they had sent one back.

15 Q Therefore, you're not going to send another one there

16 this month, correct?

17 MR. PATTAKOS: Objection.

18 MR. MANNION: Objection.

19 A Per Brandy's instruction we were to send the cases --

20 no more cases to A Plus for the month, correct.

21 Q Okay. And on the next e-mail, Number 11, she writes

22 "Please make sure you're paying attention to your

23 referral board in your office. We sent five cases to

24 Warrensville Physical Medicine last week. We need to

25 get some cases to A Plus Injury since they sent us 10

Page 270	Page 271
<p>1 cases last month and Warrensville Physical Medicine 2 hasn't sent us any cases in 2013," exclamation mark, 3 exclamation mark, exclamation mark. Is there any 4 other reason that she is telling you -- do you 5 understand any other reason from this e-mail to send 6 clients to A Plus Injury and not to Warrensville, 7 other than that Warrensville hadn't sent the firm any 8 cases in 2013? 9 MR. BEST: Objection to what she's 10 thinking. 11 MR. MANNION: Objection to form, yeah. 12 A Yeah, I can't -- from what she says, I can't -- I 13 don't know what's in her head. I'm sorry, I could 14 not see a reason -- say that one more time. 15 Q Well, let me rephrase it. Is there any other reason 16 that you're aware of, based on your experience 17 working at KNR, that she is telling you to not send 18 cases to Warrensville, other than that they hadn't 19 sent you any cases in 2013 and A Plus had sent more? 20 MR. MANNION: Objection to form. 21 MR. BEST: Objection to what she's 22 thinking, he doesn't have a clue. 23 A Other than what's in this e-mail I can't tell you, 24 no. 25 Q You're not aware of any other reason that she was</p>	<p>1 telling you to do this, are you? 2 MR. BEST: Objection. 3 MR. MANNION: Objection. 4 A No. I mean -- 5 MR. BEST: Objection. 6 Q Any other facts that would go into her reason for 7 sending this e-mail? 8 MR. BEST: Objection to what she's 9 thinking. 10 MR. SKIDMORE: Objection. 11 A Not that I can -- I have no specific recollection of 12 it and I don't -- I can't speculate. 13 Q If these guys aren't going to stop with their 14 speaking objections, I just want to make a request on 15 the record to not listen to these speaking 16 objections. 17 A Yes. 18 MR. PATTAKOS: It's so inappropriate. 19 You guys are now on the record about a 20 hundred times more than I was while you asked 21 your questions. 22 MR. MANNION: I just said objection. 23 MR. PATTAKOS: I maybe made two 24 objections the entire time. 25 MR. MANNION: Because we talked about</p>
Page 272	Page 273
<p>1 facts. 2 MR. PATTAKOS: What you guys are doing 3 is inappropriate. 4 MR. MANNION: Facts. 5 MR. PATTAKOS: No, you're trying to 6 obstruct. 7 MR. MANNION: Facts. 8 MR. PATTAKOS: It is so inappropriate. 9 MR. MANNION: Did anybody say anything 10 other than objection? 11 Q So please just ignore these guys. 12 MR. SKIDMORE: Come on, let's go. 13 MR. MANNION: You can't tell the witness 14 that. You can't instruct him. 15 Q Okay. Now, we see the third e-mail, Number 12. You 16 are -- you sent this e-mail, correct? 17 A Possibly. 18 Q You provided me this e-mail. I'm going to represent 19 to you that you provided me this e-mail -- 20 A Oh, yeah; yeah. Yeah; yeah. 21 Q -- with the subject line redacted. 22 A Yep. 23 Q Do you recall doing that? 24 A I do. 25 Q Do you recall redacting your name from a bunch of</p>	<p>1 e-mails that you provided me? 2 A I do. 3 Q And why did you do that? 4 A Because I didn't want to get sued. 5 Q You were scared, right? 6 A Yeah. 7 Q So you sent the e-mail about a client, and you 8 probably also redacted a client's name from this, 9 correct? 10 A I would assume so. 11 Q Two clients it looks like, or at least two, because 12 you write "Web referrals. They live 20 minutes from 13 Cain Chiro, Ken's friend, and 30 minutes from ASC or 14 West Tusc. Holly indicated they should go to ASC, is 15 that correct, or do we want to send them to somebody 16 else closer to them?" 17 Brandy responds "ASC if you can. I already told 18 Minas. Plus Cain doesn't send us shit." What's your 19 understanding of this e-mail? 20 MR. BEST: Objection. 21 MR. MANNION: Objection. 22 A I can tell you my understanding is I was asking to 23 send this guy to a chiro that was presumably closer 24 to his house, and there's a chiro that Ken knew, I 25 don't remember his name or even where he was.</p>

Page 274

1 Q And then what?

2 A It looks like I talked to Holly about it at some

3 point and then asked Brandy what to do.

4 Q Well, do you remember why the client was supposed to

5 go to ASC?

6 A No. I mean, because that's what they said, but I

7 mean, a reason beyond that I can't tell you.

8 -----

9 (Thereupon, Plaintiffs' Exhibit 13 was

10 marked for identification.)

11 -----

12 Q Okay. Here we go. Brandy writes here to prelit

13 attorneys, copying Holly Tusko and Kevin Thompson,

14 "Twice in the past week I've learned that ASC has

15 roped in companions from our referrals. You must

16 indicate if there are companions on the intake and

17 you must try to rope them in. Obviously you cannot

18 call them, but we don't have this problem with Paul

19 or our Columbus attorneys as they do a great job with

20 this. This is a big problem in Akron." What's your

21 understanding of this e-mail?

22 MR. BEST: Objection.

23 MR. MANNION: Objection.

24 A That we -- so we probably -- we sent people over to

25 Akron Square, and there were other people involved in

Page 276

1 under these two particular circumstances, or

2 companion -- yeah, "Twice in the past week --" this

3 is, listen, it's about picking up the case. If I was

4 talking to a driver, and they said, you know, "John

5 was in the passenger seat next to me," we were to say

6 "Hey, can I talk -- or, have John call us" or

7 whatever to try and get them in as a client, to

8 represent them. I mean, it's getting everybody

9 involved in the accident.

10 Q So you can't tell from reading this e-mail whether or

11 not that companion that was roped in, or I guess this

12 happened twice, so these companions that were roped

13 in ended up retaining KNR?

14 A I cannot.

15 Q So it could have happened?

16 A We could have represented those people?

17 Q Yes.

18 A I can't say one way or the other.

19 Q Okay. Did anyone at KNR ever communicate to you that

20 the purpose of managing the referrals in this way was

21 to spread referrals out evenly to make sure that too

22 many weren't going to one doctor?

23 A Not to my recollection.

24 Q Do you recall any discussion at all about managing

25 referrals to make sure they're spread out evenly?

Page 275

1 the accident with them that we did not get signed up.

2 Q Well, what does it mean when she says "ASC has roped

3 in companions from our referrals." They were still

4 with the firm, correct?

5 A No; no. No; no. So we sent -- driver A was in a

6 car, and we would say let's send driver A to Akron

7 Square. Passenger B was also in the car, and either

8 we don't know or something, I mean, I have no idea,

9 and, again, complete -- presumably A went to Akron

10 Square and took B with him or something like that, I

11 don't know, and then so a companion of the two people

12 in the car together, so Akron Square would have

13 signed up the other person in the car. Does that

14 make sense?

15 Q Signed them up to what?

16 A No; no. Like as a patient.

17 Q And also signed them up with the KNR firm?

18 MR. MANNION: Objection.

19 A No; no. Akron Square didn't sign clients up for us.

20 Q Okay. But the investigator would go to Akron Square

21 to sign up the clients when Akron Square would call

22 and a client was there, correct?

23 MR. MANNION: Objection. You're missing

24 a little step there, Peter, and you know it.

25 A No. The investigator -- again, I can't speculate

Page 277

1 A We didn't -- the attorneys didn't generally discuss

2 the management of referrals.

3 -----

4 (Thereupon, Plaintiffs' Exhibit 14 was

5 marked for identification.)

6 -----

7 Q An e-mail from Attorney Nestico to Brandy, that

8 Brandy then forwarded to the staff, it says "Please

9 make sure to refer all Akron cases to ASC this month.

10 We are 30 to zero." What do you understand this to

11 mean, "We are 30 to zero"?

12 MR. MANNION: Objection.

13 MR. BEST: Objection. He's not a

14 manager of the law firm for crying out loud.

15 A It would be a speculation, but --

16 MR. BEST: Objection.

17 MR. MANNION: Objection, speculation.

18 Stop it, Peter. Stop that. I'm serious.

19 Don't do that again.

20 A We were to refer all Akron cases to Akron Square for

21 the month, we are 30 and 0, a ratio.

22 Q Of what?

23 A Presumably referrals.

24 Q What does it mean to say "We are 30-0"?

25 MR. BEST: Objection.

Page 278	Page 279
<p>1 MR. MANNION: And I'm going to object 2 again on the ratio. 3 A Yeah. I mean -- 4 Q Well, you received this e-mail, didn't you? 5 A Yes. 6 MR. MANNION: He said it's speculation, 7 Peter. 8 A If I'm on staff I got the e-mail. 9 Q Yeah. So -- 10 A We were -- Rob was telling us to refer all cases to 11 Akron Square. 12 Q And why? 13 MR. BEST: Objection. 14 MR. MANNION: Yeah. 15 Q You have no understanding of what "We are 30-0" 16 means? 17 MR. MANNION: You asked two different 18 questions there. 19 A It appears to be a ratio of referrals. 20 Q That the firm had sent 30 -- that the firm -- that 21 Akron Square had sent 30 cases to KNR, and KNR had 22 not sent any to Akron Square? 23 A Yes, is what it appears. 24 Q And when he writes "Also, any time you refer a 25 patient to any chiro, have your assistant follow up</p>	<p>1 and make sure they go on obviously cases that are 2 signed up outside of chiro office." 3 MR. MANNION: Objection. 4 Q What does that mean to you? 5 MR. MANNION: Objection. You missed a 6 period in there and you know it. 7 A So if we, if we -- "any time you refer a patient to 8 any chiro," so if we refer a client to go see 9 somebody, make sure that they went, make sure they 10 got their appointment and went, and then it's for 11 cases that signed up outside of the chiro's office. 12 Q So -- 13 A Because clearly if they're at the chiropractor, then 14 we don't need to make sure they're there. 15 Q I see. So that happened -- that was a common 16 occurrence for cases to be signed up at the chiro's 17 office? 18 MR. MANNION: Objection. 19 MR. BEST: Objection. 20 MR. SKIDMORE: Objection. 21 A Yes. 22 Q What percentage of your cases signed at the chiro's 23 office would you estimate? 24 A I don't know. 25 Q A third?</p>
Page 280	Page 281
<p>1 A Fifty-fifty, a third, maybe. I don't know. 2 Q Okay. Fifty-fifty, could be 50 percent? 3 MR. POPSON: I thought he said "I don't 4 know." 5 A Yeah, I mean, that's a number I can't give you a 6 specific on, but it would be easy to figure out. 7 Q How would it be easy to figure out? 8 A They kept track of it. 9 Q In Needles? 10 A Yeah. 11 Q When Mr. Nestico sent this e-mail, 2012, telling you 12 to refer all Akron cases to ASC, you had been at the 13 firm approximately eight months or so, you said you 14 started in early 2012, how many different 15 chiropractors in the Akron area was the firm sending 16 patients to, or sending clients to at that time? 17 A Akron proper, or like -- 18 Q Akron area cases. 19 A Ten-ish, 12, maybe. I don't know. 20 Q Okay. So there were about 10 or 12 other 21 chiropractors that the firm worked with in the Akron 22 area at this time? 23 A Ones that I knew of. 24 Q Well, when Mr. Nestico writes "Make sure to refer all 25 Akron cases to ASC," what does that mean to you, "all</p>	<p>1 Akron cases"? Does that mean within the Akron city 2 limits, or does that mean Akron area? 3 MR. MANNION: Objection. 4 A I don't know. I couldn't tell you. I guess define 5 Akron. I mean, city limits or not, I don't know. I 6 didn't look at it like that, I guess. 7 Q How did you look at it? 8 A Akron, I mean, is Fairlawn Akron? I guess 9 technically maybe, but maybe not. I don't know. 10 Q So I mean, if you had a client in Wadsworth, would 11 you understand to send them to ASC from this e-mail? 12 A No, I don't think so. 13 Q Okay. So you read this e-mail, like is -- you're 14 following this instruction that's being given to you 15 from the owner of the firm, he writes "Refer all 16 Akron cases to ASC" -- 17 MR. MANNION: I'm going to object. He 18 did not send this to him. 19 Q -- you are only going to send Akron city limits 20 patients to Akron Square? I'm just trying to 21 understand -- 22 A No, it's not necessarily defined by city limits, but 23 I mean, you use, you use your judgment, I guess. 24 Q Okay. 25 A Is Godadore Akron? I don't know. I don't know if</p>

Page 282

1 there's a chiropractor out in Mogadore that treats
 2 anybody or not. But I don't know.
 3 Q Basically he wants you to get cases to Floros,
 4 correct?
 5 MR. MANNION: Objection.
 6 MR. SKIDMORE: Objection.
 7 A Akron cases to be referred to Akron Square.
 8 Q Okay.
 9 ----
 10 (Thereupon, Plaintiffs' Exhibit 15 was
 11 marked for identification.)
 12 ----
 13 Q This is an e-mail from Brandy, March 12, 2013, with a
 14 subject chiropractor referrals, to all prelit
 15 attorneys, copying Mr. Nestico, saying "Please make
 16 sure you are calling the chiro and scheduling the
 17 appointment. This has been discussed before." You
 18 testified earlier that "If the client had a soft
 19 tissue injury, we were supposed to send them to a
 20 chiropractor." Why was that?
 21 A For treatment. I mean, generally chiropractors are
 22 the people that treat soft tissue injuries for the
 23 most part.
 24 Q And why is that?
 25 A I don't know. That's just what they do.

Page 284

1 a chiropractor we do not work with, either pull it
 2 and send to one of our doctors or call the
 3 chiropractor directly. You must do this on all
 4 intakes, otherwise the chiropractor will pull and
 5 send to one of their attorneys!" What was your
 6 understanding of this e-mail?
 7 MR. MANNION: Objection to her state of
 8 mind.
 9 A Well, it's she was instructing us to pull the client
 10 from who they were treating with and send to -- send
 11 it to somebody -- one of our doctors, I don't know if
 12 you want to say "our doctors," but send it to a
 13 chiropractor you knew, or call the chiropractor
 14 directly.
 15 Q What were -- what does it mean to say "pull"?
 16 MR. SKIDMORE: Objection. What did she
 17 mean by "pull"? What is the question?
 18 MR. PATTAKOS: What does he understand
 19 "pull it" to mean.
 20 A Get him to change doctors.
 21 Q Why did she want you to do that? Did you ever have
 22 any understanding of that?
 23 MR. MANNION: Objection.
 24 A It looks -- it would have to -- a better answer would
 25 be from Brandy, but from the e-mail, she did not want

Page 283

1 Q Because doctors won't treat them?
 2 MR. SKIDMORE: Objection.
 3 A No. Doctors, like a primary care doctor, can make a
 4 diagnosis, make a recommendation for treatment and do
 5 particular things for a patient, prescribe the
 6 medicine, whatever a primary care doctor does. You
 7 got a fever, you go to the primary care doctor. He
 8 diagnoses you and, you know, gives you an antibiotic,
 9 or he says -- or, you know, my knee is bothering me,
 10 "Oh, you probably have some sort of inflammation, go
 11 see an orthopedist" or whatever the case may be. I
 12 hope that's a good way to put it.
 13 I lost my train of thought.
 14 The doctor could make a referral to the
 15 chiropractor, but the chiropractor can also just see
 16 the patient if they have got a soft tissue injury and
 17 then do what the chiropractor does. They provide
 18 treatment for the soft tissue injury. I don't know.
 19 ----
 20 (Thereupon, Plaintiffs' Exhibit 16 was
 21 marked for identification.)
 22 ----
 23 Q Brandy writes to all attorneys in this e-mail on
 24 March 26, 2013, with high importance, "If you do an
 25 intake and the person already has an appointment with

Page 285

1 to lose the case.
 2 Q Because she believed that a chiropractor will --
 3 another chiropractor that isn't one that this firm
 4 works with will pull the case and send to another
 5 attorney?
 6 A That's what she wrote, yeah.
 7 MR. MANNION: Objection.
 8 Q And you're understanding that based on what she wrote
 9 here?
 10 MR. MANNION: Objection.
 11 A Correct.
 12 Q Okay. What would, what would calling the
 13 chiropractor directly accomplish?
 14 A Introduce yourself, let them know that you're
 15 representing that person and to send over anything
 16 that they needed, a letter of protection or, you
 17 know, eventually medical records and whatnot.
 18 Q Okay.
 19 ----
 20 (Thereupon, Plaintiffs' Exhibit 17 was
 21 marked for identification.)
 22 ----
 23 Q This is Brandy e-mailing you and Jenna Wiley. Is
 24 Jenna your paralegal?
 25 A Yeah, probably.

Page 286	Page 287
<p>1 Q She was a prelit paralegal that handled all your 2 cases? 3 A For a period of time, yes. 4 Q For a period of time. Okay. And it looks like the 5 client's name is redacted here? 6 A Yes. 7 Q And this is marked high importance, and she says "The 8 client only went to ASC one time. Please call ASAP 9 and get back in for treatment. Can treat with PCP 10 and chiro. Explain that Minas does PT as well. This 11 cannot keep happening, guys. Please stay up to date 12 on all new cases. It is a critical time in the case, 13 the most important part of the case." Why, why is it 14 bad if the client only went to the chiropractor once? 15 A Well, it means one of two things; they only needed to 16 go once, or they only went once and have not 17 continued, but are still injured and need to go back. 18 And I mean, if they only go once, they only go once, 19 but -- I think we touched on it a little bit earlier 20 about gaps, gaps in treatment from insurance, they 21 devalue cases based on your gaps in your treatment, 22 and you can -- you only -- your case is only as good 23 as the evidence you can provide, I guess. 24 So if they're not going to the doctor for two 25 weeks, the insurance company is going to say "Well,</p>	<p>1 they couldn't have been hurt, they didn't see anybody 2 for this two week gap." So making sure that, you 3 know, the clients understand "Listen, if you're still 4 injured, you need to go see somebody. Keep up on it, 5 because that's the evidence we use in your case." I 6 don't know if that makes sense. 7 Q Sure. But how do you know if the client didn't feel 8 better at that point? 9 A I can't tell you. Based on this e-mail I can't say. 10 Q There's nothing here that suggests that wasn't the 11 case, is there? 12 MR. MANNION: Objection. 13 A I can't say either way. 14 ---- 15 (Thereupon, Plaintiffs' Exhibit 18 was 16 marked for identification.) 17 ---- 18 Q This is another e-mail that you provided me that you 19 redacted yourself, correct? 20 A Probably. 21 Q And so you're the attorney that Brandy is e-mailing 22 here, actually it looks like you wrote the e-mail on 23 December 18th, correct? 24 A Yes, it appears so. 25 Q And it's about a client who signed up yesterday,</p>
<p>Page 288</p> <p>1 around noon, while at ASC. This is missing a page. 2 I'll have the other page. Well, I can represent to 3 you what it says. Brandy writes "Why didn't --" 4 okay. You say "Signed up yesterday around noon while 5 at ASC. Client called this morning and said that he 6 does not need the services of an attorney. Tried to 7 explain the complicating factor of having a 8 government entity involved, immunity, et cetera. 9 Said that he does not need representation, but will 10 recommend us to others in the future." 11 Brandy writes "Why didn't you call him yesterday 12 after Manos text you and asked you to call because 13 the guy was hesitant?" 14 You responded, and I guess I'm just going to 15 have to read this to you unless Tom wants to get the 16 e-mail printed out, but you write "I didn't think 17 anything of it. My feeling on it is that if they are 18 hesitant but have already signed up, they can't be 19 that hesitant about it and I do not want to annoy 20 them before they get comfortable. I thought that the 21 conversation I had with him initially was a good 22 conversation, informative, cautionary, et cetera, and 23 we ended it well. And Floros was being overly 24 cautious because the guy was a seemingly educated 25 individual who maybe didn't buy into his normal</p>	<p>Page 289</p> <p>1 bullshit." 2 Nestico responds "No, wrong. He helps talk to 3 them, but they need constant reassurance. Wrong 4 decision." Do you recall this? 5 A No. 6 Q Do you recall anything about it? 7 A No, I mean, other than -- I mean, my name is on it, 8 yes. I don't recall the specific circumstances. 9 Q Well, what does it mean about the guy being a 10 seemingly educated individual who doesn't buy into 11 Floros' normal bullshit? 12 A Probably that he was a moderately educated guy that 13 thought he could maybe handle a personal injury case 14 on his own, which is never a good idea, because a lot 15 of people think that, and then they call us when 16 they've tried and then they can't, so possibly that. 17 Q You don't think it's ever possible for a person to 18 settle a soft tissue case for a good settlement? 19 MR. MANNION: Objection. That's not 20 what he said. 21 A I don't think it's a good idea. 22 Q But you don't think it's impossible, do you? 23 MR. MANNION: Objection. 24 A I mean, you can settle your case for anything you 25 want to, but doing it the right way -- it's not</p>

Page 290

1 advisable. Every day of the week I think somebody,
 2 especially with a soft tissue case, should have
 3 counsel.
 4 Q Was this common, for Floros to communicate with you
 5 guys when a client was hesitant to sign up with the
 6 firm?
 7 MR. MANNION: Objection. I'm going to
 8 object. You mischaracterized. He already
 9 signed up.
 10 Q Well, here Nestico says -- or, I'm sorry, I'm reading
 11 right here, "Why didn't you call him yesterday after
 12 Minas text you and asked you to call because the guy
 13 was hesitant?"
 14 MR. MANNION: It says "Signed up
 15 yesterday." Don't mischaracterize.
 16 Q Then it said "Client called this morning and said
 17 that he does not need the services of an attorney."
 18 Is it normal for Doctor --
 19 MR. MANNION: That's still
 20 mischaracterizing.
 21 Q Was it normal for Doctor Floros to text you guys
 22 about stuff like this?
 23 A The attorneys?
 24 Q Yes.
 25 A I maybe got a handful of text messages from Floros

Page 292

1 family doc and PT." Do you remember this?
 2 A Vaguely.
 3 Q What do you remember about it?
 4 A I don't know who the person was. A friend of
 5 Brandy's, maybe.
 6 Q Um-um.
 7 A It says "My referral." It's a person that -- it's
 8 somebody whose case I handled who was an acquaintance
 9 or somebody Brandy sent over or something.
 10 Q So what does that mean to you, "Since she is a nurse
 11 she may not want chiro, she may want family doc and
 12 PT"? Why would a nurse want that, as opposed to any
 13 of the other clients?
 14 MR. MANNION: Well, he didn't write
 15 this. Objection.
 16 A I don't know. A lot of -- well, not "a lot of"
 17 people. Some people have problems with
 18 chiropractors. Why her specifically, why she said
 19 "as a nurse," I don't know.
 20 Q And "PT" means physical therapy?
 21 A Yes.
 22 Q But the chiropractors do PT as well, right?
 23 A Some of them do, yeah.
 24 Q Floros does, correct?
 25 A I can't tell you for certain.

Page 291

1 over the years, maybe a handful.
 2 Q So he would actively participate in your efforts to
 3 keep the firm retained, correct?
 4 MR. MANNION: Objection.
 5 Q Or to keep the client retained, correct?
 6 MR. MANNION: Objection.
 7 MR. SKIDMORE: Objection.
 8 A I can't tell you that he did with me, but if he did
 9 with, like, anybody else, I --
 10 Q That's what's happening here, isn't it?
 11 MR. MANNION: Objection. He just said
 12 it didn't happen with him. He just said.
 13 A With the exception, you know, I said that Floros
 14 maybe texted me a handful of times over the three
 15 years I was there. I don't specifically recall him
 16 texting me even on this particular occasion. Whether
 17 he texted me or somebody else and then somebody else
 18 told me, I don't know.
 19 - - - -
 20 (Thereupon, Plaintiffs' Exhibit 19 was
 21 marked for identification.)
 22 - - - -
 23 Q Here Brandy's e-mailing you, subject "My referral.
 24 Since she is a nurse, she may not want chiro. Feel
 25 her out for that before you refer. She may want

Page 293

1 Q I think if we look back at one of these e-mails it
 2 says specifically Brandy says that he does.
 3 MR. SKIDMORE: That's nice, but he's
 4 testifying he doesn't know for certain, so --
 5 MR. PATTAKOS: I can refresh his
 6 recollection.
 7 MR. SKIDMORE: Based on something that
 8 Brandy said?
 9 MR. PATTAKOS: Based on an e-mail that
 10 he received.
 11 MR. BEST: What difference does it make?
 12 MR. PATTAKOS: See, look at Exhibit
 13 17 --
 14 MR. MANNION: I'm lost as to how this
 15 e-mail has any bearing on this case.
 16 MR. BEST: It doesn't.
 17 Q Let's look at Exhibit 17. "Explain that Minas does
 18 PT as well." She's telling you to explain that. So
 19 why wouldn't she be telling you here to just send
 20 the -- send this friend of hers who's a nurse to
 21 Minas for PT?
 22 MR. MANNION: Objection as to why Brandy
 23 would or wouldn't say something. I can't
 24 wait to hear this one.
 25 A I don't know. I mean, I don't know what level of

Page 294	Page 295
1 physical therapy Floros does. I don't know. I don't	1 So not too terribly far away, but there's areas where
2 know where this -- again, I don't know where this	2 people just don't practice it and they won't take
3 person was.	3 personal injury cases, you know.
4 Q Okay.	4 Q You don't recall that this person was from one of
5 A She might not have been in Akron. I don't know.	5 those areas, though, do you?
6 Q There are chiropractors all over the place. So there	6 A I don't know where this person was from.
7 was never --	7 Q Okay.
8 A Um-um.	8 MR. MANNION: And you can't prove she
9 Q Yes?	9 wasn't, that's the next one.
10 A Yes. I'm sorry. Yes.	10 Q So you would regularly get e-mails about red bag
11 Q There was no area where you would take in clients	11 referrals, do you recall?
12 that you didn't have a chiropractor that you would	12 A Yes.
13 refer them to, was there?	13 Q And that all of these red bag referrals were supposed
14 MR. MANNION: I'm going to object,	14 to go to a particular chiro in a particular area?
15 because I don't know if you mean "you" or	15 A Yes.
16 KNR.	16 Q What do you recall about why that was the case?
17 MR. PATAKOS: KNR.	17 A That's just what we were told.
18 MR. MANNION: Okay.	18 Q It's just what you were told to do?
19 A There were some spots where there weren't a lot of	19 A Yes.
20 people, outlier areas.	20 Q Did you ever -- do you remember anything else about
21 Q Sure. Like where?	21 it?
22 MR. MANNION: He smiles like he got him.	22 A No. They were just adamant about it. I mean, it was
23 A Like, not rural areas, but -- I don't know -- like	23 a constant reminder.
24 even up towards, like, Bath, like I don't think there	24 Q And you never asked why?
25 are a lot of guys out in Bath that do injury work.	25 A No.
Page 296	Page 297
1 Q And no one ever told you why?	1 A The doctor's office.
2 A No.	2 Q The doctor's office, okay. How often would this
3 Q You understood that the chiropractors, including	3 happen?
4 Doctor Floros, work with telemarketers, correct?	4 A Well, I mean, specifically how often, like I don't --
5 A Yes.	5 a lot. I mean, we got --
6 Q And that the telemarketers would call the clients?	6 Q On roughly a third to half of the cases?
7 A Yes.	7 A I mean, we got a lot of referrals from doctors'
8 Q What else do you understand about this process?	8 offices for sure.
9 A That's it, that telemarketers would call and solicit	9 Q Did you understand that Doctor Floros would keep
10 clients.	10 copies of the KNR fee agreements at his office?
11 Q Well, Thiera Reid, who's a named Plaintiff, and Naomi	11 MR. MANNION: Objection.
12 Wright, who was formerly a Plaintiff in this case,	12 A I don't know if I knew that or not.
13 have said that they were contacted by a	13 MR. MANNION: And I'm going to object.
14 chiropractor's office, Doctor Floros, who sent a car	14 Don't take it as fact just because he says
15 to pick them up, and then connected them with a KNR	15 it.
16 attorney and put them on the phone with a KNR	16 Q Now is a good time for a break. Let's take one.
17 attorney. Is this consistent with your experience?	17 A It doesn't matter to me.
18 MR. MANNION: Objection. It's a broad	18 THE VIDEOGRAPHER: We're off the record.
19 generalization, but go ahead.	19 4:53.
20 A Other than connecting them with the KNR attorney, the	20 - - - -
21 things that led up to that, I can't tell you.	21 (Thereupon, a recess was had.)
22 Q Well, how did it work that they would connect the	22 - - - -
23 clients with a KNR attorney?	23 THE VIDEOGRAPHER: We're back on the
24 A They would call us.	24 record. 5:11.
25 Q Who would call you?	25 Q Let's talk about narrative reports.

<p style="text-align: right;">Page 298</p> <p>1 A Sure.</p> <p>2 Q Do you recall that when you were at KNR, you were</p> <p>3 directed for clients who treat with certain</p> <p>4 chiropractors to automatically order a narrative</p> <p>5 report from those chiropractors summarizing the</p> <p>6 client's injuries and treatment?</p> <p>7 MR. MANNION: Objection.</p> <p>8 A Rephrase. Say that one more time. Sorry.</p> <p>9 Q Do you recall that while you were at KNR, you were</p> <p>10 required to automatically order a narrative report</p> <p>11 from certain chiropractors summarizing the client's</p> <p>12 injuries and treatment?</p> <p>13 A Yes.</p> <p>14 Q What do you remember about that?</p> <p>15 A There were just a list of doctors where it was just</p> <p>16 standard practice on the cases that we would get</p> <p>17 narrative reports with their medical records or at</p> <p>18 some point in time from them.</p> <p>19 Q Do you know why this was the policy for certain</p> <p>20 doctors and not others?</p> <p>21 A No.</p> <p>22 Q So like when Brandy sends an e-mail that says these</p> <p>23 are the only narrative fees that get paid, and then</p> <p>24 lists a series of chiropractors and instructions for</p> <p>25 payment of the narrative fees, you have no</p>	<p style="text-align: right;">Page 299</p> <p>1 understanding of why those particular chiropractors</p> <p>2 were identified?</p> <p>3 MR. MANNION: Objection. Completely</p> <p>4 mischaracterizes. I'd ask you to show him</p> <p>5 the e-mail at least.</p> <p>6 A Yeah, can I look at it? Do you have it by chance?</p> <p>7 Q Sure.</p> <p>8 -----</p> <p>9 (Thereupon, Plaintiffs' Exhibit 20 was</p> <p>10 marked for identification.)</p> <p>11 -----</p> <p>12 Q For example --</p> <p>13 A Yes.</p> <p>14 Q -- Exhibit 20, Brandy sending out, subject line</p> <p>15 Plambeck clinics, "These are the only narrative fees</p> <p>16 that get paid in addition to Doctor Alex Frantzis</p> <p>17 with NorthCoast Rehab, \$200, not Plambeck," and then</p> <p>18 there's a list of 14 chiropractors from 13 different</p> <p>19 clinics, and then another list beneath of</p> <p>20 chiropractors that -- I don't know what -- well, I'm</p> <p>21 sorry, never mind, those are I think the same</p> <p>22 chiropractors, but just specific payment</p> <p>23 instructions. Do you -- does this refresh your</p> <p>24 recollection at all?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 300</p> <p>1 Q Okay. How so?</p> <p>2 A These are the -- these particular doctors are the</p> <p>3 ones where it would be requested, I mean,</p> <p>4 automatically.</p> <p>5 Q And -- but you never understood why?</p> <p>6 A No.</p> <p>7 Q Okay. Do you have any idea why Brandy would</p> <p>8 distinguish between Plambeck clinics and not Plambeck</p> <p>9 clinics?</p> <p>10 MR. BEST: Objection.</p> <p>11 MR. MANNION: Objection as to Brandy's</p> <p>12 motives.</p> <p>13 MR. SKIDMORE: Objection.</p> <p>14 A I do not.</p> <p>15 Q When you say that these narrative fees were to be</p> <p>16 paid automatically, did you believe it was in your</p> <p>17 discretion as to whether to order the narrative</p> <p>18 fees -- the narrative reports or not?</p> <p>19 MR. MANNION: Objection.</p> <p>20 A No.</p> <p>21 Q No, it was not?</p> <p>22 A Not, yeah.</p> <p>23 Q So this wasn't a suggestion, this was an instruction,</p> <p>24 correct?</p> <p>25 A I would say an instruction, yes.</p>	<p style="text-align: right;">Page 301</p> <p>1 Q Okay.</p> <p>2 -----</p> <p>3 (Thereupon, Plaintiffs' Exhibit 21 was</p> <p>4 marked for identification.)</p> <p>5 -----</p> <p>6 Q Okay. This is an e-mail that was produced to me as</p> <p>7 part of a firm handbook or employment manual. Does</p> <p>8 that look right to you?</p> <p>9 A If it was in a manual, I never -- I mean, I don't</p> <p>10 know. I can't tell you one way or the other whether</p> <p>11 it was.</p> <p>12 Q Did you ever look at the manual?</p> <p>13 A No.</p> <p>14 Q Okay. Were you given manuals?</p> <p>15 A I think so at one point.</p> <p>16 Q Okay. Well, when this says, up at the top, "Those</p> <p>17 highlighted are the only narrative fees that get paid</p> <p>18 automatically --"</p> <p>19 MR. MANNION: I don't think you finished</p> <p>20 there.</p> <p>21 Q "-- with the amount indicated to the doctor</p> <p>22 personally. All doctors are in Needles." What did</p> <p>23 this mean to you, "get paid automatically"?</p> <p>24 MR. MANNION: Automatically to the</p> <p>25 doctor, Peter. Read it correctly.</p>

Page 302	Page 303
<p>1 Q What does this mean to you, Rob?</p> <p>2 A It's -- I don't know. I mean, I've never seen this.</p> <p>3 Those highlighted -- "Those highlighted are the only</p> <p>4 narrative fees that get paid automatically to the</p> <p>5 doctor personally." Well, the list is the same, I</p> <p>6 think.</p> <p>7 Q More or less the same at least?</p> <p>8 A Yeah, it looks like some of the names are changed,</p> <p>9 but it's the same clinics.</p> <p>10 I mean, it appears to be the same list for the</p> <p>11 most part that's on this e-mail, and there are</p> <p>12 clinics that the narrative fees were just requested,</p> <p>13 I mean, they were just part of the handling of the</p> <p>14 case.</p> <p>15 Q Okay. And the fee was paid automatically, too,</p> <p>16 correct?</p> <p>17 MR. MANNION: Objection. To the doctor</p> <p>18 personally. Please read it correctly.</p> <p>19 A I'm sorry, say the -- the fee was paid automatically?</p> <p>20 Q Yes.</p> <p>21 A I mean, the doctors were paid for their narrative</p> <p>22 reports. It ended up being a case expense I think,</p> <p>23 if that's what you're asking.</p> <p>24 Q Okay. So when -- it was your understanding that when</p> <p>25 a case was with any of these doctors, you were going</p>	<p>1 to get a narrative report, and when the case settled,</p> <p>2 the client was going to be charged for that narrative</p> <p>3 report, correct?</p> <p>4 MR. MANNION: I'm going to object. He</p> <p>5 said he didn't read this.</p> <p>6 A As it relates to -- I mean, they're the same thing,</p> <p>7 but as it relates to what was apparently in the</p> <p>8 handbook, when the case resolved, if there was a</p> <p>9 narrative fee on there, it would be a case expense.</p> <p>10 Is that what you're asking?</p> <p>11 Q Yes.</p> <p>12 A Yes.</p> <p>13 Q Well, and the narrative report would be requested</p> <p>14 automatically if the case was with one of these</p> <p>15 chiros, correct?</p> <p>16 MR. MANNION: Objection.</p> <p>17 A Yes.</p> <p>18 Q And then if the report was requested and provided,</p> <p>19 the fee would be paid, correct?</p> <p>20 A Yes. I don't know the sequence of events, when it</p> <p>21 got paid or how it got paid. It was just it ended up</p> <p>22 being a case expense.</p> <p>23 Q But it was the request for the report and the payment</p> <p>24 that all happened automatically if the client was</p> <p>25 with these certain chiropractors, correct?</p>
<p>Page 304</p> <p>1 MR. MANNION: Objection.</p> <p>2 A Yes.</p> <p>3 Q Okay. And the firm's instructions to you attorneys</p> <p>4 as to which chiropractors got this treatment changed</p> <p>5 regularly, correct?</p> <p>6 MR. MANNION: Objection.</p> <p>7 A What do you mean "treatment"?</p> <p>8 Q Got automatic narrative reports ordered.</p> <p>9 A I don't recall a lot of change.</p> <p>10 Q Okay.</p> <p>11 A I can't say one way or the other.</p> <p>12 You did say they changed regularly, right?</p> <p>13 Q I'm asking you. Do you recall that they changed</p> <p>14 regularly? You would receive, you would receive</p> <p>15 instructions regularly that "Okay. We're paying</p> <p>16 narrative fees to this chiropractor now"?</p> <p>17 A No, not too terribly often.</p> <p>18 Q Okay. We'll look at some e-mails tomorrow.</p> <p>19 How many cases did you handle where a narrative</p> <p>20 fee was changed?</p> <p>21 A I couldn't tell you.</p> <p>22 Q Hundreds?</p> <p>23 A Probably.</p> <p>24 Q Well --</p> <p>25 A That's a question I don't know the specific answer</p>	<p>Page 305</p> <p>1 to, but it's something that would be easily</p> <p>2 identifiable.</p> <p>3 Q In Needles, correct?</p> <p>4 A Yeah.</p> <p>5 Q Okay. Would you say it was between a third and half</p> <p>6 of your cases where a narrative fee was charged?</p> <p>7 A Probably.</p> <p>8 Q Doctor Floros always -- strike that.</p> <p>9 The firm always requested a narrative report</p> <p>10 from Doctor Floros, and always paid him a fee for</p> <p>11 that narrative report on every case that he handled,</p> <p>12 correct?</p> <p>13 MR. MANNION: Objection.</p> <p>14 MR. SKIDMORE: Objection.</p> <p>15 MR. MANNION: Way outside his knowledge.</p> <p>16 A Yeah, I --</p> <p>17 Q Testify to the best of your knowledge.</p> <p>18 A To the best of my knowledge, it was more prevalent</p> <p>19 than not. I can't say on every case for sure, but --</p> <p>20 Q If he's on these lists, then generally that's going</p> <p>21 to be the practice, correct?</p> <p>22 A I would assume so, yeah.</p> <p>23 Q Are there any chiropractors at your current firm</p> <p>24 where you order narrative reports from them on every</p> <p>25 single case?</p>

Page 306

1 MR. SKIDMORE: Objection. That's going
 2 to be --
 3 MR. MANNION: Objection.
 4 MR. SKIDMORE: -- part of his work with
 5 Slater & Zurz and that's outside discovery.
 6 MR. PATTAKOS: You can mark it as
 7 confidential under the protective order.
 8 MR. SKIDMORE: No; no. You would need
 9 to go to Slater & Zurz and get them to waive
 10 on that. His employment and what he does for
 11 them is not subject to discovery.
 12 MR. PATTAKOS: Well, I think it is,
 13 but --
 14 MR. SKIDMORE: It's proprietary
 15 information to them.
 16 MR. PATTAKOS: Okay. You can think
 17 about that overnight. I mean, we can avoid
 18 him having to come back to talk about this.
 19 MR. SKIDMORE: Well, I can tell you the
 20 answer to that right now. I don't have to
 21 think about it overnight.
 22 MR. PATTAKOS: Okay. Maybe you can
 23 consult with Slater & Zurz tonight.
 24 MR. SKIDMORE: No, I don't represent
 25 Slater & Zurz. I represent Rob Horton, okay?

Page 308

1 anything like that?
 2 A No, I don't think so.
 3 Q That never happened, did it?
 4 MR. SKIDMORE: Objection. As to all the
 5 lawyers, or just as to him?
 6 A Yeah, I never had one that I recall, and I don't
 7 recall a conversation.
 8 Q Okay.
 9 ----
 10 (Thereupon, Plaintiffs' Exhibit 22 was
 11 marked for identification.)
 12 ----
 13 Q These are materials that were produced by KNR as
 14 excerpts from their training documents or employee
 15 handbooks or manuals.
 16 A Okay.
 17 MR. MANNION: I'm going to object. He
 18 already testified he didn't read them.
 19 MR. PATTAKOS: Why do you need to remind
 20 him of that, Tom?
 21 MR. MANNION: Well, why would you ask
 22 him about something he didn't read?
 23 MR. PATTAKOS: Tom, I don't have to
 24 explain to you why I'm asking him questions,
 25 believe it or not.

Page 307

1 MR. PATTAKOS: Okay.
 2 MR. SKIDMORE: So maybe you can consult
 3 with Slater & Zurz. You can go do that.
 4 Q So part of the narrative report was -- all the
 5 narrative reports included an opinion on causation
 6 generally speaking, correct?
 7 A I can't tell you with a specific recollection that
 8 all of them did, but I would think that they did.
 9 Q Wasn't that part of the point?
 10 A I think so, yeah.
 11 Q Okay. Do you ever recall any of the chiros on this
 12 list -- on one of these two lists, who got a
 13 narrative fee paid automatically, coming back and
 14 telling you that there was no causation?
 15 A I have no recollection of it, no, I don't know.
 16 Q You don't remember that ever happening once, do you?
 17 A I don't recall. Paying, and then having somebody
 18 come back and say there is no causal relationship?
 19 Q Right.
 20 A I don't think so. Not that I know of.
 21 Q Did you ever hear of that happening even on cases
 22 that weren't yours?
 23 A I don't think so.
 24 Q Like talk around the office, "Hey, Floros said
 25 there's no causation in my case, what a jerk,"

Page 309

1 Q So if we look at the last --
 2 MR. MANNION: I'll object to that.
 3 Q So if we look at the last page here -- first of all,
 4 did you ever see any documents like this?
 5 A Not that I recall.
 6 Q Okay. It says here on the last page if Akron
 7 Square -- I'm sorry, the second to last page, it
 8 looks like policies for second shift, let's -- review
 9 this and tell me if this is consistent with your
 10 understanding of how things worked when you were at
 11 the firm, since you didn't -- since you've never seen
 12 this before.
 13 A I haven't.
 14 Q Well, why don't you just review the whole document
 15 and tell me if this is all consistent with the way
 16 things worked when you were at the firm?
 17 MR. SKIDMORE: No. I'm going to object
 18 to that. Let's -- if you want to ask him
 19 specifically about certain things in the
 20 document, that's great. But just generally
 21 to say does he have any objection to anything
 22 in this document --
 23 MR. PATTAKOS: Tom, please. These are
 24 firm policies. This has been produced by the
 25 Defendants in this case. I want him to

Page 310	Page 311
<p>1 review these four pages --</p> <p>2 MR. SKIDMORE: Okay.</p> <p>3 MR. PATTAKOS: -- and tell me if this is</p> <p>4 how things worked when he was at the firm.</p> <p>5 MR. SKIDMORE: Generally.</p> <p>6 MR. PATTAKOS: If anything here is</p> <p>7 inconsistent with his experience, I want to</p> <p>8 hear about it.</p> <p>9 MR. MANNION: Objection. I'll ask that</p> <p>10 we take some time for him to review it.</p> <p>11 MR. PATTAKOS: He can take as much time</p> <p>12 as he wants.</p> <p>13 MR. MANNION: Yeah, when he's on video</p> <p>14 and under pressure.</p> <p>15 MR. PATTAKOS: Well, he's a big boy.</p> <p>16 MR. SKIDMORE: Come on, guys.</p> <p>17 A Okay. The second shift page, I read that.</p> <p>18 Q Well, look at all four pages here.</p> <p>19 A Oh.</p> <p>20 THE WITNESS: Can I have a pen, Tom?</p> <p>21 Q Don't mark up the -- oh, I guess if you want to mark</p> <p>22 up the exhibit, that's fine, it will just go into the</p> <p>23 record.</p> <p>24 A Okay.</p> <p>25 Q Let me see if -- some of this has been redacted.</p>	<p>1 A Hold on. Okay.</p> <p>2 MR. MANNION: I'm going to object. This</p> <p>3 is to the staff, not the attorney.</p> <p>4 MR. PATTAKOS: I don't know that at all.</p> <p>5 MR. BEST: You don't know much. The</p> <p>6 testimony was it was to the staff, not the</p> <p>7 lawyers.</p> <p>8 MR. PATTAKOS: Brandy's testimony or</p> <p>9 Rob's?</p> <p>10 MR. MANNION: Well, and the fact that</p> <p>11 the prelit lawyers never seen it.</p> <p>12 A Okay.</p> <p>13 MR. MANNION: Nice facial expression,</p> <p>14 but it doesn't change the facts.</p> <p>15 A Okay.</p> <p>16 Q What are you laughing at?</p> <p>17 A Just based on the question you asked me earlier, one</p> <p>18 of the statements in here.</p> <p>19 Q Well, this last piece, "Don't ever tell a client that</p> <p>20 their case has been transferred or their</p> <p>21 attorney/paralegal is no longer with us," is that</p> <p>22 what you're laughing at?</p> <p>23 A Yeah.</p> <p>24 MR. MANNION: I'm going to object.</p> <p>25 That's for a staff member, Peter, and you</p>
<p>Page 312</p> <p>1 know that.</p> <p>2 Q Can you think of any reason --</p> <p>3 A No.</p> <p>4 Q Okay.</p> <p>5 A All right. I think I've gone over this.</p> <p>6 MR. BEST: What's the question?</p> <p>7 Q Is that all consistent with the way things were run</p> <p>8 while you were at the firm?</p> <p>9 MR. MANNION: Objection.</p> <p>10 MR. POPSON: Objection.</p> <p>11 A So like this first page here, it looks like that's</p> <p>12 for a receptionist or an intake person to answer --</p> <p>13 when they answer the call, what to do with it. So I</p> <p>14 don't know, I don't know if that's consistent.</p> <p>15 I will tell you, so like the first part, in the</p> <p>16 computer program we had, like I told you, the case is</p> <p>17 in a paralegal's name, and then in the attorney's</p> <p>18 name. Generally they tried to give the call to the</p> <p>19 person whose name it was in. So if somebody called</p> <p>20 in on a case that wasn't submitted yet, it would go</p> <p>21 to the paralegal. And if somebody called in on a</p> <p>22 case that was submitted, it would go to the attorney,</p> <p>23 in that order preference. So that kind of looks</p> <p>24 consistent.</p> <p>25 The judges and the courts, I didn't deal with</p>	<p>Page 313</p> <p>1 any of that.</p> <p>2 I don't know about the doctor calls, with the</p> <p>3 exception of if a doctor calls with a new patient, it</p> <p>4 says "ring this out to the appropriate person." I</p> <p>5 don't know, I don't know what the appropriate person</p> <p>6 would be like. When somebody would call in with a</p> <p>7 new client, they would ring it out to all the</p> <p>8 attorneys, I think. Again, I believe that's my</p> <p>9 recollection. There was no particular person who was</p> <p>10 going to answer the phone.</p> <p>11 Q Okay.</p> <p>12 A And I don't know what any of this other stuff is,</p> <p>13 opening, pending, something case calls.</p> <p>14 Q Do you think maybe it's distinguishing between</p> <p>15 objective cases and soft tissue cases?</p> <p>16 MR. MANNION: Objection.</p> <p>17 A I don't know.</p> <p>18 MR. SKIDMORE: And I'm going to ask</p> <p>19 because we're not involved in this, Peter,</p> <p>20 and I'm going to ask -- I don't know where</p> <p>21 this document -- do you know where this</p> <p>22 document is from?</p> <p>23 THE WITNESS: I don't know.</p> <p>24 MR. SKIDMORE: Can I get some background</p> <p>25 as to what this document is, where it came</p>

Page 314	Page 315
<p>1 from, why he's being asked about it?</p> <p>2 MR. PATTAKOS: It was produced in</p> <p>3 response to a discovery request that we made</p> <p>4 for firm policies, firm manuals, employee</p> <p>5 handbooks.</p> <p>6 MR. SKIDMORE: Okay. So I'm assuming</p> <p>7 that this is just a few pages of that manual?</p> <p>8 MR. PATTAKOS: These guys won't tell us.</p> <p>9 They're just producing random pages out of</p> <p>10 employee manuals that they're refusing to</p> <p>11 produce the entire thing of.</p> <p>12 MR. BEST: False; false.</p> <p>13 MR. SKIDMORE: I think to be fair to</p> <p>14 Mr. Horton, you know, if he's not seen this</p> <p>15 document, I have no idea where this is from</p> <p>16 or what he --</p> <p>17 MR. PATTAKOS: I'd love to know more</p> <p>18 about it myself, sir. I didn't produce it, I</p> <p>19 promise you.</p> <p>20 MR. SKIDMORE: And I understand and I</p> <p>21 don't mean to be giving you a hard time, but</p> <p>22 what I'm saying is he's not the right person</p> <p>23 to be asking about this.</p> <p>24 MR. PATTAKOS: I can ask him if what's</p> <p>25 listed here is consistent with his</p>	<p>1 understanding and experience as to how --</p> <p>2 MR. MANNION: He's not a staff member.</p> <p>3 MR. PATTAKOS: -- things were run while</p> <p>4 he was there.</p> <p>5 MR. SKIDMORE: Well, I understand that,</p> <p>6 with the exception that the document itself,</p> <p>7 I don't know what it's from or who it's</p> <p>8 directed to.</p> <p>9 MR. PATTAKOS: I would love to know more</p> <p>10 about it, too, so we can work with the</p> <p>11 Defendants to try to figure that out.</p> <p>12 MR. MANNION: We have told you, Peter.</p> <p>13 You want to know more about it, I'll tell</p> <p>14 you.</p> <p>15 MR. SKIDMORE: Okay; okay. Okay. Keep</p> <p>16 going.</p> <p>17 MR. MANNION: No. It's for the staff</p> <p>18 and you know that.</p> <p>19 Q So it says here on the third page toward the bottom,</p> <p>20 second to last bullet point, "If Akron Square or --"</p> <p>21 and I can tell you what's been redacted here is Town</p> <p>22 & Country.</p> <p>23 A Real quick. Hold on one second. Which page?</p> <p>24 Q Third page.</p> <p>25 A Third page, okay.</p>
<p>Page 316</p> <p>1 Q Yeah. And Defendants have represented that what's</p> <p>2 been redacted here is Town & Country. So "If Akron</p> <p>3 Square or Town & Country calls after hours with a new</p> <p>4 patient, don't take any information, just patch them</p> <p>5 through to the attorney." Do you have any</p> <p>6 understanding of why Akron Square or Town & Country</p> <p>7 would get identified in this document as receiving</p> <p>8 this kind of treatment?</p> <p>9 MR. MANNION: Objection as to "this kind</p> <p>10 of treatment."</p> <p>11 A No, I don't. So I can tell you the procedure during</p> <p>12 the day is if a doctor's office called, they rang it</p> <p>13 out to the lawyers, and the intake department didn't</p> <p>14 get any information, so it was a lawyer's job to</p> <p>15 basically do everything. You know, I would be</p> <p>16 speculating beyond why those two were in the</p> <p>17 handbook.</p> <p>18 Q What's your best estimate of how many cases that you</p> <p>19 handled were clients who treated with Doctor Floros?</p> <p>20 A I don't know. Again, that's a question I don't know</p> <p>21 the answer to, but it would be easy to find out.</p> <p>22 Q What's your best estimate?</p> <p>23 MR. BEST: Objection. He said he didn't</p> <p>24 know.</p> <p>25 A Thirty percent, 25 percent. I don't know. That's a</p>	<p>Page 317</p> <p>1 guess.</p> <p>2 Q Okay.</p> <p>3 A Ten percent. I mean, honestly I couldn't tell you.</p> <p>4 Q Okay. And this last page, "Any after hours intakes</p> <p>5 that come from Akron Square get patched to the</p> <p>6 attorney ASAP with no intake. If Doctor Floros calls</p> <p>7 do not ask any questions." Do you understand why</p> <p>8 this was the policy?</p> <p>9 A I do not.</p> <p>10 Q Okay.</p> <p>11 ----</p> <p>12 (Thereupon, Plaintiffs' Exhibit 23 was</p> <p>13 marked for identification.)</p> <p>14 ----</p> <p>15 Q You received this e-mail, correct?</p> <p>16 A Yes.</p> <p>17 Q So Brandy is writing to all prelit attorneys, prelit</p> <p>18 support, copying Mr. Nestico and Jenna Wiley, "When</p> <p>19 there is an insurance issue or even a possibility of</p> <p>20 an insurance issues on ASC cases, please send an</p> <p>21 e-mail to" these two e-mail addresses "with the</p> <p>22 information. This must be done. Thank you." Do you</p> <p>23 remember this?</p> <p>24 A Vaguely.</p> <p>25 Q What do you remember about it?</p>

Page 318

1 A Nothing specific. Just receiving it --
 2 Q Okay.
 3 A -- possibly.
 4 Q What kind of insurance issues did you understand
 5 Brandy to be talking about here?
 6 MR. SKIDMORE: Objection.
 7 MR. MANNION: Objection.
 8 A I can't tell you what specifically Brandy would be
 9 referring to. I can tell you what insurance issues
 10 arise in the course of a personal injury case, but I
 11 can't tell you what she's talking about.
 12 Q Well, what do you -- as someone who received this
 13 e-mail and received this instruction, what did you
 14 understand it to mean?
 15 MR. MANNION: Objection, asked and
 16 answered.
 17 A An insurance issue would be possibly liability
 18 concerns, coverage concerns. I mean, that's
 19 really -- I mean, basically the only insurance issues
 20 would be liability or coverage concerns.
 21 Q So if there was no coverage to pay for Doctor Floros'
 22 treatment; is that fair?
 23 MR. SKIDMORE: Objection.
 24 MR. BEST: Objection.
 25 MR. MANNION: Objection. He said he

Page 320

1 to stop. We can stop for the day.
 2 MR. SKIDMORE: All right. We're
 3 definitely going to be done tomorrow, right?
 4 MR. PATTAKOS: Yes. Well --
 5 MR. MANNION: I don't know.
 6 THE VIDEOGRAPHER: Do you want me to go
 7 off the record?
 8 MR. MANNION: You can go off the video.
 9 THE VIDEOGRAPHER: We're off the record.
 10 5:38.
 11 ----
 12 (Thereupon, the following colloquy was
 13 had off the video recording.)
 14 ----
 15 MR. MANNION: I mean, if you got more,
 16 why don't we at least go until six here so we
 17 can be done tomorrow?
 18 MR. PATTAKOS: I'm ready to stop.
 19 MR. MANNION: Then you're passing?
 20 MR. PATTAKOS: No, I'm not.
 21 MR. MANNION: Well, then --
 22 MR. PATTAKOS: That's it for today. We
 23 can resume tomorrow.
 24 MR. MANNION: Why? You don't get to
 25 make that rule. We have more people here to

Page 319

1 didn't know.
 2 A Again, I can't tell you what Brandy was thinking. On
 3 a personal injury case if there is no coverage,
 4 recovery for anyone is unlikely.
 5 Q Sure. Including the chiropractors, correct?
 6 A Everyone.
 7 Q Okay. Do you recall getting instructions like this
 8 about other chiropractic offices?
 9 A I have no recollection of that.
 10 Q Okay.
 11 MR. PATTAKOS: Now is a good time to
 12 stop for the day. You said you wanted to
 13 stop by six.
 14 MR. MANNION: I don't have to step. We
 15 want to keep going.
 16 MR. PATTAKOS: The point is I'm at a
 17 place where it's good to stop, so --
 18 MR. MANNION: I don't want to be
 19 precluded tomorrow from being able to ask my
 20 questions, either.
 21 MR. PATTAKOS: I'm not going to preclude
 22 you from doing anything tomorrow, Tom.
 23 MR. MANNION: We're already starting at
 24 noon and if you go for three or four hours.
 25 MR. PATTAKOS: Well, now is a good place

Page 321

1 ask questions.
 2 MR. PATTAKOS: We'll have plenty of time
 3 tomorrow. I don't have to --
 4 MR. BARMEN: I'm going to have a few
 5 questions.
 6 MR. MANNION: Yeah, right. If he has
 7 questions, let him go.
 8 MR. PATTAKOS: Okay. If that's what you
 9 guys want to do, that's fine.
 10 MR. MANNION: Well, I mean, I wanted to
 11 use as much time as we can here.
 12 MR. BARMEN: I mean, you had indicated
 13 earlier today you thought we'd be able to get
 14 done today if Tom ended by --
 15 MR. MANNION: By about noon. I was
 16 pretty quick after lunch.
 17 MR. PATTAKOS: Well, I underestimated.
 18 MR. BARMEN: How much do you think you
 19 have left tomorrow, ballpark?
 20 MR. PATTAKOS: Two hours.
 21 MR. BARMEN: Okay.
 22 MR. MANNION: Okay. If it's two hours
 23 we can get done, then.
 24 ----
 25 (Thereupon, the deposition was adjourned

Page 322

1 at 5:41 P.M.)
 2 -----
 3
 4
 5 _____
 6 Robert Paul Horton
 7 -----
 8 Date
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 323

1 The State of Ohio,)
 2 County of Cuyahoga.) SS:
 3 CERTIFICATE
 4 I, Mary Lou Mellinger, a Notary Public within
 5 and for the State aforesaid, duly commissioned
 6 and qualified, do hereby certify that the above-
 7 named ROBERT PAUL HORTON was by me, before the
 8 giving of his deposition, first duly sworn to
 9 testify the truth, the whole truth and nothing
 10 but the truth;
 11 That the deposition as above set forth was
 12 reduced to writing by me by means of stenotypy,
 13 and was later transcribed upon a computer by me;
 14 That the said deposition was taken in all
 15 respects pursuant to the stipulations of counsel
 16 herein contained; that the foregoing is the
 17 deposition given at said time and place by said
 18 ROBERT PAUL HORTON;
 19 That I am not a relative or attorney of
 20 either party or otherwise interested in the
 21 event of this action.
 22 IN WITNESS WHEREOF, I hereunto set my hand
 23 and seal of office, at Cleveland, Ohio this
 24 6th day of March, A.D. 2019.
 25 _____
 Mary Lou Mellinger, RPR and Notary Public
 within and for The State of Ohio
 My Commission expires August 9, 2019.

The State of Ohio,)

County of Summit.) SS:

IN THE COURT OF COMMON PLEAS

Member Williams, et al.,

Plaintiffs;

vs.

No. CV-2016-09-3928

Judge James Brogan

Kisling, Nestico &
Redick, LLC, et al.,

Defendants.

- - - -

Videotaped deposition of ROBERT PAUL HORTON, one of the Defendants herein, taken before Mary Lou Mellinger, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of Thomas A. Skidmore Co., L.P.A., One Cascade Plaza, 12th Floor, PNC Center Building, Akron, Ohio, commencing at 11:48 A.M., Tuesday, February 26, 2019, pursuant to notice of counsel.

- - - -

Magna Legal Services
866-624-6221
www.MagnaLS.com



Page 325

1 APPEARANCES:
 2 Peter Pattakos, Esq.
 Rachel Hazelet, Esq.
 3 The Pattakos Law Firm, LLC
 101 Ghent Road
 4 Fairlawn, Ohio 44333
 330.836.8533
 5 peter@pattakoslaw.com
 rhazelet@pattakoslaw.com
 6
 On behalf of the Plaintiffs;
 7
 8 Thomas P. Mannion, Esq.
 Lewis Brisbois Bisgaard & Smith LLP
 9 1375 East Ninth Street, Suite 2250
 Cleveland, Ohio 44114
 10 216.344.9422
 tom.mannion@lewisbrisbois.com
 11 and
 James M. Popson, Esq.
 12 Sutter O'Connell
 1301 East Ninth Street
 13 3600 Erieview Tower
 Cleveland, Ohio 44114
 14 216.928.2200
 jpopson@sutter-law.com
 15
 On behalf of Defendants Kisling Nestico &
 16 Redick, LLC, Alberto R. Nestico and
 Robert Redick;
 17
 18 Thomas A. Skidmore, Esq.
 Thomas A. Skidmore Co., L.P.A.
 19 One Cascade Plaza, 12th Floor
 PNC Center Building
 20 Akron, Ohio 44308
 330.379.2745
 21 thomasskidmore@rrbiznet.com
 On behalf of Defendant Robert Horton;
 22
 23
 24
 25

Page 326

1 APPEARANCES:
 2 Bradley J. Barmen, Esq.
 Lewis Brisbois Bisgaard & Smith LLP
 3 1375 East Ninth Street, Suite 2250
 Cleveland, Ohio 44114
 4 216.344.9422
 brad.barmen@lewisbrisbois.com
 5
 On behalf of Defendant Dr. Sam Ghoubril;
 6
 7 David M. Best, Esq.
 4900 W. Bath Road
 8 Akron, Ohio 44333
 330.666.6586
 9 dmb@dmbestlaw.com
 On behalf of the Defendants.
 10
 11

 12
 13 ALSO PRESENT:
 14 John J. Reagan, Esq.
 15 Jim Torok, Videographer
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 327

1 EXAMINATION INDEX
 2 By Mr. Pattakos page 328
 3 By Mr. Mannion page 500
 4 By Mr. Pattakos page 572
 5 By Mr. Mannion page 579
 6
 7 ----
 8 EXHIBIT INDEX
 9 Plaintiffs' Exhibit
 10 24 page 332 33 page 404
 11 25 page 348 34 page 407
 12 26 page 363 35 page 419
 13 27 page 377 36 page 425
 14 28 page 382 37 page 430
 15 29 page 387 38 page 436
 16 30 page 391 39 page 472
 17 31 page 393 40 page 487
 18 32 page 396
 19
 20 ----
 21 Defendants' Exhibit
 22 II page 520
 23 JJ page 539
 24 KK page 543
 25 LL page 566
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45

Page 328

1 THE VIDEOGRAPHER: We're on the record.
 2 Day number two of Robert Horton. The time is
 3 11:48 A.M.
 4 THE COURT REPORTER: Sir, you are
 5 reminded you are still under oath.
 6 THE WITNESS: Thank you.
 7
 8 ----
 9 EXAMINATION OF
 ROBERT PAUL HORTON
 10 BY MR. PATTAKOS:
 11 Q Good morning, Rob.
 12 A Hi, Peter.
 13 Q Yesterday you were testifying about insurance
 14 companies.
 15 A Yes.
 16 Q Now, I want to understand your testimony better. Did
 17 you mean to communicate that you believe that
 18 insurance companies' jobs or insurance adjusters'
 19 jobs are purely to devalue the clients' claims and
 20 pay them less money?
 21 MR. MANNION: Objection.
 22 A Well, I mean, if you look at an insurance company as
 23 a business, their business is to pay people less
 24 money to make a profit, I guess, if that's how they
 25 approach their business model, the less money they

Page 329

1 pay people, the more money they make.
 2 Q Well, would you agree that there could be some
 3 insurance companies and insurance representatives
 4 that simply want to make sure that the clients are
 5 fairly compensated for injuries that actually exist?
 6 MR. SKIDMORE: Objection.
 7 A I would say that there -- and I've told people this,
 8 an insurance company's idea of fair and our idea of
 9 fair are usually not the same thing. So an insurance
 10 company might think fair compensation for a
 11 particular injury is X, and we think it's Z, and
 12 we've got to figure that out, if that makes any
 13 sense.
 14 Q Well, sure. There's often disagreement as to what's
 15 fair, I understand that. But my question goes more
 16 to your belief about their intent. Just because you
 17 have different views on what's fair doesn't mean that
 18 they don't sincerely hold their belief, does it?
 19 MR. MANNION: Objection, not related to
 20 class action in any manner.
 21 MR. SKIDMORE: Objection.
 22 MR. BEST: Speculation.
 23 A I mean, I can't -- that's their belief, you know, I
 24 can't tell you that for sure. It's my belief of
 25 their belief, I guess is the best way to put it.

Page 331

1 negotiate with them, and it's going to be difficult
 2 to get the claim settled. Like I said, I think
 3 yesterday I brought up one, I mentioned an insurance
 4 company name, and if you get them on the other side
 5 of a file, it's going to be very, very good for your
 6 client, you know, it's --
 7 Q They'll be fair?
 8 A Some are more fair than others, yeah.
 9 Q It's not your testimony that insurance company
 10 representatives are never fair, is it?
 11 A Not never. I mean, I can't say that, no.
 12 Q Okay. Sometimes you'll get an insurance company
 13 paying the policy limits on a case without much
 14 trouble, correct?
 15 MR. BEST: Objection.
 16 MR. MANNION: Objection.
 17 A That's way too subjective, too much goes into that.
 18 The basic answer to that question is -- and it all
 19 depends on how you define too much trouble as well.
 20 The basic answer to that question is yes, you can get
 21 an insurance company to offer policy limits on a
 22 clear policy limits case, nothing to do with
 23 fairness, because the claim might be worth half a
 24 million dollars and they've got \$100,000 in coverage.
 25 So they're going to offer you policy limits without a

Page 330

1 Q Kelly Phillips testified "Adjusters aren't bad
 2 people. If you get them what they need, they'll pay
 3 you." You don't necessarily disagree with that, do
 4 you?
 5 MR. MANNION: Objection.
 6 A If you get them what they need, they will -- it will
 7 be easier to get them to a point that is as fair as
 8 you can get them to be to your client, and then
 9 you're taking your client's instruction on whether
 10 they think that's fair or not to settle a case. I
 11 don't know if that makes sense.
 12 Q Do you think insurance companies are evil?
 13 A Evil?
 14 MR. MANNION: Objection.
 15 MR. SKIDMORE: Objection.
 16 MR. MANNION: Come on.
 17 MR. BEST: Is an insurance company a
 18 party to this case?
 19 A I don't, I don't know if "evil" is the right word. I
 20 definitely think there are insurance companies out
 21 there that are more fair or less fair when it comes
 22 to compensation than others for sure.
 23 Q Okay.
 24 A Some insurance companies, you see them out of the
 25 gate, you know it's going to be difficult to

Page 332

1 problem. I mean, you still have to go through, you
 2 know, getting the medical records, producing
 3 documentation, producing medical bills, to justify
 4 them offering those policy limits, but it's a case by
 5 case basis, and it's, it's a subjective standard.
 6 Q Okay. Let's take a look at a document.
 7 -----
 8 (Thereupon, Plaintiffs' Exhibit 24 was
 9 marked for identification.)
 10 -----
 11 Q Read from the bottom. This is an e-mail that you
 12 provided me before the case was filed; do you believe
 13 that to be the case?
 14 A Yeah, sure.
 15 Q Why did you provide me this e-mail?
 16 A I don't know.
 17 Q Why don't you take a look and review the exchange,
 18 start from the second page, that's -- the second page
 19 is the first e-mail in the chain, and then it goes
 20 from bottom to top.
 21 A I think it's a demonstration of how difficult
 22 Allstate can be to work with for sure.
 23 Q But that's not why you sent it to me, is it?
 24 MR. MANNION: Objection. He just -- why
 25 do you do that, Peter? I'm going to object,

Page 333

1 you asked and he answered it.

2 A I mean, it's an e-mail exchange discussing the

3 difficulty of resolution of cases, and a new Allstate

4 policy as it relates to particular, particular cases,

5 particular providers. I mean, that's the gist of

6 this e-mail.

7 Q Which providers?

8 A Plambeck claims, Plambeck clinics.

9 Q So why would you have provided me an e-mail about why

10 it was difficult to settle Allstate -- settle

11 Plambeck claims with Allstate?

12 MR. MANNION: Objection, asked and

13 answered.

14 MR. SKIDMORE: Objection.

15 MR. PATTAKOS: He hasn't answered the

16 question.

17 MR. MANNION: He has. You may not like

18 it --

19 MR. PATTAKOS: That's your opinion,

20 okay?

21 MR. MANNION: Don't point at me.

22 MR. PATTAKOS: It's my deposition now.

23 MR. MANNION: Do not point at me, do you

24 understand me? You already said some pretty

25 bad things off the record and refused to

Page 335

1 Allstate thinks.

2 MR. PATTAKOS: I'm not asking him what

3 Allstate thinks. I'm asking him what he

4 thinks.

5 MR. BARMEN: That's exactly what you

6 just asked him.

7 MR. MANNION: This is totally

8 ridiculous.

9 MR. SKIDMORE: Hold on.

10 MR. PATTAKOS: Enough of the commentary,

11 please.

12 MR. SKIDMORE: Can you read the question

13 back, please?

14 - - - -

15 (Thereupon, the last question was

16 read back by the Notary.)

17 - - - -

18 MR. MANNION: Objection.

19 MR. SKIDMORE: And I objected because

20 you're asking him why Allstate does this.

21 MR. PATTAKOS: No, I'm not. I'm asking

22 him what he thinks about why Allstate does

23 this, okay? It's a different question.

24 MR. POPSON: What he thinks Allstate

25 thinks.

Page 334

1 apologize for them. You're not going to sit

2 there and do that to me.

3 MR. PATTAKOS: Stop with the --

4 MR. MANNION: Stop with the faces.

5 MR. PATTAKOS: Stop with the nonsense

6 objections.

7 MR. MANNION: You stop.

8 A Presumably as a demonstration of how Allstate

9 approached Plambeck claims, I mean, that's --

10 Q Okay.

11 MR. MANNION: I'm going to object there,

12 making that face there, sort of suggesting

13 the witness is lying.

14 MR. PATTAKOS: You just keeping

15 objecting, Tom. You're speaking more than

16 either the witness or I at this deposition

17 and it's quite a display.

18 MR. MANNION: No, I'm not. Not until

19 you just started right there.

20 A This is an example of what Allstate does on Plambeck

21 claims, right.

22 Q And why do you believe Allstate does this on Plambeck

23 claims?

24 MR. MANNION: Objection.

25 MR. SKIDMORE: Objection as to what

Page 336

1 MR. PATTAKOS: He's a lawyer who

2 represents clients who are trying to collect

3 money from Allstate, and I want to understand

4 what he understands and how he interprets

5 this position of Allstate. Okay. It's

6 not -- this isn't anything difficult. So

7 your attempts to obstruct to the contrary --

8 MR. MANNION: Stop it.

9 MR. BEST: I think his lawyer --

10 MR. SKIDMORE: The question --

11 MR. PATTAKOS: We agree his lawyer

12 advised him to sign here, so -- and we'll get

13 to that.

14 MR. MANNION: Whoa.

15 MR. PATTAKOS: I've had enough of it,

16 okay? So let's go.

17 MR. MANNION: At least we're not lying

18 over it.

19 MR. SKIDMORE: We're going to go off the

20 record.

21 THE VIDEOGRAPHER: Off the record.

22 11:56.

23 - - - -

24 (Thereupon, a recess was had.)

25 - - - -

Page 337	Page 338
<p>1 THE VIDEOGRAPHER: We're back on the 2 record. 11:59. 3 A I think -- is there a pending question? 4 Q Yes, there is. 5 MR. SKIDMORE: Go ahead and ask a 6 question. 7 MR. PATTAKOS: Can you read the question 8 back to the witness, the last question that I 9 asked. 10 ---- 11 (Thereupon, the last question was 12 read back by the Notary.) 13 ---- 14 MR. MANNION: Objection. 15 THE WITNESS: I can answer that, right? 16 MR. SKIDMORE: Sure. 17 A All right. Because Allstate doesn't like Plambeck 18 clinics. 19 Q Why doesn't Allstate like Plambeck clinics? 20 MR. MANNION: Objection. 21 MR. SKIDMORE: Objection. 22 A I don't know. I can speculate as to why they don't. 23 MR. MANNION: Objection. 24 Q What is your understanding about why they don't? 25 MR. MANNION: I'm going to object. This</p>	<p>1 is speculation. This is not proper. 2 MR. SKIDMORE: I'm just going to object. 3 If you're speculating, don't speculate. 4 Q You had clients, sir, that you sent, that your law 5 firm sent to treat with Plambeck clinics, knowing 6 that Allstate doesn't like Plambeck clinics. So I 7 would assume that you have some understanding or that 8 you would at least try to form some understanding of 9 why Allstate doesn't like these clinics that your law 10 firm is sending its clients to; is that fair? 11 MR. MANNION: Objection. 12 MR. BEST: Objection. His law firm 13 didn't send, he sent individually on each 14 case. 15 MR. PATTAKOS: David, enough testimony, 16 please. 17 MR. MANNION: That's what you were 18 doing. 19 MR. BEST: Just the facts. 20 MR. PATTAKOS: I'm asking questions. 21 MR. BEST: You're making up facts. 22 A All right. What was the question, again? 23 MR. PATTAKOS: Please read back my 24 question. 25 ----</p>
Page 339	Page 340
<p>1 (Thereupon, the last question was 2 read back by the Notary.) 3 ---- 4 MR. MANNION: Objection. 5 A I -- again, a lot -- these clinics do a lot of work 6 around the state. I don't know what Plambeck's 7 involvement is in other states and what Allstate's 8 involvement is in other states, but in the State of 9 Ohio, they see a lot of Plambeck claims, lots of 10 them, and maybe they don't like paying them. I mean, 11 I don't know. You'd have to ask Allstate why they 12 don't like Plambeck claims. There are -- 13 Q You never took it upon yourself to try to investigate 14 why Allstate doesn't like Plambeck claims? 15 A No. I do know there was some litigation between the 16 two of them, between the two of them at one point in 17 time or another that I don't know a whole lot about. 18 Q Allstate accused Plambeck of fraud, correct? 19 MR. MANNION: Objection. 20 A I believe so. 21 Q You knew that, didn't you? 22 A Yeah, I think that's what the lawsuit was about. 23 Q So you agree that if Allstate believed that Plambeck 24 was guilty of fraud, that would be a reason for 25 Allstate not to like Plambeck, correct?</p>	<p>1 MR. SKIDMORE: Objection. 2 A Probably. 3 Q But you never formed -- you never conducted an 4 investigation to come to any understanding of exactly 5 why Allstate was treating Plambeck cases like this, 6 did you? 7 A No. 8 Q And no one at KNR ever instructed you to do that, 9 correct? 10 A To do an investigation? 11 Q Correct. 12 A No. 13 Q And no one -- well, strike that. 14 At the bottom of this, the second page, this is 15 an e-mail from you, I see that the printout is a bit 16 cut out, but it's -- cutoff, but it is an e-mail from 17 you on Thursday, May 30, 2013, to all attorneys. 18 Would this go to all attorneys firm-wide -- 19 MR. BEST: Objection. 20 Q -- this e-mail? 21 A You say if it has attorneys in the by line? 22 Q Yes. 23 MR. MANNION: Objection. 24 A I believe so. 25 Q Okay. So you understood that you were sending this</p>

Page 341	Page 342
<p>1 to all attorneys in the firm, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. And you write, the subject line is "New</p> <p>4 Allstate request." You write "David Stephas from</p> <p>5 Allstate just requested consent for deposition of</p> <p>6 doctor, all x-ray films, and all paperwork signed by</p> <p>7 the client from the chiro on a third party claim.</p> <p>8 Said it is their new prelit procedure. It is an</p> <p>9 Akron Square case." You sent that e-mail, right?</p> <p>10 A Presumably, yes.</p> <p>11 Q Why did you send it?</p> <p>12 A To tell everybody that that was the new Allstate</p> <p>13 policy. And to be honest with you, the deposition of</p> <p>14 the doctor and then the paperwork signed by client, I</p> <p>15 think that's -- I mean, they get that stuff anyways.</p> <p>16 I think the thing that stands out in my mind is the</p> <p>17 x-ray, they wanted x-ray films, which I also think</p> <p>18 had something to do the outside litigation.</p> <p>19 Q The fact that --</p> <p>20 A That's what stood out to me, was the x-ray films.</p> <p>21 Q Okay. Were you ever instructed by anyone at KNR to</p> <p>22 advise your clients that Allstate didn't like</p> <p>23 Plambeck or treatment from Plambeck clinics?</p> <p>24 A Was I ever instructed to tell my clients that</p> <p>25 Allstate did not like Plambeck?</p>	<p>1 Q Yes.</p> <p>2 A I don't believe so.</p> <p>3 Q Did you ever do that?</p> <p>4 A To tell them they didn't like Plambeck clinics?</p> <p>5 Q Yes.</p> <p>6 A Not to my -- I have no specific recollection of it.</p> <p>7 Q Okay. You'll see the next e-mail here is Josh</p> <p>8 Angelotta responding on May 30th, same day, really</p> <p>9 six minutes later it looks like, he says, "I'm</p> <p>10 getting unusually low Allstate offers on Plambeck</p> <p>11 cases. Allstate has obviously always made lousy</p> <p>12 offers with MIST claims. These new offers are really</p> <p>13 bad even on moderate-heavy impact collisions." Did</p> <p>14 you have any reason to -- do you have any reason to</p> <p>15 doubt that Mr. Angelotta was getting unusually low</p> <p>16 Allstate offers on Plambeck cases at the time of this</p> <p>17 e-mail?</p> <p>18 A I mean, that's what he says there, yeah.</p> <p>19 Q Do you recall that you were getting unusually low</p> <p>20 Allstate offers as well?</p> <p>21 A I don't have a specific recollection of it. Allstate</p> <p>22 generally doesn't give good offers to begin with. I</p> <p>23 don't have any specific recollection of getting</p> <p>24 unusually low ones at the time.</p> <p>25 Q But you don't have a recollection that you weren't</p>
Page 343	Page 344
<p>1 getting unusually low ones, either, correct?</p> <p>2 MR. MANNION: Objection.</p> <p>3 A Correct.</p> <p>4 Q Okay. Ken then says, Ken Zerrusen, four minutes</p> <p>5 after Josh sends his e-mail, "Me too. They have</p> <p>6 tightened the screws even more. I just got a pair of</p> <p>7 \$1500 offers on ER/Plambeck claims both having</p> <p>8 approximately 7k in bills." I'll ask you the same</p> <p>9 questions. You don't have and never had any reason</p> <p>10 to doubt that Allstate was tightening the screws even</p> <p>11 more on Ken's cases, too, correct?</p> <p>12 A I mean, that's what he says, yeah. That's what he</p> <p>13 said.</p> <p>14 Q But you have no memory of Allstate tightening the</p> <p>15 screws or not either way with your cases, correct?</p> <p>16 A I have no specific recollection of it.</p> <p>17 Q Okay. And Angelotta then responds to Ken's e-mail</p> <p>18 four minutes after Ken's e-mail, saying "I think a</p> <p>19 lot of us made a deal with the devil by allowing them</p> <p>20 to have recorded statements because the result would</p> <p>21 usually be a workable offer. I'm inclined to stop</p> <p>22 doing this because now we're wasting our time, along</p> <p>23 with the client's time, and delaying the inevitable;</p> <p>24 which is filing suit on all of these claims."</p> <p>25 Mr. Nestico then responds it looks like 13</p>	<p>1 minutes later, "I agree we need to file all these</p> <p>2 Allstate files. Please send John and I a list of"</p> <p>3 all of your Allstate Plambeck cases -- sorry, "Please</p> <p>4 send John and I a list of your Allstate Plambeck</p> <p>5 cases." Do you recall this?</p> <p>6 A Not specifically, but, I mean, it had to happen</p> <p>7 because it's an e-mail.</p> <p>8 Q Do you recall the firm adopting a policy that all</p> <p>9 Allstate files were going to be filed?</p> <p>10 A Not specifically. I can't, I can't say that it</p> <p>11 became a policy or not. I can't -- I don't know if</p> <p>12 after this e-mail got sent if we just handed over</p> <p>13 our -- I don't think we handed over our Allstate</p> <p>14 files and all of them got filed, or we still tried to</p> <p>15 work files. I don't know. I don't know if it became</p> <p>16 a policy or not.</p> <p>17 Q You don't remember?</p> <p>18 A I don't remember.</p> <p>19 Q Okay. You understand that KNR's clients generally</p> <p>20 wanted their lawsuits to be resolved as efficiently</p> <p>21 as possible, correct?</p> <p>22 A I think that is probably everybody. I mean, all</p> <p>23 clients would prefer probably I guess to not litigate</p> <p>24 cases, but --</p> <p>25 Q But if you can obtain a reasonable settlement, a</p>

Page 345

1 satisfactory settlement as quickly as possible, that
 2 is in your client's interest, correct?
 3 MR. MANNION: I'm going to object to
 4 some hypothetical clients without the facts.
 5 A Not necessarily as quickly as possible. As quickly
 6 as possible you start running into problems.
 7 Q Well, I mean, if you could maximize recovery as
 8 quickly as possible, that would be in your client's
 9 interests, correct?
 10 MR. MANNION: Objection.
 11 MR. BEST: If they just pay you what you
 12 ask without doing anything, wouldn't that be
 13 better? How retarded.
 14 MR. MANNION: I'm going to object. It's
 15 an improper hypothetical, he's not here as an
 16 expert, and I don't know what facts he's
 17 referring to.
 18 MR. PATTAKOS: I'm talking about his own
 19 clients when he --
 20 MR. MANNION: Which client?
 21 MR. PATTAKOS: When he was at KNR.
 22 MR. MANNION: Which one?
 23 Q Your clients generally wanted you to maximize
 24 recovery for them as quickly as possible, correct?
 25 A I mean, that's a fair statement for everybody, yeah,

Page 347

1 A I don't know.
 2 Q Why didn't you just send that e-mail?
 3 MR. MANNION: Objection.
 4 A I don't know if anything changed because of this
 5 e-mail. Again, I have no specific recollection of
 6 that actually becoming a policy. I can tell you that
 7 we still had plenty of Allstate cases that were -- I
 8 believe anyways, getting -- presumably getting
 9 resolved without going through the litigation
 10 process. I don't know. I have no specific
 11 recollection of it.
 12 Q Well, how do you think Rob Nestico would have reacted
 13 had you sent that e-mail?
 14 MR. MANNION: Objection. That's
 15 completely improper.
 16 A I don't think it would have changed much.
 17 Q He would have gotten mad at you, wouldn't he?
 18 MR. MANNION: Objection.
 19 MR. SKIDMORE: Objection.
 20 A I don't know if he would have gotten mad, but -- I
 21 don't know what he would have done; ignored it, taken
 22 it under advisement, I don't know.
 23 Q Okay.
 24 A I didn't call the shots.
 25 - - -

Page 346

1 KNR or anywhere really.
 2 Q So do you know why the firm couldn't have simply just
 3 stopped referring its clients to Plambeck
 4 chiropractors at least on Allstate cases?
 5 MR. SKIDMORE: Objection.
 6 A No.
 7 Q Did you ever ask?
 8 A No.
 9 Q You never became aware of anyone at the firm ever
 10 considering -- never considering stopping referring
 11 the clients to Plambeck chiropractors, correct?
 12 A I would not be privy to those conversations. I don't
 13 know.
 14 Q It wasn't your job to ask those questions, was it?
 15 A To ask the questions about where the referrals went?
 16 Q Yes.
 17 A No.
 18 Q If you would have responded to this, "Hey, why don't
 19 we just send our clients to different chiropractors,"
 20 wouldn't that solve the problem?
 21 MR. SKIDMORE: Objection.
 22 Q Had you sent that e-mail, you would have gotten --
 23 there would have been repercussions, wouldn't there?
 24 MR. MANNION: Objection.
 25 MR. SKIDMORE: Objection.

Page 348

1 (Thereupon, Plaintiffs' Exhibit 25 was
 2 marked for identification.)
 3 - - - -
 4 Q Can you confirm that this is another e-mail exchange
 5 that you provided to me?
 6 A Yeah.
 7 Q Why did you provide me with this e-mail?
 8 A Just another -- it looks like just another example of
 9 correspondence between, it looks like me and Brandy
 10 about a chiropractor.
 11 Q That raised your concerns?
 12 MR. MANNION: I'm sorry?
 13 A Just a demonstration of the interaction with the
 14 chiropractor, yeah.
 15 Q That you were concerned about, correct?
 16 A Sure.
 17 MR. MANNION: Objection.
 18 Q Did you say "Sure"?
 19 A Yeah.
 20 Q It looks like I don't have the whole picture, but
 21 Brandy at the bottom of the last page sends you an
 22 e-mail asking you to do something. I don't know that
 23 I have the rest of this, but it's possible that I
 24 might. Let me actually check this.
 25 MR. BARMEN: You say asking her to do

Page 349	Page 350
<p>1 something, the one that is cut off on the 2 bottom of the last page says RE, so she's 3 responding to something. To represent that 4 she's asking something I think is 5 inappropriate. 6 MR. PATTAKOS: Maybe you're right. 7 MR. BARMEN: Maybe. 8 MR. PATTAKOS: I don't know. Let's just 9 see if we can find the e-mail. 10 Q Do you have any recollection of what's happening 11 here? You write "Tell him he should" blank "that 12 would be great." I assume that it wasn't kind 13 language that is redacted here; is that fair? 14 A I have no idea. 15 Q You have no idea? 16 A No, I don't. 17 Q You redacted this e-mail, didn't you, when you 18 provided it to me? 19 A I would assume so. 20 Q Okay. Let's see. We've got some pretty slow wifi 21 here. Sorry. Well, you told Brandy to tell -- 22 A Hold on. 23 Q Yeah. 24 MR. MANNION: If you look, these are out 25 of time order the way you have them.</p>	<p>1 MR. PATTAKOS: 341 -- 2 MR. MANNION: Put -- page one should be 3 on the top. Page one should be on the top. 4 They're labeled -- 5 MR. POPSON: The last one should be on 6 the top and the first one should be on the 7 bottom. 8 MR. MANNION: Just look at the bottom. 9 It says one, two, three. 10 MR. PATTAKOS: Okay. Sorry. Yeah, this 11 is in reverse order. So one, two, three. 12 Q So if it starts with "If I remember correctly," 13 blank, blank, blank, blank. "Horton, please chime in 14 if I am misremembering." 15 You say "Ding ding ding." 16 Brandy says "Okay. This isn't an excuse for the 17 file to sit for three months. What is the plan?" 18 You say "Withdraw." 19 She says "Please write up for withdraw then. 20 Thank you. And soon, there's no sense in wasting any 21 additional time on this. Cawley has a 3k bill on 22 this case." 23 And then you say "Tell him he should" blank 24 "that would be great." 25 And she says "133 cases from him just this year.</p>
Page 351	Page 352
<p>1 I am not going to tell him anything. We need to do 2 our job and get off the case and not let it sit any 3 longer." 4 Would you agree that what's going on here is 5 that a chiropractor is -- that the firm does a lot of 6 business with is continuing to treat a client where 7 you were going to end up withdrawing from the case? 8 MR. SKIDMORE: Objection. 9 MR. MANNION: Objection. 10 A No, I would not. 11 Q So what's going on here? 12 A I don't think he was continuing to treat. I don't 13 have a specific recollection of this, but I do not 14 believe that he was continuing to treat a case. I 15 think this person had been finished treating, and 16 there had to be some sort of problem with the case 17 and it had not been addressed. 18 Q Okay. 19 A Maybe a liability thing, a coverage thing, something 20 along those lines. 21 Q That was going to make it hard to get the 22 chiropractor paid, correct? 23 A Hard to pursue the claim, yeah. 24 Q Okay. I understand. And she says, Brandy says 25 "There's no sense in wasting any additional time on</p>	<p>1 this. Cawley has a 3k bill on this case." Why is 2 she telling you that? 3 MR. SKIDMORE: Objection. 4 MR. MANNION: Objection. 5 MR. BARMEN: Objection. 6 A I don't know. 7 Q What's your understanding of why she is sending that 8 to you? 9 MR. BEST: Objection. 10 MR. SKIDMORE: Objection. 11 MR. MANNION: Objection. 12 A To withdraw from the case and not let it sit around. 13 Q But what does Cawley's bill have to do with it? 14 A Nothing. As it relates to me, nothing. 15 Q So you have no idea why she would be writing that? 16 MR. MANNION: Objection, asked and 17 answered. 18 A If I were withdrawing on a case for some kind of 19 issue, his bill would be irrelevant to me. 20 Q Okay. 21 A How she sees it, I don't know. 22 Q And Cawley would still have a right -- well, strike 23 that. 24 Do you think Cawley was working on a letter of 25 protection here?</p>

Page 353

1 MR. SKIDMORE: Objection.
 2 A I would presume that he was.
 3 Q Did Cawley handle a lot of cases?
 4 MR. MANNION: Objection.
 5 A I think so.
 6 Q What clinic was Cawley with?
 7 A West Tusc, or it might have been -- after that it was
 8 Canton Injury Center, and then he went somewhere else
 9 after that, too. I don't know where.
 10 Q Is that the same clinic as Tassi?
 11 A Yes.
 12 Q You would get narrative reports, correct, you would
 13 get narrative reports from Cawley?
 14 A I believe so.
 15 Q He's probably on one of these exhibits that we looked
 16 at yesterday, correct?
 17 A Yeah. I would have to look at it to be sure, but --
 18 Q Okay. And if the firm withdraws and he's got a
 19 letter of protection, he is going to be able to
 20 theoretically sue the client, correct, to recover his
 21 bills?
 22 A I think fundamentally a patient is ultimately
 23 responsible for their bills, so if he chose to do
 24 that --
 25 Q That would be his right, correct?

Page 355

1 Q Okay.
 2 A If I gave it to you, it's in that stuff.
 3 Q Okay. In the stuff that you returned to KNR,
 4 correct?
 5 A Yes.
 6 Q Okay. Kelly Phillips testified that easily
 7 80 percent of his cases out of the Columbus office
 8 went to Doctor Khan and Town & Country Chiropractic.
 9 Do you have any reason to disagree with that?
 10 A No. I didn't have anything to do with Columbus, so I
 11 wouldn't know.
 12 Q Okay. Kelly Phillips testified at his deposition
 13 that in his opinion, Mr. Nestico wasn't cutting Town
 14 & Country's bills nearly as much as he should have or
 15 nearly as much as any comparable personal injury firm
 16 would have negotiated with a comparable chiropractor.
 17 Did you have that experience at KNR with any of the
 18 chiropractors that the firm worked with?
 19 A In cutting their bills?
 20 Q Yeah.
 21 A I mean --
 22 Q Did you notice that some chiropractors got cut less
 23 than others?
 24 A Yeah, but that's yes and no. It was pretty
 25 subjective. Sometimes they would give good

Page 354

1 A I believe so.
 2 Q Okay. What do you understand Brandy to mean when she
 3 writes "133 cases from him just this year. I am not
 4 going to tell him anything"?
 5 MR. BEST: Objection.
 6 MR. MANNION: Objection.
 7 A I would be guessing. I mean, I think it's fairly
 8 clear from what's written.
 9 Q What is clear?
 10 A That she is commenting on the number of cases that
 11 have been referred over by him and she doesn't want
 12 to tell him anything that apparently I told her to
 13 tell him, which again, I don't know what that is,
 14 whether -- I don't know what that says.
 15 Q Will you agree to provide us an unredacted copy of
 16 this document?
 17 A I don't have it.
 18 Q KNR does, correct?
 19 MR. MANNION: Objection.
 20 A I would assume that they do. It's from them.
 21 Q You provided it back to them as part of the
 22 settlement agreement that you reached with them,
 23 didn't you?
 24 A I would assume so, yeah. It's in the stuff I handed
 25 over.

Page 356

1 reductions, sometimes the reductions weren't as good
 2 based on the case. There are other chiropractors who
 3 were really difficult to get their bills reduced.
 4 Why that is, I don't know.
 5 Q Okay. Kelly Phillips also testified that when Doctor
 6 Ghoubrial was on the case, meaning that he had
 7 provided treatment to the client, Nestico would allow
 8 for bigger reductions to Town & Country, presumably
 9 so that Ghoubrial could get paid, but when Doctor
 10 Ghoubrial wasn't on the case, there was less
 11 flexibility to cut Town & Country's bills.
 12 MR. MANNION: Objection.
 13 MR. BARMEN: Objection.
 14 Q Is this consistent with your experience on cases
 15 where Ghoubrial was involved?
 16 A So I'm going to repeat that to make sure I got it
 17 right. So on cases where Ghoubrial was involved,
 18 there was more flexibility with cutting the
 19 chiropractor's money?
 20 Q Yes.
 21 MR. MANNION: And just for the record,
 22 this is a question from you, you're trying to
 23 get his question, right?
 24 THE WITNESS: Yeah, I'm trying to get
 25 his question.

Page 357

1 MR. MANNION: I just want to make sure
 2 nobody is confused and thinks you're
 3 testifying to that.
 4 THE WITNESS: Yeah, no; no.
 5 A And then if Ghoubrial was not on the bill, there
 6 would be less --
 7 Q Less flexibility to cut the chiropractor's bill.
 8 A From a practical standpoint, yes. More bills means
 9 more people have to take a haircut.
 10 Q But that's not what Phillips was saying,
 11 because Ghoubrial --
 12 MR. BARMEN: Objection.
 13 MR. MANNION: Objection.
 14 Q Because Phillips' testimony was that Ghoubrial would
 15 not take a reduction, and the chiro would be forced
 16 to.
 17 MR. BEST: Objection.
 18 MR. MANNION: Objection. That wasn't
 19 his testimony.
 20 MR. PATTAKOS: It sure was.
 21 MR. BEST: You can make it up all you
 22 want.
 23 MR. SKIDMORE: In this regard do you
 24 have the testimony?
 25 MR. PATTAKOS: Nope, I don't. It hasn't

Page 359

1 say for sure whether that's true or not?
 2 MR. BARMEN: Objection.
 3 MR. BEST: Objection.
 4 MR. MANNION: Objection.
 5 A I guess not, no.
 6 Q Given or taken smaller reductions?
 7 A Right.
 8 Q Okay. What's your -- you're familiar with Doctor
 9 Ghoubrial, correct?
 10 A I am.
 11 Q He treated a lot of the firm's patients, correct?
 12 A He did.
 13 Q He was around the office a lot, correct?
 14 A He was.
 15 Q You would see Ghoubrial at the office regularly,
 16 correct?
 17 MR. BARMEN: Objection to "regularly."
 18 A Yes.
 19 Q What would you see him doing there?
 20 A Interacting with Rob, picking up checks.
 21 Q How often would you say you saw him at the firm?
 22 A Fairly regularly.
 23 Q Weekly?
 24 A Oh, yeah.
 25 Q "Oh, yeah." More than weekly?

Page 358

1 been transcribed yet. It was just Friday.
 2 MR. MANNION: Just ask him his
 3 experience.
 4 MR. PATTAKOS: I am.
 5 A Ghoubrial took reductions on his bills. I have, not
 6 specific recollections on what cases where we would
 7 make a recommendation and Rob would change it.
 8 Honestly I can't say it wasn't both ways, pay
 9 Ghoubrial less, pay the chiro more, or pay the chiro
 10 less, pay Ghoubrial more. He did make those
 11 adjustments on files that we gave to him to do it on.
 12 Any time you have more providers on a case, it makes
 13 it more difficult in divvying up the money, if that
 14 make sense.
 15 Q Sure. But you can't say for sure either way,
 16 correct?
 17 MR. BARMEN: Objection.
 18 MR. BEST: He just did say it went both
 19 ways.
 20 A Can't say for sure that he didn't -- hold on. I
 21 can't say for sure that Ghoubrial being on the bill
 22 made it less flexible, right?
 23 Q Let me put it this way. You can't say for sure that
 24 when Kelly Phillips says that Ghoubrial would be
 25 given smaller reductions than the chiros, you can't

Page 360

1 A I can't say daily. I mean, I know I probably saw him
 2 at least once a week.
 3 Q At the office in Fairlawn?
 4 A Yeah. And listen, I mean, if he didn't show up for
 5 like two or three weeks I couldn't tell you, but if
 6 he came, you know, every day in one week, I also
 7 couldn't tell you. But he was there, I saw him
 8 regularly.
 9 Q So it's fair to say that he was at the office in
 10 Fairlawn in person regularly at least once a week,
 11 and sometimes more than once a week, correct?
 12 MR. BARMEN: Objection.
 13 MR. MANNION: Objection.
 14 A Maybe not at least once a week. I mean, there
 15 might -- I can't say that he wouldn't not show up for
 16 a little period of time. But he was there regularly.
 17 Q Okay. What's your best estimate of your percent --
 18 the percentage of your cases that you handled at KNR
 19 whose -- where the clients ended up treating with
 20 Ghoubrial?
 21 MR. BARMEN: Objection.
 22 A Again, a lot. I don't want to give you a best
 23 estimate of a percentage. I really have no idea.
 24 But again, that is something that's easily
 25 identifiable through the computer.

Page 361	Page 362
1 Q Would you say that it could be half?	1 Q In every case?
2 MR. BARMEN: Objection.	2 A I don't know about every case.
3 MR. BEST: He just said he can't give	3 Q Okay. How much insight did you have into the
4 you an estimate.	4 treatment that Ghoubrial provided?
5 A It would be a guess.	5 MR. BARMEN: Objection.
6 Q I'm asking for your best estimate.	6 MR. MANNION: Objection.
7 MR. BARMEN: You're an attorney, you	7 A What do you mean "insight"?
8 know how this works. You shouldn't be	8 Q How much exposure did you have to the actual
9 guessing.	9 treatment that he provided?
10 THE WITNESS: I know.	10 MR. BARMEN: Objection.
11 MR. BARMEN: So don't.	11 A Other than what the medical records showed, none.
12 Q What's your best estimate?	12 Q Did you review the medical records and bills in every
13 MR. BARMEN: Objection. He just told	13 case and understand exactly what treatment was
14 you he can't guess.	14 provided?
15 A I'll give you a range. More than 20, less than 60.	15 A Yes.
16 I mean, that's as good as it gets.	16 Q Did you have to come to an independent determination
17 Q Okay. That's something.	17 of whether that treatment was necessary?
18 A And if it ends up being 10, I mean --	18 A No.
19 Q Understood. That's why I said estimate.	19 Q That wasn't your job, correct?
20 A -- or 90, I mean, I don't know. I'm just -- it's not	20 A The doctor makes the decision if it's reasonable and
21 90.	21 necessary treatment. We -- that's not our job to do.
22 Q What's your understanding about how the KNR clients	22 Q Okay. Yesterday you referred to the course of care
23 ended up treating with Doctor Ghoubrial?	23 and you said if that's what the doctor says, then
24 MR. BARMEN: Objection.	24 that's what it is; that's fair?
25 A I believe the chiropractor would make a referral.	25 A Yes.
Page 363	Page 364
1 Q Okay. Let's take a look at another document.	1 Kelly's e-mail that's on page three.
2 ----	2 MR. BEST: An e-mail that he doesn't
3 (Thereupon, Plaintiffs' Exhibit 26 was	3 remember, he wasn't involved in, and has
4 marked for identification.)	4 never seen.
5 ----	5 MR. PATTAKOS: Do you have any more
6 Q Read from the back. It's an e-mail exchange between	6 testimony you want to add, David?
7 Kelly Phillips and Rob Nestico.	7 MR. BEST: The record is clear.
8 MR. MANNION: Do you have copies?	8 MR. MANNION: He's just accurately
9 MR. PATTAKOS: Yeah, I'm getting there.	9 reciting the testimony.
10 Here, the middle two pages need to be taken	10 MR. BEST: That's what I thought.
11 out of that, just like with Kelly's	11 MR. PATTAKOS: By a lawyer who worked at
12 deposition.	12 the same law firm at the same time about the
13 Q Have you ever seen this e-mail exchange?	13 same doctor that Rob says 20 to 60 percent of
14 A No.	14 his clients treated with, okay? I know, I
15 Q Did you ever hear about it?	15 know I don't need to explain it to you.
16 A No. Oh --	16 MR. MANNION: You do, because you got me
17 Q Kelly Phillips testified that this e-mail exchange,	17 lost --
18 after he sent it, was a hot topic around the office.	18 THE WITNESS: You guys need to all stop
19 Does that refresh your recollection at all?	19 talking so I can read this, how's that?
20 A Maybe the Columbus office. I don't recall it in the	20 MR. MANNION: -- completely lost.
21 Akron office.	21 MR. SKIDMORE: Was there a question?
22 Q You never spoke about it with Paul?	22 MR. PATTAKOS: I'm asking him to read
23 A I don't think so. I mean, if I did, I don't recall.	23 the e-mail.
24 I don't remember.	24 A Okay; okay.
25 Q Okay. Why don't you read it, why don't you read	25 Q Having read this e-mail from Kelly Phillips, can you

Page 365

1 understand why it would have been a hot topic of
 2 conversation in the office?
 3 MR. MANNION: Objection.
 4 MR. BEST: Objection.
 5 A Probably.
 6 Q Why is that?
 7 A Because it looks like he's questioning the boss.
 8 Q And not just questioning the boss, but questioning
 9 him about the boss' decision to send the firm's
 10 clients to Doctor Ghoubrial, correct?
 11 MR. MANNION: Objection.
 12 MR. BARMEN: Objection, states facts not
 13 in evidence. You haven't had one person
 14 testify that anybody at the firm sent any
 15 clients to Ghoubrial. You know it's not
 16 true.
 17 A I'm sorry, repeat that question, and they can object
 18 again, I just want to hear.
 19 Q Well, Kelly Phillips isn't just questioning the boss
 20 here, he's questioning the boss' decision to continue
 21 to refer clients to Doctor Ghoubrial, correct?
 22 MR. BARMEN: Same objection.
 23 MR. SKIDMORE: Objection. Did you not
 24 ask Kelly Phillips this in his deposition?
 25 A I don't think this says about -- again, I don't think

Page 367

1 clients received treatment from Ghoubrial as well,
 2 correct?
 3 A Yes, I believe so.
 4 Q And it would be easy to find out from Needles,
 5 correct?
 6 MR. MANNION: Objection.
 7 A It would.
 8 Q Okay. And you understood that Doctor Ghoubrial would
 9 treat the KNR clients at Akron Square's office,
 10 correct?
 11 A I don't necessarily know if that was the case. I
 12 think he had his own office throughout the course of
 13 my employment there. I don't know if while I was
 14 there he was treating at the chiropractor's office or
 15 not. I don't know.
 16 Q Okay. Did you know that Doctor Ghoubrial would
 17 travel to other cities in Ohio to treat clients at
 18 chiropractors' offices?
 19 A Yes.
 20 Q How did you know that?
 21 A I think it was just common knowledge. He would show
 22 up on other chiropractors' bills -- or, not on the
 23 chiropractors' bills. It would be in the same demand
 24 package for a chiropractor in Cincinnati or something
 25 like that. I mean, that's an example, but --

Page 366

1 says, again, about us or KNR referring people to
 2 Doctor -- is this about Doctor Ghoubrial -- yeah --
 3 to Clearwater. This more is -- it looks like it's
 4 more as it relates to paying Doctor Ghoubrial than
 5 referring anybody there, or Clearwater.
 6 Q You understood, Rob, that if a client went to a
 7 certain chiropractor, that that client would also end
 8 up treating with Doctor Ghoubrial as well, or was
 9 likely to end up treating with Doctor Ghoubrial?
 10 MR. BARMEN: Objection.
 11 MR. SKIDMORE: Objection.
 12 MR. MANNION: Objection.
 13 A There was a high correlation between the
 14 chiropractors that we saw on a regular basis and
 15 Doctor Ghoubrial treating those same clients. Does
 16 that make sense?
 17 Q Yes. So, for instance, Akron Square, if you sent a
 18 client to Akron Square, you understood that there was
 19 a higher probability that that client would also
 20 treat with Doctor Ghoubrial, correct?
 21 MR. BARMEN: Objection.
 22 A I think there was a likelihood that they would. I
 23 mean, it wasn't on every case, I can't say it was on
 24 every case, but it was common.
 25 Q A lot of the cases that Akron Square handled, the

Page 368

1 Q And how would you know that? Did you handle cases
 2 from Cincinnati?
 3 A Oh, yeah.
 4 Q You did?
 5 A Um-um, yes.
 6 Q How did that work? Wasn't there a Cincinnati office,
 7 or was there not a Cincinnati office while you were
 8 there?
 9 A I don't recall. We have -- they had -- I said
 10 "we" -- office shares all over the place. We had --
 11 I don't know if Cincinnati was on the list or not
 12 when I was there.
 13 Q Have you reviewed Mr. Nestico's response to Kelly's
 14 e-mail? Please do if you haven't.
 15 MR. MANNION: While he's reading, I'm
 16 just going to say I'll object to any
 17 questions on this. It's completely
 18 unrelated. He hasn't read it. He doesn't
 19 remember the talk about it.
 20 MR. PATAKOS: Your narrative
 21 opinions --
 22 MR. MANNION: I'm allowed, I'm allowed
 23 to put my objection on. I'm not
 24 suggesting --
 25 MR. PATAKOS: Speaking objections are

Page 369

1 inappropriate and you know it.
 2 MR. MANNION: I'm not making a speaking
 3 objection.
 4 MR. PATTAKOS: Of course you are.
 5 MR. MANNION: This is all stuff he's
 6 already said, and I'm trying to tell you that
 7 I object to any questions on it.
 8 MR. PATTAKOS: You are trying to
 9 influence the witness' testimony.
 10 MR. MANNION: I'm not.
 11 THE WITNESS: Would you guys both be
 12 quiet so I can read this?
 13 MR. PATTAKOS: Thank you.
 14 THE WITNESS: I mean, seriously, both of
 15 you.
 16 MR. MANNION: I'm still going to put my
 17 objection --
 18 THE WITNESS: Shhhh.
 19 MR. MANNION: I'm still going to put my
 20 objection on, so let me know.
 21 THE WITNESS: Yeah, when I'm done
 22 reading it, you can put your objection on.
 23 Okay.
 24 MR. MANNION: My objection before you
 25 ask a question, in addition --

Page 371

1 objections?
 2 MR. PATTAKOS: I maybe objected twice
 3 yesterday.
 4 MR. SKIDMORE: We're going to go off the
 5 record.
 6 MR. MANNION: This could have been five
 7 seconds and I could have put my objection on.
 8 MR. SKIDMORE: We're going to go off the
 9 record. We're going to take a break.
 10 MR. PATTAKOS: We're not going to take a
 11 break in the middle of -- we're in the middle
 12 of a document.
 13 MR. MANNION: You just you said there's
 14 no question.
 15 MR. PATTAKOS: No, I -- no, we are
 16 not --
 17 MR. SKIDMORE: We're going to take a
 18 break.
 19 MR. PATTAKOS: We're in the middle of a
 20 document.
 21 MR. SKIDMORE: You guys need to get your
 22 stuff together. We're going to take a break.
 23 MR. MANNION: All you had to do was let
 24 me put it on the record, Peter. I wasn't
 25 suggesting anything.

Page 370

1 MR. PATTAKOS: You're objecting
 2 before -- before I even ask a question you're
 3 objecting?
 4 MR. MANNION: Stop. Stop it. Stop it.
 5 MR. PATTAKOS: You're giving your
 6 interpretation --
 7 MR. MANNION: Stop it.
 8 MR. PATTAKOS: -- of this e-mail to the
 9 witness.
 10 MR. MANNION: Let me object.
 11 MR. PATTAKOS: It's clearly
 12 inappropriate.
 13 MR. MANNION: Stop interrupting me.
 14 MR. PATTAKOS: No, I'm not going to let
 15 you object.
 16 MR. MANNION: I'm not going to say
 17 anything about this e-mail. I'm not going to
 18 say anything about the contents of it at all.
 19 MR. PATTAKOS: Why are you talking?
 20 MR. MANNION: Because I'm trying to put
 21 an objection on and you keep interrupting me.
 22 MR. PATTAKOS: Your objection is
 23 limited. Say "object to form." Those are
 24 the only objections that are allowed.
 25 MR. MANNION: Have you looked at your

Page 372

1 MR. PATTAKOS: Once again, the witnesses
 2 and the parties in this case are interrupting
 3 a deposition in the middle of a document.
 4 MR. MANNION: In the middle of a
 5 document?
 6 MR. PATTAKOS: In the middle of a
 7 document.
 8 MR. MANNION: You objected to me --
 9 MR. PATTAKOS: I'm in the middle of
 10 questioning a witness about the document.
 11 MR. SKIDMORE: Come on, you guys.
 12 MR. PATTAKOS: This would never be
 13 allowed in court.
 14 MR. MANNION: You said there was never
 15 any question.
 16 MR. SKIDMORE: Come on, you guys. We're
 17 off the record.
 18 THE VIDEOGRAPHER: Is that agreed?
 19 MR. PATTAKOS: What can I do?
 20 THE VIDEOGRAPHER: We're off the record.
 21 12:42.
 22 ----
 23 (Thereupon, a recess was had.)
 24 ----
 25 THE VIDEOGRAPHER: We're back on the

Page 373

1 record. 12:54.
 2 MR. SKIDMORE: I'm going to make a
 3 statement on the record before we get
 4 started. This deposition was supposed to
 5 start today at 11:30, and it's now 1:00 and I
 6 don't feel that we're going to get done again
 7 today.
 8 So I'm going to ask that the lawyers be
 9 civil in this case in the remaining part of
 10 the deposition and limit their objections.
 11 If I find that there's more disruption during
 12 this deposition, I will seek intervention
 13 from the court and we will do this deposition
 14 before Judge Brogan and we will make such a
 15 motion to do so.
 16 So I would like this deposition to
 17 continue. I'm not here to interrupt the
 18 deposition, but it's going to continue in a
 19 civil fashion so we can get through it and
 20 get it done, okay?
 21 MR. PATTAKOS: I would join any motion
 22 to have depositions conducted in front of
 23 Judge Brogan.
 24 MR. SKIDMORE: Let's just get it done
 25 the right way, okay?

Page 375

1 MR. BARMEN: Objection.
 2 A If -- is it my -- I'm asking the question here. Is
 3 it my understanding that if we questioned Doctor
 4 Ghoubrial's care and payment of his bills, our jobs
 5 would be in jeopardy?
 6 Q Let me say it this way. Let me ask you a different
 7 question. You testified that you believed it wasn't
 8 your place to question the course of care if it's
 9 what the doctor said, correct?
 10 A Correct.
 11 Q If you were to have received this e-mail from
 12 Attorney Nestico, that would only confirm that
 13 understanding, correct?
 14 MR. BARMEN: Objection.
 15 A That we were reasonable in relying on what the doctor
 16 was doing for the patient?
 17 Q That it wasn't your place as the KNR attorney to
 18 question the treatment that Doctor Ghoubrial
 19 provided, correct?
 20 MR. MANNION: Objection.
 21 MR. BARMEN: Objection.
 22 A I suppose that's right. I mean, I tell people "Do
 23 what your doctor tells you to do to the extent that
 24 it's good for you." I mean, "Go see your doctor, and
 25 if they want you to do particular things and it makes

Page 374

1 MR. PATTAKOS: Okay. Let's just confirm
 2 on the record that Plaintiffs have agreed to
 3 allow the KNR Defendants until Monday to
 4 provide the confidentiality designations to
 5 Rob Nestico's deposition transcript, and
 6 Doctor Ghoubrial has agreed to allow
 7 Plaintiffs until Monday to respond to the
 8 pending 12(C) motion, correct?
 9 MR. BARMEN: Correct.
 10 MR. MANNION: Correct.
 11 MR. PATTAKOS: Okay. Thank you. A
 12 three-way trade, Anthony Davis was sent to --
 13 Q Okay. So you've reviewed Mr. Nestico's response to
 14 Kelly Phillips' e-mail here on Exhibit 26, correct?
 15 A Yes.
 16 Q Okay. Kelly Phillips testified that he took from
 17 this response from Mr. Nestico that it wasn't his job
 18 at KNR to question Doctor Ghoubrial's treatment or
 19 his bills, and that his job would be in jeopardy if
 20 he continued to do so, his job at KNR would be in
 21 jeopardy if he continued to do so. Is that
 22 consistent with your experience and understanding as
 23 a KNR attorney?
 24 MR. MANNION: Objection,
 25 mischaracterization.

Page 376

1 you better, that's what you do." And when they see
 2 patients, I rely on what the, I guess, I suppose what
 3 the doctor says, and if the patient is saying it
 4 helps, I don't know.
 5 I mean, it's not my place to -- if a doctor is
 6 saying X, Y, Z, I'm not there, I'm not the doctor. I
 7 get those records and I present them to an insurance
 8 company to argue with them to the best that I can, if
 9 that makes any sense.
 10 I feel like I say "if that makes any sense" a
 11 lot. I do.
 12 Q Kelly Phillips testified that clients would often
 13 complain that they never asked for or wanted
 14 injections, and were upset at the end of their case
 15 that they were being charged so much for them. Did
 16 you ever have that experience?
 17 MR. BARMEN: Objection.
 18 A I have no specific recollection of it. I can't say
 19 it didn't happen. People always get mad when they
 20 see their medical bills. I don't recall what was
 21 charged for those or what wasn't. I mean, could I
 22 say that people complained, I can't say yes or no. I
 23 can't say that they didn't complain. I'm sure at one
 24 point in time or another somebody did, but I couldn't
 25 tell you who.

Page 377	Page 378
1 Q Okay.	1 Q Was that something that was frequently done before
2 A And people complain about their medical expenses.	2 she sent this e-mail, LOPs going out on the firm's
3 -----	3 letterhead?
4 (Thereupon, Plaintiffs' Exhibit 27 was	4 A I don't know.
5 marked for identification.)	5 Q You don't remember?
6 -----	6 A I don't. Most of the providers that we dealt with
7 Q So this is an e-mail that was provided by Gary Petti	7 had their own LOPs, I think.
8 in response to the subpoena that the Plaintiffs'	8 Q Well, Nomiki responds and says "Is someone going to
9 served on him, and it's an e-mail from Brandy to	9 create a new LOP? The current medical assignment
10 staff, copying Mr. Nestico, on Friday, November 9,	10 comes up on our letterhead."
11 2012, the subject line, LOPs, importance high, and	11 Nestico responds "No provider sends them to
12 she writes "Absolutely no LOPs should be sent out of	12 you."
13 this office on letterhead. Please see me if you have	13 And then Nomiki says "What about for CNS and
14 questions." This is an e-mail you would have	14 Ohio Sports and Spine, Doctor Dunne, they have us
15 received, correct?	15 create LOPs."
16 A I believe so, yeah. I think staff was everybody who	16 And then Megan Jennings says "Town & County also
17 worked there.	17 has us send them our LOPs for clients."
18 Q Do you have any understanding of why Brandy was	18 Do you recall that that was the case, that
19 sending this e-mail?	19 certain chiropractors or providers would use LOPs on
20 MR. SKIDMORE: Objection.	20 KNR letterhead?
21 A No. I mean, it's -- I think it's clear that she	21 A I don't have any recollection of it. I don't have
22 didn't want anybody to send LOPs on letterhead.	22 any recollection of that specifically taking place.
23 Q Yeah, but do you know why she didn't want anyone to	23 I do know there has been some back and forth in terms
24 send LOPs on letterhead?	24 of case law about how LOPs are handled or not handled
25 A No.	25 or the order of operations as it relates to those.
Page 379	Page 380
1 What those specifics are, I don't know, and I can't	1 Q Do you recall that Town & Country was another
2 tell you.	2 chiropractor who would regularly send their
3 Q Okay. Did you handle a lot of cases with Town &	3 clients -- send KNR's clients that were treating at
4 Country?	4 Town & Country to Doctor Ghoubrial?
5 A No, not really. They were all Columbus.	5 A I don't recall.
6 Q But you handled some Town & Country cases?	6 Q Okay. You have no reason to believe that's not the
7 A Probably a handful.	7 case?
8 Q Do you remember what year the Columbus office opened?	8 MR. MANNION: Objection.
9 A 2013, 2014, maybe --	9 MR. BARMEN: Objection.
10 Q During your time at the firm, right?	10 A True.
11 A -- staffed?	11 Q Okay. Tell me what you remember about the
12 Yeah.	12 investigators at KNR.
13 Q And do you remember that Paul Steele went --	13 A Mike and Aaron, and I think we talked about Gary the
14 A He did.	14 other day.
15 Q -- to move to Columbus to manage that office,	15 Q Gary Monto?
16 correct?	16 A Yeah. There was a guy named Josh, I think, in
17 A Yes.	17 Southern Ohio. Some guy out in the Youngstown area,
18 Q So do you know if the firm -- do you remember	18 I don't remember his name.
19 handling Town & Country cases in Akron before the	19 Q What do you remember about them? What did they do?
20 Columbus office opened?	20 A I don't know what -- the only -- well, the guys
21 A Yes.	21 outside of the office, they went and signed up cases.
22 Q Okay. So you would have handled more Town & Country	22 I don't know beyond that what else they did, if they
23 cases before the Columbus office opened out of Akron,	23 got -- some of the stuff that was in that e-mail, you
24 correct?	24 know, they took pictures periodically, things like
25 A Yes.	25 that. I don't know. Outside of that, I don't know.

Page 381	Page 382
<p>1 Aaron and Mike did a lot of stuff around the Akron 2 office and signed up cases. 3 Q What kind of stuff did they do around the Akron 4 office? 5 A A little of everything. 6 Q Like what? 7 A I believe they had something to do with stuffing of 8 mailers, or they always had a big stack of CDs and 9 stuff like that in their office that they were 10 putting in envelopes. 11 Q They had an office? 12 A Well, it was the server room. They had two desks in 13 the server room that was cluttered with junk. I 14 don't know, it might not have even been two desks, 15 they might have split duty on it. But all the 16 computer servers were in an area, and then they had 17 them and whatever else other crap they had in there. 18 That's where they sat and did -- stuffed envelopes -- 19 I don't know if they stuffed envelopes. They stuffed 20 something. 21 Q That was basically where the investigators would be? 22 A Around the office, doing stuff around the office. 23 Q Yeah, like hanging decorations for holidays and 24 things like that? 25 MR. MANNION: Objection.</p>	<p>1 A Yes. 2 Q Okay. 3 A Changing lightbulbs. 4 Q Were they there every day? 5 A I think so. I mean, you know, like everybody else, 6 they had time off, or if they had things they weren't 7 going to be around for, but they were generally 8 around. 9 Q So you distinguished just now about the guys outside 10 of the office. You meant that there's some 11 investigators who you consider to be the guys outside 12 of the office, and then there were Aaron and Mike who 13 were always in the office; is that fair? 14 MR. MANNION: Objection. 15 A Aaron and Mike were the Akron, Canton, Cleveland area 16 guys. Everybody else was further away from home 17 base. I don't know. Again, I can't comment because 18 I was in the Akron office, so -- 19 Q Okay. What did you understand the purpose of the 20 investigators to be? 21 A Well, they were the people that we sent out to sign 22 up new cases, and perform small tasks when asked to. 23 Q Okay. 24 ---- 25 (Thereupon, Plaintiffs' Exhibit 28 was</p>
Page 383	Page 384
<p>1 marked for identification.) 2 ---- 3 Q You provided me with this e-mail, didn't you? 4 A I think so. 5 Q This is an e-mail from Brandy to all prelit 6 attorneys, copying Mr. Nestico, where Brandy writes, 7 "We must send an investigator to sign up clients. We 8 cannot refer to chiro and have them sign forms there. 9 This is why we have investigators. We are losing too 10 many cases doing this." That's what she writes in 11 the first paragraph. 12 MR. BARMEN: What's the Bates number? 13 THE WITNESS: One. 14 Q When Brandy wrote -- you received this e-mail, right? 15 A Yeah, I was a prelit attorney. 16 Q Right. So when Brandy writes "We are losing too many 17 cases doing this," who do you understand her to be 18 referring to here? Losing too many cases to whom? 19 MR. SKIDMORE: Objection. 20 MR. MANNION: Objection. 21 A I don't know. I cannot -- 22 Q When Brandy says "We must send an investigator to 23 sign up clients," you understood that this was an 24 order from Brandy, correct, not just a suggestion? 25 MR. SKIDMORE: Objection.</p>	<p>1 MR. POPSON: Objection. 2 MR. MANNION: Same objection. 3 A Yes. 4 Q Do you have any idea -- do you have any understanding 5 of what Brandy is referring to when she's talking 6 about "We are losing too many cases doing this"? 7 MR. SKIDMORE: Objection. 8 MR. BEST: Objection. He just said "I 9 don't know." 10 A No. 11 Q Okay. You testified yesterday that you never sent an 12 investigator to someone who didn't want to be 13 represented. 14 A Correct. 15 Q Would you agree it's also true that clients often 16 change their mind and would maybe sign up with 17 another firm or decide that they don't want 18 representation by KNR for any other reason? 19 MR. SKIDMORE: Objection. 20 A It's always a possibility, yeah. 21 Q So I believe you testified yesterday that clients, 22 that KNR clients often signed the forms at the 23 chiropractor's office, correct? 24 A Yes. 25 Q And that sometimes you, as the prelit attorney, would</p>

Page 385	Page 386
<p>1 speak with the client on the investigator's phone or 2 on the client's phone while the investigator is there 3 to go over the contingency fee agreement and any 4 other forms while the client is deciding whether to 5 sign them, correct? 6 A Yes. 7 Q But that didn't happen on every single sign-up, 8 correct? 9 MR. SKIDMORE: Objection. 10 A What do you mean? 11 Q Well, you didn't talk to the client on every single 12 sign-up that the investigators did, did you, as an 13 attorney? 14 A Yes. 15 Q Oh, you did? 16 A Yeah. 17 Q Okay. I wasn't clear about that. So it was your 18 experience that an investigation fee was charged for 19 the investigators on almost every single case that 20 was settled on behalf of the KNR client, correct? 21 MR. MANNION: Objection. 22 MR. SKIDMORE: Objection. 23 A I can comment as to my caseload. Well, I think 24 everybody's was -- I haven't seen all of their 25 settlement memos, but they were on mine. I can't</p>	<p>1 tell you that they were or weren't on theirs, but 2 they were doing the same job for me as they were for 3 every other attorney in the firm. 4 Q And if they completed the sign-up, they would get 5 their investigation fee, correct? 6 A Their -- I don't know. I presumed so. I don't know. 7 Q The investigation fee was deducted on nearly every 8 single settlement memorandum that you executed with 9 your clients, correct? 10 A Probably, yeah. 11 Q Okay. And are you saying that you didn't -- you have 12 no understanding of what the investigators did to 13 earn that fee? 14 MR. SKIDMORE: Objection. 15 A It was my understanding that they were getting paid 16 for going out and getting the client or potentially 17 some of the other -- you know, taking pictures and 18 things like that. But going out and getting clients 19 signed up. 20 Q That was the main job, correct? 21 MR. MANNION: Objection. 22 A That is predominantly what Aaron and Mike did, I 23 believe, yeah. 24 Q Okay. To the extent that they took any photos or 25 obtained police reports, that wasn't on every single</p>
<p>Page 387</p> <p>1 case, correct? 2 MR. MANNION: Objection. 3 A I would say correct. 4 ---- 5 (Thereupon, Plaintiffs' Exhibit 29 was 6 marked for identification.) 7 ---- 8 Q Tom might have showed you this e-mail yesterday. 9 This is an e-mail from Holly Tusko to prelit 10 attorneys, Brandy Brewer -- copying Brandy Brewer, 11 Rob Nestico, prelit attorneys, and it looks like a 12 bunch of the investigators, correct? 13 A Yes. 14 Q And the importance is high. Did you understand that 15 when you received an e-mail like this from Holly 16 Tusko, that this was an instruction that you had to 17 follow? 18 MR. MANNION: Objection. 19 A This wasn't for me. 20 Q This was for the investigators, I understand. 21 A Yeah. And Holly's relationship with the 22 investigators, I don't know. I don't know if she 23 was -- she was the intake manager. I don't know if 24 she would be considered their boss or their manager 25 or any -- I don't know. So I don't know if Holly --</p>	<p>Page 388</p> <p>1 if sending this to them would rise to that level or 2 not. 3 Q Okay. So she's writing here, she lists seven 4 criteria, and she writes "Please note that if this 5 criteria is not met, you will not be paid. When 6 doing a sign-up, the following steps need to be 7 taken," et cetera, and she lists the seven steps. 8 Was it your experience that the investigators would 9 often get paid even when they did not do all of these 10 things? 11 MR. BEST: Objection. 12 MR. POPSON: Objection. 13 MR. MANNION: Objection. 14 A I don't know. When the investigators were paid and 15 how they were paid was done before attorney -- I 16 don't know if it was before attorney involvement or 17 not, but I don't know that process. I can't comment 18 on that process. 19 MR. MANNION: Objection. 20 Q As an attorney who handled intakes, you expected the 21 investigators to be on call every day to handle these 22 sign-ups, didn't you? 23 A They were on call -- they were working every day to 24 do sign-ups. 25 Q And you expected them to be?</p>

Page 389

1 A Yes -- well, I didn't expect them -- well, yeah, we
 2 knew that they were there.
 3 Q Okay. And Mike and Aaron in particular were on call
 4 every day to handle sign-ups and whatever other tasks
 5 that you or one of the other attorneys or staff might
 6 need them to do, correct?
 7 A Yes.
 8 Q You knew that Mike and Aaron weren't going to be tied
 9 up working on some other investigative job for some
 10 other law firm or some other law firm's clients,
 11 correct?
 12 A To the best of my knowledge, they did not work for
 13 anybody else.
 14 Q You testified yesterday that you became aware of
 15 certain cases where investigators were paid on cases
 16 even where they did not do any work on the file --
 17 MR. MANNION: Objection.
 18 Q -- do you recall?
 19 A I don't recall, but if that's -- if I said that, I
 20 don't know. I don't recall if I said that or not
 21 yesterday.
 22 Q But that you are aware of that happening, correct?
 23 MR. MANNION: Objection.
 24 A I'm sorry, about them getting paid and not doing any
 25 work on the cases?

Page 391

1 A If something happened on a case the note would be in
 2 Needles.
 3 Q It was supposed to be in Needles?
 4 A It was supposed to be, yes.
 5 ----
 6 (Thereupon, Plaintiffs' Exhibit 30 was
 7 marked for identification.)
 8 ----
 9 Q So Brandy called these case intake e-mails. Do you
 10 remember these?
 11 A Yes.
 12 Q What do you remember about them?
 13 A They were sent out by Holly, I think at the end of
 14 every day. I don't know why we got them. Maybe it's
 15 just because those are the cases -- I think maybe it
 16 shows -- I don't know why we got them, because I
 17 didn't pay any attention to them.
 18 They were the case -- the date of the -- I don't
 19 know what the first date is, the date of something,
 20 maybe either the sign-up or the accident, I don't
 21 know what A or O means, it might be a class, and then
 22 it looks like it's the attorney and the paralegal.
 23 The next line or the next column, it's the
 24 investigator, and dollar amount. And then the last
 25 column looks like the referral source.

Page 390

1 Q Yes.
 2 A I mean, do I have a specific recollection of a case
 3 where they got paid and didn't do any work, I
 4 couldn't tell you a case name, but I mean, they got
 5 paid on most every case. I can't tell you if they
 6 did all of these things on every one of those cases
 7 or not. Does that make sense?
 8 Q Sure. Do you have any recollection of them being
 9 paid on cases where they did no work at all --
 10 MR. MANNION: Objection.
 11 Q -- where they didn't even do the sign-up?
 12 MR. MANNION: Objection.
 13 A Mike and Aaron I believe got paid on cases from --
 14 far away from Akron. On what basis I can't tell you.
 15 I don't know -- so that would be a case where they
 16 didn't actually do the sign-up, but I don't know if
 17 they did anything else or not.
 18 Q Okay. Would it be in Needles? To determine whether
 19 Mike or Aaron did anything on these cases, would you
 20 be able to tell from Needles?
 21 A If a note was made.
 22 Q If a note was made?
 23 A Yeah.
 24 Q Okay. And sometimes a note would be made about what
 25 an investigator did, correct?

Page 392

1 Q Do you think A might stand for auto?
 2 A I don't know. It could.
 3 Q Okay.
 4 A Well, yeah, so at the bottom of the one column is the
 5 one that says "Dog," so --
 6 Q That's a dog bite case?
 7 A Presumably that would be a dog bite case.
 8 Q Yeah, so this column says what kind of case it is?
 9 A I don't know, but that's a good assumption.
 10 Q Okay. Did you -- strike that.
 11 Were these e-mails being sent out during your
 12 entire employment with the firm, or did she start
 13 sending these sometime after you started working
 14 there?
 15 A I don't know; I don't know. I can't remember if they
 16 were sent out when I first started or not.
 17 Q If we look at page 25 of this document, it's Williams
 18 25, the Bates number, I just want to be clear, do you
 19 understand that this is all the intakes that came in
 20 on that particular day?
 21 A I think that's what they are.
 22 Q Okay. And if we look on October 14th, this shows
 23 that AMC and MRS, which you understand to be Aaron
 24 Czetli and Mike Simpson, correct?
 25 A Yes.

Page 393

1 Q Or -- they're partners in their business, correct?
 2 A Yes.
 3 Q These are the Akron based investigators?
 4 A Yes.
 5 Q This confirms that they were paid on a total of 22
 6 cases, including cases that came in from a
 7 chiropractic clinic in Toledo and Columbus, as well
 8 as on cases that came in from Akron, Canton, Shaker
 9 Heights, Elyria and Youngstown, correct?
 10 MR. SKIDMORE: Objection.
 11 A It appears that way.
 12 Q Is this consistent with your testimony that Mike and
 13 Aaron would get paid on cases from -- far away from
 14 Akron, where they didn't do the sign-up?
 15 MR. SKIDMORE: Objection.
 16 MR. MANNION: Objection.
 17 A Yes.
 18 Q You believe this document reflects that, correct?
 19 A I believe so.
 20 Q Okay. And -- okay.
 21 ----
 22 (Thereupon, Plaintiffs' Exhibit 31 was
 23 marked for identification.)
 24 ----
 25 Q Do you remember this document?

Page 395

1 paralegal there, told me there was an e-mail about
 2 investigator fees sent that same day."
 3 You write "An internal e-mail??? or the e-mails
 4 I sent Paige giving them a hard time?"
 5 And Breanna responds "I think so, something went
 6 around about how they will only get the fee now if
 7 they actually go to the house or something. I don't
 8 remember exactly. I don't know about that."
 9 Do you understand that she was referring to the
 10 cases that we've just been talking about, where the
 11 investigator does not do the sign-up or Mike and
 12 Aaron or AMC and MRS do not do the sign-up but get
 13 paid anyway?
 14 MR. SKIDMORE: Objection.
 15 MR. MANNION: Objection.
 16 A I think if you read the bottom part, it might -- you
 17 can infer that.
 18 Q Okay. And you don't deny that this text message
 19 exchange occurred, correct?
 20 A No.
 21 Q Have you changed cell phone numbers since?
 22 A No.
 23 Q Okay. What is your cell phone number?
 24 A 330-606-2506.
 25 Q Is Breanna still at KNR?

Page 394

1 A No.
 2 Q Can you confirm that this is a copy of a text message
 3 exchange that you provided to me between you and
 4 Breanna Dianetti?
 5 A It could be. I mean, it looks like a text message
 6 exchange. I don't remember giving it to you or not,
 7 but --
 8 Q You don't deny that you did, do you?
 9 A I can't say I can deny it, no.
 10 MR. MANNION: Is there a date, Peter?
 11 MR. PATTAKOS: No. I assume the date
 12 would be on Rob's phone. I don't see a date
 13 on this.
 14 Q But this appears to be you speaking on the right and
 15 Breanna on the left, correct?
 16 A I believe so, yeah.
 17 Q And Breanna is who?
 18 A She was my paralegal when I worked there.
 19 Q And you would text with her after you left there,
 20 correct?
 21 A Periodically.
 22 Q And that's what this is here, correct?
 23 A Um-um.
 24 Q Okay. And she writes here, her second text message,
 25 "The day you first texted me about this, Kevin, the

Page 396

1 A No, and I don't think she was at the time of this
 2 exchange, either. She left shortly after I did.
 3 Q And do you remember Kevin's name?
 4 A I don't. Kevin something.
 5 Q Thanks.
 6 A Yeah.
 7 Q You write at the bottom of this text message,
 8 "They're so fucked."
 9 A Yeah.
 10 Q Why did you write that?
 11 A I don't know. They're changing their -- it looks
 12 like they were changing a policy based on something,
 13 so they had concerns about it, I guess. I don't
 14 know. And I don't know if they actually did or not,
 15 so --
 16 ----
 17 (Thereupon, Plaintiffs' Exhibit 32 was
 18 marked for identification.)
 19 ----
 20 MR. MANNION: What number was that?
 21 MR. SKIDMORE: 32.
 22 Q I don't have the e-mail that actually went to the
 23 staff. I'll represent to you that this e-mail
 24 actually did go out to the staff that Robert Redick
 25 suggests here.

Page 397	Page 398
<p>1 A Okay.</p> <p>2 Q Where Redick writes "Please be advised that if the</p> <p>3 attorney on the case requests any investigator, who</p> <p>4 is not Mike or Aaron, to do something for a case that</p> <p>5 has already been opened, i.e., pick up records, knock</p> <p>6 on the door to verify address, they can be paid on a</p> <p>7 case-by-case basis, depending on the task performed.</p> <p>8 However, no checks for anything other than the</p> <p>9 sign-up fee should ever be requested without getting</p> <p>10 in writing approval from the handling attorney,</p> <p>11 myself and/or Brandy. Under no circumstances should</p> <p>12 any additional checks to MRS or AMC be requested</p> <p>13 other than at the time the case is set up. Please</p> <p>14 see me if you have any questions." It's your</p> <p>15 understanding that the SU fee that Mr. Redick was</p> <p>16 referring to here was in fact the investigation fee,</p> <p>17 correct?</p> <p>18 MR. MANNION: Objection.</p> <p>19 Q When he talks about the SU fee --</p> <p>20 A Yeah; yeah.</p> <p>21 Q -- he means sign-up fee, correct?</p> <p>22 A You would have to ask him, but I believe so.</p> <p>23 Q Yeah, and the sign-up fee and the investigation fee</p> <p>24 are the same thing, correct?</p> <p>25 A They were used interchangeably, I think.</p>	<p>1 Q Okay. Do you recall that this happened frequently</p> <p>2 when that other -- the other investigators would get</p> <p>3 separate checks cut to them for doing things apart</p> <p>4 from the sign-up fee?</p> <p>5 A Other investigators?</p> <p>6 Q Apart from the sign-up I should say?</p> <p>7 A Other investigators other than --</p> <p>8 Q Aaron and Mike.</p> <p>9 MR. MANNION: I'll object to somebody</p> <p>10 else's meaning.</p> <p>11 A Are you referring to Aaron and Mike specifically, or</p> <p>12 Aaron and Mike and all those other guys on that list?</p> <p>13 Q Any -- well, this says any investigator who is not</p> <p>14 Mike or Aaron.</p> <p>15 A Okay. I don't recall.</p> <p>16 Q Do you recall that that happened frequently?</p> <p>17 A I couldn't tell you a specific case, but not</p> <p>18 frequently.</p> <p>19 Q How often would it happen that you -- how many times</p> <p>20 a week would it happen that you would be requesting a</p> <p>21 separate check for an investigator apart from the</p> <p>22 sign-up fee?</p> <p>23 A Not very often.</p> <p>24 Q Once a month?</p> <p>25 A I can't -- no, I can't tell you. Not often.</p>
Page 399	Page 400
<p>1 Q Less than once a month?</p> <p>2 A Probably.</p> <p>3 Q Okay. Do you know or have any understanding as to</p> <p>4 why Mr. Redick makes the distinction between Mike and</p> <p>5 Aaron on one hand and everyone else on the other?</p> <p>6 MR. MANNION: Objection.</p> <p>7 MR. BEST: Objection.</p> <p>8 Q Do you believe it relates to the fact that Mike and</p> <p>9 Aaron were getting paid on these cases where even</p> <p>10 they did not do the sign-ups?</p> <p>11 MR. MANNION: Objection.</p> <p>12 A You would have to ask Robert; you would have to ask</p> <p>13 Robert.</p> <p>14 Q Do you agree it's reasonable to infer that's the</p> <p>15 case?</p> <p>16 MR. MANNION: Objection. It's</p> <p>17 completely improper.</p> <p>18 MR. BEST: Objection.</p> <p>19 MR. PATTAKOS: I know you guys are</p> <p>20 really uncomfortable with the concept --</p> <p>21 MR. MANNION: Not at all.</p> <p>22 MR. PATTAKOS: -- of inferences, but I'm</p> <p>23 asking him if he believes a particular</p> <p>24 inference is reasonable.</p> <p>25 MR. SKIDMORE: Objection.</p>	<p>1 MR. MANNION: Objection. By who?</p> <p>2 A I mean, it depends on how you read the e-mail if</p> <p>3 somebody would come to that inference.</p> <p>4 Q Would you argue with them?</p> <p>5 MR. MANNION: Objection.</p> <p>6 MR. SKIDMORE: Objection.</p> <p>7 MR. MANNION: Come on.</p> <p>8 A No, I guess not.</p> <p>9 Q Are you aware of any facts that would foreclose that</p> <p>10 inference?</p> <p>11 MR. MANNION: Objection.</p> <p>12 A No.</p> <p>13 Q Okay. I assume you understand what an inference is?</p> <p>14 A I think so.</p> <p>15 Q And you understand an inference is a permissible</p> <p>16 deduction that a trier of fact may, but is not</p> <p>17 required to, make from facts or circumstances that</p> <p>18 have been established by direct evidence?</p> <p>19 MR. POPSON: Objection.</p> <p>20 MR. MANNION: I object.</p> <p>21 A My understanding was not that lengthy, but sure.</p> <p>22 Q That's a fair definition of an inference, correct?</p> <p>23 MR. MANNION: Objection.</p> <p>24 A Yes.</p> <p>25 MR. MANNION: I will say for the record</p>

Page 401	Page 402
1 if we want to get this done, if we're allowed	1 during a deposition? Do you understand that
2 to ask about reasonable inferences on every	2 I will exercise the right to adjourn the
3 piece of evidence, then we're going to go	3 deposition and take it up with the court? Do
4 four or five days, because I have a lot of	4 you understand?
5 things I'm going to ask about reasonable	5 MR. PATTAKOS: Are you adjourning this
6 inferences on.	6 deposition right now, sir?
7 MR. PATTAKOS: I'll tell you what, Tom,	7 MR. SKIDMORE: I'm telling you right now
8 you know, had you not --	8 if I hear any more of it today, I will
9 MR. SKIDMORE: Guys.	9 adjourn the deposition and bring it up to the
10 MR. PATTAKOS: -- obtained this	10 court. I'm not going to tolerate this.
11 ridiculous affidavit from Mr. Horton, this	11 Q Mr. Horton --
12 wouldn't be an issue, so --	12 MR. SKIDMORE: Do you understand what
13 MR. MANNION: I was just nicely saying.	13 I'm saying?
14 MR. BEST: A truthful affidavit.	14 MR. PATTAKOS: I don't.
15 MR. PATTAKOS: Truthful?	15 MR. SKIDMORE: You don't?
16 MR. SKIDMORE: I'm going to say this	16 MR. PATTAKOS: No, I don't.
17 right now. If I hear any more of this, I'm	17 Q Mr. Horton, your affidavit at paragraph 30, you state
18 going to adjourn this deposition today and	18 "I was never aware of an 'upcharge' or 'surcharge' on
19 I'm going to take this up with the court. I	19 any expenses charged to clients."
20 am not going to tolerate those kind of	20 A Yes. Well, I've got to look at my affidavit.
21 comments while my client is sitting here, and	21 Q Sure, take a look.
22 especially in front of me. Do you	22 A Upcharge or a surcharge.
23 understand, Mr. Pattakos? Do you? Do you	23 Q It's Exhibit 6.
24 understand I am not going to tolerate those	24 A Six.
25 kind of comments about myself or my client	25 MR. POPSON: It's Horton A.
Page 403	Page 404
1 A Got it, right on top.	1 Q Okay. Paragraph 21, you write you're not aware --
2 Q Sorry. B -- A.	2 you state that you're not aware of any fraud or
3 MR. POPSON: Horton A. Paragraph 30.	3 ethical violations with --
4 A Yes.	4 MR. MANNION: Wait a minute. We're not
5 Q You write "I was never aware of an 'upcharge' or	5 allowed to talk about that. There's a court
6 'surcharge' on any expenses charged to clients." Do	6 order.
7 you agree this can't be true if clients are being	7 Q Let's just talk about fraud. "I did not advise her
8 charged investigation fees on cases where the	8 that any fraud or ethical violations had occurred
9 investigator didn't do any work?	9 with her case and I was not aware of any fraud or
10 MR. SKIDMORE: Objection.	10 ethical violations had occurred with her case."
11 MR. MANNION: Objection.	11 MR. MANNION: No objection to that
12 A No.	12 question.
13 Q Why is that?	13 A I did not.
14 A The rest of it reads "All expenses were simply	14 MR. BEST: There's no question.
15 pass-through expenses that KNR had incurred, and only	15 MR. MANNION: You read that. Is there a
16 the actual cost was charged to the client, to the	16 question?
17 best of my knowledge." So I take that as an upcharge	17 MR. PATTAKOS: I'll strike it. Let's
18 or a surcharge would be Mike or Aaron charging KNR	18 move on.
19 \$50 and KNR charging the client \$100.	19 ----
20 Q So you're not talking about a situation where Mike	20 (Thereupon, Plaintiffs' Exhibit 33 was
21 and Aaron charged KNR \$50 even when Mike and Aaron	21 marked for identification.)
22 didn't do anything, that's not the kind of upcharge	22 ----
23 or surcharge you're referring to there, correct?	23 Q These are e-mails that you provided to me, correct?
24 MR. MANNION: Objection.	24 A Yes.
25 A That is not what paragraph 30 says.	25 Q What do you remember about this?

Page 405	Page 406
1 A I would say corresponding with Paige asking for an 2 itemization to quantum meruit lien on a case.	1 Q After Paige sent you the last e-mail saying "I just 2 wanted to let you know that I have sent over 3 everything that we have to date"?
3 Q And you asked her specifically about the 4 investigation fee, correct?	4 A Like I said, I think maybe shortly after this I 5 didn't even represent this client anymore.
5 A Yes.	6 Q Okay. In your time at KNR, did you ever come to 7 understand that different offices had different 8 policies regarding investigators?
6 Q You asked her to include the results of the 7 investigation, e.g., scene and vehicle photographs, 8 witness statements obtained by the investigator, et 9 cetera, as you do not see any of those things in the 10 original and supplemented documentation that was sent 11 over.	9 A No. The only thing I could tell you is what I knew 10 at Akron.
12 A Correct.	11 Q Did you ever come to understand that the firm had 12 different policies regarding referrals to 13 chiropractors or doctors in certain offices, other 14 than they would obviously send to doctors and chiros 15 that were close to them?
13 Q She didn't send you any of that information, did she?	16 MR. BARMEN: Objection.
14 A I don't recall. I ended up actually not finishing my 15 representation of the person that we were talking 16 about.	17 A Say that again. Did I understand that other 18 offices --
17 Q Okay. You knew when you sent this that she wasn't 18 going to have that information, didn't you?	19 Q Let me ask it this way. Strike the question. Did 20 you ever become aware of any differences at all in 21 terms of how the firm operated among the different 22 offices -- between the different offices?
19 MR. SKIDMORE: Objection.	23 A No. I mean, I didn't work in them and I don't recall 24 a specific conversation with anybody that worked in 25 the offices about any of it.
20 A I did not. I was asking for it because it wasn't on 21 the lien.	
22 Q You have no memory of ever receiving anything in 23 response to this e-mail, correct?	
24 MR. MANNION: Objection.	
25 A I couldn't tell you.	
Page 407	Page 408
1 Q Okay. 2 ---- 3 (Thereupon, Plaintiffs' Exhibit 34 was 4 marked for identification.) 5 ----	1 not? 2 MR. PATTAKOS: He's a witness here under 3 oath to testify about the facts of this case. 4 I know you both understand that. Thanks.
6 Q This is an affidavit that Gary Petti executed in 7 connection with this case. It's six pages long, 8 double spaced. Please read it and tell me if you 9 believe anything here is untrue.	5 MR. MANNION: You're asking about the 6 truth of somebody.
10 MR. MANNION: Objection.	7 MR. PATTAKOS: Your objection is that 8 I'm asking the witness about the truth?
11 MR. POPSON: Objection.	9 MR. SKIDMORE: Okay. Last warning.
12 MR. SKIDMORE: I'm just going to object 13 to the question.	10 MR. MANNION: The last objection would 11 be foundation, lack of knowledge.
14 You have to answer based on what you 15 know and your own knowledge.	12 MR. SKIDMORE: Peter, I think I'm going 13 to ask that you ask specific questions 14 regarding this because all of this goes to 15 his personal knowledge. You're asking a 16 general question. Some of this he would have 17 no personal knowledge of, so I'm going --
16 What's the question?	18 MR. PATTAKOS: If he has no personal 19 knowledge -- how about I ask him this 20 question.
17 MR. PATTAKOS: Whether he believes 18 anything here is untrue.	21 MR. SKIDMORE: Do you understand -- I'm 22 not trying to be argumentative here to you -- 23 I'm just saying if there are things in this 24 affidavit that he wouldn't have any personal 25 knowledge of, you're asking him to say yay or
19 MR. MANNION: I'm going to object. It's 20 a six-page affidavit.	
21 MR. PATTAKOS: Well, he can read it. 22 He's a big boy.	
23 MR. BEST: Or he could choose not to.	
24 MR. MANNION: Yeah, why does he have to 25 say whether Gary Petti is being truthful or	

Page 409

1 nay as to whether it's false or not, he would
 2 have no idea. So I think the answer is
 3 different, based on the particular things
 4 that are being said.
 5 MR. PATTAKOS: I will ask him this. Is
 6 he aware of any facts suggesting that
 7 anything written here is untrue.
 8 MR. MANNION: Objection.
 9 MR. SKIDMORE: And again, I think it's
 10 the same objection. I think you need to be
 11 specific with regards to your questions in
 12 directing him to this affidavit.
 13 MR. PATTAKOS: We can go through every
 14 single one.
 15 MR. SKIDMORE: That's what I'm saying, I
 16 think you need to be specific. To just -- I
 17 mean, if he says that he's not aware of
 18 anything, then he's generally what, agreeing
 19 to everything in the affidavit, even though
 20 he doesn't have personal knowledge of it?
 21 MR. PATTAKOS: No, he's not necessarily
 22 agreeing to everything in the affidavit.
 23 He's only saying he's not aware of any facts,
 24 or he is, he either is or is not aware of any
 25 facts suggesting that anything in this

Page 411

1 MR. SKIDMORE: Well, I'm going to tell
 2 him I'm going to direct him not to answer the
 3 question.
 4 MR. PATTAKOS: We'll come back then.
 5 MR. MANNION: I doubt that.
 6 MR. PATTAKOS: Do you?
 7 MR. MANNION: Not on that question.
 8 MR. SKIDMORE: So unless you're going to
 9 ask specifics, I'm not going to allow him to
 10 answer a general question.
 11 MR. PATTAKOS: Okay. This will take a
 12 lot longer, then.
 13 MR. SKIDMORE: That's fine.
 14 Q Mr. Horton, are you aware of any facts to suggest
 15 that anything in paragraph one of Mr. Petti's
 16 affidavit is untrue?
 17 MR. MANNION: Wait a second. Objection.
 18 A I don't know anything about that stuff. I know Gary
 19 has three kids.
 20 Q Are you aware of any facts suggesting that any of
 21 Mr. Petti's statements in paragraph two are untrue?
 22 MR. MANNION: Objection.
 23 A I can't tell you what Gary learned. Those are all
 24 conversations he had with other people.
 25 Q Look, I understand if you don't know. I'm asking you

Page 410

1 affidavit is untrue.
 2 MR. MANNION: Objection. That's an
 3 improper question.
 4 MR. SKIDMORE: And again, I think it's
 5 very improper.
 6 MR. PATTAKOS: It's no less -- I'm
 7 sorry, again, we would not have to do this
 8 were it not for the affidavit that you all
 9 negotiated as part of your settlement. So it
 10 doesn't seem legitimate to me to be making
 11 this objection when he executed this sweeping
 12 affidavit.
 13 MR. SKIDMORE: Listen, we're not talking
 14 about that. We're talking about a particular
 15 document that's in front of him. You're
 16 asking him to make a general comment about a
 17 lot of stuff in here. I need to know and the
 18 witness needs to know specifically what
 19 you're asking about. So you just need to be
 20 more specific with your question, and I think
 21 it's an unfair question then to ask him to
 22 generally comment about a lot of stuff that's
 23 in here that he wouldn't have any knowledge
 24 of.
 25 MR. PATTAKOS: Your objection is noted.

Page 412

1 a different question. I'm asking if you --
 2 A Do I have facts to refute that?
 3 Q Yes.
 4 A No.
 5 Q Okay.
 6 MR. MANNION: Again, that's a completely
 7 improper question.
 8 THE WITNESS: I know.
 9 Q Are you aware of any facts to refute any of what
 10 Mr. Petti writes in paragraph three here?
 11 MR. MANNION: Objection.
 12 MR. SKIDMORE: Objection.
 13 A I have no personal knowledge of anything in paragraph
 14 three.
 15 Q How about paragraph four?
 16 A I mean, again, do I have any facts to refute what he
 17 is saying --
 18 Q Yes.
 19 A -- about what he's telling you?
 20 Q Yes.
 21 MR. MANNION: Objection.
 22 MR. SKIDMORE: Objection.
 23 A No, I can't -- a lot of it is opinion.
 24 Q Are you aware of any facts to refute any --
 25 MR. MANNION: Objection.

Page 413	Page 414
1 Q -- anything written here, whether it's a fact or an	1 MR. PATTAKOS: I'm only asking if he has
2 opinion, I want to know what those facts are.	2 personal knowledge of any facts that would
3 MR. MANNION: Objection.	3 refute paragraph six.
4 MR. SKIDMORE: Paragraph four?	4 MR. SKIDMORE: So does he have personal
5 Q You've answered paragraph four, correct? We're on to	5 knowledge of the facts contained in paragraph
6 paragraph five now?	6 six and does he have any facts --
7 MR. MANNION: Objection. I didn't hear	7 MR. PATTAKOS: I'm not asking if he has
8 anybody ask paragraph five yet.	8 personal knowledge of the facts contained in
9 Q Well, are you aware of any facts suggesting that any	9 paragraph six. I'm just asking if he has
10 statements in paragraph five are untrue?	10 personal knowledge of any facts that would
11 A Those are all things that Gary did. I can't tell you	11 refute anything in paragraph six.
12 one way or the another.	12 MR. MANNION: Object.
13 Q But you have no facts to refute --	13 MR. BARMEN: It's so bush league it's
14 A No.	14 embarrassing.
15 Q -- what is written here? Okay.	15 MR. MANNION: Seriously, though, you're
16 Paragraph six, are you aware of any facts	16 trying to say by that that that assumes,
17 suggesting that any of the statements in paragraph	17 then, that he agrees with those facts, and
18 six are untrue?	18 that's not what that means.
19 MR. MANNION: Same objection.	19 MR. PATTAKOS: I'm just trying to
20 MR. SKIDMORE: I'm going to object. Why	20 discover facts in a discovery deposition of a
21 don't we ask -- why don't you ask him whether	21 witness that you have restricted my access --
22 he has personal knowledge of the things	22 MR. MANNION: I have not.
23 contained in paragraph six, and then ask him	23 MR. PATTAKOS: -- to in an extreme
24 whether or not he has facts to refute it? Is	24 degree.
25 that what you're trying to do?	25 MR. MANNION: That is wrong. I have
Page 415	Page 416
1 never restricted your access.	1 going to make the same objection to every
2 MR. SKIDMORE: And I'm going to object	2 paragraph, we can just stipulate to that. We
3 to that and I'm going to say I represent	3 only have three more to go.
4 Mr. Horton and I have not done that.	4 MR. SKIDMORE: Actually, unfortunately,
5 A I can't make any comment on paragraph six.	5 due to the appellate rules, he has to object
6 Q You're not aware of any facts that refute paragraph	6 every time.
7 six, are you?	7 MR. PATTAKOS: Oh, really?
8 MR. MANNION: Objection, asked and	8 MR. SKIDMORE: Yeah.
9 answered. He said he couldn't make a	9 MR. PATTAKOS: Sorry.
10 comment.	10 MR. BEST: True dat as they say, that's
11 A No, I mean this is all stuff that Gary did.	11 an accurate statement of the law.
12 Q Okay. Paragraph seven, are you aware of any facts	12 MR. SKIDMORE: It's unfortunate,
13 suggesting that any of the statements in paragraph	13 honestly.
14 seven are untrue?	14 A Paragraph nine. Paragraph nine, "Although I had
15 MR. MANNION: Objection.	15 ample opportunity to observe their activities,
16 A No.	16 comings, goings, and work product, I never witnessed
17 Q How about paragraph eight, are you aware of any facts	17 or became aware of these so called investigators
18 suggesting that any of the statements in paragraph	18 performing any actual investigations. To my
19 eight are untrue?	19 knowledge, their only involvement with client matters
20 A No, I can't.	20 was to meet potential clients and sign them to KNR
21 Q So paragraph nine, are you aware of any facts	21 fee agreements."
22 suggesting that any of Mr. Petti's statements in	22 MR. SKIDMORE: You're killing the court
23 paragraph nine of his affidavit are untrue?	23 reporter.
24 MR. MANNION: Same objection.	24 THE WITNESS: Sorry. I just read
25 MR. PATTAKOS: I understand that you're	25 paragraph nine.

Page 417

1 A As I've testified earlier today, there were occasions
 2 that Mike and Aaron did do other things.
 3 Q Like take photos?
 4 A Yeah, some of the things that were on those lists.
 5 Q Okay.
 6 A Do I have a specific recollection of those things,
 7 no, but I do know that from time to time they
 8 performed those duties. So I would say there are
 9 facts that dispute that.
 10 Q Understood. Okay.
 11 A But Gary may not have seen that, so I can't tell you.
 12 Q Okay. We'll find out on Friday.
 13 A I'm not coming back Friday, am I?
 14 Q No, but Gary is. Paragraph 10, are you aware of any
 15 facts suggesting that any of the statements in
 16 paragraph 10 are untrue?
 17 A I don't know. In terms of being criticized in front
 18 of other KNR attorneys for his unwillingness to be
 19 dishonest, that did not happen in front of me, so I
 20 don't know if that counts as a fact or not.
 21 Q Okay. You weren't at this meeting or you don't have
 22 any memory of this happening?
 23 A Yeah, I don't remember this happening.
 24 Q Okay.
 25 A I mean, it says all prelit KNR attorneys were

Page 419

1 A Hold on. I'm still going.
 2 Q This is paragraph 10. I don't need to ask you about
 3 11 and 12, so once you answer 10 we're done.
 4 A I have no recollection of that, so I can't tell you.
 5 Q But you're not aware of any facts suggesting it's not
 6 true, correct?
 7 MR. MANNION: Objection.
 8 A I can't say one way or the other.
 9 Q Okay.
 10 THE VIDEOGRAPHER: I have to change the
 11 media.
 12 MR. PATTAKOS: Pardon?
 13 THE VIDEOGRAPHER: Can I have a break to
 14 change the media?
 15 MR. PATTAKOS: Please.
 16 THE VIDEOGRAPHER: Thank you. Off the
 17 record. 1:55.
 18 ----
 19 (Thereupon, a recess was had.)
 20 ----
 21 THE VIDEOGRAPHER: We're back on the
 22 record. Tape number two. 2:16.
 23 MR. PATTAKOS: Mark the next exhibit.
 24 ----
 25 (Thereupon, Plaintiffs' Exhibit 35 was

Page 418

1 present. That may or may not be the case because of
 2 intakes, but I don't recall it, so --
 3 Q What do you mean "because of intakes"?
 4 A Because we had to still answer the phones while
 5 meetings were going on.
 6 Q Okay. So if you were having one of these meetings
 7 and the phone rang, someone would have to get up and
 8 get it?
 9 A I don't remember. Maybe. I don't remember. It was
 10 a while ago, clearly a long time ago.
 11 Q But is that how -- that would be common at meetings,
 12 if all of the prelitigation attorneys were in a
 13 meeting and the intake phone rang, that someone would
 14 have to leave and answer the phone?
 15 A I think. I mean, for sure if like an objective case
 16 came in, somebody would leave. It might even be Rob
 17 or John or somebody.
 18 Q Was there a special ring for the objective cases?
 19 A No.
 20 Q Oh, right, how would there be. Okay. But a
 21 paralegal would, or someone who answered the phone
 22 would say "We have an objective and we need to get a
 23 lawyer on the phone"?
 24 A Yeah, I think they would come in and get us, I think.
 25 Q Okay.

Page 420

1 marked for identification.)
 2 ----
 3 Q The executed affidavit of Amanda Lantz. Sorry.
 4 MR. SKIDMORE: We have to do this again?
 5 MR. PATTAKOS: We sure are. I'm just
 6 trying to discover facts.
 7 MR. BARMEN: If that were only true.
 8 Q So I'm not going to ask you about every one of these.
 9 Let's look at paragraph three. You're not
 10 aware of -- are you aware of any facts suggesting
 11 that any of the statements in paragraph three of
 12 Amanda Lantz's affidavit are untrue?
 13 MR. MANNION: Objection.
 14 A Paragraph three, am I aware of any facts to refute
 15 these things?
 16 Q Sure.
 17 A I can't -- I know I testified yesterday of the
 18 \$100,000 goal for attorneys, that I can confirm, but
 19 I have no other knowledge of any of these other
 20 things.
 21 Q Okay. You said yikes because 60 to 70 cases each
 22 month is a lot, right?
 23 MR. MANNION: Objection.
 24 A She settled 89 cases in one month.
 25 Q That's what you were reacting to?

Page 421	Page 422
1 A Yeah. It's a lot, yeah.	1 if you are, please identify, if you're not, please
2 Q So you're confirming you're not aware of any facts to	2 confirm.
3 refute what she writes in paragraph three here?	3 MR. MANNION: Objection.
4 A I can't say, no.	4 MR. SKIDMORE: Objection to the way that
5 Q Okay. How about paragraph four, are you aware of any	5 question is formed.
6 facts suggesting that Amanda Lantz's statements in	6 A Again, the only thing I would say is -- about the
7 paragraph four are untrue?	7 referral to Doctor Ghoubrial, I would disagree with
8 MR. MANNION: Objection.	8 that, but I can't -- I have no facts to refute
9 A The only thing that I can say is to -- I never	9 anything else she's saying.
10 referred anybody to Doctor Ghoubrial.	10 Q What would you disagree with?
11 Q It was always the chiropractor, correct?	11 A A referral to Doctor Ghoubrial. Again, I never
12 A Chiropractor, I mean, neurosurgeons and stuff like	12 referred anybody directly to Doctor Ghoubrial, I
13 that if the case warranted, but --	13 don't think.
14 Q I understand. Okay.	14 Q Okay. So you're saying you're confirming that it was
15 A I don't know if it's a fact or not.	15 your understanding that the decision to make the
16 Q How about paragraph five? Are you aware of any facts	16 referral was the chiropractor's or the neurosurgeon's
17 suggesting that any of the statements in paragraph	17 or whoever --
18 five of this affidavit are untrue?	18 A Yeah, somebody else.
19 MR. MANNION: Object based on his lack	19 Q -- whichever provider?
20 of knowledge.	20 A Yeah.
21 MR. BARMEN: Same objection.	21 Q Okay; okay. Anything else that you want to --
22 A I mean, this all appears out of Columbus, I'd have no	22 A I can't make a comment on anything else, I don't
23 idea.	23 know.
24 Q Well, okay. That's fine. I'm just asking you if	24 Q Okay. We can skip paragraph six.
25 you're aware of any facts that would contradict this;	25 Let's move on to paragraph seven. Are you aware
Page 423	Page 424
1 of any facts suggesting that any of the statements in	1 interrupted him after you got the part of the
2 paragraph seven of this affidavit are untrue?	2 answer you wanted.
3 MR. SKIDMORE: Objection.	3 A Yeah, I can't say one way or the other.
4 A The first sentence is true. I mean, you always want	4 MR. MANNION: That's completely
5 somebody to get in as soon as possible because it	5 improper.
6 helps them. I do not recall ever being directed to	6 Q Is there anything else that you want to say?
7 set up a reminder. We had client contact reminders	7 A No.
8 just to keep in touch with our clients, but as it	8 MR. MANNION: Well, you cut him off,
9 relates to treatment, I don't recall that. But	9 Peter. You did. You can stare at me all you
10 again, this is Columbus, and I was in Akron.	10 want.
11 No, I have no knowledge of any of that.	11 Q How about paragraph nine --
12 Q Okay. How about paragraph eight?	12 MR. MANNION: Same objection.
13 MR. MANNION: Same objection.	13 Q -- are you aware of any facts suggesting that any of
14 Q Are you aware of any facts suggesting that any of the	14 the statements in paragraph nine of this affidavit
15 statements in paragraph eight are untrue?	15 are untrue?
16 MR. MANNION: Same objection.	16 MR. SKIDMORE: Objection.
17 MR. SKIDMORE: Objection.	17 MR. MANNION: Same objection.
18 A I can't, I can't say one way or the other whether	18 A I have no personal knowledge of any of that stuff. I
19 it's true or not in number eight. So I guess the	19 can't -- again, I can't say that it's not true, but I
20 answer to the question is no, I can't refute it, but	20 also can't say it's true.
21 I can't confirm it.	21 Q You're not aware of any facts that would contradict
22 Q Okay. You're not aware of any facts that would	22 it, correct?
23 refute it?	23 MR. MANNION: Objection.
24 MR. MANNION: Stop it. Peter, he was in	24 A No.
25 the middle of answering and you directly	25 Q Okay. And number 10, are you aware of any facts

Page 425

1 suggesting that any of the statements in paragraph 10
 2 of this affidavit are untrue?
 3 MR. MANNION: Same objection.
 4 A "On rare occasions involving exceptionally high
 5 valued cases, the attorneys were required to meet the
 6 client within 24 hours to obtain the signature on the
 7 fee agreement and establish the attorney-client
 8 relationship." I would tell you it wasn't 24 hours.
 9 I mean, I would leave the office on the spot to go
 10 sign up somebody who was significantly hurt and
 11 couldn't come in.
 12 Q Sure. Okay.
 13 A So I don't know if 24 hours was a policy, but meeting
 14 with a significantly injured individual as soon as
 15 possible, I don't think there was a 24 hour
 16 requirement, I think it was as soon as possible. But
 17 that's just how you do it. Again, I mean, it's the
 18 same answer for number 10 with the exception of that.
 19 Q Okay. We can skip 11. We can skip 12. Okay. I
 20 think we're good on this. Thank you.
 21 ----
 22 (Thereupon, Plaintiffs' Exhibit 36 was
 23 marked for identification.)
 24 ----
 25 Q You provided me with this document, did you not?

Page 427

1 there's an investigator, it looks like Simpson is
 2 there. Besides Simpson, who we know is an
 3 investigator, is there anyone else on here who is not
 4 either a KNR lawyer or a provider?
 5 MR. MANNION: Object.
 6 A Matt was a paralegal, I believe.
 7 Q What do you understand about the criteria for this
 8 trip?
 9 MR. SKIDMORE: Objection.
 10 MR. MANNION: Objection.
 11 A At this point in time it was just our trip.
 12 Q What do you mean?
 13 A The first year I was there -- I mean, so Rob would
 14 take everybody on vacation. I don't know when it
 15 started. I know my first year we went to Fort
 16 Lauderdale. My second year we went to Cancun. My
 17 third year we went to the Dominican.
 18 The third year, though, there was criteria. One
 19 year it wasn't there, everybody who made their goal
 20 subsequently got to go on a trip. These first two
 21 trips were just trips, like there was no requirement
 22 to go. And I think the third trip we went on was if
 23 we made our goal for the year or month or --
 24 Q Where was the third trip?
 25 A I think it was the Dominican Republic.

Page 426

1 A I believe so.
 2 Q And what do you recognize this document to be?
 3 A Room assignments for a trip.
 4 Q A trip where?
 5 A I was with -- no, it was either to Fort Lauderdale --
 6 Q Could it have been Cancun?
 7 A -- or -- it was either Fort Lauderdale or Mexico,
 8 because those were the two times I stayed with
 9 Robert.
 10 Q Oh, you roomed with Robert --
 11 A Redick.
 12 Q -- Robert Redick? Okay.
 13 And this is a number of your fellow KNR
 14 attorneys, along with a number of chiropractors and
 15 other doctors and providers that treated the firm's
 16 clients frequently, correct?
 17 MR. MANNION: Objection as to the
 18 "frequently."
 19 A Yes.
 20 Q Okay. Is there anyone on this list that's either not
 21 a KNR lawyer or a provider, a healthcare provider
 22 that treated KNR clients?
 23 MR. MANNION: I'm going to object.
 24 A I'm sorry, say that again.
 25 Q Is there anyone on this list who is -- okay, I see

Page 428

1 Q And Mr. Nestico paid for these trips?
 2 MR. MANNION: Objection.
 3 A I did not pay for my trip.
 4 Q Okay.
 5 A I know he paid for mine.
 6 Q Okay. Did the providers go on all of the trips that
 7 you went on?
 8 MR. MANNION: Objection.
 9 Q Not necessarily all the providers, but --
 10 A I don't remember the trip to the Dominican. I don't
 11 remember.
 12 I remember this one because Doctor Schneider
 13 actually adjusted me on the trip.
 14 And then the first one, I don't really remember
 15 the first one, either.
 16 Q You can't remember if providers were involved or not?
 17 A I mean, as stupid as it sounds, no, I can't. This is
 18 the trip I remember the most.
 19 Q What do you remember about it?
 20 A Nothing, just the trip, the place we stayed was
 21 really nice.
 22 Christ, I can't tell you. I honestly can't
 23 remember on the first one and the third one if they
 24 went or not. I can't say that they didn't and I
 25 can't say that they did. Shoot, I don't know.

Page 429	Page 430
<p>1 Q Do you recall telling me that you spoke with Paul 2 Steele, who reported to you that he witnessed Doctor 3 Ghoubrial and Mr. Nestico in a room engaging in a sex 4 act with a prostitute at the same time? 5 MR. BARMEN: Objection. 6 MR. MANNION: Objection. Come on. 7 MR. SKIDMORE: Objection. 8 MR. MANNION: That's ridiculous. 9 Q You recall telling me that, don't you? 10 MR. MANNION: Objection. 11 A I may have. 12 Q You recall that happening, don't you? 13 MR. MANNION: Objection. 14 MR. BARMEN: Objection. 15 MR. SKIDMORE: Objection. 16 A That happening? 17 Q You recall getting that report from Paul Steele, 18 correct? 19 A I don't really -- possibly. 20 MR. MANNION: Objection. 21 MR. SKIDMORE: Objection. 22 Q You don't deny that you told me that, do you? 23 MR. MANNION: Objection. 24 MR. SKIDMORE: Objection. 25 A No, I can't.</p>	<p>1 Q Are you aware of any mutual investments or business 2 ventures among Mr. Nestico, Doctor Floros, Doctor 3 Ghoubrial or any of the providers or other 4 contractors that the firm works with? 5 MR. MANNION: Objection. 6 MR. BARMEN: Objection. 7 A I am not. 8 Q Are you aware of any holding company that Mr. Nestico 9 owns with Doctor Floros? 10 A I am not. 11 Q Have you ever heard of Panatha Holdings? 12 A I have not. 13 Q Have you ever heard of Twin Crown Properties? 14 A I have not. 15 Q Okay. 16 ---- 17 (Thereupon, Plaintiffs' Exhibit 37 was 18 marked for identification.) 19 ---- 20 Q Do you recall receiving this e-mail? 21 A No. 22 Q You have no memory of it at all? 23 A I do not. 24 Q What -- you recall that the firm would give away gift 25 cards?</p>
Page 431	Page 432
<p>1 A Yes. 2 Q What do you remember about that? 3 A A client would come in, we'd settle their case, they 4 would fill out a survey for us, and I believe they 5 would get a gift card in exchange. 6 Q About \$25? 7 A I don't recall. 8 Q Do you remember the restaurants that the -- well, do 9 you remember the gift cards were for restaurants? 10 A Yes. 11 Q Okay. Do you remember the gift cards that the firm 12 would distribute to clients? 13 A I didn't see them very much. Vaguely. 14 Q What do you remember? 15 A Subway, Red Lobster, maybe Olive Garden-ish. 16 Q Okay. Was there ever a fried chicken place that you 17 can recall? 18 A I have no idea. 19 Q You don't recall -- 20 A I do not. 21 Q -- ever -- the firm ever distributing gift cards to 22 Popeye's Chicken or KFC or anything like that, do 23 you? 24 A I have no specific recollection of it. 25 Q Okay. Would you agree that a relatively large</p>	<p>1 portion of KNR's clientele is African-American? And 2 when I say "relatively large," I mean larger than the 3 population at large. 4 MR. MANNION: I'm going to object. What 5 geographical area? 6 A We had a lot of African-American clients, yeah. 7 Q Do you recall telling me that one of your colleagues 8 once said that he speaks with more black people than 9 the NAACP? 10 MR. MANNION: Objection. 11 MR. SKIDMORE: Objection. 12 A No, that wasn't it. 13 Q What was it? 14 A Josh said he knew more black people than Martin 15 Luther King. 16 Q Ah. I'm sorry. Because of the firm's clientele, 17 correct? 18 A Right. 19 Q And that's Josh Angelotta, correct? 20 A Yeah. 21 Q Okay. Tell me how your employment at KNR ended. 22 A I was terminated for making unauthorized copies of 23 firm documents. 24 Q What were those documents? 25 A Reports for the quarterly performance of attorneys.</p>

Page 433	Page 434
<p>1 Q And what did those reports show?</p> <p>2 A Cases closed, fees earned.</p> <p>3 Q Why did you copy those?</p> <p>4 A I don't know. There's no good reason.</p> <p>5 Q You were interested in seeing how your fellow attorneys were doing, weren't you?</p> <p>6 MR. SKIDMORE: Objection. He just said</p> <p>7 he doesn't know.</p> <p>8 MR. PATTAKOS: I'm not asking if he</p> <p>9 knows. I'm asking him if he was interested</p> <p>10 in how his fellow attorneys were performing</p> <p>11 as a general matter.</p> <p>12 MR. MANNION: I'm going to object. You</p> <p>13 implied that's why he did that, though.</p> <p>14 A It was fairly common knowledge about what everybody</p> <p>15 was doing in terms of their performance. We talked</p> <p>16 about it openly. The things that I copied were in</p> <p>17 all likelihood at one point in time or another</p> <p>18 distributed amongst us. It was, you know, quarterly</p> <p>19 meetings we always talked about how well each other</p> <p>20 did, kind of on a daily basis to see how everybody</p> <p>21 was.</p> <p>22 The actual copying of the documents served no</p> <p>23 purpose, other than to have a copy of them to refer</p> <p>24 to, I guess. I don't know.</p> <p>25</p>	<p>1 Q To evaluate your own performance?</p> <p>2 A I mean, I knew how I was doing. Maybe against others</p> <p>3 there. I don't know.</p> <p>4 Q Okay. Were you trying to set up a competitive firm?</p> <p>5 A No.</p> <p>6 Q Were you trying to recruit KNR attorneys?</p> <p>7 A No.</p> <p>8 Q Do you understand that that is --</p> <p>9 A I mean, Paul and I talked about some day going</p> <p>10 somewhere and doing our own firm, but it was, you</p> <p>11 know, coffee or like water cooler --</p> <p>12 Q Pie in the sky?</p> <p>13 A Yeah. Paul apparently did it.</p> <p>14 But no, I had no plans of -- I wanted to leave,</p> <p>15 that is a hundred percent true. I had no plans of</p> <p>16 going -- I wouldn't have the resources or capability</p> <p>17 to set up my own firm anywhere.</p> <p>18 Q Why did you want to leave?</p> <p>19 A I was pretty unhappy.</p> <p>20 Q Why were you unhappy?</p> <p>21 A The work atmosphere, the amount of work, in all</p> <p>22 fairness, compensation for the amount of work that we</p> <p>23 did. We did a lot of work.</p> <p>24 Q What's the most you ever made in a year?</p> <p>25 A Over there?</p>
<p>Page 435</p> <p>1 Q Yes.</p> <p>2 A Probably somewhere between like 120 and 125, I think.</p> <p>3 Q What was the lowest you made in a year?</p> <p>4 A I think my first year I made like somewhere between</p> <p>5 like 105 and 112, maybe 110.</p> <p>6 Q Okay.</p> <p>7 A I feel like 110 is a good number.</p> <p>8 Q What did you make in the other year, since you were</p> <p>9 there for three years?</p> <p>10 A Somewhere between there, like 117 maybe, 115. I</p> <p>11 don't remember.</p> <p>12 Q Okay. Do you know that KNR has stated in answer to</p> <p>13 an interrogatory that you were terminated because</p> <p>14 you, quote, stole documents and breached your</p> <p>15 confidentiality agreement. In addition, you tried to</p> <p>16 set up a competitive firm and recruit KNR attorneys.</p> <p>17 Did you know that?</p> <p>18 A No.</p> <p>19 Q Did anyone ever tell you that you were terminated for</p> <p>20 breaching a confidentiality agreement?</p> <p>21 A No. I mean, if as part of the client -- or, employee</p> <p>22 handbook, if there was a -- like I said, I didn't</p> <p>23 actually read it. If there was a confidentiality</p> <p>24 provision in the employee handbook, then that's</p> <p>25 definitely a possibility. We signed that thing when</p>	<p>Page 436</p> <p>1 we first started. I don't know. I don't know how</p> <p>2 that would have played into me getting terminated</p> <p>3 because it wouldn't make any sense.</p> <p>4 But the firm -- I mean, the firm document thing</p> <p>5 made sense. I mean, it wasn't -- I probably would</p> <p>6 have fired me.</p> <p>7 Q Okay. For copying documents that had already been</p> <p>8 distributed to you?</p> <p>9 MR. MANNION: Objection.</p> <p>10 A Well, the way I went about it, surreptitious --</p> <p>11 not -- I don't know if "surreptitious" is the right</p> <p>12 word. I think that implies some ill intent. Doing</p> <p>13 it on my own. Like Rob actually said to me, "You</p> <p>14 could have just asked me and I would have given them</p> <p>15 to you."</p> <p>16 Q I understand.</p> <p>17 A And that's probably true.</p> <p>18 Q Okay. Did anyone -- did Mr. Nestico or anyone else</p> <p>19 at the firm ever tell you that they believed you were</p> <p>20 trying to set up a competitive firm and recruit KNR</p> <p>21 attorneys?</p> <p>22 A No, I don't think so. Not to my recollection.</p> <p>23 - - -</p> <p>24 (Thereupon, Plaintiffs' Exhibit 38 was</p> <p>25 marked for identification.)</p>

Page 437	Page 438
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
Page 439	Page 440
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25

Page 441

1 Q Okay. He refused to answer any questions about why
 2 he terminated you or anything like that, so we're
 3 going to have to have him come back and ask these
 4 questions.
 5 MR. MANNION: Since you said that
 6 gratuitously for the record, I did that
 7 because we have a confidentiality agreement
 8 on a lawsuit between us, and I didn't want to
 9 violate anything, neither did he.
 10 MR. PATTAKOS: Oh, okay.
 11 THE WITNESS: Sorry, am I breaching
 12 that --
 13 MR. MANNION: No.
 14 THE WITNESS: -- by telling him why I'm
 15 fired? I don't know.
 16 MR. MANNION: Nope.
 17 Q Okay. So if you go down, it looks like the same day,
 18 now we're at -- on the third page at the bottom,
 19 Nestico texts you -- actually if you just look at the
 20 top of the fourth page, the whole thing. "Rob, this
 21 is bad. Paul called me and said you were concerned
 22 about Bar complaint. I agree not to do anything
 23 provided you do not interfere with any KNR clients."
 24 What's going on here?
 25 A I probably had a conversation with -- because I

Page 443

1 MR. MANNION: I'm going to object.
 2 That's not what Nestico is saying here.
 3 MR. PATTAKOS: I'm not saying it is.
 4 MR. SKIDMORE: I'm going to object.
 5 You're asking whether he violated a law?
 6 MR. PATTAKOS: Whether he believes
 7 there's anything wrong with calling a client
 8 and telling them that he's no longer with the
 9 firm.
 10 MR. SKIDMORE: Well, then I think you're
 11 getting into a question of ethics, and don't
 12 you guys have a protective order on that
 13 issue?
 14 MR. MANNION: Yes, there's an order that
 15 Judge Brogan specifically put on.
 16 MR. PATTAKOS: Regarding the KNR
 17 clients. It doesn't apply to Mr. Horton.
 18 MR. MANNION: That's not true.
 19 MR. PATTAKOS: Do you want to get the
 20 order out and look at it and tell me how it
 21 applies to Mr. Horton?
 22 MR. MANNION: It says no, it says no
 23 questions regarding the professional rules of
 24 conduct. You can ask about individual
 25 conduct, but not whether they violate the

Page 442

1 talked to Paul periodically after I got fired, I
 2 probably talked to Paul and was concerned about
 3 having a Bar complaint filed against me.
 4 Q For what?
 5 A I don't know. Just a concern.
 6 Q Okay. What did you understand this to mean, "I agree
 7 not to do anything provided you do not interfere with
 8 any KNR clients"?
 9 A I mean, you would have to ask Rob. I think he was
 10 just telling me not to contact any clients.
 11 Q Do you think it's illegal for you to contact clients?
 12 MR. MANNION: Objection.
 13 MR. SKIDMORE: Objection. Illegal?
 14 MR. MANNION: You got to add more to
 15 that question.
 16 A I don't know specifically. I know there are ways
 17 that you can and you can't. As I'm sitting here now
 18 I can't tell you what those ways are or are not.
 19 Q Well, okay. Do you believe that --
 20 A I mean, some ways to do it would invite a Bar
 21 complaint I think and some ways to do it would not,
 22 and I don't know which one of those things it is.
 23 Q Okay. Do you think that you would be violating any
 24 rules or laws by contacting a client whose case you
 25 handled to tell them "I am no longer with the firm"?

Page 444

1 rules.
 2 MR. PATTAKOS: What do you care?
 3 MR. MANNION: What are you talking
 4 about, what do I care?
 5 MR. SKIDMORE: Wait a minute. I don't
 6 care what either one of you two care. I
 7 care. Okay. So here's the thing. If you're
 8 asking him whether or not he had a right to
 9 contact a client of KNR when he left, I think
 10 that's appropriate.
 11 If you're asking him whether it violated
 12 an ethical standard as to how it happened, I
 13 think it's inappropriate.
 14 So go ahead and ask your question.
 15 MR. PATTAKOS: That's fine. Well, I'll
 16 ask the question that you believe is
 17 inappropriate -- that you believe is
 18 appropriate.
 19 Q Do you believe you had the right to contact the
 20 clients whose cases you worked on to tell them you
 21 were no longer with the firm?
 22 A I don't know.
 23 Q Okay. Do you interpret this text message from
 24 Mr. Nestico as a threat that he will do something if
 25 you call a KNR client?

Page 445	Page 446
1 MR. MANNION: Objection.	1 him to be referring to with "I lived it"?
2 A At the time I might have thought he was actually	2 A Oh, there was I think some pretty substantial
3 being nice.	3 litigation between him and the Eshelman Group, Rob,
4 Q Okay.	4 Robert and Gary used to be part of Eshelman I think,
5 A Because I didn't know whether I could actually have a	5 and they left, and that's as much as I know.
6 Bar complaint filed against me or not. I don't know.	6 Q You mean Rob -- Kisling, Nestico & Redick, correct?
7 Q Okay. You write "I won't. Wasn't planning on it. I	7 A Yeah.
8 know I fucked up." You mean you know you fucked up	8 Q Gary Kisling and Robert Redick?
9 by taking photos of those documents?	9 A Yes.
10 A Yes.	10 Q Okay. And then you write "Not that it matters, but
11 Q Okay. Then you write "He asked me about calling them	11 as you saw, everything I had was stuff we" were --
12 and I didn't think I could." Paul is who you're	12 "we already were shown at one point or another,
13 referring to there, Paul asked you about calling the	13 except the phone numbers on that statement. That is
14 clients?	14 all. No other money stuff."
15 A I believe so, yes.	15 A Yeah, I took a picture of a phone number on a
16 Q Okay. And you said "Not sure how it works, but I	16 statement for, it was a municipal or a county
17 clearly don't have the resources." You mean there	17 something or other.
18 that you don't have the resources to take these	18 Q He writes --
19 clients on and represent them, correct?	19 A Like a clerk of courts.
20 A I would not have the capacity to start my own firm.	20 Q Okay. He writes "I know this why no one
21 Q Okay. And Rob says "No, you can't, you don't	21 understands," it looks like a typo. What do you
22 represent them anymore is KNR," then he clarifies	22 think he means there?
23 "KNR does," and "Any tortious interference will draw	23 MR. MANNION: Objection to the "typo."
24 Bar complaints and lawsuit. Trust me I know, I lived	24 A Well, I mean, you'd have to ask Rob what he means,
25 it." What is he referring to? What do you understand	25 but my position is, like I testified earlier, the
Page 447	Page 448
1 things that I took were things that were readily --	1 Q Okay.
2 basically readily available. Like I said, he told me	2 A Do I know that they had investments together, I guess
3 that if I would have asked, he just would have given	3 I don't specifically know. I thought, I thought that
4 them to me.	4 they did have some -- I think I knew that Danny
5 Q Oh, so this is why no one understands why you did it?	5 developed the neighborhood that they both lived in.
6 A Yes.	6 Do I have specific knowledge of it, no, I don't have
7 Q Okay. He asks -- you then ask "Can you call me	7 specific knowledge of it, but I think it may have
8 really quick?"	8 been, not common knowledge or not uncommon knowledge.
9 He says "In a few I'm in a meeting with Danny	9 that they were friends and had investments together.
10 right now." Is that probably Danny Karam?	10 I mean, I don't know. I can't say yes or no.
11 MR. MANNION: Objection.	11 Q And that's the development that Nestico Drive is on,
12 A I could guess to say yes. I mean, Danny is Danny. I	12 correct?
13 mean, it was Danny.	13 A No. Nestico Drive is on -- I think it's a, like a
14 Q Danny Karam?	14 duplex/condo kind of complex --
15 A I guess.	15 Q Okay.
16 Q Did you know that Mr. Nestico had a lot of	16 A -- somewhere in -- somewhere. I've been there
17 investments with Danny Karam?	17 because another girl that worked at KNR was selling
18 MR. MANNION: Objection.	18 something over Facebook, so I went over to get it and
19 A I think so.	19 I had to pull onto Nestico Drive when I went to get
20 Q You knew they were close, right?	20 it.
21 A Yeah. Danny was a nice guy, is a nice guy, I think	21 No, I think, again, the neighborhood that Rob
22 he's still around.	22 and Danny -- I can't say. I can't say.
23 Q Okay. Now, it looks like later in the day --	23 Q The neighborhood that Rob and Danny developed is --
24 A Hold on. Let me back up. I want to clarify what I	24 A I don't know.
25 just said.	25 Q -- the neighborhood that they live in?

Page 449	Page 450
1 A Yes, but I don't know if they developed it. I'm	1 A I do.
2 making that up. I don't know.	2 Q Because you were friendly with them, right?
3 Q Okay. Did you see Danny around the office?	3 A I was. Especially John.
4 A Oh, yeah.	4 Q You said you were burned out and maybe you sabotaged
5 Q A lot?	5 yourself?
6 A Periodically. He had -- I believe also we	6 A I was.
7 represented him for something at one point.	7 Q What's going on in this next page where you say "I
8 Q Do you know whether Danny was close with Ghoubrial?	8 have a pic of my chiro board. You want it. And the
9 MR. MANNION: Objection.	9 investigator list for doing after hours."
10 A I do not.	10 And then Rob says "Yes and this is the video of
11 Q Okay. So it looks like quite a few hours pass, Rob	11 Brandy's office where is all of the stuff from
12 Nestico writes "I am glad you were honest and	12 Julie's office?"
13 returned that because that download came up on	13 What is he talking about here?
14 Ethan's search and that would surely cost you	14 A So we had these boards next to our desks with
15 license. I really do hope you do well and you find	15 chiropractors' names written on them that were
16 employment quickly." What is he talking about here?	16 basically the same information that was in the
17 A I don't know.	17 e-mails that got sent to us.
18 Q Something you returned that --	18 Q The chiro boards?
19 A Yeah, I took some stuff back. What specifically it	19 A Yeah.
20 was, I can't tell you. You'd have to go ask or get	20 Q Brandy testified about that. You don't have to
21 it from them, I have no idea.	21 explain what those are.
22 Q Okay. And then you confirm "I'm not out, nor was I	22 A Yeah. So I had a picture of that because I was on
23 ever out to screw anybody. I told Brandy and I hope	23 the after hours rotation pretty heavily. So I had
24 she told you what I feel the worst about is you	24 that and the investigator list for who was going to
25 guys." You mean them personally?	25 do what. It says here "for doing after hours." So
Page 451	Page 452
1 Brandy's office was the, the charts and graphs and	1 next. Don't be a fool. I like you but I don't like
2 stuff, and then the clerk -- the number of the	2 her. Don't join her file and rank." What's going on
3 clerk -- the -- I don't know if it was the clerk of	3 here?
4 courts or municipal something or other I took a	4 A I had talked to Amanda, because she got, I think,
5 picture of was in Julie's office.	5 fired the day after me.
6 Q Julie who?	6 Q Amanda Lantz?
7 A Branch.	7 A Yeah, and I think she was -- had a different plan
8 Q What was her position?	8 than I had. I really had no plan. She had asked me
9 A Bookkeeper.	9 if I -- my opinion on some of that contacting client
10 Q Okay. And it looks like sometime later you tell him	10 stuff or not, and I said I didn't know, and I think I
11 that you're cleaning out your desk and you found some	11 sent her some case law.
12 other stuff, he asks you to return it.	12 Q About whether it was okay?
13 Then let's look at the next page. Rob writes to	13 A I think so, yeah.
14 you "Are you serious your following this Amanda.	14 Q What did you find in the case law that you reviewed?
15 Seriously."	15 A I can't tell you right now.
16 MR. MANNION: I'm going to object to the	16 Q Did it tell you, did it tell you that it was okay to
17 tone. I think the rules are clear you have	17 contact the clients?
18 to read that without that.	18 MR. SKIDMORE: Objection.
19 Q "What she didn't read in those decisions is the all	19 MR. MANNION: Objection.
20 the case law. We demanded our client list and you	20 A I don't recall. I think in some circumstances it is
21 returned it so it is trade secret. We contacted all	21 and in some circumstances it's not. I don't know.
22 our clients of your departure. What wasn't followed	22 Q Okay. How did -- what did Rob mean by "your
23 by either one of you is how you obtained the client	23 following this Amanda"?
24 list. She may want to do further research and see	24 A Oh, because she had e-mailed me, and I think she
25 what rules she has violated and what she will face	25 accidentally forwarded the -- I sent her the case

Page 453	Page 454
1 law, and then she accidentally forwarded that e-mail	1 illegal?
2 to somebody, it went to Rob. I think she was typing	2 MR. MANNION: Objection.
3 to respond to me, I'm guessing, she was trying to	3 A I don't know.
4 respond to me and responded to Rob.	4 Q Okay. Are you aware that Amanda did anything that
5 Q And he was upset?	5 would support a lawsuit against her?
6 A I think so.	6 A I don't know.
7 Q Yeah. Okay. You said "She just asked if I had any	7 Q Rob says "She is stupid. If I so much as get one
8 case law. I sent her what I had. That's it. She	8 termination letter she is done. She just needs to
9 can do what she wants. I've moved on."	9 move on."
10 He says "Smart cause I am going to go after her	10 And then he writes "And contacting our clients
11 now. First a Bar complaint then a lawsuit. She	11 by improperly obtaining info is another.
12 can't read case law if it would save her life. Your	12 "Dude she hung herself. Did you tell her to
13 departure was not my wish hers was. You should talk	13 stay the fuck away?"
14 to her let her know I'm gunning for her. I have	14 MR. MANNION: Objection to the way
15 copies of e-mails to clients asking to go with her	15 you're reading this. You're not allowed to
16 for a lower rate. She has violated so many ethical	16 do that. The rules are clear on this.
17 rules it's crazy. See what the nut says."	17 MR. PATTAKOS: What rule, Tom?
18 So he's telling you that he is going to sue	18 MR. MANNION: You're not --
19 Amanda and file a Bar complaint against her, right?	19 MR. SKIDMORE: All right, guys, let's
20 MR. MANNION: Objection,	20 go. Keep going.
21 mischaracterizes.	21 MR. MANNION: You're not allowed to do
22 A I have to read the text message.	22 that.
23 Q Is that what he's saying?	23 MR. PATTAKOS: I want to know the rule
24 A Whatever the text message says.	24 you're talking about.
25 Q Okay. Are you aware Amanda did anything that was	25 MR. SKIDMORE: Just read the statement.
Page 455	Page 456
1 MR. PATTAKOS: You can look it up and	1 MR. MANNION: Objection.
2 find it for me and send it to me later.	2 MR. SKIDMORE: Objection.
3 MR. SKIDMORE: Keep going. I'm sorry.	3 MR. MANNION: Expectations.
4 What was the question?	4 A I think, I think so.
5 Q So he writes "Did you tell her to stay the fuck	5 Q Okay. And you did end up --
6 away?" Did you understand that Rob wanted to	6 A To give her advice to not do what he thought she was
7 communicate this threat through you?	7 doing, but, yeah.
8 MR. SKIDMORE: Objection.	8 Q Okay. And you did end up talking to her?
9 MR. MANNION: Objection.	9 A I did.
10 MR. POPSON: Objection.	10 Q And you write here "I told her it would be in her
11 MR. MANNION: Objection to the	11 best interest for sure," correct?
12 characterization of it as a threat.	12 A Yes.
13 MR. PATTAKOS: What is it, then?	13 Q Did you tell her about Rob's text messages?
14 MR. MANNION: To try to prevent her from	14 A I don't recollect. In all likelihood.
15 doing unethical conduct.	15 Q Okay. You said "Like I said, I told her I haven't
16 MR. PATTAKOS: Good one.	16 had any problems at all. Hint hint.
17 MR. MANNION: You asked me.	17 "Hopefully she takes the hint, for her sake."
18 MR. PATTAKOS: That's a hot take there,	18 You mean here that you told her that he hasn't
19 Tom.	19 gone after you, correct?
20 MR. MANNION: I don't think so, not when	20 A Not to jump on what Tom just said, I know that's a
21 you read that. What's the question?	21 big deal, but keeping her out of trouble, not getting
22 Q Let me ask another question instead.	22 Bar complaints against her, not having her run afoul
23 A Yeah. Okay.	23 of anything, not having to deal with any of this
24 Q Rob expected you to communicate what he said to	24 stuff, I mean, in my mind made sense.
25 Amanda, correct?	25 Q Okay. Rob says "She doesn't get hints. If you don't

Page 457	Page 458
<p>1 tell her straight she is too stupid to figure it 2 out." Do you believe that Amanda was stupid? 3 A No, I don't believe she was. 4 Q Okay. So it looks like on Saturday, five -- I'm not 5 sure if these are connected. If you turn two pages, 6 Rob writes to you at the top "This girl continues to 7 fail to tell anyone the truth. She is either 8 ignorant or just absent minded. Either one." 9 You write "Well, you reap what you sow I 10 suppose." 11 Is he still talking about Amanda here? 12 A I believe so. 13 Q Do you remember what happened that caused this 14 e-mail? 15 A I do not. 16 Q He writes then "She has no idea what it means to go 17 to war with someone who has a lot more money than 18 her!!!" That means litigation, correct? 19 A I don't -- you'd have to ask Rob. 20 Q Well, he says in the next text "I learned when I went 21 to battle with Eshelman it cost me 75k in legal and 22 50 percent of my fees, and not even one deposition 23 was taken. Lol." So he is talking about litigation, 24 correct? 25 A It would appear that way.</p>	<p>1 Q He's talking about suing her, correct? 2 A You would have to ask Rob. I mean, it's a reasonable 3 inference based on the second text message, I 4 suppose. 5 Q Okay. And he says "It's all fun and games until you 6 go to war." Did you communicate that to Amanda? 7 A I don't recall. 8 Q Okay. So what's this last one on -- now we're three 9 months out from your termination, Nestico writes to 10 you, "You really need to just move on and stop 11 spreading false rumors or you may get a lesson on a 12 defamation case with your name on it. Remember your 13 the one who was unethical and betrayed our 14 friendship, not me or KNR." What's this about? 15 A I don't have a recollection. I might have -- I don't 16 know. I might have been talking to Paul at some 17 point. I feel like I remember getting this, I was at 18 a softball game, surprisingly, and I don't know 19 where -- I don't know what context it was in. I feel 20 like I remember getting it, but that's it. 21 Q What about your conversation with Paul that's 22 relevant to this? 23 A I don't know; I don't know. 24 Q But you were having some conversations that Nestico 25 got wind of that he was upset about?</p>
Page 459	Page 460
<p>1 A Possibly. 2 Q Okay. When Rob writes to you "She has no idea --" 3 back to the previous page, "She has no idea what it 4 means to go to war with someone who has a lot more 5 money than her," you agree that that's difficult, 6 correct? 7 MR. SKIDMORE: Objection. 8 MR. MANNION: Objection. 9 A What's that? 10 Q To be involved in litigation against someone who has 11 a lot more money than you? 12 MR. SKIDMORE: Objection. 13 A It is. 14 Q Why? 15 A Resources, being sued is not fun, it's costly, as he 16 clearly points out. 17 Q And when someone has more resources than you, they 18 can make the litigation harder on you, correct? 19 MR. MANNION: Objection. 20 A From personal experience, my litigation ended up not 21 being too terrible. 22 Q You mean this one? 23 MR. MANNION: Objection. 24 A No, not this one. 25 Q KNR's lawsuit against you?</p>	<p>1 A Yes. 2 Q Okay. How do you mean? 3 A It was resolved, and it didn't drag on and wasn't -- 4 it didn't cost \$75,000. 5 Q Well, that was important to you, right? 6 A Yes. 7 Q That it get resolved very quickly, correct? 8 A Not necessarily quickly, but it was important to get 9 it resolved. 10 Q Well, what was your reaction when KNR first filed the 11 lawsuit against you? 12 MR. MANNION: Objection. 13 A I did not feel good. I felt panicked. I felt 14 terrible, worried. I mean, all the things you feel 15 when you get sued, I think. I don't know. That's 16 what I felt when I got sued. 17 Q You didn't believe you had done anything wrong, had 18 you? 19 MR. SKIDMORE: Objection. 20 MR. MANNION: Objection. I'm going to 21 object. I think this is really close to the 22 line, Tom, on violating any of the underlying 23 confidentiality on our settlement. 24 MR. SKIDMORE: I think -- are you asking 25 from an ethical standpoint?</p>

Page 461	Page 462
<p>1 MR. PATTAKOS: No, I'm not.</p> <p>2 MR. SKIDMORE: You're asking from a</p> <p>3 legal standpoint?</p> <p>4 MR. PATTAKOS: I'm asking -- he was</p> <p>5 sued. I'm asking did he believe that he was</p> <p>6 liable for anything legitimately.</p> <p>7 MR. MANNION: Well, I'm going to object.</p> <p>8 That also calls for attorney-client, and I</p> <p>9 think it calls for potentially things that</p> <p>10 violate the settlement agreement.</p> <p>11 MR. PATTAKOS: Oh, it sure does not.</p> <p>12 MR. MANNION: That's your opinion.</p> <p>13 MR. PATTAKOS: So you're saying that you</p> <p>14 can control his testimony based on the</p> <p>15 settlement agreement?</p> <p>16 MR. MANNION: Peter. Peter, I'm not</p> <p>17 saying anything. I have no right to say</p> <p>18 anything at all to him and tell him not to</p> <p>19 answer, okay? I'm putting an objection on</p> <p>20 the record. I have no idea what you're</p> <p>21 asking necessarily, so --</p> <p>22 MR. BARMEN: You ask these very broad</p> <p>23 questions.</p> <p>24 MR. PATTAKOS: I ask narrow questions,</p> <p>25 you get upset. I ask broad questions, you</p>	<p>1 get upset.</p> <p>2 MR. MANNION: I don't get upset with</p> <p>3 narrow questions.</p> <p>4 MR. PATTAKOS: Tom, let's move on.</p> <p>5 MR. BEST: You read text messages where</p> <p>6 he said he fucked up. What more do you want</p> <p>7 that he made a mistake?</p> <p>8 Q You didn't believe that you had done anything that</p> <p>9 warranted a lawsuit to be filed against you, did you?</p> <p>10 MR. SKIDMORE: Objection.</p> <p>11 MR. MANNION: Objection.</p> <p>12 A I don't know. I don't know if I can answer that</p> <p>13 question.</p> <p>14 Q You were afraid about what could happen as a result</p> <p>15 of the lawsuit, weren't you?</p> <p>16 MR. MANNION: Objection.</p> <p>17 MR. SKIDMORE: On this particular point,</p> <p>18 I'm only going to say that if his -- any of</p> <p>19 his impressions came from discussions he had</p> <p>20 with me as to the advice I gave him on the</p> <p>21 case, then that would be a protected</p> <p>22 privilege.</p> <p>23 MR. PATTAKOS: I'm not asking him to</p> <p>24 testify about what you told him. I'm asking</p> <p>25 him to testify from his own knowledge,</p>
<p>Page 463</p> <p>1 experience, feelings and understanding. It</p> <p>2 doesn't reveal what you told him.</p> <p>3 MR. SKIDMORE: I'm just saying if he had</p> <p>4 that knowledge gained from information and</p> <p>5 conversation with me, I'm going to say that</p> <p>6 it's not discoverable.</p> <p>7 MR. PATTAKOS: You mean if he was scared</p> <p>8 about something because of something you told</p> <p>9 him, you're saying that he doesn't have to</p> <p>10 admit that he was afraid?</p> <p>11 MR. SKIDMORE: No, that's not what I</p> <p>12 said.</p> <p>13 MR. PATTAKOS: It sounds like that's</p> <p>14 what you said.</p> <p>15 MR. SKIDMORE: You know what, see this</p> <p>16 right here, this is my mouth, not yours,</p> <p>17 okay, so --</p> <p>18 MR. PATTAKOS: Okay. So I'm only asking</p> <p>19 him, he was afraid, he was scared about what</p> <p>20 could happen as a result of the lawsuit that</p> <p>21 KNR filed against him.</p> <p>22 Q Correct?</p> <p>23 MR. MANNION: Objection.</p> <p>24 A Initially, absolutely. I mean, nobody likes to get</p> <p>25 sued. I mean, I don't know how else to answer that</p>	<p>Page 464</p> <p>1 question. Getting sued sucks.</p> <p>2 Q You testified --</p> <p>3 A Tom -- but I will say that my lawyer did a good job.</p> <p>4 I mean, I was -- he represented me well and got</p> <p>5 everything done, I felt very confident and better</p> <p>6 when Tom was representing me.</p> <p>7 Q You testified yesterday that you were worried about</p> <p>8 having to pay tens of thousands of dollars in legal</p> <p>9 fees, correct?</p> <p>10 A I mean, getting sued is not fun. It's costly, as</p> <p>11 everybody knows.</p> <p>12 Q When Mr. Mannion asked you about the notion of</p> <p>13 whether you were intimidated into signing the</p> <p>14 affidavit, you said it wasn't so black and white,</p> <p>15 litigation is a scary thing to be involved in when</p> <p>16 you're staring down the barrel of tens of thousands</p> <p>17 of dollars in legal fees.</p> <p>18 MR. MANNION: Objection.</p> <p>19 Q You're not withdrawing that testimony, are you?</p> <p>20 MR. MANNION: I'm going to object. It's</p> <p>21 a little out of context, but --</p> <p>22 A No, I think when Tom asked me the question about</p> <p>23 being, you know, threatened or intimidated, I said,</p> <p>24 and I will maintain, I was never threatened or</p> <p>25 intimidated. Nobody told me they were going to do</p>

<p style="text-align: right;">Page 465</p> <p>1 anything to me. Nobody said there's going to be a 2 consequence to this, that or the other. But as 3 everybody in this room who -- and we're all 4 attorneys, with the exception of two people, 5 everybody understands that litigation is not fun, 6 especially I think in this room, nobody knows 7 litigation to be a good time. 8 Q And it's even less fun when you are the defendant 9 against a party that has, say, exponentially more 10 resources than you do, correct? 11 MR. MANNION: Objection to 12 "exponentially." 13 A I can't say, because I don't know the, I don't know 14 the lengths to which they were willing to go to do 15 anything. So their resources might have been 16 fundamental -- I mean, the pot is bigger, but they 17 might have been willing to do the same thing I was, 18 which I can't say. 19 Q You didn't know for sure, correct? 20 A I can't say. 21 Q You knew that Rob Nestico and KNR had massive 22 resources available to keep you tied up in litigation 23 if the court would allow it, correct? 24 MR. MANNION: Objection. The 25 court wouldn't allow it.</p>	<p style="text-align: right;">Page 466</p> <p>1 A I don't think it had anything to do with the court. 2 Q Well -- 3 MR. MANNION: Retract that statement 4 right now. 5 Q You knew that Nestico was extremely angry with you, 6 correct? 7 A I'm sure he was. 8 Q Okay. And you also knew that Judge Breaux was the 9 judge in KNR's case against you, as well as in this 10 case by -- in this case right here that you're 11 testifying in, correct? 12 MR. MANNION: Objection. 13 A Yes. 14 Q And you were aware that by the time KNR sued you, 15 Judge Breaux had made a number of orders in this case 16 that were favorable to the KNR Defendants, correct? 17 MR. MANNION: Objection. 18 MR. BERMAN: Objection. 19 MR. MANNION: You're implying now that 20 she's unethical? 21 Q You knew -- 22 MR. PATTAKOS: No, of course I'm not. 23 MR. MANNION: It sounds like it. 24 Q You knew that Judge Breaux had imposed a gag order on 25 me and my co-counsel and the Plaintiffs, correct?</p>
<p style="text-align: right;">Page 467</p> <p>1 A Yeah. I think so, yes. 2 Q And you also knew that Judge Breaux had dismissed 3 Nestico and Redick as individual Defendants, and 4 ordered the Plaintiffs to pay Nestico and Redick's 5 attorneys' fees on that motion, correct? 6 A Do I know those things, yeah, but she's the judge 7 making a decision, and what the judge does on any 8 particular case doesn't mean it's going to be the 9 same in my case. I mean, there's no relationship 10 there. So because there was a favorable or 11 unfavorable ruling for somebody else had no bearing 12 on what I was doing. 13 Q It didn't make you more concerned? 14 A No. 15 Q Okay. You didn't have an attorney when you were 16 first sued, correct? 17 A No. 18 Q And how long did it take for you to have an attorney? 19 A I don't remember. 20 Q Was it weeks? 21 A Probably. 22 Q And during those weeks, you stated that you were 23 panicked, you were extremely stressed out, weren't 24 you? 25 A Yeah.</p>	<p style="text-align: right;">Page 468</p> <p>1 Q And it was affecting your performance at work, wasn't 2 it? 3 MR. MANNION: Objection. Come on. 4 A No. 5 Q You don't think it was? 6 A I actually -- well, I didn't go to work for a couple 7 of weeks, but not because I couldn't do it. 8 Q Well, why was that? 9 A I was given time off. 10 Q In connection with this lawsuit? 11 A Not necessarily, I don't think. I guess a law firm 12 doesn't like employees who get sued, so we took a 13 break. I don't know. 14 Q You were feeling pressure from your employers at the 15 time in connection with the lawsuit, correct? 16 A No pressure from them. 17 Q You knew they didn't like it, correct? 18 A Yeah. 19 MR. SKIDMORE: Objection. 20 Q You knew that they would have preferred for the 21 lawsuit with KNR to end as quickly as possible, 22 correct? 23 MR. SKIDMORE: Objection. 24 MR. MANNION: Objection. 25 A The lawsuit -- my lawsuit?</p>

1 Q KNR's lawsuit against you.
 2 A I don't know how they felt about it. I don't know.
 3 I can't say one way or the other whether they wanted
 4 it to end or go on. I mean, it's not my -- it isn't
 5 within the purview of my knowledge.

6 Q Well, you said they weren't happy about it?
 7 A Yeah. That's why I didn't go to work for a couple of
 8 weeks.

9 [REDACTED]

1 [REDACTED]
 2 [REDACTED]

1 [REDACTED]

1 [REDACTED]

Page 473

1 [REDACTED]

2 MR. PATTAKOS: You guys can take a

3 break. We can take a break.

4 THE VIDEOGRAPHER: We're off the record.

5 3:17.

6 ----

7 (Thereupon, a recess was had.)

8 ----

9 (Thereupon, the following colloquy was

10 had off the video recording.)

11 ----

12 MR. MANNION: Motion to strike the

13 questions and the responses to the questions

14 about the trip with Doctor Ghoubrial and with

15 Mr. Nestico allegedly, not only was it double

16 hearsay, but also the witness said he didn't

17 remember, he couldn't deny, but he couldn't

18 remember. We certainly don't want something

19 like that innuendo and double hearsay being

20 injected into the lawsuit or anywhere else,

21 and we move to strike that.

22 MR. PATTAKOS: We would oppose any

23 formal motion. So file your motion.

24 MR. MANNION: Okay.

25 MR. PATTAKOS: Can we go on video?

Page 475

1 MR. SKIDMORE: And I'm going to direct

2 him not to answer anything about this topic.

3 You guys have a motion. This is just

4 theatrics. All right.

5 Q Well, what did you say about it?

6 MR. SKIDMORE: I'm going to direct him

7 not to answer.

8 Q You're refusing to answer now?

9 MR. SKIDMORE: No, he's not refusing.

10 I'm directing him not to answer.

11 MR. PATTAKOS: And he's refusing

12 based -- he doesn't have to listen to your

13 advice, you understand that?

14 MR. MANNION: Stop pointing.

15 MR. SKIDMORE: Are you kidding?

16 MR. PATTAKOS: I'm not kidding. He's

17 free to reject your advice.

18 MR. MANNION: Are you trying to give him

19 advice when he's represented?

20 MR. PATTAKOS: I'm not trying to give

21 him advice.

22 MR. SKIDMORE: Listen, guys. Move on,

23 all right? He's not going to answer any more

24 questions in that regard. Move on.

25 MR. MANNION: Wow.

Page 474

1 THE VIDEOGRAPHER: Back on the record.

2 The time is 3:35.

3 Q I want to be clear about your testimony that

4 Mr. Mannion just referred to regarding Paul Steele

5 and what he told you about what he witnessed.

6 MR. SKIDMORE: We're not going to answer

7 those questions. Those questions have been

8 asked and answered, so --

9 MR. PATTAKOS: I don't think they have.

10 MR. SKIDMORE: I think they're

11 defamatory and I think you need to move to

12 on.

13 MR. PATTAKOS: Defamatory? I'm asking

14 him what he told me.

15 MR. SKIDMORE: He already told you.

16 It's of record. You guys can argue about it

17 later. Those are questions that have already

18 been asked. We're going to move on.

19 Q You told me that, didn't you, Rob?

20 MR. SKIDMORE: We are going to move on.

21 Q Are you going to deny -- are you going to sit here

22 and deny that you told me that Paul Steele told you

23 that about Nestico and Ghoubrial in the hotel room?

24 A I already answered that question.

25 Q What did you say?

Page 476

1 Q You know you told me that, don't you?

2 MR. SKIDMORE: I said move on. He's not

3 going to answer the questions. He's already

4 answered it.

5 Q Okay. So we just took a, supposed to be a short

6 break, ended up being an almost 20 minute break. You

7 were conferring with your attorney about how to

8 answer questions about the settlement agreement,

9 correct?

10 MR. MANNION: Objection.

11 MR. SKIDMORE: Objection. I'm going to

12 instruct you not to answer.

13 MR. PATTAKOS: Well, why?

14 MR. SKIDMORE: He's allowed to confer

15 with me on whatever he wants to confer with

16 him.

17 MR. PATTAKOS: I understand, but --

18 MR. SKIDMORE: You're asking him about a

19 discussion with me. It's totally

20 inappropriate.

21 MR. PATTAKOS: The subject matter of the

22 conversation is not privileged. The actual

23 advice is privileged.

24 MR. BARMEN: Unbelievable.

25 MR. SKIDMORE: You are way off base.

Page 477

1 MR. PATTAKOS: Do you think I'm way off
 2 base?
 3 MR. SKIDMORE: I think you are way off
 4 base.
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 MR. PATTAKOS: Okay.
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 MR. SKIDMORE: Objection.
 18 MR. MANNION: Objection.
 19 A I was going to the bathroom.
 20 Q Okay.
 21 MR. MANNION: I move to strike.
 22 Q Are you denying that you conferred with Mr. Skidmore?
 23 MR. MANNION: Stop it. Stop it right
 24 now.
 25 MR. PATTAKOS: What's the basis of your

Page 478

1 motion to strike?
 2 MR. MANNION: What?
 3 MR. SKIDMORE: Objection. Would you ask
 4 a question that's relevant to what we're here
 5 for?
 6 MR. MANNION: Sheesh.
 7 MR. PATTAKOS: You guys are the ones
 8 that tied this all up in knots with your
 9 agreement, so --
 10 MR. MANNION: No, we didn't.
 11 MR. PATTAKOS: That will be for the
 12 court to decide.
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 479

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]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 480

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]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED], correct?
 25 MR. MANNION: Objection.

Page 485

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]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q Okay. It was stressful?

18 A Of course it's stressful. Getting sued sucks. I've

19 said this 20 times already. Getting sued is not fun.

20 Everybody here knows that. I'm sure KNR doesn't like

21 being sued. Everybody in here has probably been

22 sued. Nobody likes getting sued. I mean, I don't

23 know what else to say.

24 [REDACTED]

Page 487

1 want to just mark it as a separate exhibit,

2 the signature page, let's do that, since it

3 came from separate sources anyway.

4 - - - -

5 (Thereupon, Plaintiffs' Exhibit 40 was

6 marked for identification.)

7 - - - -

8 MR. PATTAKOS: I told you I had 40

9 exhibits. Didn't I say that yesterday?

10 Q Okay. Let's go back to the affidavit itself. I'm

11 wrapping up, I promise. Let's look at page 25.

12 MR. SKIDMORE: Paragraph 25?

13 MR. PATTAKOS: Paragraph 25, thank you.

14 Q When you state here in paragraph 25 that you only

15 asked your and KNR clients to sign the settlement

16 memorandum if you believed the fees, expenses and

17 payments to the client were fair and reasonable and

18 the client agreed to them, that doesn't mean that the

19 fees, expenses and payments actually were fair and

20 reasonable, it just means that you never came to

21 believe that they were not, correct?

22 MR. MANNION: Objection.

23 MR. SKIDMORE: What is that? Objection.

24 A I guess I --

25 MR. SKIDMORE: Do you understand that

Page 486

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]

14 [REDACTED]

15 [REDACTED]

16 MR. SKIDMORE: Just for the record,

17 there's a second page that's not -- a

18 signature page --

19 MR. PATTAKOS: Let's add that. Can we

20 have that, Tom?

21 MR. MANNION: That's fine.

22 MR. SKIDMORE: Sure, that's fine.

23 That's what he's looking for.

24 MR. PATTAKOS: I see. Okay. Just

25 incorporate that in the -- or if you just

Page 488

1 question?

2 A I think so. I mean, he's asking me if I believed

3 them to be, not -- I mean, if somebody else makes

4 another interpretation, that's not my -- does that

5 sound like it -- yes.

6 Q Okay. So similarly with paragraph 34, when you state

7 in your affidavit that you were not aware of any quid

8 pro quo relationship with -- between Liberty Capital

9 Funding and KNR, that doesn't mean that no such

10 relationship existed, it just means that you were

11 never aware that one existed, correct?

12 A I was not aware of a quid pro quo relationship. I

13 think I've testified that I have no support of that

14 assertion.

15 Q And -- but it also doesn't mean that no such

16 relationship existed, correct?

17 MR. MANNION: Objection.

18 A I can't say that it doesn't.

19 Q Okay. You can't identify any facts that would

20 foreclose an inference that a quid pro quo existed

21 between Liberty Capital and KNR or its owners, can

22 you?

23 A I'm sorry. Say that again.

24 Q You can't identify any facts that would foreclose an

25 inference that a quid pro quo existed between Liberty

Page 489

1 Capital and KNR or its owners?
 2 MR. MANNION: Objection. An inference
 3 based on what, Peter?
 4 A I'm sorry, I think the answer to that question is no.
 5 I think that's pretty similar to some of the ones we
 6 were going over on the affidavit earlier. I cannot
 7 say that there isn't, but I have nothing that I'm
 8 aware of that there is.
 9 Q Okay. So similarly with paragraph 36, when you state
 10 in your affidavit that you were not aware of any
 11 kickback or other payments made by Liberty Capital to
 12 KNR or any of its owners or employees in return for
 13 KNR directing clients to borrow from Liberty Capital,
 14 that doesn't mean that no such payments took place,
 15 it just means that you never became aware of any,
 16 correct?
 17 MR. MANNION: Objection.
 18 MR. BARMEN: Can you read that last
 19 line? If you're going to actually read that
 20 paragraph, read the whole thing, please.
 21 A I'm sorry, are we at number 36?
 22 Q Please answer my question.
 23 A I am. Again, that's -- I mean, that's -- I can't say
 24 that I know of facts that don't make that true.
 25 Q That make it untrue?

Page 491

1 based on what?
 2 A Correct.
 3 Q So similarly with paragraph 40, and I only have two
 4 more paragraphs I want to ask you about, including
 5 this one, when you state at paragraph 40 that you
 6 were not aware of any chiropractor, medical doctor,
 7 or other healthcare provider sending any payments to
 8 KNR, its employees or its owners, for referral of any
 9 claimant to the chiropractor, medical doctor, or
 10 other healthcare provider, that doesn't mean that no
 11 such payments took place, it just means that you
 12 never became aware of any, correct?
 13 MR. BARMEN: Objection.
 14 MR. MANNION: Objection.
 15 A Correct.
 16 Q And you can't identify any facts sitting here today
 17 that would foreclose an inference that there were
 18 payments between providers and KNR or its owners over
 19 referrals, correct?
 20 MR. BARMEN: Objection.
 21 A Correct.
 22 Q So finally, paragraph 41, when you state in the
 23 affidavit that you were not aware of Akron Square or
 24 any other chiropractor, medical doctor, or other
 25 healthcare provider making a payment or a kickback to

Page 490

1 A I don't know of any facts that make it untrue,
 2 correct.
 3 Q Okay. You can't identify any facts that would
 4 foreclose an inference that kickback payments were
 5 made between Liberty Capital and KNR or its owners,
 6 correct?
 7 MR. MANNION: Objection as to inference
 8 from what?
 9 MR. BARMEN: Unfair question.
 10 MR. SKIDMORE: Objection.
 11 A I think that is true.
 12 Q Similarly with paragraph 37, when you state that you
 13 do not have information to suggest that Rob Nestico,
 14 Robert Redick or anyone at KNR had any financial or
 15 ownership interest in Liberty Capital, that doesn't
 16 mean that they didn't have a financial or ownership
 17 interest, it just means that you never became aware
 18 of it, correct?
 19 MR. MANNION: Objection.
 20 A Correct.
 21 Q And you can't identify any facts that would foreclose
 22 an inference that Nestico, Redick or anyone at KNR
 23 had a financial or ownership interest in Liberty
 24 Capital, correct?
 25 MR. MANNION: Objection. Inference

Page 492

1 KNR, its employees or its owners, that doesn't mean
 2 that no such payments took place, it just means that
 3 you never became aware of any, correct?
 4 A Correct.
 5 MR. BARMEN: Objection.
 6 MR. POPSON: Objection.
 7 MR. MANNION: Objection.
 8 THE WITNESS: Sorry.
 9 Q And you can't sitting here today identify any facts
 10 that would foreclose an inference that there were
 11 kickback payments between providers and KNR or its
 12 owners over referrals, correct?
 13 MR. MANNION: Objection.
 14 MR. BARMEN: Objection.
 15 MR. POPSON: Objection.
 16 A Correct.
 17 Q Did you ever meet Julie Ghoubrial?
 18 A Yes.
 19 Q Do you believe she's trustworthy?
 20 MR. MANNION: Objection.
 21 MR. POPSON: Objection.
 22 MR. BARMEN: Objection.
 23 A I don't know her well enough to say. [REDACTED]
 24 [REDACTED]
 25 MR. SKIDMORE: Objection.

Page 493

1 THE WITNESS: Oh, sorry.
 2 Q We can keep that sealed.
 3 THE WITNESS: Sorry.
 4 MR. SKIDMORE: It's okay.
 5 Q She's a nice lady, isn't she?
 6 A She is.
 7 MR. SKIDMORE: Just if we could for the
 8 record agree to redact that?
 9 MR. PATTAKOS: That's fine.
 10 MR. MANNION: Can we do that?
 11 [REDACTED]
 12 A I mean, it's public record.
 13 MR. MANNION: True. That's true, it is
 14 public record.
 15 MR. SKIDMORE: It is.
 16 MR. PATTAKOS: All right, then. You can
 17 withdraw the motion to seal.
 18 Q Okay. Number six of your affidavit, and paragraph
 19 nine -- I'm sorry, paragraph number six and paragraph
 20 number nine I want to ask you about. You say in
 21 paragraph six, "Prior to the termination of my
 22 employment, I did not report or threaten to report
 23 Kisling Legal Group, Kisling, Nestico & Redick, LLC
 24 or any of its owners, stockholders, partners," et
 25 cetera, "to any governmental, professional, or other

Page 495

1 MR. PATTAKOS: What's the cite for that?
 2 MR. SKIDMORE: It is called Disciplinary
 3 Counsel versus Oviatt, Ohio State Supreme
 4 Court, decided December 20, 2018, the cite is
 5 2018 Ohio Lexus 3008, I believe it's 2018
 6 Ohio 5091.
 7 MR. PATTAKOS: Okay.
 8 MR. SKIDMORE: So in that regard, he's
 9 not going to answer any questions about that.
 10 MR. PATTAKOS: That's fine. We'll take
 11 a look at that.
 12 MR. SKIDMORE: And again, I don't mean
 13 to interrupt your questioning on that. If
 14 you want to raise that with the judge, I
 15 think that's an area I'm not all that
 16 familiar with.
 17 MR. PATTAKOS: We'll take a look.
 18 MR. SKIDMORE: All right.
 19 MR. PATTAKOS: Thanks.
 20 Q You know that other current or former KNR employees
 21 are afraid of talking about the facts at issue in
 22 this case because they're afraid of being sued,
 23 correct?
 24 MR. MANNION: [REDACTED] Objection.
 25 MR. POPSON: Objection.

Page 494

1 authority for any reason, including but not limited
 2 to any violations of law, violations of the Ohio
 3 Rules of Professional Conduct, ethical violations,
 4 fraud, or other legal wrongdoing." You did
 5 eventually file a Bar complaint, didn't you?
 6 MR. MANNION: Objection. We're not
 7 allowed to ask about those.
 8 MR. PATTAKOS: I'm allowed to ask about
 9 the Complaint that he filed.
 10 MR. MANNION: No, you're not.
 11 MR. SKIDMORE: Wait a minute.
 12 Objection, first of all.
 13 And second, I believe there's a case
 14 that came out in December I believe of 2018,
 15 called Disciplinary Counsel versus Oviatt,
 16 decided by the Ohio State Supreme Court. It
 17 indicates that the board concluded that a
 18 disciplinary complaint, filed or talked about
 19 in a common pleas court is not discoverable
 20 or relevant in proceedings. As a matter of
 21 fact, this case seemed to go on to indicate
 22 that talking about a filed grievance or a
 23 complaint is potentially an ethical
 24 violation. So I am going to ask that
 25 Mr. Horton not discuss that issue.

Page 496

1 A That's a possibility. Nobody likes to be sued.
 2 Q You know that that's the case, though, don't you?
 3 MR. MANNION: Objection.
 4 Q You've had conversations with people confirming that
 5 that's the case?
 6 A About being sued by KNR?
 7 Q Yes. For violating confidentiality agreements, for
 8 example.
 9 A I mean, after I got sued, people may have felt that
 10 way.
 11 Q Did you talk to some people about that?
 12 A I could have. I don't recall.
 13 Q Did you talk to Paul Steele about it?
 14 A I don't know.
 15 Q You've told me that Paul Steele was afraid of being
 16 sued by Rob Nestico; haven't you told me that?
 17 MR. SKIDMORE: Objection.
 18 A Oh, yeah, but I don't think it had anything to do
 19 with -- I don't think, I don't think it had anything
 20 to do with me being sued. I think it had -- they had
 21 their own separate history and agreement and
 22 something that I am not privy to any of that stuff.
 23 I couldn't tell you. Is it a possibility he's afraid
 24 of getting sued by Rob? It could be, but he's got
 25 his own deal.

Page 497	Page 498
1 Q But he also told you that he was?	1 client in Needles whoever treated with Doctor Floros?
2 MR. MANNION: Objection.	2 MR. MANNION: Objection. He's not here
3 A I don't know. I don't recall the conversation. He	3 as a Needles expert.
4 could have. I don't know.	4 A Yes.
5 Q Okay. What do you understand about the whole deal	5 Q And how do you know that?
6 between Rob and Paul?	6 A Because I'm familiar with the system.
7 MR. MANNION: Objection.	7 Q Okay. Same goes for all the clients who treated with
8 A I understand nothing about the deal between Rob and	8 Ghoubrial or any other specific provider, correct?
9 Paul, other than there was -- somebody filed	9 MR. POPSON: Objection.
10 something that I read, some letters back and forth	10 MR. BARMEN: Yep, same.
11 between the two of them. That's all I know. The	11 A As long as they were put in there the right way, yes,
12 actual agreement itself I have no clue.	12 yeah, you can.
13 Q Okay.	13 Q Okay. Do you recall the practice at the KNR firm of
14 A I know they met at McDonald's in Mansfield.	14 redacting Medicare and Medicaid information from
15 Q For what?	15 certain documents before they were submitted to the
16 A I don't know; I don't know. Paul said he had to go	16 insurance company?
17 to McDonald's to meet Rob, that's all I know. I	17 A Yes.
18 think it was in Mansfield.	18 Q What do you recall about that?
19 Q Do you believe Paul was responsible for creating the	19 A Some people redacted Medicare and Medicaid -- well,
20 Columbus office's policies, or do you believe he was	20 not even -- it wasn't just Medicare and Medicaid,
21 acting at Rob Nestico's direction?	21 just health insurance information.
22 MR. MANNION: Objection.	22 Q And why?
23 MR. SKIDMORE: Objection.	23 A I think the argument is the health insurance payments
24 A I don't know. I couldn't tell you. I wasn't there.	24 bear no reasonable relationship to the actual value
25 Q Do you believe it would be easy to pull up every	25 of the services rendered, and the insurance company
Page 499	Page 500
1 isn't necessarily entitled to that information. If	1 didn't go look. I don't know if it's on there or
2 they want it, they can get it. The claim is based on	2 not.
3 the value billed, I mean, it's the prima facie	3 Q Okay. And this represents that, this Exhibit E, the
4 evidence of the value of the medical services	4 scales, it represents that with the right lawyer, the
5 rendered, so --	5 right lawyer will balance the scales between the
6 Q Were you instructed to do that?	6 client and the insurance company, correct?
7 A No.	7 A That is what it appears to say.
8 Q No?	8 Q Just because a law firm says that it's going to do
9 A I don't think so.	9 that, doesn't mean that it will, correct?
10 MR. PATTAKOS: Okay. I have no further	10 MR. SKIDMORE: Objection.
11 questions, subject to follow up on whatever	11 A I don't know how to answer that question.
12 Tom has to do. Do you want to take a break?	12 Q Well, a law firm could say that -- you know what,
13 Actually, you know what, I just want to look	13 let's just move on.
14 at one more exhibit. Just real briefly.	14 MR. PATTAKOS: Tom, go ahead.
15 BY MR. PATTAKOS:	15 A I'm sorry, I just don't know how to answer that.
16 Q This was -- I don't remember what exhibit number this	16 Q That's okay.
17 was, the scales.	17 - - - -
18 A Yeah.	18 EXAMINATION OF
19 MR. PATTAKOS: This was something from	19 ROBERT PAUL HORTON
20 Slater & Zurz's website, is that what you	20 BY MR. MANNION:
21 said, Tom?	21 Q Just talking briefly, you were asked a question about
22 MR. SKIDMORE: Exhibit E.	22 whether others were worried about being sued for
23 Q This was something that Tom Mannion got from Slater &	23 talking to other people. Do you recall that the
24 Zurz's website?	24 Complaint that KNR filed against you wasn't about
25 A I would -- that's what it's been told to me. I	25 talking to other people?

Page 501

1 A Yes.

2 Q In fact, it was about, I'm reading right from the

3 Complaint here, it was a breach of the

4 confidentiality agreement you signed with them for,

5 among other things, by photographing, downloading,

6 sharing and publishing confidential information and

7 documents, correct?

8 A Yes.

9 Q Okay. And in fact, it certainly -- if somebody

10 believes there's a breach of a contractual

11 arrangement or confidentiality agreement, they

12 certainly have a right to pursue that, don't they?

13 A Yes.

14 Q And I don't want to get into all that stuff, I think

15 you've already admitted that you felt that it was

16 justified being fired, correct?

17 A Waiving attorney-client privilege for the one time, I

18 told my attorney I probably deserved to get -- I

19 probably told everybody I deserved to get fired.

20 Q And it was about how you got the documents?

21 A Yeah.

22 Q And what was that?

23 A I did it on my own, as opposed to going through the

24 proper channel, I suppose is the best way to say it.

25 Q Okay. But you went to people's offices and took them

Page 503

1 A Right.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q Anything in that affidavit that's not true?

7 A No.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q Do you know why Amanda Lantz was fired?

12 A No. I mean, I don't -- no, I don't. I know Rob --

13 you can tell from the text messages in there, from

14 what he says to me I think he thought she was

15 incompetent. But I don't. I don't. I probably had

16 a conversation with her at some point in time, but I

17 don't -- you know, this is almost four years later, I

18 don't recollect why.

19 Q Paragraph 25 of your affidavit that Peter asked you

20 about, where it says "I only asked my clients to sign

21 the settlement memorandum at KNR --" I didn't do that

22 in the right order, but "if I believed the fees,

23 expenses, and payments to the client were fair and

24 reasonable and the client agreed to them." That

25 means at the time you went over the settlement

Page 502

1 from areas there?

2 A One person -- well, two different things from -- yes;

3 yes.

4 Q Okay.

5 A In a binder.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 504

1 memorandum with the client you believed they were,

2 true?

3 A Yes.

4 Q You weren't saying what someone else might believe,

5 but you believed at the time that you were there that

6 they were, correct?

7 A Yes.

8 Q Now, also you were asked about several other

9 paragraphs in here, about whether you have any facts

10 to disprove them. But you also don't have any facts

11 to prove any type of quid pro quo with Liberty

12 Capital, do you?

13 A No.

14 Q And did Peter ever show you any facts or evidence to

15 support any kickbacks or quid pro quo with Liberty

16 Capital?

17 A No, I don't -- no.

18 Q Has Mr. Pattakos showed you any facts at all that

19 show an ownership interest in Liberty Capital that

20 either KNR has, Rob Nestico has or Robert Redick has?

21 A Not to my recollection.

22 Q You've never seen one anywhere, have you?

23 A No; no.

24 Q Okay. And likewise, has Mr. Pattakos shown you any

25 evidence of an actual reciprocal agreement with

Page 505	Page 506
<p>1 chiropractors?</p> <p>2 A No.</p> <p>3 Q And you haven't seen one either, have you?</p> <p>4 A No.</p> <p>5 Q Did you know that Mr. Pattakos represented in open</p> <p>6 court that you took an entire hard drive from KNR?</p> <p>7 A I did not know that.</p> <p>8 Q You didn't, did you?</p> <p>9 A No.</p> <p>10 Q Okay.</p> <p>11 A It might -- he might have been mistaken on the idea,</p> <p>12 but --</p> <p>13 Q Okay. How long after you left KNR did you discover</p> <p>14 you had those materials on your computer?</p> <p>15 MR. PATTAKOS: I just want to correct</p> <p>16 it. I don't believe that's what I</p> <p>17 represented. I believe I represented that</p> <p>18 Horton had documents from KNR on his own hard</p> <p>19 drive. If you want to get the transcript.</p> <p>20 MR. MANNION: Yeah, I know what it says.</p> <p>21 MR. PATTAKOS: Okay. What does it say?</p> <p>22 Why don't we look at it?</p> <p>23 MR. BEST: This is the speaking</p> <p>24 objection that he doesn't do.</p> <p>25 MR. PATTAKOS: Well, you know, after</p>	<p>1 being interfered with --</p> <p>2 MR. MANNION: Stop.</p> <p>3 MR. PATTAKOS: -- for so long I guess</p> <p>4 it's just only fair.</p> <p>5 MR. MANNION: Stop.</p> <p>6 MR. SKIDMORE: You guys can figure it</p> <p>7 out later I'm sure.</p> <p>8 A I think it's an irrelevant point, but --</p> <p>9 MR. PATTAKOS: It surely is.</p> <p>10 Q But you did not take a hard drive?</p> <p>11 A No, I did not.</p> <p>12 Q And when was it, again, that -- because I lost the</p> <p>13 answer there, that you think you discovered those</p> <p>14 documents on your computer?</p> <p>15 A Like the e-mails?</p> <p>16 Q Yeah.</p> <p>17 A The time frame I don't know, I can't tell you. From</p> <p>18 some of the text messages there, I think I got on</p> <p>19 my home -- because I have two computers at home, I</p> <p>20 had maybe put in the memory stick that had a couple</p> <p>21 of the things on there that I returned, like I think</p> <p>22 it says on there like a medical authorization and</p> <p>23 something else.</p> <p>24 Q Not those, but when you found all those other files?</p> <p>25 A To be honest with you, I have no specific</p>
Page 507	Page 508
<p>1 recollection of when that was. Within six months,</p> <p>2 within a month -- I don't think it was within a</p> <p>3 month, but no specific recollection of when.</p> <p>4 Q At the time when we saw those text messages where you</p> <p>5 were returning some of the documents, you had not</p> <p>6 discovered all of them yet, true?</p> <p>7 A No, I don't believe so.</p> <p>8 Q My statement was true?</p> <p>9 A Yes; yes. I'm sorry, yes, your statement is true.</p> <p>10 Q Okay. So do you recall at all when the first time is</p> <p>11 you gave Mr. Pattakos any documents, or Mr. Chandra?</p> <p>12 A Not specifically.</p> <p>13 Q Okay. And you didn't take any documents</p> <p>14 intentionally with you from KNR, did you?</p> <p>15 A No.</p> <p>16 Q And you certainly didn't take any documents with you</p> <p>17 from KNR in an attempt to prove KNR did anything</p> <p>18 wrong, true?</p> <p>19 A No. I'm sorry, your statement is true. I didn't</p> <p>20 even know I had anything from KNR when I left.</p> <p>21 Q Okay. Did you make any false or misleading</p> <p>22 statements to any KNR clients regarding the task</p> <p>23 performed by investigators on a file?</p> <p>24 A No.</p> <p>25 Q Did anyone at KNR direct you to do that?</p>	<p>1 A No.</p> <p>2 Q Did any other attorney or -- at KNR tell you that</p> <p>3 they made or were directed to make any false or</p> <p>4 misleading statements to any KNR client regarding the</p> <p>5 task performed by investigators?</p> <p>6 A I have no recollection.</p> <p>7 Q Did you make any false or misleading statements to</p> <p>8 KNR clients regarding loans on their cases?</p> <p>9 A No.</p> <p>10 Q And did you ever see anyone do that?</p> <p>11 A It wouldn't be something that I would see.</p> <p>12 Q Okay.</p> <p>13 A I can't say.</p> <p>14 Q And no one at KNR directed you to make any false or</p> <p>15 misleading statements to clients regarding loans with</p> <p>16 Liberty Capital, true?</p> <p>17 A Correct.</p> <p>18 Q Did you make any false or misleading statements to</p> <p>19 your clients at KNR regarding the report fee paid for</p> <p>20 any narrative report?</p> <p>21 A No.</p> <p>22 Q And did anyone at KNR direct you to make any false or</p> <p>23 misleading statements to your clients at KNR</p> <p>24 regarding the report fee paid for any narrative</p> <p>25 report?</p>

Page 509	Page 510
1 A Say that again.	1 A No, I would not have.
2 Q Sure. Did anyone at KNR tell you to misrepresent the	2 Q That would have violated what you wanted to do for
3 narrative report?	3 that client, I assume?
4 A No.	4 A Yes.
5 Q Okay. And did any other KNR attorney tell you that	5 Q Okay. By the way, on that trip, there's a Tony and a
6 they ever misrepresented the report?	6 slash Waleed. Who are those --
7 A I have no recollection of that.	7 A The Lababidis.
8 Q Did you make any false or misleading statements to	8 Q Okay. What did they do?
9 any KNR clients regarding Doctor Ghoubrial, the	9 A Pain management doctors.
10 treatment he provided, or the cost of that treatment?	10 Q Okay. Do you know how much KNR even uses them?
11 A False or misleading statements as it relates to	11 A No idea. It seemed periodically.
12 Doctor Ghoubrial's treatment?	12 Q Pretty relatively rare, wasn't it?
13 Q Of any KNR clients, yes.	13 A I can't say.
14 A No.	14 Q Okay.
15 Q And did anyone at KNR direct you to make such false	15 A They were nice guys.
16 and misleading statements?	16 Q So on medical care, you were asked some questions
17 A No.	17 about a high correlation between chiropractic care
18 Q Did any other attorney at KNR tell you that they made	18 and Doctor Ghoubrial's care. Now, you're familiar
19 any false or misleading statements regarding Doctor	19 with how soft tissue injuries are treated, from a
20 Ghoubrial's treatment or the cost of his treatment?	20 lawyer's perspective you are, correct?
21 A Did anybody tell me if they made --	21 A Yes.
22 Q Yeah.	22 Q And a lot of times that involves chiropractic care,
23 A I have no recollection of it.	23 fair?
24 Q Okay. If you were told to make false or misleading	24 A Fair.
25 statements, you wouldn't have done it, would you?	25 Q Sometimes it involves PCP care?
Page 511	Page 512
1 A Mostly it involves chiropractic care I'd say.	1 A Probably.
2 Q It also involves PCP care?	2 Q Okay. So the various treatment that's provided,
3 A Yes.	3 though, you realize different doctors are limited
4 Q Maybe physical therapy?	4 sometimes to their specialty or their practice;
5 A Potentially.	5 chiropractors can't do, for example, injections,
6 Q It could involve electrical stimulation?	6 true?
7 A Yes.	7 A I don't know if they can or not.
8 Q It could involve pain medications?	8 Q Okay. But --
9 A Not so much any more, but I think it used to.	9 A I think you have to have -- I believe you have to
10 Q Because people are against it?	10 have some sort of higher medical, like -- not an LPN,
11 A Yes.	11 what's -- a nurse practitioner I think can do that
12 Q In fact, are you aware Doctor Ghoubrial is really	12 kind of stuff now, but I don't know, I have no idea.
13 against prescribing opiates unless the patient	13 Q It's not unusual for chiropractors that you work
14 insists?	14 with, and I think you said there were 12 in Akron you
15 A No.	15 work with at times --
16 Q Okay. It doesn't surprise you about him?	16 A It's a guess.
17 A I don't know.	17 Q -- to refer out to other doctors, true?
18 Q You don't know one way or the other?	18 A If the -- if it was necessary.
19 A I don't know one way or the other.	19 Q Not just Doctor Ghoubrial, other doctors in the
20 Q You never had a client come to you and say that	20 community, true?
21 Doctor Ghoubrial or Doctor Gunning said "Hey, what do	21 A I have no specific recollection of it, but I can't
22 you want? I'll write you a script for anything you	22 say it didn't happen.
23 want;" you never heard that, did you?	23 Q Well, it happens in your profession now, right?
24 A No.	24 A Yes.
25 Q That would have concerned you if you did?	25 Q Okay. Now, if you -- I'm going to give you a copy of

Page 513	Page 514
1 the Fifth Amended Complaint.	1 in the past, haven't you?
2 MR. MANNION: I have a couple copies if	2 A Not this one.
3 anyone wants to grab them, but I don't have	3 Q Okay. Are you going to now tell your clients to stop
4 too many of them.	4 getting injections?
5 MR. PATTAKOS: I'll take one.	5 A No.
6 Q So just look at --	6 MR. PATTAKOS: I thought we couldn't ask
7 A I'm not reading this whole thing, just to let you	7 about practices at Slater & Zurz.
8 know.	8 THE WITNESS: Oh, is that a practice?
9 Q No; no. No; no.	9 MR. PATTAKOS: Well, I thought that was
10 MR. PATTAKOS: I've got to ask a few --	10 off limits.
11 Q What do you agree or disagree with in there? I'm	11 MR. MANNION: I didn't ask about
12 kidding.	12 practices at Slater & Zurz. I asked about
13 If you look at paragraph 85, which is on page	13 him personally, if he would stop that.
14 24.	14 Q Now --
15 A Okay.	15 A I think that's more of a practice of law, not a
16 Q It -- in this paragraph it talks about peer reviewed	16 specific --
17 research and whether or not injections of steroids	17 Q Right.
18 are effective. Now, do you let one article determine	18 A Not to nitpick, but --
19 how your patients should treat?	19 Q If you look at Exhibit 22 in your exhibits there,
20 A I don't determine how my patients should treat.	20 not -- Exhibit 22.
21 Q The physicians do, right?	21 A Yeah.
22 A Yeah.	22 Q Okay.
23 Q Okay. And --	23 A I went right to it.
24 A Did I say patients? I meant clients.	24 Q Go to the second page in at the bottom.
25 Q I know what you meant. But you've read the Complaint	25 A Yes.
Page 515	Page 516
1 Q Now, at the bottom it says "Don't ever tell a client	1 I got cases where somebody had left, that's what I
2 that their case has been transferred or their	2 did.
3 attorney/paralegal is no longer with us;" did I read	3 Q Okay. And if, for example, if you tried to leave
4 that correctly?	4 some phone messages and you weren't able to get
5 A You did.	5 through to them, and then they called in looking for
6 Q Now, that's because this is referring to someone	6 the other attorney, do you think it was reasonable
7 taking calls, right, this whole document?	7 for the office staff to say "I'll get you to an
8 A I don't know.	8 attorney," as opposed to telling that client right on
9 Q Okay. Well, you see up above where it talks about	9 the phone that that attorney is no longer here, so
10 Open/Pending case calls?	10 they could get an attorney to handle it?
11 A Yeah, it says when someone calls and their attorney	11 A I'm sorry, say that again.
12 is no longer with the firm.	12 Q Okay. Let's say that --
13 Q Okay. And you weren't taking those calls directly,	13 A You're asking me to make an inference?
14 true?	14 Q No.
15 A No -- I mean yeah, true.	15 A I'm just kidding.
16 Q And the reason that this was in place is because you	16 Q No, I'll just --
17 didn't want office staff or a non-attorney talking to	17 A No, I get what you're saying.
18 a client about that issue, fair?	18 Q The attorney is supposed to do the communication
19 A You'd have to ask whoever wrote this.	19 regarding that, not a staff member, fair?
20 Q When an attorney left KNR, another attorney would	20 A A client should talk to their lawyers I guess is the
21 take over his files, true?	21 best way to put it, or even a paralegal.
22 A Yeah.	22 Q Okay. If -- do you have one of the contingency fee
23 Q And that attorney had a duty to talk to those clients	23 agreements as an exhibit?
24 and let them know that he was on the case, true?	24 A Somewhere. I mean, I know what it says.
25 A I can only tell you from my personal experience when	25 Q Okay. I'm just going to read this and see if you

Page 517	Page 518
<p>1 agree. These agreements were between the client and 2 Kisling, Nestico & Redick, LLC? 3 MR. SKIDMORE: We're going to go to 4 Exhibit F. 5 MR. MANNION: Thank you. 6 A Yes. 7 Q And paragraph one, it said "I understand that my case 8 may be handled by any one or more of the members of 9 the firm of Kisling, Nestico & Redick, LLC, and 10 different members may handle the case at different 11 times;" did I read that correctly? 12 A Hold on. Where are you reading that from? 13 Q Middle of one. 14 A Yes. 15 Q Okay. And regardless of who signed the contingency 16 fee agreement with Member Williams and Monique 17 Norris, you were the attorney handling their case 18 when you were at KNR, true? 19 A Again, I have no specific recollection of Monique 20 Norris. I cannot tell you if I was or was not. 21 I can tell you that for part of Member's case I 22 did handle her case. 23 Q If the Needles notes indicate that you were the 24 attorney of record for Monique Norris, then you would 25 have been the attorney handling her case, true?</p>	<p>1 A For the time my notes are in there, yeah. 2 Q And you certainly had a professional duty, and I'm 3 not talking ethical, but I mean a professional duty 4 standard of care to both Member Williams and Monique 5 Norris, true? 6 A Yes. 7 Q And you certainly believe you fulfilled that, don't 8 you? 9 A Yes. 10 Q You don't believe you breached any fiduciary duties 11 to either one of them, do you? 12 A I don't believe so. 13 Q But if we wanted -- for example, you don't remember 14 Monique Norris' case, you'd have to go back, if you 15 really wanted an answer, go back and look at every 16 single case and look through all the Needles files 17 and all of that stuff, you certainly didn't 18 intentionally do it, but -- 19 A Correct, I couldn't tell you. 20 Q To determine how you handled any one particular case, 21 you'd have to look at that particular case, fair? 22 A The specifics of that particular case? 23 Q Yes. 24 A You would, but generally speaking they were handled 25 by me in that fashion, if that makes any sense.</p>
Page 519	Page 520
<p>1 Q Right. But whether you had a discussion about a loan 2 or didn't have a discussion about a loan, you'd have 3 to look at each case? 4 A Yes. 5 Q What you said about a loan or didn't say about a 6 loan, you know what you generally always say, but to 7 know what was told to the client, you might have to 8 look in the file, too? 9 A I mean, you become a bit of a robot at some point in 10 the particular conversations that you have. So, you 11 know, it's not a script, but you do have things that 12 you say. So there is a very high likelihood that I 13 would have had the same conversation with Monique if 14 I had it, if she was my client, that I would have 15 with everybody else. But to know specifically, yes. 16 Q In other words, there was specific information you 17 would want to convey to someone about a loan, 18 primarily that you would want to discourage it? 19 A Yes. 20 Q And that it had high interest? 21 A Yeah. 22 Q Okay. But how you said that was up to you? 23 A Yeah. I mean, there's not too many ways to say it. 24 I mean, "Listen, these loans suck, they have high 25 interest, I wouldn't get one."</p>	<p>1 Q Right. 2 A But, yeah. 3 Q No one told you what to say, true? 4 A There was some guidance that -- I think it was 5 Supreme Court related, at some point in time that the 6 Supreme Court said that -- specifically what those 7 requirements were. Basically it was to advise them 8 against it. The gist of it was to tell them that 9 they were bad ideas, which is what I did. 10 Q Now, as far as the contingency fee agreements and how 11 Monique Norris and Member Williams got to KNR, you 12 realize that neither one of them responded to an ad, 13 right? 14 A I know Member -- I don't think Member did because she 15 was a friend of a friend. 16 I have no idea how Monique Norris got to KNR. 17 ---- 18 (Thereupon, Defendants' Exhibit II was 19 marked for identification.) 20 ---- 21 THE VIDEOGRAPHER: Can I change media 22 while she's doing that? Off the record. 23 4:21. 24 ---- 25 (Thereupon, a discussion was had</p>

Page 521	Page 522
<p>1 off the record.)</p> <p>2 ----</p> <p>3 THE VIDEOGRAPHER: We're back on the</p> <p>4 record. 4:23.</p> <p>5 Q Handing you what's been marked as Exhibit II, does</p> <p>6 this appear to be a Needles note of Ms. Monique</p> <p>7 Norris?</p> <p>8 A Yes.</p> <p>9 Q Okay. And do you see down there right near the</p> <p>10 redaction, it said "Said that uncle gave her our</p> <p>11 number. She is not sure how he heard about us.</p> <p>12 Deniss Baylor is uncle's name;" did I read that</p> <p>13 correctly?</p> <p>14 A You did.</p> <p>15 Q Okay. So if this is correct, and correctly</p> <p>16 documented what Ms. Norris told to intake or whoever</p> <p>17 wrote this in, then she didn't call KNR from seeing</p> <p>18 an ad, she called based on her uncle's referral,</p> <p>19 true?</p> <p>20 A I don't know, because something is redacted after</p> <p>21 "Cousins."</p> <p>22 Q That's a name.</p> <p>23 MR. SKIDMORE: That's a name.</p> <p>24 A Right. So I don't know if this "Said that uncle gave</p> <p>25 her our number she is not sure how he heard about us"</p>	<p>1 is referring to Monique, or is potentially referring</p> <p>2 to the cousins in that redaction.</p> <p>3 Q Okay. Maybe we're missing the question. It's clear</p> <p>4 that the "uncle gave her our number" means gave</p> <p>5 Monique the number, true?</p> <p>6 A No. If cousins is somebody else -- I don't know. So</p> <p>7 if cousins is, if this is a client name right here --</p> <p>8 Q Okay.</p> <p>9 A -- "Said that uncle gave her our number," if this</p> <p>10 is -- I don't know if it's referring to this person</p> <p>11 or Ms. Norris. Does that make sense? I can't say</p> <p>12 it's not.</p> <p>13 Q Oh, you think that says cousins were told that?</p> <p>14 A Doesn't it say "Cousins"? Well, it says "Cousins,"</p> <p>15 and then somebody's name.</p> <p>16 Q "Cousins" and it lists somebody. But at the bottom,</p> <p>17 then, after that, it's not next to that name --</p> <p>18 A Right.</p> <p>19 Q -- the new paragraph, "Said that uncle gave her our</p> <p>20 number she is not sure how he heard about us,"</p> <p>21 because you want to document how they came to the</p> <p>22 firm, right?</p> <p>23 A Oh, yeah, we always, yes.</p> <p>24 Q So there's no other documentation of how she came to</p> <p>25 the firm, other than on a referral from the uncle,</p>
<p>Page 523</p> <p>1 fair?</p> <p>2 A I don't know. Do you want me to tell you how you</p> <p>3 would find out?</p> <p>4 Q Sure.</p> <p>5 A It's not in the case note. It's in the referred by</p> <p>6 in Needles.</p> <p>7 Q Okay. Well, assuming that she came by referral from</p> <p>8 somebody, you agree it wasn't because she saw an ad</p> <p>9 and KNR enticed her in, true?</p> <p>10 A Correct.</p> <p>11 Q Okay. And you know Member Williams didn't come from</p> <p>12 an ad, true?</p> <p>13 A Yes.</p> <p>14 Q Certainly these were not plaintiffs who the</p> <p>15 investigators had to chase down, fair?</p> <p>16 A Correct.</p> <p>17 Q So in paragraph four of the Fifth Amended Complaint</p> <p>18 where it says "investigators do nothing more than</p> <p>19 chase down car accident victims at their homes and</p> <p>20 other locations," that is not accurate as it relates</p> <p>21 to Monique Norris, if this -- if that's how she was</p> <p>22 referred, or to Member Williams, true?</p> <p>23 A The interaction with the investigator and Monique</p> <p>24 Norris I can't make a comment on. I don't know what</p> <p>25 that interaction was.</p>	<p>Page 524</p> <p>1 Q You didn't send your investigator to chase her down,</p> <p>2 she had already agreed with you to be represented,</p> <p>3 true?</p> <p>4 A If I sent an investigator to see her, she would have</p> <p>5 agreed to meet with that person.</p> <p>6 Q So under that circumstance, that investigator wasn't</p> <p>7 chasing her down, was he?</p> <p>8 A If he -- it depends on how you define "chase her</p> <p>9 down," but no.</p> <p>10 Q You wouldn't define it that way, would you?</p> <p>11 A Probably not.</p> <p>12 Q Okay.</p> <p>13 A And I'm not trying to be difficult.</p> <p>14 And then with Member Williams, I don't believe</p> <p>15 she ever met with an investigator, she met with me,</p> <p>16 so there would be no --</p> <p>17 Q Okay. If you would look at paragraph 14 in the Fifth</p> <p>18 Amended Complaint. Just tell me when you're done</p> <p>19 reading paragraph 14.</p> <p>20 A Okay.</p> <p>21 Q Do you agree paragraph 14 alleges that Doctor Floros,</p> <p>22 as owner and manager of Akron Square Chiropractic,</p> <p>23 "unlawfully solicits clients on KNR's behalf in</p> <p>24 exchange for referrals and kickback payments,</p> <p>25 including a fraudulent 'narrative fee;'" that's what</p>

<p style="text-align: right;">Page 525</p> <p>1 it alleges, true?</p> <p>2 A That's what it alleges.</p> <p>3 Q Now, you never saw the narrative fee by Doctor Floros</p> <p>4 for Monique Norris as fraudulent, did you?</p> <p>5 A I have no recollection of the case. I can't tell</p> <p>6 you.</p> <p>7 Q Okay. When you submitted a narrative fee on behalf</p> <p>8 of Doctor Floros, you didn't think it was fraudulent,</p> <p>9 did you?</p> <p>10 A Submitted to an insurance carrier?</p> <p>11 Q Yeah, in the settlement memorandum.</p> <p>12 A It was a narrative fee that went along with the case,</p> <p>13 and what the insurance company did with it I suppose</p> <p>14 would be up to them.</p> <p>15 Q The fact that a client was charged \$150 or \$200 for</p> <p>16 that narrative report, you didn't see that as</p> <p>17 fraudulent, did you?</p> <p>18 A That was not my call to make, no.</p> <p>19 Q And in fact, you don't think that your partner, John</p> <p>20 Lynett, is doing something fraudulent if he pays</p> <p>21 Doctor Floros a fee for the narrative fee, are you, a</p> <p>22 fee for the narrative report?</p> <p>23 A I do not think what John does is wrong.</p> <p>24 Q Okay. And you don't think that Doctor Floros</p> <p>25 unlawfully solicits clients for John, even though he</p>	<p style="text-align: right;">Page 526</p> <p>1 refers clients, do you?</p> <p>2 MR. PATTAKOS: Tom, if I were you, and</p> <p>3 the shoes were reversed, you would be</p> <p>4 screaming that this case is not about John</p> <p>5 Lynett and John Lynett is not a party to this</p> <p>6 case, and for the record --</p> <p>7 MR. MANNION: Stop it. Stop it. Stop</p> <p>8 it.</p> <p>9 MR. PATTAKOS: -- you would be jumping</p> <p>10 out of your chair to bark at me about it.</p> <p>11 Just for the record.</p> <p>12 A Well, I suppose in being fair with everyone, I'm not</p> <p>13 going to talk about business practices of Slater &</p> <p>14 Zurz, so --</p> <p>15 Q Got it. No problem; no problem.</p> <p>16 You certainly have no evidence that the payment</p> <p>17 for the narrative fee was in any way a kickback</p> <p>18 payment, true?</p> <p>19 A I do not.</p> <p>20 Q And in fact, it was KNR who referred Monique Norris</p> <p>21 to Doctor Floros?</p> <p>22 A I don't know.</p> <p>23 Q If that's what the records show, and which she's</p> <p>24 testified, you don't dispute that, do you?</p> <p>25 A If that's what the computer says. I can't say one</p>
<p style="text-align: right;">Page 527</p> <p>1 way or the other.</p> <p>2 Q If you would now look at -- oh, look at paragraph 17.</p> <p>3 Now, paragraph 17 actually references a Plaintiff,</p> <p>4 Thera Reid?</p> <p>5 A Yes.</p> <p>6 Q But let me ask you this. Do you believe that you</p> <p>7 coerced or deceived Monique Norris into accepting a</p> <p>8 conflicted legal representation because she was</p> <p>9 referred to Doctor Floros?</p> <p>10 A I'm sorry, say that again.</p> <p>11 Q Sure. If you referred Monique Norris to Doctor</p> <p>12 Floros --</p> <p>13 A Yes.</p> <p>14 Q -- do you believe you had a conflicted legal</p> <p>15 representation?</p> <p>16 A No.</p> <p>17 Q Do you believe that you were trying to deceive or</p> <p>18 coerce her into that?</p> <p>19 A No.</p> <p>20 Q You never did that with any KNR client, did you,</p> <p>21 deceived them into a conflicted legal representation?</p> <p>22 A No.</p> <p>23 Q You never felt like you had a conflicted legal</p> <p>24 representation with Monique Norris or Member</p> <p>25 Williams, did you?</p>	<p style="text-align: right;">Page 528</p> <p>1 A Again, I can't answer any questions about Monique</p> <p>2 Norris. I can just go on how I do things, and I</p> <p>3 never -- there wasn't a conflict of any kind.</p> <p>4 Q If there was, you would have brought it to somebody's</p> <p>5 attention?</p> <p>6 A Yes.</p> <p>7 Q Okay. If you look at paragraph 121 of the Fifth</p> <p>8 Amended Complaint, it talks about signing prospective</p> <p>9 clients up within 24 hours of their first contact</p> <p>10 with KNR; do you see that?</p> <p>11 A Yes.</p> <p>12 Q Now, first of all, there was no -- strike that.</p> <p>13 This was after a client had already talked to a</p> <p>14 lawyer and had agreed to representation, only then</p> <p>15 would KNR try to sign them up, true?</p> <p>16 A Yes.</p> <p>17 Q And in fact, it's good for the client if they sign up</p> <p>18 within 24 hours, so you could start working on the</p> <p>19 case, isn't it?</p> <p>20 A The sooner you can start working on the case the</p> <p>21 better.</p> <p>22 Q In fact, even if the purpose was to get the case in</p> <p>23 before another firm signs it away from you, do you</p> <p>24 see something wrong with that, wanting the case?</p> <p>25 A As a business practice, getting them signed up as</p>

Page 529	Page 530
<p>1 quickly as possible is a good business practice.</p> <p>2 Q But you only did that once they had already agreed</p> <p>3 verbally on the phone that they wanted to be your</p> <p>4 client, true?</p> <p>5 A Yes.</p> <p>6 Q You never promised a client fast cash from a loan in</p> <p>7 order to get them to sign a contingency fee agreement</p> <p>8 at KNR, did you?</p> <p>9 A No.</p> <p>10 Q And I think you've already said you never directed or</p> <p>11 recommended anyone to get a loan, true?</p> <p>12 A Not without them inquiring about them.</p> <p>13 Q Okay.</p> <p>14 A Is that what you mean?</p> <p>15 Q Yes. But all you would give is contact information,</p> <p>16 you wouldn't recommend the loan, fair?</p> <p>17 A Correct.</p> <p>18 Q Do you remember a single KNR client that you actually</p> <p>19 directed to take a loan?</p> <p>20 A No.</p> <p>21 Q Or recommended that they take a loan?</p> <p>22 A No.</p> <p>23 Q If you'd look at paragraph 161 of the Fifth Amended</p> <p>24 Complaint, the first part of that reads, "Ms. Norris</p> <p>25 also took out a loan from Liberty Capital on similar</p>	<p>1 terms, based on Defendants' recommendation." Now, if</p> <p>2 you were the attorney handling her case and you saw</p> <p>3 those loan documents that you signed earlier, this</p> <p>4 isn't accurate as to Ms. Norris, is it?</p> <p>5 A It is not.</p> <p>6 Q Okay. We asked Ms. Norris at request for admission</p> <p>7 number 65 for the record whether you were truthful in</p> <p>8 the following representation on those loan documents.</p> <p>9 A If I was truthful?</p> <p>10 Q Yes. "While I am not endorsing or recommending this</p> <p>11 transaction, I have reviewed the contract and all</p> <p>12 costs and fees have been disclosed to my client,</p> <p>13 including the annualized rate of return applied to</p> <p>14 calculate the amount to be repaid by my client," and</p> <p>15 Ms. Norris denied that you were being truthful in</p> <p>16 that representation. So I'll ask you, were you being</p> <p>17 truthful in that representation in the loan document</p> <p>18 where you signed?</p> <p>19 A Yeah, that's --</p> <p>20 Q It has a paragraph that says you're not endorsing or</p> <p>21 recommending the transaction.</p> <p>22 A Correct.</p> <p>23 Q Ms. Norris denied that you were being truthful in</p> <p>24 signing that.</p> <p>25 A Yeah, that's not accurate.</p>
Page 531	Page 532
<p>1 Q Okay. That's nonsense, isn't it?</p> <p>2 A Yes.</p> <p>3 Q And request for admission number 68, Ms. Norris</p> <p>4 stated or denied that she knowingly acknowledged loan</p> <p>5 documents by initialing, because she did it on KNR</p> <p>6 attorneys' advice so she could obtain what she</p> <p>7 understood to be the proceeds from her lawsuit. Did</p> <p>8 that happen?</p> <p>9 A No.</p> <p>10 Q If you would turn to paragraph 163 of the Fifth</p> <p>11 Amended Complaint -- never mind. 164 -- actually we</p> <p>12 can skip that one, too, because we just answered it.</p> <p>13 165. Okay. In paragraph 165 of the Fifth</p> <p>14 Amended Complaint it alleges that KNR attorneys could</p> <p>15 be subject to harsh discipline if they disbursed</p> <p>16 settlement or judgment funds to a client without</p> <p>17 paying amount owed to Liberty Capital. Now, was</p> <p>18 there ever a time where you did that?</p> <p>19 A Are we looking at 165?</p> <p>20 Q Yeah. Let me find that exhibit.</p> <p>21 MR. SKIDMORE: Here, it's right here.</p> <p>22 A I don't have any specific recollection of not paying</p> <p>23 back Liberty Capital.</p> <p>24 Q There was a reason that sometimes attorneys would</p> <p>25 have to pay back on their own to a vendor who had a</p>	<p>1 lien, for example, if they had not had to go through</p> <p>2 the settlement memorandum, correct?</p> <p>3 A If we missed subrogation we got it taken out of our</p> <p>4 pay.</p> <p>5 Q Out of the bonus, true?</p> <p>6 A Yeah.</p> <p>7 Q And it wasn't just the Liberty Capital, it was any</p> <p>8 lien or vendor or subrogation interest, true?</p> <p>9 A Yes.</p> <p>10 Q And the reason for that is, you didn't want to call</p> <p>11 the client back and have them take a hit, right?</p> <p>12 A I don't know what the reason was. We just -- it just</p> <p>13 happened.</p> <p>14 Q Okay. But it was the individual attorney who made</p> <p>15 the mistake who took the hit, not the client, fair?</p> <p>16 A Yeah.</p> <p>17 Q And -- but it came out of a bonus, not your base pay,</p> <p>18 true?</p> <p>19 A It's still pay.</p> <p>20 Q I agree. I'm not asking whether you agree with</p> <p>21 the practice.</p> <p>22 A Yeah.</p> <p>23 Q But it wasn't to the harm of any clients, was it?</p> <p>24 A Correct.</p> <p>25 Q Okay. And the fact that Ken or whoever had to pay a</p>

<p style="text-align: right;">Page 533</p> <p>1 vendor back, that went to no harm to any client that 2 you know anywhere from KNR, true? 3 A I would know nothing about -- I don't know the 4 situation you're talking about. 5 Q Okay. Well, they showed an e-mail earlier where -- I 6 thought I had it. 7 MR. BARMEN: I have it. Give me a 8 second. 9 Q There was sort of a, I don't know what you want to 10 call it from Mr. Pattakos trying to allege that 11 somehow the firm was bargaining clients against each 12 other because of that -- 13 A Correct. 14 Q -- because of the -- 15 A Oh, okay. 16 Q -- of the attorney having to pay back to Liberty. 17 MR. PATTAKOS: That misstates the 18 argument, Tom. But go ahead. 19 MR. MANNION: No, it doesn't. 20 MR. PATTAKOS: Do what you want to do, 21 that's fine. 22 A I'll have to take a look at it. I don't know if I 23 remember that e-mail in that -- I don't think it was 24 about -- I don't know. I can't remember what it 25 said.</p>	<p style="text-align: right;">Page 534</p> <p>1 Q I had it right here. So at any rate -- yes, 2 perfect -- Exhibit 6. 3 A 6? 4 MR. SKIDMORE: Can you tell I just got 5 out of a trial -- 6 THE WITNESS: Yeah. 7 MR. SKIDMORE: -- trying to keep track 8 of my exhibits. You guys will have to have 9 somebody on this full-time. 10 A Okay. 11 Q Do you have it? 12 A Oh, wait. No. Hold on -- yeah; yeah. Yeah, lending 13 company at the top? 14 Q Yes. And this is an e-mail where Ken failed to put 15 Liberty on one case and Gary P. failed to put Liberty 16 on another case at the time of the settlement 17 memorandum, or at least that's what it looks like, 18 fair? 19 A Okay. 20 Q And at the top what it says is Ciro, despite the fact 21 that they did that, he was willing to waive 22 initially, correct? 23 A That's what the e-mail says. 24 Q I mean, you realize these loan companies take great 25 risk in giving these loans, don't you?</p>
<p style="text-align: right;">Page 535</p> <p>1 A I cannot comment on their risk level. 2 Q If the client doesn't recover what happens? 3 A Nobody gets paid. 4 Q Right. And they're not even considered loans by law, 5 are they? 6 A I don't know. 7 Q Okay. At any rate, it was discussed, and the 8 decision at KNR was to have the attorneys who made 9 the mistakes pay, because at some point you might 10 need to negotiate on Ciro's charges for a client, 11 correct? 12 A I don't know. Hold on. Say that again. 13 Q Sure. In other words, I mean, you know that Liberty 14 Capital had to stay in business to be of good to any 15 clients, true? 16 A Liberty Capital being in business is not my concern. 17 Q I understand. But if they -- do you think that -- 18 well, let me strike that one. 19 What this e-mail is saying is "We're not going 20 to put our clients in jeopardy of not getting a 21 reduction in the future because he's giving one now"? 22 A I don't know. I mean, you're asking me to get into 23 the mind of why Brandy -- 24 Q Okay. 25 A -- I think, or was it Rob, whoever the people are in</p>	<p style="text-align: right;">Page 536</p> <p>1 this e-mail, why they're doing what they're doing. 2 Q Well, let me ask you this. The fact that Ken or Gary 3 were going to have to pay this and Ciro wasn't taking 4 a cut, that did not harm any clients, did it? 5 A I don't know. I mean -- 6 Q Can you even think of how that would harm a client? 7 A I mean, the client got their money and it was over. 8 I can't say. 9 Q And it says "At some point we will need a favor from 10 Ciro and need him to waive," and that means waive a 11 fee for a client, true? 12 A You would have to ask Brandy. 13 Q Well, there were no fees that Liberty Capital had to 14 KNR, right? 15 A Right, yeah; yeah. Yes. 16 Q So that would have been waiving a fee for a future 17 client, true? 18 A You would have to ask Brandy or Rob, but the e-mail 19 says what it says. 20 Q All I'm saying is you never knew of a single time 21 where Ciro had a fee going to KNR to waive, it was to 22 KNR's clients? 23 A Yeah, it was, it was loan money. 24 Q So if you're talking about waiver, it would be about 25 whatever had to be paid back on the loan?</p>

Page 537	Page 538
1 A If you follow that presumption.	1 admit that this is all relevant, you should
2 Q And that was true whether it was something that had	2 talk to Ciro and --
3 to be paid to Ciro, or perhaps on a letter of	3 MR. MANNION: Well, if it's not relevant
4 protection or something of that nature, fair?	4 why is it in the Fifth Amended Complaint?
5 A Yes.	5 MR. PATTAKOS: If it's not relevant why
6 Q Oh, paragraph 166 of the Fifth Amended Complaint	6 would you obstruct discovery on it?
7 alleges that KNR clients were Liberty Capital's only	7 A I can't comment one way or the other.
8 customers. You don't have any facts that you have to	8 Q Okay.
9 support that, do you?	9 A I mean, if you're representing that they gave loans
10 A I do not.	10 to law firms other than KNR, I don't know one way or
11 Q And in fact, were you aware that some of Slater &	11 the other.
12 Zurz's clients have used Liberty Capital in their	12 Q But if they do that, then this allegation that KNR
13 loans?	13 was the only customer would be inaccurate?
14 A No. I didn't work here when Liberty Capital was in	14 A It's plain text.
15 existence.	15 Q And paragraph 170 of the Fifth Amended Complaint --
16 Q Well, if that's true, then obviously this statement	16 well, before you -- let me just ask you this. Can
17 is not correct, fair?	17 you remember any exact time period where the only
18 A I don't know.	18 loan company you used, or any of your clients used,
19 Q Well, if Slater & Zurz also had clients who used	19 was Liberty Capital, and that's all they used, didn't
20 Liberty Capital, then this allegation wouldn't be	20 go anywhere else?
21 true, fair, where it says "only customer"?	21 A A specific recollection of it?
22 MR. PATTAKOS: I guess we'll need to get	22 Q Of a specific time period.
23 documents from Liberty Capital.	23 A No.
24 MR. MANNION: I mean, stop it.	24 Q Okay. And do you have a specific time period of ever
25 MR. PATTAKOS: Well, if you want to	25 being prohibited from having your client go with
Page 539	Page 540
1 anybody other than Liberty Capital, even if it was	1 Q It doesn't say "want part of their settlement," does
2 recommended to use them initially, if they didn't	2 it?
3 like them or couldn't get it, you could still use	3 A Correct.
4 another company, true?	4 Q It doesn't say "want med pay," does it?
5 A I can't say one way or the other.	5 A It does not.
6 Q You don't remember one way or another?	6 Q It says "wanting loan," true?
7 A Right.	7 A It does.
8 Q Okay. Now, let's look at --	8 Q And did Jenna Sanzone then only give those clients
9 ----	9 contact information for Liberty Capital?
10 (Thereupon, Defendants' Exhibit JJ was	10 A Based on -- that's not what this says.
11 marked for identification.)	11 Q Okay. In fact, it says she gave them Liberty Capital
12 ----	12 Financial and Oasis numbers, true?
13 Q So showing you what looks like to be page eight of 18	13 A That is what it says.
14 of some Needles notes -- these are Needles notes,	14 Q It doesn't say that she told them one over the other
15 right, sir?	15 was preferred, does it?
16 A Um-um.	16 A It does not.
17 Q Yes?	17 Q Now, it says "clients," so assuming there were two on
18 A Yes.	18 there, assume one went with Liberty Capital and one
19 Q And R. Horton is you?	19 went with Oasis. Is there anything about that that
20 A Yes.	20 would make you think there's an ownership interest in
21 Q And do you see on 10-29-01 it looks like "Spoke with	21 either one of those by KNR?
22 clients, wanting loan;" did I read that correctly?	22 A I don't know.
23 A Yes.	23 Q I mean, you never -- you were on this file, there's
24 Q And meaning the clients wanted a loan, true?	24 nothing about it at the time that you thought you
25 A I presume so.	25 were having -- that somebody was taking out a loan

Page 541	Page 542
1 with a company that Rob or KNR owned, did you, or	1 read that?
2 partially owned?	2 A Yes.
3 A Say that again.	3 Q And then after the "narrative," did it say "requested
4 Q Sure. When you were counsel for -- you were actually	4 check," true?
5 counsel for the companion, too. When you were	5 A It says "requested CKL."
6 counsel for those two clients, and one went with	6 Q Meaning check?
7 Liberty Capital and one went with Oasis, you didn't	7 A If that's what she meant.
8 think at that time that there was going to be any	8 Q Okay. But it doesn't say before that that the check
9 kickbacks from those companies to KNR, did you?	9 was requested before the narrative was received, does
10 A No.	10 it?
11 Q You wouldn't have done it otherwise, would you?	11 A I can't -- I mean, I can't read that and say check.
12 A No.	12 I mean, you can make the assumption that it says
13 Q And you didn't think there was an ownership interest	13 check, and that same typographical error or
14 in either of those by Rob or KNR, did you?	14 indication is not on the page of notes that you gave
15 A I have, I have nothing to --	15 me previously.
16 Q You didn't think so?	16 Q Okay. But this was a standard practice is the
17 A As I stated, there's nothing that I have to purport	17 narrative would come in and then the check would be
18 that there's an ownership interest.	18 requested, true?
19 Q Right. If you would have thought that, you would	19 A I don't know. You'd have to talk to the paralegals.
20 have done something different, fair?	20 Q You don't recall?
21 A Probably, yeah.	21 A We didn't request the checks.
22 Q Okay. Now, if you look at the bottom, do you see	22 Q Okay. But you knew if a narrative was coming in for
23 where it says 12-4-13?	23 certain doctors -- well, strike that.
24 A Yes.	24 A narrative report from any expert is going to
25 Q It says "Received chiro records and narrative;" did I	25 cost money, true?
Page 543	Page 544
1 A Yes.	1 racist, but then you accused him of being one
2 Q Okay. And so you knew if you were receiving a	2 on the record.
3 narrative report, the doctor was going to have to be	3 MR. PATTAKOS: I did not tell you that
4 paid?	4 off the record at all.
5 A Yes.	5 MR. MANNION: You absolutely told me
6 Q You didn't negotiate those rates --	6 that off the record.
7 A I did not.	7 MR. BARMEN: I was standing right there
8 Q -- but you knew he had to be paid?	8 when you did it.
9 A Yes.	9 MR. MANNION: Yeah.
10 Q And at the time, you knew generally the rates for	10 A All right. Ask me questions. Come on.
11 Doctor Floros, true? You may not remember them now,	11 Q So on Exhibit KK --
12 but you knew at the time, true?	12 MR. PATTAKOS: I'm sorry, what did you
13 A I probably saw them.	13 just say that I told you off the record?
14 Q Well, you saw them on the settlement memorandum?	14 MR. MANNION: That you didn't believe
15 A Yeah.	15 Rob Nestico was a racist, but you had a
16 - - - -	16 client to represent, your exact words.
17 (Thereupon, Defendants' Exhibit KK was	17 MR. PATTAKOS: I certainly did not say
18 marked for identification.)	18 that.
19 - - - -	19 MR. BARMEN: Unbelievable.
20 Q Okay. Now, if we now look at KK --	20 Q If you look down at 3-24-2014.
21 MR. PATTAKOS: We better not get to	21 A Yes.
22 three Ks, huh?	22 Q Actually 3-21-2014, "Client called in." This is
23 MR. MANNION: I actually don't find it	23 Monique Norris, true?
24 funny. You told me off the record that you	24 A Okay.
25 knew -- you didn't believe Rob Nestico is a	25 Q You talked to her, true?

Page 545	Page 546
<p>1 A Yes.</p> <p>2 Q And it said "gave Preferred Capital;" do you see</p> <p>3 that?</p> <p>4 A Yep.</p> <p>5 Q And if you look up above, it's -- well -- and if you</p> <p>6 go down one I should say, "e-mailed Amber back</p> <p>7 concerning loan info Preferred Capital;" do you see</p> <p>8 that?</p> <p>9 A Yes.</p> <p>10 Q Okay. So three different companies were provided,</p> <p>11 the contact information provided to Monique Norris</p> <p>12 during the time that you were representing her, true?</p> <p>13 A I have no specific recollection of it.</p> <p>14 Q I understand.</p> <p>15 A But if these are the notes from the computer, then</p> <p>16 that would be accurate.</p> <p>17 Q You don't dispute those at all, do you?</p> <p>18 A No.</p> <p>19 Q And in fact, did you think that Rob or KNR had an</p> <p>20 ownership interest in Preferred Capital?</p> <p>21 A No.</p> <p>22 Q Okay.</p> <p>23 A I have no facts to indicate one way or the other.</p> <p>24 Q You don't believe so, do you?</p> <p>25 A No. I think they've been around longer than KNR has</p>	<p>1 been around.</p> <p>2 Q And if the companion was given two loan companies as</p> <p>3 well and went with Oasis, can you tell me how, if at</p> <p>4 all, KNR was somehow directing and forcing their</p> <p>5 clients to take loans with Liberty Capital?</p> <p>6 A Not forcing for sure.</p> <p>7 Q Providing contact information?</p> <p>8 A Providing contact information.</p> <p>9 Q And for both the companion, if it happened, and with</p> <p>10 what you've seen with Monique Norris, multiple loan</p> <p>11 company contact information was provided, true?</p> <p>12 A That is correct.</p> <p>13 Q If you would look at paragraph eight of the Fifth</p> <p>14 Amended Complaint.</p> <p>15 MR. SKIDMORE: Doing all right?</p> <p>16 THE WITNESS: I just want to get out of</p> <p>17 here.</p> <p>18 Q You can waive it, we've answered that one. You can</p> <p>19 skip that one.</p> <p>20 MR. SKIDMORE: I don't want to curtail</p> <p>21 any of you guys, but I also am starting to</p> <p>22 recognize my client is starting to get tired,</p> <p>23 so I want this --</p> <p>24 MR. MANNION: I haven't been going that</p> <p>25 long.</p>
<p>Page 547</p> <p>1 MR. SKIDMORE: No, I know, I know, but</p> <p>2 I'm just saying observably he's looking</p> <p>3 tired, so --</p> <p>4 MR. PATTAKOS: Do you want to take a</p> <p>5 break? I could use a break.</p> <p>6 MR. SKIDMORE: Well, let me ask you</p> <p>7 this. How much longer are we looking at</p> <p>8 tonight?</p> <p>9 MR. MANNION: I have an hour.</p> <p>10 THE WITNESS: For real?</p> <p>11 MR. PATTAKOS: I have 10 minutes.</p> <p>12 MR. MANNION: I just got it.</p> <p>13 MR. SKIDMORE: I understand. All right.</p> <p>14 So why don't we take a break.</p> <p>15 THE VIDEOGRAPHER: We're off the record.</p> <p>16 ----</p> <p>17 (Thereupon, a recess was had.)</p> <p>18 ----</p> <p>19 THE VIDEOGRAPHER: We're back on the</p> <p>20 record. 5:03.</p> <p>21 Q I think this was clear from the record, but I'll tell</p> <p>22 you why I'm going to ask the next few questions. You</p> <p>23 were asked some questions by Attorney Pattakos</p> <p>24 basically about how the firm KNR did things.</p> <p>25 A Yes.</p>	<p>Page 548</p> <p>1 Q Were you purporting to speak for the whole firm, or</p> <p>2 primarily for how you do things when you were there?</p> <p>3 A Well, how I did things was -- I guess it depends on</p> <p>4 what.</p> <p>5 Q Okay. Well, you told me that -- on direct you were</p> <p>6 essentially so busy, you know, handling your own</p> <p>7 cases and on the phone to really listen to how other</p> <p>8 lawyers were handling other things.</p> <p>9 A Like doing an intake or talk to a client, something</p> <p>10 like that?</p> <p>11 Q Yes.</p> <p>12 A I mean, yeah, that's something --</p> <p>13 Q How many prelit attorneys were there total in Ohio</p> <p>14 when you were at KNR?</p> <p>15 A Employees of KNR?</p> <p>16 Q Um-um, prelit.</p> <p>17 A Yeah. I think we had probably five or six in Akron,</p> <p>18 depending on the time.</p> <p>19 Q What about in all of Ohio?</p> <p>20 A Out in Youngstown, I don't know what their roles</p> <p>21 were. There may have been one or two or --</p> <p>22 Youngstown was a different office. It was -- I</p> <p>23 didn't really know a lot about it. But they had to</p> <p>24 have -- I think they had an intake person out there.</p> <p>25 And then down in Columbus, when they opened, I</p>

Page 549	Page 550
<p>1 don't -- Paul was down there, and then a buddy of 2 mine, Greg, and then I don't know when Amanda came on 3 and then Greg left and they hired a couple other 4 people. But how they split up -- oh, Walter 5 Messenger was down there, but he wasn't a prelit guy, 6 I think he was a litigation guy. So I don't know. A 7 handful, a couple down in Columbus, five or six in 8 Akron, maybe one out in Youngstown. 9 Q Cincinnati? 10 A They did not have anybody -- 11 Q At that time? 12 A -- in Cincinnati at the time. 13 Q Okay. Now, you referred to some of Brandy's e-mails 14 as, quote, strong suggestions yesterday in some of 15 your testimony. I don't know if you recall that 16 phrase. 17 A No, but sure. 18 Q Were you aware of Kelly Phillips did not follow those 19 strong suggestions? 20 A I have no, no knowledge of anything that happened in 21 Columbus. 22 Q And so you don't know how Kelly Phillips handled his 23 cases versus Paul Steele versus Amanda, true? 24 A True. 25 Q Okay. If they exercised their own independent</p>	<p>1 professional judgment on which chiros to refer to or 2 not, you would have to look at those cases and talk 3 to those attorneys about those cases, true? 4 A If they exercised their own, if they exercised their 5 own personal judgment you would have to talk to them. 6 Q Yes. 7 A Yes. 8 Q And the same would be true with the Youngstown 9 lawyers as well, true? 10 A Yeah, I don't know anything about Youngstown. 11 Q You don't know what percentage of their cases they 12 sent to chiros? 13 A No idea. 14 Q Now, did you think that sending Monique Norris, 15 assuming you did, to Doctor Floros was detrimental to 16 her at the time you sent her? 17 A Detrimental in what sense? 18 Q Well -- 19 A I mean, I guess the answer to that question is no, 20 she was going to go get some chiropractic care and 21 work on -- I think, from what the settlement memo 22 said, she went to see a couple other places, too, 23 so -- 24 Q You thought it would be helpful to her care, fair? 25 A Yes.</p>
Page 551	Page 552
<p>1 Q I will just read you the first sentence of paragraph 2 44 of the Fifth Amended Complaint, "Defendants 3 routinely send their clients to certain 4 chiropractors, even when they know that doing so will 5 actually be detrimental to their clients. Now, 6 that's not something you ever did at KNR, is it? 7 A I think it's an interpretation of "detrimental." 8 Some of the e-mails we went over earlier about 9 Allstate and whatnot, I mean, if you think the 10 potential for litigation is detrimental or not, I 11 mean, listen, we sent them places to get care and 12 they got care, and then we tried to resolve their 13 cases. If they ended up in litigation to get better 14 for them, then that's what it took. Does that make 15 sense? 16 Q Let me ask you, though, did you ever send your 17 clients to chiropractors if you thought it would be 18 detrimental to that client? 19 A No. 20 Q Did you ever coerce unwanted healthcare -- 21 A No. 22 Q -- on a client? 23 A No. 24 Q Look at paragraph five of the Fifth Amended 25 Complaint.</p>	<p>1 A Does it say I did that? 2 MR. SKIDMORE: We've got a products 3 liability case here. 4 Q Do you see in paragraph five where it says that 5 Defendants coerced clients into unwanted healthcare? 6 A Yes. 7 Q Okay. Now, when you referred anybody to Doctor 8 Floros, you didn't do it if they didn't want it, did 9 you? 10 A No. 11 Q You didn't do that with any chiropractor or any other 12 physician, did you? 13 A No. 14 Q You never asked Brandy or Rob Nestico the purpose 15 behind the referral boards or e-mails about who to 16 refer chiropractors to, did you? 17 A No. 18 Q Okay. And in fact, do you know -- well, let me 19 strike that. 20 Have you ever managed a group of lawyers? 21 A No. 22 Q Okay. Have you ever managed a -- the number of -- 23 or, excuse me, cases being referred to chiropractors 24 for multiple lawyers? 25 A No.</p>

Page 553	Page 554
1 Q Or had to look at that issue?	1 Q And -- but you were comfortable with the referrals
2 A No.	2 that you were sending your clients to?
3 Q You didn't really know how many referrals were going	3 A Yes.
4 to certain chiropractors and not -- you knew just	4 Q With Needles, you're not a Needles expert, true?
5 your cases, fair?	5 A I'm pretty good at it.
6 A Except when you got an e-mail from Brandy or Rob that	6 Q Is that what you have currently?
7 had particular --	7 A Yes.
8 Q True.	8 Q Okay. Now, do you realize that Needles can be sort
9 A -- communications in it. It's something that would	9 of -- what do you call -- customized for the law
10 be easy, again, it would be easy to look up in the	10 firm?
11 computer. It's not something I looked at, though.	11 A Yes; yes.
12 Q Well, we'll talk about that in a second, as far as	12 Q And the reports that Peter was talking about, in the
13 whether it's easy to look that up. But absent	13 format he was talking about, you never saw reports in
14 getting an e-mail from somebody, you wouldn't know	14 that format at KNR, did you?
15 how many total cases are being sent anywhere, would	15 A I don't remember him mentioning reports, but I
16 you?	16 don't --
17 A Total cases, no.	17 Q Or certain information that he asked, you never saw
18 Q Yeah. Because you didn't see the overview that they	18 information in that format from a report from Needles
19 saw, true?	19 at KNR, did you?
20 A Correct.	20 A I don't recall the question you're asking.
21 Q So you never talked to Rob or Brandy about why they	21 Q Okay.
22 actually sent those you said, so you don't know if it	22 A I don't recall, I don't recall him saying the
23 was to spread cases or to check marketing or what it	23 question you're asking.
24 was for, do you?	24 Q What I'm saying is, you've said a number of times
25 A You would have to ask Rob and Brandy.	25 that certain information is easy to get from Needles?
Page 555	Page 556
1 A Yes.	1 Q Now, you don't know in particular the exact reports
2 Q And I don't want there to be some implication out	2 that you can get from KNR's Needles system, do you?
3 there that we can press a button and get a report	3 A Just when I was there.
4 that has all that information. So if I wanted right	4 Q Did you do those reports you just said?
5 now to go and see every case in Needles that, for	5 A No.
6 example, talk -- talking about the conversations you	6 Q So that's what I'm asking. You never saw one of
7 had with a client on a chiro referral --	7 those reports --
8 A The conversations, no.	8 A Like --
9 Q -- I'd have to go and actually open up that case,	9 Q -- you just mentioned?
10 correct?	10 A -- a provider listing?
11 A I don't -- to that degree, I don't know. Beyond	11 Q In that manner that you just said.
12 there, I don't know.	12 A I can't tell you if I did or if I didn't.
13 Q Okay. What do you think that you can get from	13 Q Do you know that Needles notes are not searchable?
14 Needles and how would you do it?	14 A The specific content of the Needles notes are not
15 A So like you asked me about the number of cases that I	15 searchable.
16 worked on that had a particular provider. You -- one	16 Q Are you aware --
17 of the standard reports that comes with Needles is	17 A You can, you can search things like last time a note
18 you search a provider, then you can hit list cases,	18 was made in a case, but you can't search the content.
19 and it will show you -- and you can pick particular	19 Q Are you aware that the value tabs are not searchable?
20 criteria for that search range. So you can put from,	20 A Searchable in what sense?
21 you know, January 1st, you know, 2019 to whatever	21 Q Any sense.
22 today is, and it will list all the cases that are	22 A You can, you can look up value listings and stuff
23 either open or -- I think, I think it does open and	23 like that, but it might not get the information that
24 closed, you can list all the cases that that	24 you're looking for.
25 particular provider appears on.	25 Q Are you aware that when running a case listing for an

Page 557	Page 558
1 attorney, the info you're given is the client name,	1 Are you there?
2 the case number and the statute of limitation date,	2 A Yes.
3 that's the information you get when you run it on a	3 MR. PATTAKOS: Paragraph 138 you said?
4 particular attorney?	4 MR. MANNION: 136.
5 A For a case listing?	5 Q And down near the bottom it says "KNR never advised
6 Q Yes.	6 Williams as to the purpose of the charge to MRS
7 A That sounds about right.	7 Investigations, Inc., and never obtained Williams'
8 Q Okay.	8 consent for the charge;" did I read that correctly?
9 A Keep going.	9 A Yes.
10 Q I'm getting rid of them.	10 Q And if you look at the top, you can see this was
11 A That's why I'm saying, keep going.	11 filed November 28, 2018?
12 Q By the way, you don't know what was done or not done	12 A Yes.
13 by an investigator in Monique Norris' case, do you?	13 Q And I'll represent to you as I read from page 25 of
14 A I have no recollection.	14 Member Williams' deposition that was seven months and
15 Q You'd have to look at the actual file and talk to the	15 10 days before that, "Did you ask them --" excuse me,
16 investigator?	16 strike that. She testified "They never showed me any
17 A I would.	17 information that they got from investigating
18 Q If there's photographs of the car taken --	18 anything."
19 A I have no recollection. Everything everybody here	19 "Question: Did you ask them at any point?"
20 has told me about Monique Norris' case I'm taking you	20 "Answer: I think I was told that it was a
21 at your word, because I have no recollection of it at	21 police report and things from the accident."
22 all.	22 "Who told you that?"
23 Q Look at page 136 of the Fifth Amended Complaint.	23 And she says "I don't remember her name, the
24 A Paragraph?	24 girl at the exit interview, I believe," and it goes
25 Q Paragraph 136, page 38. Tell me when you're there.	25 on multiple times to say that she was told that.
Page 559	Page 560
1 MR. PATTAKOS: I'm going to object to	1 MR. MANNION: Right.
2 the characterization of the transcript,	2 MR. SKIDMORE: -- anyway without paying
3 without having the transcript on the record	3 a fee; do you know that?
4 or you haven't even filed it yet. You keep	4 MR. PATTAKOS: I'm not sure about that
5 referring to it, it's not on the record, you	5 at all.
6 haven't produced any copies of it.	6 MR. SKIDMORE: It's copyrighted, so --
7 MR. MANNION: Of Member Williams'	7 MR. PATTAKOS: What's the law for that?
8 deposition, I haven't produced copies?	8 MR. SKIDMORE: I actually litigated that
9 MR. PATTAKOS: You haven't. So you're	9 issue.
10 just making your own selective --	10 MR. PATTAKOS: Is there a statute?
11 MR. MANNION: What do you mean?	11 MR. SKIDMORE: So anyway --
12 MR. PATTAKOS: You're making your own	12 MR. MANNION: He's tried to get them
13 selective entries.	13 from me multiple times.
14 MR. MANNION: Stop it; stop it.	14 MR. BEST: He's violating copyright law.
15 MR. BARMEN: You spent 30 minutes asking	15 Q So at any rate, if Member Williams --
16 about Kelly Phillips' testimony without	16 MR. PATTAKOS: Sue me, Dave.
17 showing it to him.	17 Q -- is accurate that she was told that it was a police
18 MR. PATTAKOS: Well, right, because	18 report and things from the accident, would you agree
19 Kelly Phillips testified on Friday. If we	19 that the allegation that she was never advised as to
20 had Kelly Phillips' testimony, everybody in	20 the purpose is not accurate; it can't be both, can
21 this room would have the transcript.	21 it?
22 MR. SKIDMORE: Actually I'm going to	22 A That's, that's -- you have to read it, that's in the
23 tell both you guys you're not allowed to	23 plain text. I mean, you're stating one thing from
24 provide a court reporter transcript to	24 her testimony that is apparently in opposition to
25 another attorney --	25 what is written here. I mean, it's the same thing as

Page 561

1 this person wrote this, what do you think they were
 2 thinking when they wrote it. I don't know.
 3 Q No, really, if she's saying she was advised and this
 4 says she wasn't, one of them is right and one of them
 5 is not, true?
 6 A Those are two different things.
 7 Q Okay.
 8 A That's -- I don't know why you're asking me that
 9 question.
 10 Q Well, because you represented Member Williams.
 11 A I did, but that still doesn't -- I mean, it's one
 12 sentence says blue, one sentence says red. Anybody
 13 can read it, you know.
 14 Q Well, I mean --
 15 A I'm sorry, keep going; keep going.
 16 Q If your client testified that they were advised of
 17 the reason for the investigation, would you put in a
 18 pleading seven months later and allege that they were
 19 never advised?
 20 A I don't know; I don't know.
 21 Q It doesn't sound like something you would do, is it?
 22 A Let's keep going.
 23 Q Would you do that?
 24 A That's irrelevant. Let's keep going.
 25 Q There was some implication that somehow you would

Page 563

1 for good without a court order from the
 2 judge, okay?
 3 MR. PATTAKOS: That's fine.
 4 MR. SKIDMORE: So he's allotted two full
 5 days to take this deposition. You're wasting
 6 time. So let's ask the question, let's get
 7 it answered, and let's keep moving.
 8 MR. PATTAKOS: We started at noon today.
 9 Q Mr. Horton --
 10 A Yes.
 11 Q -- would you ever, and have you ever compromised a
 12 client's representation because of the level of their
 13 education?
 14 A No.
 15 Q Did anybody at KNR tell you to do that?
 16 A No.
 17 Q Would you have done that even if they did?
 18 A No.
 19 Q Do you think that educated people use chiropractors,
 20 too?
 21 A Yes.
 22 Q You were adjusted by a chiropractor, true?
 23 A I was.
 24 Q Okay. I went to a chiropractor a month ago. Do you
 25 think I'm halfway educated anyway?

Page 562

1 compromise clients, or KNR would, if they're less
 2 educated than more educated. You never did that, did
 3 you?
 4 A Say that again.
 5 Q Sure. There was some insinuation by Mr. Pattakos,
 6 like many of his -- that somehow higher educated
 7 clients got better treatment by the attorneys.
 8 MR. PATTAKOS: You mean all the
 9 documents that show that, Tom? Is that what
 10 you're referring to, like where it says "If
 11 we get a savvy client we might be in
 12 trouble," or "Since she's a nurse --"
 13 MR. BEST: This is a non-speaking
 14 objection.
 15 MR. SKIDMORE: Instead of you guys
 16 arguing about it, why don't we just ask a
 17 question and get an answer.
 18 MR. MANNION: I was trying to do that.
 19 MR. PATTAKOS: Well, I'm just saying
 20 it's an insinuation. I'm pointing out that
 21 Mr. Horton has looked at --
 22 MR. SKIDMORE: I'm going to tell you
 23 right now Mr. Horton has to be out of here
 24 today at a certain time. When that time
 25 comes, this deposition is going to be ended

Page 564

1 A I don't know, Tom, I don't know.
 2 Q Do you think that multiple -- if anybody else in here
 3 saw chiropractors, that that's an educated person
 4 seeing a chiropractor?
 5 A Yes, I think most people in this room are educated
 6 individuals.
 7 Q And you refer educated and uneducated to
 8 chiropractors, true?
 9 A I do, or, did.
 10 Q Whether a trigger point injection works or doesn't
 11 work isn't based on your education, is it?
 12 A I have no education to say one way or the other.
 13 Q Do you think a trigger point injection would impact
 14 somebody differently based on their level of
 15 education?
 16 A That's a question I can't answer. I don't -- I mean,
 17 common sense says no, but --
 18 Q Okay. Now, you were asked some questions about the
 19 affidavits of Gary Petti and Amanda Lantz, and a
 20 number of times you said "Well," in response to
 21 Mr. Pattakos' question, "I don't have any facts to
 22 refute that paragraph;" do you remember those
 23 questions?
 24 A Yes.
 25 Q Now, by saying that, you weren't trying to say that

Page 565

1 you adopted those paragraphs as true, were you?
 2 A No.
 3 Q You were trying to say "I don't know one way or the
 4 other," fair?
 5 A Correct.
 6 Q There was, for example, though, some information in
 7 Gary Petti's opinions that you would have disagreed
 8 with, for example, when he stated that the narrative
 9 reports were worthless; you don't agree with that, do
 10 you?
 11 A That's Gary's opinion. You know, it's a report from
 12 a doctor that can serve a purpose on a particular
 13 occasion. When that occasion would be I can't tell
 14 you.
 15 Q The individual lawyer has to make that decision,
 16 true?
 17 A I suppose.
 18 Q And Mr. Lynett thinks they're important, Mr. Petti
 19 doesn't, there's different ways to look at things as
 20 a lawyer, true?
 21 A We all approach things differently, yes.
 22 Q And that doesn't mean either one of them is wrong,
 23 there's different strategies a lawyer can take?
 24 A Everybody approaches a case a different way.
 25 Q Okay.

Page 567

1 MR. PATTAKOS: Tom, whose report is
 2 this?
 3 Q Sir, is that what it looks like, a report from Akron
 4 Square Chiropractic?
 5 MR. PATTAKOS: I'm just going to object
 6 to --
 7 MR. MANNION: Stop it. Just object.
 8 MR. PATTAKOS: I'm objecting --
 9 MR. MANNION: Just object.
 10 MR. PATTAKOS: -- to this being just an
 11 unidentified random medical record.
 12 MR. MANNION: Go ahead, make your
 13 objection.
 14 A Personal Injury Summary, there's a name redacted, it
 15 says Medical Provider: Akron Square Chiropractic, and
 16 lists some other particular things about apparently
 17 this individual, it has some diagnoses --
 18 MR. MANNION: Please stop it, Peter.
 19 A -- there is a few questions about the medical
 20 opinion, and then prognosis, and then a big huge
 21 paragraph.
 22 Q And whether things are medically necessary and things
 23 of that nature?
 24 A Yes.
 25 Q Whether the injuries aggravated a pre-existing

Page 566

1 MR. MANNION: Are you talking loud
 2 enough for the witness to hear, Peter, or
 3 what exactly is your goal over there?
 4 MR. PATTAKOS: I'm talking to Rachel.
 5 ----
 6 (Thereupon, Defendants' Exhibit LL was
 7 marked for identification.)
 8 ----
 9 Q Showing you what's been marked as Exhibit LL for
 10 identification, and I'll represent to you, sir, in
 11 front of you --
 12 A Yeah, sorry.
 13 Q That's okay.
 14 A My wife is wondering where I'm at.
 15 Q Okay.
 16 A And probably so is yours.
 17 Q Many wives here, and other significant others, I
 18 don't know if you have one or not, but --
 19 So this looks like a report from Doctor Floros,
 20 fair?
 21 A It says Personal Injury Summary, Medical Provider:
 22 Akron Square Chiropractic.
 23 MR. PATTAKOS: Is this just another
 24 random medical, Tom?
 25 Q Is that what it looks like, sir?

Page 568

1 condition, true?
 2 A Wait. Hold on.
 3 Q Number seven.
 4 A Yes, that's what it says.
 5 Q Number eight talks about prognosis, true?
 6 A Yes.
 7 Q And if we go down in the body of the report, there's
 8 some mention of, generally speaking, how the injuries
 9 are and some studies about them, true?
 10 A Yes.
 11 Q And at the bottom it says "In order to stabilize her
 12 condition over the next six months, she will need
 13 treatment monthly. The cost to stabilize and monitor
 14 her condition over the next three months is \$500;" do
 15 you see that?
 16 A Yes.
 17 Q Okay. You agree this is a useful narrative report to
 18 use to negotiate with an insurance company?
 19 A You would have to look at the case.
 20 Q And to determine whether any of these reports help
 21 negotiate a case, you'd have to look at each
 22 individual case, fair?
 23 A Fair.
 24 Q Okay. But you'd agree that the information contained
 25 in here contains information that would not generally

Page 569	Page 570
1 be contained directly in the medical records, true,	1 other.
2 from your review of medical records over the years?	2 Q You've never seen one, have you?
3 A Generally speaking, a physician is not going to put	3 A Again, I can't tell you that I have or have not. I
4 in medical records a proximate cause.	4 don't have a specific recollection of one. I can
5 Q Or studies?	5 tell you generally that those doctors don't put those
6 A I can't say that that's not true. Medically	6 things in a record. Those are opinion questions.
7 necessary and reasonable, I mean, they're questions	7 Q Okay. And if those opinion questions aren't in the
8 you ask an expert on a deposition.	8 records, then you obviously couldn't cut and paste
9 Q I mean, looking at this, you wouldn't allege that	9 them into the report, fair?
10 this was cut and pasted from a medical record, would	10 A If they are not there, then you can't cut and paste
11 you?	11 them from the medical record.
12 A I could not tell you one way or the other. I don't	12 Q Paragraph 71 of the Fifth Amended Complaint, "KNR
13 know if this was in the medical record or not.	13 rank and file attorneys knew these narrative fees
14 Q Have you ever seen a medical record that looks like	14 were fraudulent and expressed their disapproval of
15 this?	15 these fees to KNR management;" did I read that
16 A Have I seen a medical record that follows this	16 correctly?
17 format?	17 A You did.
18 Q Yeah.	18 Q And do you think Attorney Pattakos was referring to
19 A I can't say that I have or haven't. I have no	19 you and the prelit attorneys as the rank and file
20 specific recollection of it.	20 attorneys?
21 Q You don't remember a medical record where you could	21 A I don't know.
22 have cut and pasted the answers to these directly	22 Q Okay. Well, you certainly didn't believe those
23 related and medically necessary and reasonable and	23 narrative fees were fraudulent, did you?
24 those --	24 A That the narrative fees were fraudulent? I mean,
25 A I don't know. I couldn't tell you one way or the	25 again, you would have to take a look at the case.
Page 571	Page 572
1 Q Each case?	1 MR. BARMEN: I don't need to go over
2 A I can't tell you.	2 stuff that's already been discussed, not at
3 Q Okay. But any of the cases you had, you didn't	3 this point.
4 believe the narrative fees were fraudulent, did you?	4 MR. PATTAKOS: Hopefully this won't take
5 A I mean, they provided opinions.	5 more than 10 minutes.
6 Q Did you believe that on your cases the narrative fees	6 THE VIDEOGRAPHER: Peter, don't forget
7 were fraudulent, ever?	7 your microphone, please.
8 A No.	8 MR. PATTAKOS: Thank you.
9 Q Okay. So at least as paragraph 71 relates to you and	9 - - -
10 how you did things at KNR, it's not accurate as to	10 EXAMINATION OF
11 you, fair?	11 ROBERT PAUL HORTON
12 A Correct.	12 BY MR. PATTAKOS:
13 Q Will you produce all of your text messages with	13 Q Ready? Hopefully this won't take more than 10, 15
14 Breanna?	14 minutes. Maybe less.
15 A That's all I -- that's -- I mean, I have a different	15 So when you said that in Needles you could
16 phone now. I mean, that's -- those were paper	16 search for a provider, search provider and you'd get
17 copies. Those were the only copies I had. I don't	17 a list of all the cases with that provider for a
18 know if -- I don't think anything else -- like	18 certain time period; you could do that at KNR,
19 nothing else exists.	19 correct?
20 Q Okay; okay. Thanks.	20 MR. MANNION: Objection.
21 MR. MANNION: Do you have any, Brad?	21 A I believe so. Well, Needles has particular built-in
22 MR. BARMEN: I don't.	22 things you can search for, and there's like a reports
23 THE WITNESS: Okay. Thanks. You told	23 tab and then there's a list that you can go down, but
24 me you were going to take at least five	24 I think also if you type in somebody's name and hit
25 minutes.	25 enter, like the provider, double click on the

Page 573	Page 574
<p>1 provider and they pop up, and then there will be list 2 cases and it can list all the cases. 3 Q Okay. 4 A But beyond -- it doesn't give you -- I mean, it just 5 says the case and the case number and the client. 6 Q Well, if you look at Exhibits II, JJ and KK, these 7 Needles notes, it says Case Note Text Search Report, 8 correct? 9 A It does. 10 Q So do you know if you can search the Needles notes 11 and turn up notes with particular terms in them? 12 A If they did, I didn't know that you could. I thought 13 you could just look at, like you could look at a case 14 to see when the last time a note was put in there to 15 monitor the case to make sure you were talking to 16 your clients and stuff like that. That I don't know. 17 Q Okay. Can you go back and edit a Needles note after 18 it's been entered? 19 A Yes, but Needles backs itself up every 12 hours, I 20 think, so -- I think. I can't say that that's how it 21 was at KNR. I don't know if it backs itself up or 22 not. But sometimes it locks -- I don't know. There 23 are particular permissions that you'd have to look 24 at. 25 Q So when you say Needles backs itself up, would that</p>	<p>1 only be because a firm requested that Needles back 2 itself up, or does Needles, the vendor, as a matter 3 of policy require all of its users to allow them to 4 back up the files? 5 MR. SKIDMORE: Objection. 6 MR. MANNION: Objection. 7 MR. SKIDMORE: That sounds like it's 8 outside the scope of his knowledge. Do you 9 have a Needles expert or something you can 10 ask these questions to? 11 A I don't know if it's a Needles' requirement or if 12 it's a suggestion or a firm policy. That's something 13 you would have to talk to Needles and the firm about. 14 Q Okay. Mr. Mannion asked you if you could remember 15 any exact time period where you were only 16 recommending Liberty Capital to KNR clients, and you 17 testified that you had no specific recollection. But 18 I just want to clarify, I believe you testified 19 earlier when I was asking you questions that when you 20 received instructions for Rob -- from Rob or Brandy, 21 for example, that the firm was to send all requests 22 for loans to Liberty Capital, that's exactly what you 23 did, correct? 24 A That was the instruction from them, and when that was 25 I can't tell you. Whatever that e-mail said.</p>
Page 575	Page 576
<p>1 Q Right. But when those instructions were pending, you 2 followed those instructions, correct? 3 A From a general practice you did what they told you to 4 do. I can't tell you, I have no specific 5 recollection of whether I did or did not in that 6 instance. 7 Q Okay. But you understood that when they instructed 8 to send all requests for loans to Liberty Capital, 9 that that wasn't a suggestion, that was an 10 instruction, correct? 11 MR. MANNION: Objection. 12 A I mean, it was the office manager and the owner of 13 the firm telling us what we had to do. 14 Q Right. Okay. So assuming Monique Norris did request 15 a cash advance on her settlement, someone at the firm 16 must have recommended Liberty Capital to her once she 17 made that request, do you agree? 18 MR. MANNION: Objection. 19 MR. SKIDMORE: Objection. 20 A I can't say one way or the other. 21 Q But it's likely that that's what happened, correct? 22 MR. MANNION: Objection. 23 A You would have to ask, you would have to ask -- I 24 mean, I hate to tell you to ask Monique, but you 25 would have to ask her or look at the notes or find</p>	<p>1 the person who actually did do that for her. I don't 2 know. 3 Q How else would a client find out about Liberty 4 Capital? 5 MR. MANNION: I'm going to object. 6 A I don't know. 7 Q They didn't advertise, did they? 8 A I have no idea. 9 Q You agree that if a KNR client has a loan with 10 Liberty Capital that gets paid out of that client's 11 settlement, that it's likely that KNR put them in 12 touch with Liberty Capital, correct? 13 A I can't tell you. 14 Q You don't think it's likely? 15 MR. MANNION: Objection. He said he 16 can't tell you. 17 MR. SKIDMORE: Objection. He said he 18 can't tell you. 19 A I don't know. If -- well, they were telling me 20 earlier that apparently, again, they're representing 21 that another law firm also had Liberty Capital 22 clients. I don't know. 23 Q Paragraph -- 24 A If it was a client -- I mean, I guess I don't know. 25 I can't answer. I don't know.</p>

Page 581

1 on the record. Since Mr. Horton's deposition
 2 is now concluded, anybody who attempts to
 3 talk to Mr. Horton, I would appreciate it if
 4 it comes through my office first, okay?
 5 THE WITNESS: I would appreciate if
 6 nobody tried.
 7 MR. PATTAKOS: Okay. We're going to
 8 evaluate whether we're going to move the
 9 court to have him come back and answer some
 10 questions he was instructed not to answer,
 11 just for what's it worth.
 12 MR. SKIDMORE: That's fine.
 13 MR. PATTAKOS: Thanks, everyone.
 14 THE VIDEOGRAPHER: We're off the record.
 15 5:41.
 16 ----
 17 (Thereupon, the deposition was adjourned
 18 at 5:41 P.M.)
 19 ----
 20
 21
 22 _____
 23 Robert Paul Horton
 24
 25 -----
 Date

Page 582

1 The State of Ohio,)
 2 County of Cuyahoga.) SS:
 3 CERTIFICATE
 4 I, Mary Lou Mellinger, a Notary Public within
 5 and for the State aforesaid, duly commissioned
 6 and qualified, do hereby certify that the above-
 7 named ROBERT PAUL HORTON was by me, before the
 8 giving of his deposition, first duly sworn to
 9 testify the truth, the whole truth and nothing
 10 but the truth;
 11 That the deposition as above set forth was
 12 reduced to writing by me by means of stenotypy,
 13 and was later transcribed upon a computer by me;
 14 That the said deposition was taken in all
 15 respects pursuant to the stipulations of counsel
 16 herein contained; that the foregoing is the
 17 deposition given at said time and place by said
 18 ROBERT PAUL HORTON;
 19 That I am not a relative or attorney of
 20 either party or otherwise interested in the
 21 event of this action.
 22 IN WITNESS WHEREOF, I hereunto set my hand
 23 and seal of office, at Cleveland, Ohio this
 24 6th day of March, A.D. 2019.
 25

 Mary Lou Mellinger, RPR and Notary Public
 within and for The State of Ohio
 My Commission expires August 9, 2019.

1

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs- CASE NO. CV-2016-09-3928

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

Defendants.

- - - -

Videotaped deposition of MINAS FLOROS, DC, taken
as if upon examination before Brian A. Kuebler,
Kurt Spencer, Notary Publics within and for the
State of Ohio, at the Pattakos Law Firm, 101
Ghent Road, Fairlawn, Ohio, at 9:09 a.m. on
Friday, March 20, 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

3

1 ALSO PRESENT :

2 John J. Reagan, Esq.

3 Peter Graves - videographer

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

2

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 On behalf of the Plaintiffs;

9 Thomas P. Mannion, Esq.

10 Lewis Brisbois

11 1375 East 9th Street, Suite 2250

12 Cleveland, Ohio 44114

13 (216) 344-9467

14 tom.mannion@lewisbrisbois.com

15 and

16 James M. Popson, Esq.

17 Sutter, O'Connell

18 3600 Erieview Tower

19 1301 East 9th Street

20 Cleveland, Ohio 44114

21 (216) 928-2200

22 jpopson@sutter-law.com

23 On behalf of the Defendants,

24 Kisling, Nestico & Redick, LLC;

25 Shaun H. Kedir, Esq.

Feagan Law

101 West Prospect Avenue, Suite 1600

Cleveland, Ohio 44115

(216) 937-2222

Skedir@feaganlaw.com

On behalf of the Defendant,

Dr. Minas Floros, DC;

Brad Barmen, Esq.

Lewis Brisbois

1375 East 9th Street, Suite 2250

Cleveland, Ohio 44114

(216) 344-9467

Ryan.rubin@lewisbrisbois.com

On behalf of the Defendants,

Sam N. Ghoubrial, MD;

4

1 EXAMINATION

2 MINAS FLOROS, DC

3 BY MR. PATTAKOS 5

4 EXAMINATION

5 MINAS FLOROS, DC

6 BY MR. POPSON 2 5 6

7 RE-EXAMINATION

8 MINAS FLOROS, DC

9 BY MR. PATTAKOS 2 5 8

10 EXAMINATION

11 MINAS FLOROS, DC

12 BY MR. MANNION 2 5 9

13 RE-EXAMINATION

14 MINAS FLOROS, DC

15 BY MR. PATTAKOS 2 6 0

16

17 EXHIBIT INDEX

18 (Morning session Exhibits marked)

19 Plaintiff's Exhibit 1 1 6

20 Plaintiff's Exhibit 2 3 5

21 Plaintiff's Exhibit 3 5 2

22 Plaintiff's Exhibit 4 5 3

23 Plaintiff's Exhibit 5 5 4

24 Plaintiff's Exhibit 6 6 6

25 Plaintiff's Exhibit 7 7 7

Plaintiff's Exhibits 8, 9, 10, 11 1 2 5

Plaintiff's Exhibit 12 1 4 5

16 (Afternoon session Exhibits marked)

17 Exhibit 13 1 6 9

18 Exhibit 14 1 8 8

19 Exhibit 15 1 9 7

20 Exhibit 16 2 0 0

21 Exhibit 17 2 0 8

22 Exhibit 18 2 1 6

23 Exhibit 19 2 1 6

24 Exhibit 20 2 1 7

25 Exhibit 21 2 1 7

Exhibit 22 2 1 8

Exhibit 23 2 1 8

Exhibit 24 2 1 9

Exhibit 25 2 1 9

Exhibit 26 2 2 9

Exhibit 27 2 4 8

Exhibit 28 2 5 5

EXHIBIT 3

5

1 MINAS FLOROS, of lawful age, called by the
2 Plaintiffs for the purpose of examination, as
3 provided by the Rules of Civil Procedure, being
4 by me first duly sworn, as hereinafter certified,
5 deposed and said as follows:

6 EXAMINATION OF MINAS FLOROS

7 BY MR. PATTAKOS:

- 8 Q. Good morning, Dr. Floros.
- 9 A. Good morning.
- 10 Q. I'm Peter Pattakos. I represent the Plaintiffs
- 11 in this lawsuit, Williams v. KNR, et al.
- 12 You understand that you're here to provide
- 13 testimony in that case today?
- 14 A. Yes.
- 15 Q. Will you please state your full name, for the
- 16 record.
- 17 A. Dr. Minas Floros.
- 18 Q. And your date of birth?
- 19 A. February 13, 1979.
- 20 Q. And where were you born?
- 21 A. Toronto. Ontario, Canada.
- 22 Q. Have you ingested any substances recently that
- 23 would impair your ability to remember events
- 24 accurately and testify truthfully today?
- 25 A. No.

6

- 1 Q. Is there any other reason you would not be able
- 2 to remember events accurately or testify
- 3 truthfully today?
- 4 A. No.
- 5 Q. Where did you go to high school?
- 6 A. Winston Churchill Collegiate Institute.
- 7 Q. And where is that?
- 8 A. It's in Scarborough Ontario.
- 9 Q. What year did you graduate?
- 10 A. High school? I don't remember. Nineteen ninety
- 11 -- I don't know, six maybe, five. I don't
- 12 remember.
- 13 Q. Where did you go to college?
- 14 A. York University in Toronto Ontario.
- 15 Q. And what year did you graduate from York?
- 16 A. I did three years and I got an early acceptance
- 17 into Logan College of chiropractic.
- 18 Q. So you didn't graduate from York?
- 19 A. No, I got my bachelor's of human biology at Logan
- 20 College of Chiropractic.
- 21 Q. Okay. And where is that?
- 22 A. In St. Louis, Missouri. In Chesterfield,
- 23 Missouri, just outside of St. Louis.
- 24 Q. I'm sorry, what's the degree that you obtained
- 25 there?

7

- 1 A. Bachelor's of the human biology.
- 2 Q. And that qualifies you to practice chiropractic?
- 3 A. No, then I got my doctorate of chiropractic in
- 4 2004 after I graduated from Logan College of
- 5 Chiropractic. I obtained my bachelor's of
- 6 science in the first three trimesters at Logan.
- 7 There was a ceremony and then the program
- 8 continued and that's when I got my doctorate of
- 9 chiropractic.
- 10 Q. I understand. Okay. And what year did you
- 11 obtain the doctorate of chiropractic degree?
- 12 A. 2004.
- 13 Q. When did you start working for Akron Square?
- 14 A. November 2004.
- 15 Q. So that was your first job?
- 16 A. Correct.
- 17 Q. Out of chiropractic school?
- 18 A. Correct.
- 19 Q. And you've never worked anywhere else?
- 20 A. No.
- 21 Q. Okay. What is Universal Reports Plus, LLC?
- 22 A. It's a company I opened maybe a year into
- 23 practicing chiropractic. It's to do depositions,
- 24 discovery depositions, when I'm asked upon,
- 25 narrative reports, and that's where I report

8

- 1 income to.
- 2 Q. You report income for the reports and litigation
- 3 work that you do through Universal Reports, LLC?
- 4 A. Correct.
- 5 Q. Okay. So if you're paid to testify in a case, it
- 6 will be reported through that?
- 7 A. Correct.
- 8 Q. Okay. So does Universal Report Plus, LLC, file
- 9 separate tax returns?
- 10 A. Oh, I don't know. My accountant does all of that
- 11 stuff. I have no idea.
- 12 Q. Okay. And it said in your discovery responses
- 13 that you're the sole owner and member of this
- 14 LLC?
- 15 A. Yes.
- 16 Q. There are no employees?
- 17 A. No.
- 18 Q. Can you please describe, generally, the services
- 19 that you as a chiropractor provide for your
- 20 patients?
- 21 A. All passive and active therapies, including, you
- 22 know, consultations, x-rays, spinal manipulation,
- 23 muscle stimulation, trigger point therapy,
- 24 intersegmental traction, dry hydrotherapy, active
- 25 release technique, passive stretching,

9

1 therapeutic exercises, neuromuscular reeducation.
 2 Just a bunch of passive and active therapies.
 3 Q. What's the difference between passive and active
 4 therapies?
 5 A. Active therapy is where the patient is moving
 6 during the therapy. Or interactive manipulation
 7 is an active therapy. An example of passive
 8 therapy is muscle stimulation and intersegmental
 9 traction. Those are more passive when the
 10 patient or myself is not actually directly
 11 involved in the therapy.
 12 Q. Sorry, what did you just say, the patient is not
 13 directly involved?
 14 A. Well, they're involved, they've got, you know,
 15 like, for example, muscle stimulation is when two
 16 stim pads are placed on the muscles of the
 17 patient and the patient sits there or lays on the
 18 table, but I'm not actively involved in the
 19 therapy.
 20 Q. Okay.
 21 A. That's passive, that's an example of passive
 22 therapy. Active therapy is more spinal
 23 manipulation, therapeutic exercises, those are
 24 active therapies.
 25 Q. Therapeutic exercises, the patient would be

11

1 Q. Okay. Or the, for example, hydrotherapy?
 2 A. Uh-huh.
 3 Q. That's on a table as well?
 4 A. Correct.
 5 Q. Can you describe what that is?
 6 A. Dry hydrotherapy is a -- it's almost like a water
 7 pressure massage table. The patient first sits
 8 at the edge of the table. We usually apply some
 9 stimulation, neck or back or shoulder, wherever
 10 they're having chief complaints. They lay down.
 11 There's water jets, water pressure that put
 12 pressure on the muscles to reduce muscle spasm of
 13 tension, swelling, this kind of stuff.
 14 Q. So it's like a massage that happens automatically
 15 by water?
 16 A. Correct.
 17 Q. On a machine?
 18 A. Correct.
 19 Q. And what's neuromuscular reeducation?
 20 A. Neuromuscular reeducation is reeducating the
 21 joints. For example, we use wobble boards for
 22 knee injuries and ankle injuries. The patient
 23 either stands or sits and we balance them. They
 24 stand up for balance. That's an example of
 25 neuromuscular reeducation.

10

1 active?
 2 A. Correct.
 3 Q. Okay. Not you?
 4 A. Not me, no.
 5 Q. Okay.
 6 A. I would show the patient what to do and I'd
 7 lauder the patient doing the therapeutic
 8 exercises.
 9 Q. Are there any other therapies where the patient
 10 is active or usually --
 11 A. Like I said, they're active. If they're present,
 12 then all of the therapies.
 13 Q. Sure.
 14 A. Are they active moving around --
 15 Q. I guess --
 16 A. -- it depends. Like if I adjust the patient,
 17 they're active. If I'm adjusting their lumbar
 18 spine, they're active in the sense that they roll
 19 on their side or they're elevating their leg.
 20 They're definitely active in the manipulation
 21 portion of the therapy, but in terms of muscle
 22 stimulation, for example, or intersegmental
 23 traction, they're laying on a table and the table
 24 is performing the traction, the intersegmental
 25 traction.

12

1 Q. They stand up and you balance them?
 2 A. Yeah. So it's a wobble board. It's the circular
 3 board with either two balls underneath the board
 4 or one and they, you know, stand and they balance
 5 themselves or they're seated and they put their
 6 ankles back and forth if we're retraining the
 7 ankle for movement. That's an example of
 8 neuromuscular reeducation.
 9 Q. It's not unlike physical therapy, correct?
 10 A. Sure. It's very similar to physical therapy.
 11 Q. Something that a physical therapist might do?
 12 A. They could do that, of course. Physical
 13 therapists do very similar passive therapies as
 14 chiropractors do and vice versa.
 15 Q. Sure. So what sets a chiropractor apart from a
 16 physical therapist or a masseuse?
 17 A. Well, a chiropractor --
 18 MR. KEDIR: Objection.
 19 A. -- a chiropractor can diagnose conditions. A
 20 chiropractor can take x-rays. A chiropractor can
 21 make referrals to other sources. I don't know if
 22 a physical therapist can.
 23 Q. Uh-huh.
 24 A. Massage therapists cannot diagnose.
 25 Q. Sure.

13

1 A. It's very different than a massage therapist.
 2 Q. Okay. But when you say diagnose, what's the
 3 significance of a diagnosis in this context? A
 4 physical therapist sees the same patient and says
 5 I think you have X, and a chiropractor sees the
 6 same patient and says I think you have X, what's
 7 the difference?
 8 MR. KEDIR: Objection.
 9 A. I don't know if there's a difference. I don't
 10 know if a physical therapist actually diagnoses
 11 conditions. For example, I refer patients with
 12 my diagnosis over to the Akron General Wellness
 13 Center. The physical therapists there consult me
 14 regarding treatment. They ask me to sign off on
 15 the therapy they're going to do. I approve the
 16 therapy and I refer back or I fax the form that
 17 they send me back and they perform the treatment
 18 that we both agreed upon.
 19 I don't know if they have diagnosing skills.
 20 I don't know if they can use CPT codes. I have
 21 no idea.
 22 Q. Okay. A sports medicine physician, on the other
 23 hand, would have the authority to diagnose,
 24 correct?
 25 MR. KEDIR: Objection.

14

1 A. Yeah. So chiropractors and sports medicine
 2 physicians, we both can diagnose.
 3 Q. Okay. But a sports medicine -- so what would you
 4 say the main difference between chiropractic and
 5 sports medicine are?
 6 A. Oh, very different. Right. So we treat
 7 basically similar conditions. For example, we'll
 8 use one of your clients, we'll use Thera Reid,
 9 for example, who had soft tissue injuries to her
 10 shoulder, neck, back, contusions on her legs. We
 11 would treat that inflammation with therapies.
 12 You know, spinal manipulation, muscle
 13 stimulation, traction, hydrotherapy.
 14 A sports medicine doctor would treat the
 15 inflammation different. They would treat it with
 16 chemicals. With medication. That's the main
 17 difference. And sports medicine physicians a lot
 18 of times have physical therapists in their
 19 office. And they would refer that patient to a
 20 physical therapist to do active and passive
 21 therapies in conjunction with the medicine that
 22 they're prescribing.
 23 Q. Sure. Okay. So a sports medicine physician and
 24 a physical therapist would work together to
 25 provide similar treatment to chiropractic except

15

1 the sports medicine physician would have the
 2 ability to prescribe medications; is that fair?
 3 MR. KEDIR: Objection.
 4 A. Correct. And sports medicine physicians a lot of
 5 times have chiropractors in their office. I
 6 would say most sports medicine facilities that I
 7 know of have chiropractors in their office.
 8 Q. To perform spinal manipulations, for example?
 9 A. Yeah. Just different active and passive
 10 therapies.
 11 Q. So what I want to understand is what can a
 12 chiropractor do -- or what does a chiropractor
 13 typically provide that cannot be obtained from a
 14 combination of a sports medicine physician
 15 working with a physical therapist or a
 16 massotherapist?
 17 MR. KEDIR: Objection.
 18 A. They can probably get similar therapies at both
 19 places as opposed to -- well, you can't -- as a
 20 chiropractor, I'm not prescribing any medication,
 21 so --
 22 Q. I understand that.
 23 A. -- they wouldn't get that aspect of the
 24 treatment, but in terms of the type of therapy
 25 they would receive, it's in terms of the therapy

16

1 part, the active and passive therapy, is pretty
 2 much equal as opposed to -- I shouldn't say that.
 3 Physical therapists do not perform spinal
 4 manipulations. So the patient will not receive
 5 spinal manipulation at a physical-therapy based
 6 office as opposed to a chiropractic office.
 7 Q. Okay. And sports medicine physicians typically
 8 do not perform spinal manipulations either, is
 9 that your understanding?
 10 A. No. It depends. If they're sports medicine
 11 physicians, DOs, doctors of osteopaths, a lot of
 12 them will perform spinal manipulations. Some of
 13 them do and some of them don't do it. They'll
 14 refer out to chiropractors to perform the spinal
 15 manipulations.
 16 Q. Moving right along here. Okay.
 17 MR. PATTAKOS: Let's mark Exhibit
 18 1.
 19 - - - -
 20 (Thereupon, Plaintiff's Exhibit 1 was marked
 21 for purposes of identification.)
 22 - - - -
 23 Q. This is a document that your attorney produced in
 24 this litigation. It appears to reflect the
 25 agreement for which Thera Reid was at least

17

1 billed by your office. Does that sound right to
 2 you?
 3 A. Correct.
 4 Q. Okay. And would you agree that this is an
 5 accurate reflection of the treatment that Thera
 6 Reid did receive from you?
 7 A. Correct.
 8 Q. And if we take a look at the various modes of
 9 treatment here, we see that you provided an x-ray
 10 of the cervical spine. What does two or three
 11 views mean here?
 12 A. It's the -- just billing code. It can be either
 13 two or three views. In Thera Reid's case I'm not
 14 sure how many x-rays we took. I don't have the
 15 file in front of me.
 16 Q. Well, I see. So the views means the --
 17 A. The position of the patient. So, for example, an
 18 A to P is, you know, Thera Reid would stand there
 19 and the x-ray beam would be right through the
 20 front of her neck. A lateral view would be her
 21 turned to the side and take a side view. A lot
 22 of times we do an A to P, open mouth it's called,
 23 with the patient opens their mouth to look at the
 24 odontoid process, which comes off the C1 arch on
 25 the back of the neck. There's also other views

18

1 that we can take. In this case we only took two
 2 or three.
 3 Q. Okay. So electrical stimulation therapy, that is
 4 essentially using the nodes with the -- that
 5 runs --
 6 A. Correct.
 7 Q. -- electrical current through the patient?
 8 A. Correct.
 9 Q. Similar to what a TENS unit does?
 10 A. It depends what type of TENS unit you're
 11 referring to.
 12 Q. Okay.
 13 A. Very different than a home TENS unit.
 14 Q. Sure.
 15 A. These are high-level electric muscle stim
 16 machines as opposed to a TENS unit.
 17 Q. So explain that some more. How is it different
 18 from a TENS unit that a patient would go home
 19 with or like one that you could buy on Amazon?
 20 A. I believe the intensity of the stimulation is
 21 different in consistency. And the level that it
 22 can get to. It's a lot more potent in these
 23 machines as opposed to those other machines.
 24 Q. More effective?
 25 A. I believe so, yes.

19

1 Q. Do you know how much one of these machines costs?
 2 A. No, I have no idea -- you mean the units at our
 3 office?
 4 Q. Yeah.
 5 A. Oh, I don't know. I would say in the thousands.
 6 Q. Okay. You don't pay for those units --
 7 A. No, I don't.
 8 Q. -- yourself? Okay.
 9 So this next mode here, Code 97010,
 10 application areas, hot/cold packs. What's that?
 11 A. That's an application of heat or ice to the area
 12 of injury. And again, Thera Reid had neck, back,
 13 low back, shoulder. So the area would -- either
 14 a hot pack or a cold pack would be placed on the
 15 soft tissue injured area.
 16 Q. And how do you decide whether to put hot or cold?
 17 A. It just depends. Usually we start with some ice
 18 early on to decrease the inflammation. As the
 19 therapy goes on, we change it to heat. I'm not
 20 opposed to using heat early on. It just depends
 21 on the condition. It depends on what the patient
 22 can tolerate as well. They both have very
 23 similar therapeutic benefits.
 24 Q. The heat and the cold?
 25 A. Correct.

20

1 Q. Okay. So can you describe how this works?
 2 A. Yeah. The patient --
 3 Q. The hot and cold packs.
 4 A. Yeah, the patient will come in. I'll tell the
 5 staff where to put the stim pads, where to put
 6 the hot and ice pack, ice cold pack.
 7 Thera Reid early on, she was receiving seated
 8 therapy, not any laying down, no traction, no
 9 hydrotherapy early on in her therapy. So she'd
 10 come in, she'd sign in, she would sign a
 11 confirmation of services page of the services she
 12 would receive. She would sit in a chair. My
 13 staff would get a hot pack out of these -- and
 14 they call it a hydrocollator, which is a -- it's
 15 like a tub of hot boiling water where the hot
 16 pack sits in.
 17 Q. Sure.
 18 A. My staff will grab the hot pack, put it in a
 19 cover and then apply it to her back or her neck
 20 or her shoulder. Wherever she's having pain that
 21 I direct my patients to do.
 22 At that time they'll put the stimulation on
 23 the patient as well and turn it for a certain
 24 time. It can be 15 minutes, 20 minutes, 25
 25 minutes. It just depends on how long I advise my

21

1 staff to do that.

2 Q. So the hot and cold packs are happening at the

3 same time the stimulation therapy is happening?

4 A. Correct.

5 Q. How long does it typically -- does this treatment

6 last?

7 A. Oh, I'd say it can be 15 minutes to, you know, 45

8 minutes. It depends on the -- it just depends.

9 Q. But the code is the same regardless of whether

10 it's 15 or 45 minutes?

11 A. Correct. There may be higher levels of code if

12 you go over 30 or 40 minutes. I'm not too sure.

13 But for this particular coding system, as I'm

14 looking at this bill, this is one unit of

15 therapy. There's different units. You can put

16 two units of muscle stimulation if you go I think

17 over 45 minutes or an hour --

18 Q. Uh-huh.

19 A. -- but we typically stay with one unit at a time.

20 Q. Okay. So on 4/25/16 she received a different

21 type of treatment it looks like, it's 98940, it

22 says CMT spinal, 1, 2 regions?

23 A. Correct.

24 Q. Can you describe what that is?

25 A. Yeah. That's chiropractic manipulation.

22

1 Q. So CMT stands for Chiropractic Manipulation

2 Therapy?

3 A. Correct.

4 Q. Can you describe what that is?

5 A. Yeah. It's the adjustment performed to the

6 spine, which is typical of what chiropractors do.

7 In Thera Reid's case again because she had a

8 fractured humerus on the day she came into the

9 office, most of these manipulations were done in

10 a seated position with very low intensity, low

11 velocity manipulation. It's a hand-held device

12 that performs the manipulation after I find which

13 regions need to be manipulated.

14 So she's in a seated position, I evaluate

15 her, I examine her, I palpate the spine, palpate

16 the muscles that are tense and then perform the

17 manipulation in the region that's needed.

18 Q. What does palpate mean?

19 A. Feel, just feel the muscles, feel the muscle

20 tension. Take her through ranges of motion as

21 well. An examination is done before the

22 manipulation is administered.

23 Q. So what is a manipulation?

24 A. It's a -- it's movement of a joint beyond the

25 paraphysiologic space. That's what chiropractors

23

1 are known for. People say, you know, crack the

2 spine, but you don't have to crack really

3 anything.

4 In Thera Reid's case it was a low amplitude,

5 low velocity, manipulation using a hand-held

6 device.

7 Q. Can you describe how it works? What does the

8 device look like? How do you use it?

9 A. It looks like -- it looks like -- it looks like

10 kind of a little bit bigger than this pen and

11 there's -- you hold it and you apply pressure and

12 there's an impulse, it's called an activator

13 device. And that device sends an impulse into

14 the joint stimulating the receptors around the

15 joints. Because when you have an injury, when

16 you have a soft tissue injury and you have spasm,

17 the vertebra, they don't move properly. Like

18 joints oscillate all the time. When you have

19 muscle spasm around the region, the joint stops

20 to oscillate. It doesn't move well. And when

21 you don't have joint motion, it breaks down the

22 joint, breaks down the zygapophyseal joint.

23 Doesn't stimulate the discs.

24 And Thera Reid had a tremendous amount of

25 spasm throughout her entire spine. She had many,

24

1 many regions in her spine that needed

2 manipulated, but again we only focused on one to

3 two regions at a time just so -- to make her

4 comfortable.

5 Q. You'll have to forgive me as a layperson --

6 A. That's all right.

7 Q. -- so when you put your fists together like this

8 (indicating) --

9 A. Yes.

10 Q. -- this would be --

11 A. Her vertebra.

12 Q. -- two vertebra?

13 A. Yeah, two vertebra.

14 Q. And what do you do with the machine that you're

15 using to the vertebra? Or there's a joint in

16 between the vertebra, correct?

17 A. Yeah. So --

18 Q. Or a disc -- it's a disc in between the vertebra?

19 A. Yes. So you have 26 vertebra --

20 Q. Right.

21 A. -- from the top of your head all the way down to

22 your spine.

23 Q. Sure.

24 A. Every vertebra has a spinous process with two

25 transverse process. And transverse process are

25

1 two bony prominences that extend off the
 2 vertebra.
 3 Q. Okay.
 4 A. When the joint is fixated, there's not much
 5 movement in there, it's stiff, it's ridged.
 6 There's hypomobile segments -- there's
 7 hypomobility at the joint --
 8 Q. When you refer to the joint, what are you
 9 referring to?
 10 A. The zygapophyseal joints where the transverse --
 11 the transverse process lay on top of each other
 12 on an angle kind of like this (indicating).
 13 Q. Okay.
 14 A. So you're palpating the joint, there should be
 15 some movement within the joint. There should be
 16 some mobility throughout the entire spine.
 17 Q. Sure.
 18 A. When you have an injury, that mobility decreases.
 19 Q. Uh-huh.
 20 A. It's tender, it's inflamed. You know, you poke
 21 on the area. You feel it's not moving. You move
 22 the head side to side, you can feel how the
 23 joints are moving. Based on the lack of movement
 24 or the, you know, sensitivity, that's when we
 25 apply the manipulation or the area of

26

1 hypomobility exists.
 2 So you put the hand-held device on the
 3 transverse proces and you impulse the joint so it
 4 sends a direct impulse in the zygapophyseal
 5 joint --
 6 Q. Like an electrical charge?
 7 A. It's not really an electrical charge. It's more
 8 of a -- it's more just of an impulse with force
 9 in it.
 10 Q. A massage, like a --
 11 A. It's not a massage. It's a little prong that,
 12 it's like a click and it puts impulse in it.
 13 So when I perform manipulation with my hand
 14 and you crack the joint, I take the joint to the
 15 end point of movement and I apply a high force,
 16 high velocity manipulation into the joint. That
 17 moves the joint. That's where you get the
 18 cracking sensation.
 19 And in a high-level soft tissue injury, you
 20 can't do that. You could, but the patient will
 21 be very sore, so we use a very low-level,
 22 low-amplitude adjustment device to put the
 23 similar movement into the joint.
 24 Q. And what does that accomplish?
 25 A. It adjusts the spine. It moves the joint. It

27

1 puts -- stimulates the receptors around the
 2 joint, decreases muscle spasm around the joint,
 3 releases pressure from the joint. It gets the
 4 joint healthy again.
 5 Q. Okay. And there's literature supporting that
 6 this works?
 7 A. Of course.
 8 Q. Okay. When you say you do a manual manipulation
 9 and there's a cracking sensation, what's cracking
 10 there?
 11 A. It's just gas released from the joints. That's
 12 all it is.
 13 Q. Bubble pops?
 14 A. Well, you don't have to hear a popping sensation
 15 to perform manipulation. Sometimes when you
 16 perform a manipulation, a cracking sound is made
 17 because pressure is released from the joint.
 18 Q. Okay. It's gas releasing?
 19 A. Yeah, you can say that.
 20 Q. Okay. So what's one, two region?
 21 A. It's --
 22 Q. When it says that CMT spinal one, two regions.
 23 A. Yeah, so it's either one spinal level or two
 24 spinal levels.
 25 Q. So you're talking about cervical, lumbar and

28

1 thoracic?
 2 A. No, I'm talking about specific intersegmental
 3 motion -- joint number. So the neck has seven
 4 vertebra, right? C1, C2, C3 --
 5 Q. I see.
 6 A. -- C4, C5. So if I adjust the C4 on the right
 7 that's one level. If I adjust C7 to the left
 8 with C4 on the right, that's two levels.
 9 Q. Gotcha.
 10 A. And many times I adjust many more regions but I
 11 keep the billing consistent to 9940 as opposed to
 12 9941 which is three to four regions. I usually
 13 bill one region.
 14 Q. Do you perform these manipulations yourself?
 15 A. Yes.
 16 Q. Okay. There's never someone else that does this,
 17 it's always the chiropractor that does this?
 18 A. It's myself or one of my associates or if I'm
 19 gone, one of my fill-in doctors that perform the
 20 manipulation if it's done.
 21 Q. So one of your associate chiropractors?
 22 A. Correct, yes.
 23 Q. So just moving down -- and I just want to talk
 24 about the different modes that show up here.
 25 What is -- if you go down to May 3rd, 2016 we

29

1 see 52 therapeutic PROC. What does that mean?

2 A. The 9-7-1-2-4-5-2?

3 Q. Yes.

4 A. That's trigger point therapy.

5 Q. So describe what trigger point therapy is.

6 A. So again, when a muscle -- when there's soft

7 tissue injury that exists around the spine,

8 typically it's resulting in a ligament sprain.

9 When a ligament sprain exists, muscle tissue

10 around the injured joint becomes very tight, it

11 becomes spastic.

12 When muscles are spastic over a period of

13 time, usually past 48 hours, trigger points build

14 up. Trigger points are like little, you know,

15 knots in the muscle. So trigger point therapy is

16 kind of like a massage where pressure is applied

17 into the trigger points, into the knots, to

18 release the pressure. And again, it increases

19 circulation, decreases spasm. Allows the

20 manipulation to hold better because you're

21 reducing the amount -- you're reducing several

22 knots within a muscle region.

23 Q. I'm sorry, you said it increases circulation?

24 A. Increases circulation, decreases swelling.

25 Q. Okay. How long does that take?

30

1 A. Oh, it ranges. It can be three minutes, it can

2 be eight minutes, it can be 12 minutes. It's

3 usually, I would say, in between four and ten

4 minutes.

5 Q. It depends on how many trigger points you

6 identify?

7 A. Correct.

8 Q. So say a few minutes per trigger point?

9 A. It can be 15 seconds on a trigger point. Like if

10 the trigger point releases quick, then it

11 releases quick. You know, but an injury, if we

12 use Thera Reid as an example, she had trigger

13 points in her suboccipital muscles, in her

14 sternocleidomastoid muscle, in her trapezius

15 muscles, her deltoid muscles, her paraspinal

16 thoracic muscles, her paraspinal lumbar muscles.

17 I mean, there was tripper points from the top

18 of her neck all the way down her spine. She was

19 in extremely rough shape after her injury.

20 Q. So you'll feel the trigger point dissipate when

21 you're performing the therapy?

22 A. Not all the time. It depends on the level of

23 trigger point that exists.

24 Q. How knotted it is?

25 A. Oh, yeah. Trigger points sometimes take months

31

1 to get rid of. I wish it was as easy as putting

2 some pressure on one trigger point and releasing

3 it.

4 Q. Sometimes it is?

5 A. Sometimes it is. It depends on the level of

6 injury I would say.

7 Q. Okay. And how long does it take -- I should have

8 asked -- to do the CMT typically if you do --

9 A. It depends. Right. The --

10 Q. -- it per region?

11 A. Yeah. Like the CMT, it's not just, you know,

12 laying the patient down and performing the

13 manipulation. The CMT code involves an

14 examination, a quick examination. Palpation,

15 range of motion, intersegmental motion. It takes

16 -- it takes sometimes a couple minutes to find

17 the restricted vertebral segment to adjust.

18 So to perform the actual adjustment where I

19 have the patient, I put my hands on them and

20 perform the manipulation, can take up to -- it

21 can take 15 seconds. It can take five seconds,

22 right? It depends. But the whole process can

23 take five to seven minutes.

24 Q. Okay. So as we go through this, it looks like --

25 well, I see, unlisted modality and there's a code

32

1 for that, 97039 --

2 A. Uh-huh.

3 Q. -- do you know what that is?

4 A. Yeah. That's the code for dry hydrotherapy.

5 Q. I see.

6 A. So there are some passive therapies that fall

7 under a category of unlisted modality and dry

8 hydrotherapy is one of them.

9 Q. Do you -- are there a number of different

10 modalities that go under the same code or you

11 know for a fact that 97039 is hydrotherapy, is

12 the dry hydrotherapy?

13 A. That is dry hydrotherapy.

14 Q. Okay.

15 A. And --

16 Q. So there are other unlisted modalities, but --

17 MR. KEDIR: Just --

18 Q. -- they would have different code numbers?

19 MR. KEDIR: -- let him answer.

20 A. Yeah. In my --

21 MR. MANNION: You cut his answer

22 off.

23 A. In my office, 97039 is always dry hydrotherapy.

24 In other offices they might have unlisted

25 modalities for other therapies that they do.

1 Q. Okay. So it looks like at some point after June
 2 6th you stopped applying the hot and cold packs
 3 and started using the hydrotherapy therapy?
 4 A. Correct. So June 6th would constitute, you know,
 5 two months post-initial consultation. Ms. Reid
 6 started to feel some improvement so we transited
 7 her from a sitting position to being a bit more
 8 aggressive on therapy with her. So we were able
 9 to transfer her, thankfully to a hydrotherapy
 10 table to try to help her healing process.
 11 Q. Okay. She was still receiving the electrical
 12 stimulation and spinal manipulations --
 13 A. That is correct.
 14 Q. -- during this time?
 15 Okay. And did you move from the seated
 16 position to the table with the spinal
 17 manipulations as well, if you recall?
 18 A. I don't recall. I would have to look at my
 19 records to see. I believe we did start doing
 20 some high-level force manipulation, but for her
 21 injury, we stuck mainly with low-level
 22 manipulation.
 23 Q. Okay. Do you know whether massage therapists
 24 typically identify trigger points and provide
 25 trigger point -- trigger point massage or trigger

1 point manipulation?
 2 MR. KEDIR: Objection.
 3 A. I have no idea if they identify trigger points
 4 like I do. I'm sure they identify tight muscles
 5 and, again, put -- I refer a lot of patients to
 6 massage therapists because it's a more -- it's a
 7 longer stimulation of muscles.
 8 Q. Uh-huh.
 9 A. I refer all kinds of patients to massage
 10 therapies. I love massage therapy. And when I
 11 need help, I refer out to a massage therapist.
 12 Do they identify trigger points? Maybe. I don't
 13 know.
 14 Q. Okay. Is there any reason why they wouldn't be
 15 able to?
 16 MR. KEDIR: Objection.
 17 A. Geez, I don't know. I don't know if they can
 18 identify specific trigger points or maybe they
 19 can identify true trigger points.
 20 A true trigger point is when you put pressure
 21 on the trigger point and it sends signals, you
 22 know, to -- if you put -- if you have a specific
 23 type of trigger point in certain layers of muscle
 24 of your trapezius fiber and you put pressure on
 25 it, a patient is going to have sensations going

1 up and down their spine. They can have radicular
 2 pain because you're putting pressure -- a lot of
 3 times the nerve is intertwined within the knot.
 4 So can they identify specific trigger points,
 5 I really don't know.
 6 Q. Are trigger points something you learned about in
 7 chiropractic school?
 8 A. Yes.
 9 Q. Okay. Let's take a look at Exhibit 2.
 10 - - - -
 11 (Thereupon, Plaintiff's Exhibit 2 was marked
 12 for purposes of identification.)
 13 - - - -
 14 Q. So this is a list of charges for Monique Norris?
 15 A. Yes.
 16 MR. MANNION: I didn't get a copy.
 17 MR. PATTAKOS: I can make another
 18 copy, but --
 19 MR. BARMEN: I would appreciate
 20 having copies for all the exhibits that you
 21 present to the witness.
 22 MR. PATTAKOS: Okay. We'll get
 23 you a copy.
 24 MR. BARMEN: I would appreciate --
 25 MR. POPSON: Could we have it

1 before you question?
 2 MR. BARMEN: -- having one before
 3 you question so I can follow along.
 4 MR. PATTAKOS: Here you go.
 5 MR. KEDIR: Tom, do you have to
 6 take a break at 10:00 still, too?
 7 MR. MANNION: Yeah.
 8 MR. PATTAKOS: What time do you
 9 have to take a break?
 10 MR. MANNION: As soon as the Court
 11 calls. It's going to be right around
 12 10:00.
 13 MR. PATTAKOS: Okay. We'll take a
 14 break when the Court calls.
 15 BY MR. PATTAKOS:
 16 Q. So we see here that Monique Norris received it
 17 looks like very similar treatment. We see a
 18 spinal manipulation to three or four regions --
 19 well, let's -- the ten-point exam, that's a
 20 preliminary examination that you perform on all
 21 your patients, correct?
 22 A. Correct.
 23 Q. And you don't charge for that?
 24 A. No, I don't charge for consultations on day one.
 25 Q. Okay. And then there are a couple of x-rays here

1 which is typical, correct?
 2 A. Correct.
 3 Q. And then we see a spinal manipulation, electric
 4 muscle stimulation, hot and cold packs -- it
 5 looks like these are the same codes -- trigger
 6 point massage. Is this the same as the 52 -- it
 7 looks like it is -- 97124?
 8 A. Correct.
 9 Q. What's the additional four digit code there?
 10 A. It's a reduced time code. So a 97124 without the
 11 59, 52 a higher charge and it's trigger point
 12 therapy for I think 12 minutes. I use the
 13 reduced time code because many times I can remove
 14 a trigger point in three minutes or two minutes
 15 or six minutes, so it's not the full 12 minutes.
 16 Q. Okay.
 17 A. If it is I'd bill 97124.
 18 Q. Okay. And the electric muscle stim -- I'm sorry,
 19 the mechanical traction here that's 97012 --
 20 A. Yes.
 21 Q. -- can you describe what that is?
 22 A. Again, it's -- we have two different style --
 23 three different style tables in the office in the
 24 therapy bay. One of them is just a stationary
 25 table that does nothing. One is the dry

1 hydrotherapy table that we've already discussed
 2 and the other one is the intersegmental traction
 3 table. It's a table, a flat table, that a
 4 patient will lay face up on. There's different
 5 levels of traction. It goes from one to six.
 6 And it's essentially a roller that goes up and
 7 down the spine. Again, providing movement within
 8 the joint space, reducing muscle spasm,
 9 increasing circulation. It usually provides some
 10 relief to the patient.
 11 Q. The patient lays on their back --
 12 A. Correct.
 13 Q. -- on the table --
 14 A. Correct.
 15 Q. -- and there's a mechanical roller that goes --
 16 A. Correct.
 17 Q. -- up and down?
 18 A. Correct.
 19 Q. And you can set it to different intensities?
 20 A. Correct. There's six levels of intensities.
 21 Q. Okay.
 22 A. Most patients in soft tissue injury cases start
 23 off at level one. Sometimes they get as high as
 24 three. Four, five, six are pretty intense.
 25 Q. Do you have a -- is a patient strapped down on

1 this table?
 2 A. No.
 3 Q. Okay.
 4 A. No, they can get up. A lot of times the patient
 5 will lay there and if it's tender and hurts,
 6 we'll put them in a seated position.
 7 Q. Well, I mean do you have different -- sorry,
 8 strike that.
 9 Do you have different size tables?
 10 A. No. They're pretty big. They can accommodate
 11 patients up to I think 400 pounds, 450 pounds, I
 12 believe.
 13 Q. Well, I guess my question is: If the patient is
 14 not strapped down or something, then at some
 15 level a patient might just be lifted up by the
 16 extra pressure, right?
 17 MR. KEDIR: Objection.
 18 A. They are lifted up, yeah. Like when that roller
 19 -- it's a big roller. When that roller goes on
 20 their back, like there's movement. Like you can
 21 see the patient --
 22 Q. Sure.
 23 A. -- oscillating on the table. So it's a -- it
 24 doesn't throw them off the table. They're laying
 25 down and that roller kind of goes up and down the

1 spine and, yeah, there's definite movement, you
 2 see the patient moving while they're laying --
 3 Q. It might move the whole body as opposed to the
 4 particular parts of the spine --
 5 A. Yeah.
 6 Q. -- if you set --
 7 A. Sure.
 8 Q. -- if you set a high setting for say a small
 9 person, it might just move the whole patient
 10 instead of moving a particular part of their
 11 spine, correct?
 12 MR. KEDIR: Objection.
 13 A. Well, look, the spine is anchored by every muscle
 14 of your back --
 15 Q. Sure.
 16 A. -- even your muscles in the interior chest wall.
 17 So, yeah, when that roller -- if you go to level
 18 five, that patient is moving.
 19 Q. Yeah.
 20 A. When it's moving the spine, it's moving the body,
 21 right? If you're putting pressure on the
 22 thoracic spine laying on the back, of course your
 23 chest wall is going to come up. Your body is
 24 always going to remain with pressure on the
 25 therapy table, it's not going to throw you off

41

43

1 the table. And again, most patients don't go to
 2 level four, five, six unless they have a very
 3 high pain threshold. I like four, five, six. A
 4 lot of patients don't.
 5 Q. Would you agree that a massage would always be
 6 more effective therapy than a mechanical traction
 7 table?
 8 MR. KEDIR: Objection.
 9 A. No. They're very -- very, very different.
 10 Q. How's that?
 11 A. Well, massage therapy doesn't put any sort of
 12 mobility in the joint as traction does. It's
 13 impossible. The amount of force that the
 14 traction puts into the spine to break up
 15 adhesions, break up scar tissue, increase
 16 circulation, is much different than what a
 17 massage does.
 18 Massage therapy works the muscles surrounding
 19 the spine. Traction directly works on the spine.
 20 It's very, very different.
 21 Q. But wouldn't a human being with their hands be
 22 able to touch the same parts of the spine with
 23 more individualized focus to the patient's
 24 injuries and parts of the spine than a mechanical
 25 table rolling a roller back and forth would be

1 varies from one modality to usually five.
 2 Q. Why five?
 3 A. Well, because if you do therapeutic exercises,
 4 you do manipulation, muscle stimulation, heat,
 5 traction, exercise. Is that five? Yeah, that's
 6 five.
 7 Q. So those are the typical --
 8 A. Correct.
 9 Q. -- those are the typical modes that you use.
 10 Are there any others that you use in treating
 11 car accident victims?
 12 A. Usually that's it, one to five modalities.
 13 Q. Okay.
 14 A. I'd like to do more, but I just have no time.
 15 Q. How many patients do you see every day?
 16 A. Oh, it varies every single day. There's no set
 17 number.
 18 Q. What's --
 19 A. Throughout the years, it's varied.
 20 Q. What's a normal day?
 21 A. Oh, I don't -- again, every day is different.
 22 Q. What's a range? What's a busy day versus a slow
 23 day?
 24 A. It's hard to speculate because it can mean -- you
 25 know, busy can mean less patients but more time

42

44

1 able to?
 2 MR. KEDIR: Objection.
 3 A. Yeah, so a massage therapist can touch the spine.
 4 Obviously, they touch the back. They touch every
 5 part of your back --
 6 Q. Sure.
 7 A. -- but the level of movement that a massage
 8 therapist can do compared to a traction device is
 9 completely different, they're completely
 10 different. Night and day.
 11 Q. Okay. So would you agree that it's typical for a
 12 patient in one appointment to get three or four
 13 -- strike that.
 14 Would you say that a patient who is being
 15 treated for injuries that were suffered in a car
 16 accident, that it would be typical for them to
 17 receive, approximately, two to four of these
 18 modes that are listed here in Monique and Thera's
 19 documents --
 20 MR. KEDIR: Objection.
 21 Q. -- in one appointment?
 22 A. It can be one to five. Like many times a patient
 23 will come in and I'll only manipulate their
 24 spine. Or a patient will come in and will only
 25 do muscle stimulation. It just depends. It

1 with the patient. For example, Thera Reid
 2 required way more time than another patient
 3 because of the level of injury --
 4 Q. She had broken bones.
 5 MR. KEDIR: Objection.
 6 A. -- the level of injury is greater. So to me busy
 7 means spending more time with the patient as
 8 opposed to seeing more patients, because you have
 9 to put a lot more time with the patient. An
 10 example, Thera Reid. But there's no way to know.
 11 I don't know. I really don't know.
 12 Q. You don't get home and say, wow, I treated 30
 13 patients today, that was a lot, that was a busy
 14 day?
 15 MR. KEDIR: Objection.
 16 A. No, I don't -- I don't even know my patient
 17 count. I don't look at sign-in sheets, I don't
 18 keep stats of anything. I just -- I'm tired
 19 every day. When I work 12 hours, I'm tired.
 20 Q. It's typical for you to put in 12-hour days
 21 there?
 22 A. Ten to 12.
 23 Q. Ten to 12 hours?
 24 A. To 12 hours a day, yeah.
 25 Q. What are the hours of the clinic?

45

1 A. I get there at 7:00, I usually leave at 7:00 --
 2 7:00 a.m. to 7:00 p.m. Most patients arrive
 3 around seven -- it depends, 7:15, 7:30.
 4 Q. Is the clinic open after 7:00 or it closes at
 5 7:00, typically?
 6 A. It depends. Sometimes patients will ask me to
 7 stay later if they can't make it and I'll stay.
 8 I don't say no.
 9 Q. Okay. If you are treating -- if you were
 10 providing this, say, treatment to Thera Reid,
 11 Thera Reid comes in for her appointment on, let's
 12 say, March 11th -- or May 11 on the first page
 13 here --
 14 A. Yep.
 15 Q. -- she receives electrical stimulation therapy
 16 and the hot and cold packs. That's administered
 17 by one of your assistants?
 18 A. Correct.
 19 Q. Okay.
 20 A. I'll assist, too. Like if we get really busy,
 21 I'll get in the therapy bay and hook patients up
 22 myself. I don't mind doing that.
 23 Q. Okay. But that's not necessary though?
 24 A. No, it's not necessary at all.
 25 Q. Okay. And then you will perform manipulation,

46

1 and then the trigger point therapy, if necessary.
 2 So that would take approximately, would you say
 3 you spend about 20 to 30 minutes?
 4 A. Yes. The patient typically is in our office
 5 between 15 minutes and 45 minutes. So when they
 6 leave the passive therapy bay -- usually they're
 7 in the therapy bay, like I said, from 12 to 20
 8 minutes. When they're done with their passive
 9 therapy, they wait to see me. They come into my
 10 room where I adjust the patient. It's just me
 11 and the patient or me and the patient and their
 12 spouse or kids. And that's when I'll do the
 13 manipulation and the trigger point work, and the
 14 therapeutic exercises when they're done in the
 15 room, which can take, again, up to, it can be
 16 three minutes, it can be 20 minutes. It depends
 17 on what I do.
 18 Q. Okay. But about three to 20 minutes, generally?
 19 A. Correct.
 20 Q. The exercises, can you describe those?
 21 A. There's all kinds of exercises. There's
 22 TheraBand stuff. There's range of motion type of
 23 exercises. There's core exercises. There's
 24 plank work. There's glut bridges. There's glut
 25 extensions. There's weighted balls, not like

47

1 kettle balls, they're just weighted six and eight
 2 pound balls that work a patient's shoulders and
 3 neck areas. There's all kinds of stuff that we
 4 do.
 5 Q. Do you encourage the patients to do these
 6 exercises at home?
 7 A. I do. Not those specific -- sometimes I give
 8 them different, just basic active range of motion
 9 stuff to do at home. Just basic -- if it's low
 10 back, trunk rotation, bending type of exercises.
 11 I don't expect them to start doing, you know,
 12 heavy-duty core plank work at home, I'd rather do
 13 them with me present.
 14 Q. Okay. What's heavy-duty plank work?
 15 A. Holding a plank in a bridge position for, let's
 16 say, 30 seconds.
 17 Q. Okay.
 18 A. If you have a hot disc and you're trying to do a
 19 side plank where you're literally on your side
 20 and you're raising your body up, I want to make
 21 sure their form is good so they don't blow out
 22 their disc or herniate the disc even more.
 23 In Thera Reid's case and Monique Norris'
 24 case, I don't think I performed any in-office
 25 therapeutic exercises.

48

1 Q. But you would bill for that if you did, right?
 2 A. Of course, yeah.
 3 Q. Okay. You would agree that if the -- if you do
 4 recommend exercises to a patient that if they do
 5 those exercises at home, they'll be better off?
 6 MR. KEDIR: Objection.
 7 A. It will help get them better quicker, yes.
 8 Q. Okay. How did you come to be employed at Akron
 9 Square?
 10 A. Ah -- wow, in trimester eight or nine maybe
 11 another chiropractor recommended that I talk to
 12 CSG, Chiropractic Strategies Group. And I
 13 remember making the call out there and that was
 14 it.
 15 Q. Okay. And what is Chiropractic Strategies Group?
 16 A. It's a corporation, I believe, that owns multiple
 17 offices in the United States.
 18 Q. Chiropractic offices?
 19 A. I don't know. Maybe.
 20 Q. Okay.
 21 A. I think there's various offices that they own.
 22 Q. Who did you meet with at Chiropractic Strategies
 23 Group?
 24 A. Oh, a lot of people. When I actually flew out
 25 there, I met a ton of people back in '04.

1 Q. And you don't remember who you talked to?

2 A. No. There was a Melanie, that was my initial

3 contact person, and she kind of talked to me and

4 told me about the job and about the locations

5 that they have and that's about it.

6 Q. Where did you go? You say when you went out

7 there.

8 A. I went to New Orleans.

9 Q. That's where they're based?

10 A. Correct.

11 Q. And Michael Kent Plambeck owns Chiropractic

12 Strategies Group or he did at the time?

13 MR. KEDIR: Objection.

14 A. At the time maybe, but I don't know.

15 Q. Does he own it now?

16 A. I have no idea.

17 Q. Have you ever spoken with him?

18 A. It's been a long time.

19 Q. When was the last time you spoke with him?

20 A. I don't remember.

21 Q. How many times have you spoken with him?

22 MR. KEDIR: Objection.

23 A. In 15 years? I don't know. Very few times.

24 Q. Five?

25 A. It's hard to say.

1 Q. More than five?

2 MR. KEDIR: Objection.

3 A. Very little I would say. I don't know. It could

4 be less than five. I don't know.

5 Q. Okay. So why did you decide to work there?

6 A. It was just an opportunity. I knew the

7 chiropractor that was working at Akron Square

8 Chiropractic before I started working there. He

9 told me about it --

10 Q. Who was that?

11 MR. KEDIR: Objection. Please let

12 him answer the question.

13 A. His name is Adam.

14 Q. Adam what?

15 A. I don't know his last family. Dr. Adam.

16 Q. How did you know him?

17 A. From school. We went to the same school.

18 Q. Okay.

19 A. He told me about it, I talked to him. I had a

20 few job offers and my intentions were to work a

21 year in Akron and then eventually go back home to

22 Canada, but I've been there ever since.

23 Q. So this friend of yours from chiropractic school

24 that was working at Akron Square -- what did you

25 say his first name was?

1 A. His name was Adam.

2 Q. Adam.

3 A. He wasn't a friend, he was a -- when we did

4 clinical rotations in St. Louis, he was in an

5 upper trimester. So when I was in trimester, I

6 think six or seven, he was in probably nine or

7 ten. And I met him through our clinical

8 rotations. So he's an acquaintance, he's a peer,

9 he's a colleague.

10 Q. And he was leaving the clinic?

11 A. Yeah. He was married and I think his wife was

12 operating the Canton location and they moved back

13 home and I don't know where back home is or was.

14 MR. MANNION: We need to take that

15 break now.

16 MR. PATTAKOS: Okay. We can take

17 a break.

18 THE VIDEOGRAPHER: We're going off

19 the record. The time is 9:57.

20 - - - -

21 (Thereupon, a recess was had.)

22 - - - -

23 THE VIDEOGRAPHER: We're back on

24 the record. The time is 10:15.

25 MR. PATTAKOS: Exhibit 3.

1 - - - -

2 (Thereupon, Plaintiff's Exhibit 3 was marked

3 for purposes of identification.)

4 - - - -

5 BY MR. PATTAKOS:

6 Q. This is a document that was produced by your

7 attorney for a patient, Kimberly Fields, who was

8 also a KNR client. It looks like she treated

9 with you on -- how many different dates here --

10 five different dates. And it looks like she

11 received the typical -- the same treatments that

12 Ms. Reid and Ms. Norris received. The only

13 difference I see here is that there's a 59 next

14 to the 52 for the 59 -- says 59, 52 manual

15 therapy each 15 minutes.

16 Can you explain what the difference there is,

17 if any?

18 MR. KEDIR: Objection.

19 MR. POPSON: Objection.

20 A. It's very similar to the 97124-5952 code. It's

21 the same thing, it's a trigger point code. Our

22 systems have changed throughout the years. So I

23 don't know what year this is in -- that could be

24 just the new code that we use for trigger point

25 therapy, but it's the exact same thing.

1 Q. Okay. So the fact that it says 59, 52, that's of
 2 no significance?
 3 A. That's the dash 59, 59 that you see on Monique
 4 Norris' trigger point work. You see how it says
 5 dash 5952 --
 6 Q. I see.
 7 A. -- those are -- it's just -- it's just produced
 8 different because it's a different billing
 9 software.
 10 Q. I see.
 11 A. So dash 5952 just -- 59, 52 is the same as dash
 12 5952 --
 13 Q. Okay.
 14 A. -- it's a reduced time code.
 15 Q. I see.
 16 A. And the 97140 is just -- it's a similar -- it's a
 17 trigger point style code, but it's very
 18 consistent with the 97124.
 19 MR. PATTAKOS: Okay. Let's look
 20 at Exhibit 4.
 21 - - - -
 22 (Thereupon, Plaintiff's Exhibit 4 was marked
 23 for purposes of identification.)
 24 - - - -
 25 Q. Your attorney produced this record as part of

1 your file for a former patient, [REDACTED]
 2 Do you have any reason to doubt that this is
 3 a true and accurate copy of that?
 4 A. No.
 5 Q. Okay. And it looks like Mr. [REDACTED] treated with
 6 you on a number of occasions from October to
 7 November 24th. I just want to make sure there is
 8 -- it doesn't appear there's anything different
 9 on this ledger than there is for any of the
 10 others.
 11 A. The difference is we haven't been paid on this,
 12 so if you talk to him, tell him that there's a
 13 balance outstanding from 2015, please.
 14 Q. Okay. Do you know if Mr. [REDACTED] case settled
 15 with KNR?
 16 MR. KEDIR: Objection.
 17 A. I don't even know if Mr. [REDACTED] had KNR as an
 18 attorney. I have no idea.
 19 - - - -
 20 (Thereupon, Plaintiff's Exhibit 5 was marked
 21 for purposes of identification.)
 22 - - - -
 23 Q. Okay. Let's take a look at Exhibit 5. Does this
 24 look like a true and accurate copy of record that
 25 your attorney produced from your file for

1 [REDACTED]
 2 A. Yes.
 3 Q. Okay. It looks like she also received the
 4 typical, the same treatment that Ms. Norris and
 5 Ms. Reid received as well, correct?
 6 MR. POPSON: Objection.
 7 A. It's similar. There's a lot more intersegmental
 8 traction that Ms. [REDACTED] received as opposed to
 9 Ms. Reid and Ms. Norris.
 10 Q. And that's the table?
 11 A. Correct. That's the intersegmental traction
 12 table.
 13 Q. Okay. It doesn't look like any of these five
 14 patients that we have these records for were
 15 billed for the exercises; is that correct?
 16 A. I don't -- I don't see any exercise charges here,
 17 no.
 18 Q. Okay. I want to go back to how you started
 19 working at Akron Square.
 20 Who was it that made the decision to hire you
 21 at Akron Square?
 22 A. I have no idea.
 23 MR. KEDIR: Objection.
 24 A. I don't know.
 25 Q. Who called you and told you -- or who told you

1 that -- who offered you the job?
 2 MR. KEDIR: Objection.
 3 A. I don't remember specifics. It may have been
 4 Melanie, the initial contact person I had.
 5 Q. And you don't remember Melanie's last name?
 6 A. I don't remember.
 7 Q. Do you have a contract with Akron Square?
 8 A. I did back 2004.
 9 Q. And it expired?
 10 A. It's changed. It's just -- there's been no new
 11 contract signed, but the parameters of that
 12 contract, I think are different. I don't
 13 remember the details of the contract.
 14 Q. Do you still have it?
 15 A. No.
 16 Q. What are the terms of your employment?
 17 MR. KEDIR: Objection.
 18 A. What does that mean?
 19 Q. Well, what's your agreement between Akron Square
 20 -- what's your agreement with Akron Square?
 21 MR. KEDIR: Objection.
 22 A. I'm just an employee of Akron Square
 23 Chiropractic. I'm required to treat the patients
 24 and that's it.
 25 Q. How are you paid?

57

1 A. With a check.
 2 Q. You have an agreement about how much you're paid,
 3 correct?
 4 MR. KEDIR: Objection.
 5 A. No, not necessarily.
 6 Q. No?
 7 A. No.
 8 Q. So they can just decide not to pay you and that's
 9 okay?
 10 MR. KEDIR: Objection.
 11 A. No, it's -- they figure out a percentage of the
 12 profit that comes in after expenses.
 13 Q. Okay.
 14 A. But I don't know the exact details of how much
 15 expenses are.
 16 Q. So you're not entitled to a particular
 17 percentage?
 18 A. No.
 19 Q. It's all discretionary?
 20 A. And what does that mean?
 21 Q. That means that Akron Square has the discretion
 22 to pay you whatever they want, whatever share of
 23 the profits that they want?
 24 A. Yeah --
 25 MR. KEDIR: Objection.

58

1 A. -- so they pay me a percentage of the profit
 2 after expenses, which I think is 50 percent, I
 3 think. I'm not 100 percent sure.
 4 Q. Do you have a guaranteed base salary as well?
 5 A. No.
 6 MR. KEDIR: Objection.
 7 Q. So the clinic has to make money for you to make
 8 money?
 9 A. Yes.
 10 Q. So if there's no profit at the clinic you
 11 wouldn't get paid?
 12 MR. KEDIR: Objection.
 13 A. Yeah, if the expenses are higher than the profit,
 14 I won't get paid.
 15 MR. KEDIR: I'm just going to have
 16 to throw out this objection here as far as
 17 if -- he's just an employee of Akron Square
 18 Chiropractic. He's not a corporate
 19 representative, so he's just giving his --
 20 you're only allowed to give personal
 21 knowledge of it. He's not a spokesperson
 22 for them, so I just wanted to get that
 23 objection out there. And make sure you're
 24 not also giving out any confidential or
 25 trade secrets as far as Akron Square.

59

1 MR. PATTAKOS: Okay. Thanks.
 2 Q. Has it always been that way, that you are paid 50
 3 percent of the clinic's profits?
 4 A. No, I don't think so.
 5 Q. When did that become the case?
 6 A. I don't remember. Many, many years ago.
 7 Q. Okay. So sometime shortly after you started
 8 then?
 9 A. Correct.
 10 Q. Okay. Do you recall what the arrangement was
 11 when you first started?
 12 A. No, it's so long ago. I have no idea.
 13 Q. You don't remember if you were just paid a salary
 14 or --
 15 A. It was different every month. I don't remember.
 16 Q. Okay.
 17 A. This is going back now 15 years. I don't
 18 remember that far back.
 19 Q. Do you have any other job duties at Akron Square
 20 other than to treat patients?
 21 A. No.
 22 Q. And there is only one other chiropractor that
 23 works there regularly?
 24 A. Correct.
 25 Q. And that's Michael Dumond?

60

1 A. Correct.
 2 MR. KEDIR: I'll object. Do you
 3 mean currently or --
 4 A. He hasn't been there for 15 years. He's been
 5 there for several years. There's been other
 6 associates that have worked under me over the
 7 past 15 years.
 8 Q. Okay. But never more than one at a time?
 9 A. Correct.
 10 Q. How often does Mr. Dumond work?
 11 A. It varies. One to two days a week.
 12 Q. And what is his role in relation to yours?
 13 MR. KEDIR: Objection.
 14 A. His role is just to treat patients, just like my
 15 role is.
 16 Q. But he sees a lot fewer patients than you do?
 17 A. He's there typically on less busy days I would
 18 think.
 19 Q. Is he there on days when you're not there?
 20 A. It could end up being that way, but it's not
 21 always that way. Sometimes we're both in the
 22 office.
 23 Q. Okay. How is it determined who is working in the
 24 office on any given day?
 25 A. There's no set schedule.

61

1 Q. So Mr. Dumond just comes in randomly when he
 2 wants to? Or, I mean --
 3 MR. KEDIR: Objection.
 4 A. It's changed over the last couple years. Early
 5 on it was early in the week, now it's more later
 6 in the week. It just changes.
 7 Q. Are you his supervisor?
 8 MR. KEDIR: Objection.
 9 A. I overlook his notes, but, no, I'm not his
 10 supervisor. I don't pay him directly.
 11 Q. Do you report to anyone at Akron Square
 12 Chiropractic?
 13 A. No.
 14 Q. Does Mr. Dumond report to anyone at Akron Square
 15 Chiropractic?
 16 A. He'll ask me questions about patient care, but he
 17 doesn't report to anybody, no.
 18 Q. So you both report to Chiropractic Strategies
 19 Group then?
 20 MR. KEDIR: Objection.
 21 A. No, I don't report to anybody. Dr. Dumond talks
 22 to me about patient care if he recommends, let's
 23 say, a patient needs an MRI of the knee or a
 24 patient -- he suggests the patient get an MRI on
 25 their low back or he suggests a referral to a

62

1 neurosurgeon, a referral to an orthopedic
 2 surgeon, he'll consult with me and we'll both
 3 make a decision together.
 4 Q. Chiropractic Strategies Group owns the company?
 5 MR. KEDIR: Objection.
 6 A. I think so. I don't know.
 7 Q. Okay. And if the company wasn't doing well and
 8 someone at the company was not pleased with your
 9 performance, who would you hear from?
 10 MR. KEDIR: Objection.
 11 A. I have no idea.
 12 Q. That's never happened?
 13 A. I don't hear from anybody.
 14 Q. You don't communicate with anybody from
 15 Chiropractic Strategies Group on a regular basis?
 16 MR. KEDIR: Objection.
 17 A. No.
 18 Q. Who do you communicate on a regular basis in
 19 working at Akron Square Chiropractic?
 20 A. Nobody. My staff, but that's it.
 21 Q. Which staff members do you communicate with
 22 regularly?
 23 A. The staff members that are in my office.
 24 Q. All of them?
 25 A. Correct.

63

1 Q. How many of them?
 2 A. There's one, two, three, four, five -- there's
 3 five or six. Not all at one time.
 4 Q. And these are all staff involved in treating
 5 patients?
 6 MR. KEDIR: Objection.
 7 A. No. There's some staff that are more geared
 8 towards the front desk. There's some staff that
 9 are more geared towards the passive therapy
 10 aspects. Sometimes they switch. They're all
 11 knowledgeable in performing the therapy if need
 12 be.
 13 Q. And staff that is involved with billing and
 14 accounting?
 15 A. No, nobody does billing.
 16 Q. Nobody does billing?
 17 A. No, we do -- we input -- when the patient is in
 18 the office, the doctor is responsible to produce
 19 the record and that automatically gets put into
 20 the computer system and then a bill is generated
 21 from another location. So the staff doesn't do
 22 any of the billing.
 23 Q. You have a third party handle your billing then?
 24 A. Correct.
 25 MR. KEDIR: Objection.

64

1 Q. Who is that?
 2 A. I don't know.
 3 Q. Who would know?
 4 A. I don't know. The attorneys I believe have --
 5 they e-mail somebody of the billing office and
 6 they get these bills produced, but we don't
 7 produce these in office.
 8 Q. Okay. Your patients at Akron Square are not only
 9 people who are in car accidents, correct?
 10 A. Correct.
 11 Q. You will treat patients who are just having back
 12 pain or having other problems that want to see a
 13 chiropractor, correct?
 14 A. Correct.
 15 Q. Do you agree that most of your patients are car
 16 accident victims?
 17 A. Yeah, I would say that.
 18 Q. Would you say the great majority of them?
 19 A. It's hard to say.
 20 MR. POPSON: Objection.
 21 A. Like I said, every day is different.
 22 Q. I understand that, but would you estimate that
 23 it's more than 75 percent or less than 75
 24 percent?
 25 MR. KEDIR: Objection.

65

1 A. It's very hard to say. On a day-to-day basis it
 2 changes.
 3 Q. But you can say that it's more than 50 percent?
 4 MR. KEDIR: Objection.
 5 A. It could be on a Monday. It might not be on a
 6 Tuesday.
 7 Q. Okay. And it's true that many of your patients
 8 come to Akron Square because they're solicited by
 9 telemarketers who contact them based on
 10 information obtained in crash reports, correct?
 11 MR. KEDIR: Objection.
 12 MR. POPSON: Objection.
 13 A. Oh, I have no idea.
 14 Q. You have no idea about the telemarketers?
 15 A. No.
 16 Q. You don't know that your clinic, representatives
 17 of your clinic, routinely contact your patients
 18 and solicit them by telemarketers?
 19 MR. KEDIR: Objection.
 20 A. I have no knowledge of that at all.
 21 MR. POPSON: Objection.
 22 Q. Okay.
 23 A. Like I said, Peter, I'm just the physician. I
 24 treat the patient when they come in. I do the
 25 exam, I treat them, they leave. That's it.

66

1 Q. Okay.
 2 - - - -
 3 (Thereupon, Plaintiff's Exhibit 6 was marked
 4 for purposes of identification.)
 5 - - - -
 6 Q. This document was produced by your attorneys as
 7 part of Thera Reid's file. Do you have any
 8 reason to doubt that?
 9 A. No.
 10 Q. Have you ever seen one of these documents before?
 11 A. No, I have not.
 12 Q. Okay. It says patient acknowledgement. I
 13 confirm I was contacted by telephone on one or
 14 more occasions by one or more persons who I
 15 understood to be representatives of Akron Square
 16 Chiropractic regarding the availability of a
 17 chiropractic consultation and spinal screening
 18 examination.
 19 I was told in the very first such telephone
 20 conversation and in each conversation thereafter,
 21 that the caller worked for this health care
 22 facility and Dr. M. Floros DC, and that the calls
 23 had no relation to and nothing whatsoever to do
 24 with my insurance company or the other driver's
 25 insurance company or any insurance company or any

67

1 police department or any government agency,
 2 hospital, or service or entity. I'll stop there.
 3 Does this refresh your recollection about the
 4 telemarketers?
 5 A. No, it doesn't.
 6 MR. KEDIR: Objection.
 7 Q. Who asks Thera Reid -- who asked Thera Reid to
 8 sign this document?
 9 A. When a new patient comes in, they're handed a
 10 bunch of documents --
 11 Q. Uh-huh.
 12 A. -- and this may have been one of the records that
 13 were in the documents. It's patient intake,
 14 name, address, phone number, medical release
 15 disclosures and then I guess whatever this is.
 16 Q. Who is responsible for determining the contents
 17 of --
 18 MR. KEDIR: Objection.
 19 Q. -- these forms that are provided to the patients?
 20 A. Oh, I don't know.
 21 Q. Okay. And you don't even know who you can ask?
 22 A. No. These have been consistent since I started
 23 working at Akron Square Chiropractic, I'm
 24 assuming.
 25 Q. So if one of your patients complained about

68

1 having to sign this form to you, what would you
 2 tell them?
 3 MR. KEDIR: Objection.
 4 A. I would tell them if they don't want to sign it,
 5 they don't have to sign it.
 6 Q. And then what, they wouldn't be able to treat
 7 with you?
 8 MR. KEDIR: Objection.
 9 A. No, I treat everybody. I don't turn a
 10 consultation down. Any patient that comes in
 11 with any problem, I'll look at them. I have no
 12 problem whatsoever with that.
 13 Q. So if one of your office staff says that a
 14 patient is refusing to sign a form, your response
 15 would be, okay, we will go ahead and treat the
 16 patient anyway?
 17 MR. KEDIR: Objection.
 18 A. Yes. Have them fill out the rest of the forms
 19 and get them in the consultation room.
 20 Q. What if they don't want to fill out any of the
 21 forms?
 22 A. Well, look, if I don't know who they are or why
 23 they're in my office, I wouldn't perform a
 24 consultation on them. I can't walk -- I'm not
 25 going to -- just randomly a person says, hey, I

69

1 want to get treatment and they don't want to tell
 2 me who their name is, I wouldn't treat that
 3 person, but if they fill out their name and they
 4 have a problem or if they just want to be checked
 5 out and have a screening, I would definitely
 6 check out the patient.
 7 Q. And --
 8 A. It happens all the time.
 9 Q. Okay. So you're not aware of any caller that
 10 works for you that makes these telemarketing
 11 calls?
 12 A. No, we have -- I'm aware --
 13 MR. KEDIR: Objection.
 14 A. -- that we have a marketing department that's
 15 responsible for all the marketing.
 16 Q. Okay.
 17 A. They're responsible for all.
 18 Q. A marketing department at Akron Square?
 19 A. Not at Akron Square, no. There's no marketing
 20 department at Akron Square.
 21 Q. The marketing department is with Chiropractic
 22 Strategies Group?
 23 A. It may be.
 24 MR. KEDIR: Object.
 25 Q. Well, when you say we have a marketing

70

1 department, who are you referring to?
 2 A. Just I'm aware there's marketing that takes
 3 place, you know, advertisements. This type of
 4 thing, that somebody does.
 5 Q. Do you do any work to market the firm?
 6 MR. KEDIR: Objection.
 7 A. What firm? What are you talking about?
 8 Q. Your chiropractic firm, your chiropractic office.
 9 A. None at all.
 10 MR. KEDIR: Objection.
 11 Q. When you started at Akron Square, a large portion
 12 of the clientele was personal -- car accident
 13 victims?
 14 MR. KEDIR: Objection.
 15 A. It's so hard to say. Like I said, Peter, every
 16 day is very different. New patients come in all
 17 the time.
 18 Q. But you don't remember that you were treating car
 19 accident victims from the moment you started
 20 working at Akron Square?
 21 A. Oh, no, of course I did. Absolutely, yeah.
 22 Q. Okay. There are certain law firm's clients of
 23 whom you treat hundreds of every year, correct?
 24 A. It's hard to say. I can't speculate on numbers.
 25 Q. Well, you don't deny that you treat hundreds of

71

1 KNR clients a year, do you?
 2 MR. KEDIR: Objection.
 3 A. I can't speculate on numbers. I have no idea.
 4 Q. So it's possible, according to your recollection,
 5 that you treat fewer than 100 KNR clients --
 6 MR. KEDIR: Objection.
 7 Q. -- a year, is that your testimony?
 8 A. I can't -- I can't attest to that. Because a lot
 9 of times I don't even know if the patient is
 10 repped by an attorney or not until the end of
 11 treatment, so I don't know. Like some days maybe
 12 there are more patients than others that are
 13 represented by attorneys, but many times there's
 14 more that aren't represented by attorneys. It
 15 changes very -- it changes from patient to
 16 patient.
 17 Q. Right. But you prepare narrative reports for
 18 many of your patients that are represented by
 19 attorneys, correct?
 20 A. Yes. I prepare a narrative report. When the
 21 patient finishes care, I get a request from
 22 different law firms. And many times they request
 23 medical records, narrative reports, bills, many
 24 other documents, any referral forms that I refer
 25 to other providers, the medical providers. They

72

1 ask for all that stuff.
 2 Q. And you produce hundreds of these reports a year,
 3 do you not?
 4 MR. KEDIR: Objection.
 5 A. Oh, I don't know the number. I have no idea. I
 6 don't keep track of any numbers, so I have no
 7 idea.
 8 Q. So you can't say that you've produced -- that you
 9 produce hundreds of narrative reports a year in
 10 personal injury cases?
 11 MR. KEDIR: Objection.
 12 A. Very tough to say.
 13 Q. Okay. KNR has provided documents -- I'm sorry,
 14 strike that.
 15 KNR has provided formal discovery responses
 16 in which they produce the number of clients that
 17 they claim were referred to and from you, Akron
 18 Square, by that law firm. And the numbers that
 19 they provided are as follows 2012, 615. 2013,
 20 748. For 2014, 798. For 2015, 880. For 2016,
 21 1,117. And for 2017, 647 as of September 17th of
 22 that year.
 23 Does that sound accurate to you?
 24 A. Oh, I have --
 25 MR. KEDIR: Objection.

1 A. -- I have absolutely no idea, Peter.
 2 Q. Okay. You will often refer patients to law
 3 firms, correct?
 4 A. No, I don't refer patients to law firms, sir.
 5 Q. You don't --
 6 A. No.
 7 Q. -- do it at all?
 8 A. No.
 9 Q. Someone at your office does?
 10 A. No. Nobody refers any patients to any attorneys.
 11 I recommend attorneys. I don't refer patients --
 12 Q. You recommend --
 13 A. -- to attorneys.
 14 Q. -- attorneys. Okay. So what's the difference
 15 between referring and recommending, in your mind?
 16 A. Well, there's two different definitions. A
 17 referral is a direct source of help. A
 18 recommendation is an endorsement of a law firm.
 19 When I refer a patient to a neurosurgeon, I'm
 20 making a direct reference for help for that
 21 patient. I don't endorse a neurosurgeon, I refer
 22 to a neurosurgeon. I refer to an orthopedic
 23 surgeon. I refer to the Akron General Wellness
 24 Center. I don't recommend it, I refer it.
 25 I put a -- I sign a piece of paper, a

1 prescription for the patient to be seen at an
 2 office. I don't refer anybody to any law firms.
 3 Q. You wouldn't sign a prescription to send a
 4 patient to a law firm?
 5 A. I don't reefer any of my patients to any law
 6 firms.
 7 Q. You recommend law firms?
 8 A. Absolutely. Yes, I do.
 9 Q. Okay. I'm not sure there's a difference in the
 10 way I'm using the word, but --
 11 MR. KEDIR: Objection.
 12 A. There's a complete difference in the definition
 13 between a referral and a recommendation, complete
 14 different source.
 15 Q. Well, a referral is a medical -- you're referring
 16 to referral in a medical sense when you talk
 17 about referring a patient to another doctor,
 18 correct?
 19 A. No --
 20 MR. KEDIR: Objection.
 21 A. -- I'm talking about the direct meaning of the
 22 word. I want to make sure we don't confuse the
 23 two words here. A referral means a direct -- a
 24 direct source of help for a patient. A
 25 recommendation is just a recommendation. Whether

1 or not the patient does that recommendation is up
 2 to them, but I definitely do not refer anybody to
 3 any law firms.
 4 Q. Whether a patient follows a referral is up to
 5 them too, correct?
 6 A. Sure. But I'm trying to help the patient get
 7 well. And I write a prescription for the patient
 8 to be seen, like I said, at an orthopedic
 9 surgeon's office, a neurologist's office, a
 10 physical therapy office, a medical doctor's
 11 office, any sort of specialist. I usually write
 12 it down on paper and I give them a referral slip,
 13 but I don't do that with law firms. I've never
 14 referred any of my patients to any law firms and
 15 I especially haven't referred any of your clients
 16 to any law firms.
 17 Q. But when you recommend a law firm to a patient,
 18 you are also trying to help the patient, correct?
 19 MR. KEDIR: Objection.
 20 A. No, I'm not trying to help the patient at all. I
 21 just -- look, I'm not a lawyer, legal questions
 22 come up all the time. A new patient comes in,
 23 they ask me a ton of questions. They want to
 24 know who's going to pay their bill. They want to
 25 know what's going to happen if they don't pay the

1 bill. They want to know, you know, why an
 2 insurance company hasn't called them, who should
 3 they contact, what should they do. I can't --
 4 I'm not a lawyer, I can't instruct them on what
 5 to do. So I recommend -- when legal questions
 6 come up, I recommend them talking to one of the
 7 attorneys that does auto accident cases.
 8 Q. And you do that because it's helpful to the
 9 patient to do that, correct?
 10 A. I do --
 11 MR. KEDIR: Objection.
 12 A. -- that because it's my recommendation because I
 13 cannot answer the question. If it's a legal
 14 question -- imagine I answered a legal question,
 15 what you'd be asking me now? I don't do that. I
 16 have -- I can't do that. It's not my specialty.
 17 Q. You only recommend patients to law firms when
 18 patients ask legal questions?
 19 A. Yeah, legal comes up in probably a high majority
 20 of patients coming to my office injured in car
 21 accidents, they have a lot of questions. Some I
 22 can help them with, if they're medical related,
 23 but if they're legal related, I can't help them.
 24 Q. Okay. Do you deny that you treated the number of
 25 KNR clients that KNR says you treated as we just

1 went over?

2 MR. KEDIR: Objection.

3 A. I can't deny or agree to it. I have no knowledge

4 of it. I have -- I don't keep any tracking

5 system in my office about who has an attorney or

6 who has KNR or who has Eshelman or who has Slater

7 or who has Elk & Elk, I have no idea.

8 - - - -

9 (Thereupon, Plaintiff's Exhibit 7 was marked

10 for purposes of identification.)

11 - - - -

12 MR. KEDIR: You have no copies of

13 this?

14 MR. PATTAKOS: I only have two

15 copies of it, but I just want to refer Dr.

16 Floros to this chart.

17 MR. KEDIR: This is going to be

18 Exhibit 7?

19 MR. PATTAKOS: Exhibit 7, yeah.

20 And if we look at -- this is request for

21 production No. 3 --

22 MR. BARMEN: Peter, please, if

23 you're going to mark something, you've

24 indicated before the last break that you

25 would have copies made, if you're going to

1 A. Oh, this here.

2 Q. And you'll see that that response asks KNR to

3 produce all documents including, but not limited

4 to spreadsheets quantifying the number of

5 referrals to and from specific chiropractors over

6 time. And KNR provided this chart for the years

7 2012 through 2017. And this was produced in mid

8 September of 2017. So these numbers for 2017 are

9 not complete.

10 So, according to KNR, there were 440

11 referrals --

12 MR. PATTAKOS: And, Jim, I can't

13 tell from this, maybe you can help. Which

14 is the to ASC from KNR and vice versa?

15 MR. POPSON: Good question. I

16 don't know.

17 A. Is there a question?

18 Q. I'm waiting for --

19 A. Oh, sorry.

20 Q. -- him to explain what these numbers mean.

21 MR. REAGAN: He doesn't know

22 anyway, so I don't know what the point is,

23 but I would assume --

24 MR. POPSON: We'll have to verify

25 it to make sure. So this is from ASC and

1 mark it, I need to see it.

2 MR. PATTAKOS: It's a discovery

3 response that's been produced in this case

4 --

5 MR. BARMEN: It's document you're

6 marking as an exhibit in a deposition, it

7 is incumbent upon you to provide copies to

8 all counsel that are here.

9 MR. PATTAKOS: If you want to take

10 a look.

11 MR. KEDIR: Do you have copies of

12 it?

13 MR. PATTAKOS: Had the witness'

14 testimony been different, I wouldn't have

15 marked this as an exhibit, okay?

16 MR. BARMEN: And that's fine, but

17 you are marking it as an exhibit. I would

18 appreciate you providing me a copy.

19 MR. POPSON: Are you referring to

20 No. 23?

21 MR. PATTAKOS: I'm referring to

22 this chart here, yes, on No. 23.

23 BY MR. PATTAKOS:

24 A. So what page is this on?

25 Q. We're just going to look at No. 23.

1 this is from KNR?

2 MR. REAGAN: I believe so.

3 MR. PATTAKOS: The top number is

4 from ASC?

5 MR. REAGAN: I believe so.

6 MR. POPSON: Yeah, but we'll have

7 to verify it. We'll just -- that's our

8 assumption with looking at it now, but,

9 yeah, we should have put the word "from" in

10 front of either one of them, but we didn't,

11 but we'll try and verify for you today, if

12 we can.

13 MR. PATTAKOS: I would appreciate

14 it. That's the --

15 MR. POPSON: He's not going to

16 know anyway apparently, so...

17 MR. PATTAKOS: Well --

18 MR. KEDIR: And I'm objecting to

19 the exhibit also.

20 BY MR. PATTAKOS:

21 Q. This is the second amended responses to the third

22 set of requests for production --

23 MR. KEDIR: From KNR.

24 MR. POPSON: As soon as we take

25 the next break, I'll make a phone call to

1 see what we can find out.
 2 Q. -- and it's No. 23.
 3 MR. REAGAN: Second amended
 4 responses to what?
 5 MR. PATTAKOS: The third request
 6 for production.
 7 MR. REAGAN: What number?
 8 MR. PATTAKOS: And it's No. 23.
 9 MR. REAGAN: Thanks.
 10 BY MR. PATTAKOS:
 11 Q. Well, does it seem right to you that you refer --
 12 that you would refer, roughly, twice as many
 13 cases to KNR as they would refer to you?
 14 MR. KEDIR: Objection.
 15 MR. POPSON: Objection.
 16 A. I have absolutely no way of knowing that,
 17 Mr. Pattakos. I have no way of knowing that.
 18 Q. Okay. Just from your experience in dealing with
 19 hundreds of these people over the years, you have
 20 no idea?
 21 MR. KEDIR: Objection.
 22 A. I treated probably over 20,000 people injured in
 23 car accidents since 2004. I would have no idea
 24 as to the -- if this is accurate or not.
 25 Q. Over 20,000 people injured in car accidents since

1 A. Yes, I am.
 2 Q. Well, how did you become friends?
 3 MR. KEDIR: Objection.
 4 A. Well, like I said, we met some time many, many
 5 years ago. Probably -- I don't know, 12 years
 6 ago maybe. I don't remember.
 7 Q. And how did you become friends?
 8 A. Well, we have a lot of similar interests.
 9 MR. KEDIR: Objection.
 10 A. He's from Canada and we like sports. We like
 11 food. We're European descent, I'm Greek, he's
 12 Italian. I don't know, we just get along.
 13 Q. I like sports and I like food and I'm Greek --
 14 A. I like you too.
 15 Q. I appreciate that. Okay. So no memory of how
 16 the relationship came to be or came to develop
 17 apart from --
 18 A. No, there is no relationship. It's a friendship
 19 that we have, like I said, over the years.
 20 Q. Well, you do a lot of business with him, don't
 21 you?
 22 MR. KEDIR: Objection.
 23 A. It's -- again, it's hard to say. I don't know
 24 what a lot means. I mean, it's -- like I said, I
 25 don't know.

1 2004?
 2 A. I would --
 3 MR. KEDIR: Objection.
 4 A. -- again, it's an estimate.
 5 Q. What's it based on?
 6 A. Just based on new patients.
 7 Q. Based on new patients in what way?
 8 MR. KEDIR: Objection.
 9 A. Based on new patients that have come in, you
 10 know, into my office whether it be workers'
 11 comp -- when a patient is injured in work
 12 injuries, auto accidents, back pain, neck pain.
 13 I've seen a lot of people in 15 years.
 14 Q. So based on the number of files you've seen?
 15 MR. KEDIR: Objection.
 16 A. Again, that's just a broad estimate. I have no
 17 idea.
 18 Q. Do you remember when you first started treating
 19 KNR clients?
 20 A. No, I don't.
 21 Q. Do you remember when you first met Rob Nestico?
 22 A. No, I don't. It was many years ago.
 23 Q. You don't remember how you met?
 24 A. No, I don't.
 25 Q. You're friends with Rob Nestico, aren't you?

1 Q. Are there any other law firms or lawyers for whom
 2 you do more business as a chiropractor than KNR?
 3 A. Again, I have no idea.
 4 MR. KEDIR: Objection.
 5 A. I don't know.
 6 Q. Okay. When you recommend a law firm to -- or
 7 when you recommend a patient to KNR, how do you
 8 decide to do that?
 9 A. I don't. Like I said, a patient comes into the
 10 office, they fill out their paperwork, they're
 11 brought to the consultation room, I do my
 12 consultation, my exam. We review the police
 13 report with the patient. We talk about impact.
 14 We talk about biomechanics of injury, how it
 15 happens. And then again, they'll ask me --
 16 sometimes they'll ask me questions. Or many
 17 times they'll tell me, hey, doc, I have an
 18 attorney, here's my attorney's name, just make
 19 sure you get all the records over to them.
 20 That's it. And if they have legal questions and
 21 they ask me for recommendations, I provide them
 22 recommendations of multiple law firms in the
 23 Akron, Cleveland area.
 24 Q. So whenever a patient has a legal question or
 25 asks for a recommendation --

1 A. Yes.

2 Q. -- you will recommend multiple law firms?

3 A. Correct.

4 Q. Why multiple?

5 A. Because there's a lot of good attorneys out there

6 and I don't -- I don't have no preference on a

7 specific law firm. I don't -- I prefer my

8 patients be represented by attorneys in these

9 situations because I've seen patients been taken

10 advantage of many, many times by insurance

11 companies, so my preference is for them to be

12 represented by somebody. Who they choose to be

13 represented by though it doesn't matter to me, I

14 don't really care.

15 Q. You agree there's no short -- sorry. Go ahead.

16 A. And in terms of the clients in question here, Ms.

17 Reid and Ms. Norris, I didn't recommend or refer,

18 to use your word, to any law firm.

19 Q. You agree there's no shortage of good personal

20 injury lawyers in --

21 MR. KEDIR: Objection.

22 Q. -- northeast Ohio?

23 A. Oh, I would have no knowledge, but I would say

24 there's probably plenty other good ones.

25 Q. What are your criteria for choosing which law

1 firms you would recommend to your patients?

2 MR. KEDIR: Objection.

3 A. I have no criteria. It doesn't matter. Like I

4 said, Peter, it doesn't matter who the attorney

5 is, there's no criteria. You know, there have

6 been attorneys that have come into my office, you

7 know, soliciting business, give me business

8 cards, and I utilize them.

9 Q. Do you follow-up to check on whether those

10 attorneys are any good?

11 A. No. I mean, I ask my patients. Through

12 interaction with my patients on a day-to-day

13 basis like they'll -- they'll tell me, hey, this

14 attorney sucks. Why isn't he calling me back?

15 Well, I don't know. Call the paralegal, talk to

16 the assistant. And many times a patient gets

17 extremely frustrated or multiple patients and

18 they fire their attorney or they get another

19 attorney. So I hear it. You know, like I said,

20 I've treated many patients injured in car

21 accidents and I've heard it, I've heard

22 everything.

23 Q. You identified seven law firms in your discovery

24 response as firms that you will recommend your

25 clients to.

1 A. There are a lot more than seven. I remember

2 doing the discovery and I just -- I can't

3 remember in 15 years how many attorneys I've

4 recommended. It's way more than seven.

5 Q. Okay. Well, so you listed KNR, Slater & Zurz --

6 A. Uh-huh.

7 Q. -- Gary Himmel --

8 A. Yep.

9 Q. -- Alberto Pena --

10 A. Yep.

11 Q. -- Elk & Elk --

12 A. Yes.

13 Q. -- Amourgis & Associates --

14 A. Uh-huh.

15 Q. -- and Skolnick Weiser?

16 A. Correct.

17 Q. Who else?

18 A. On 15 years?

19 Q. Yes.

20 A. Oh, there was Thomas Magliner [phonetic], there

21 was Westfield, there was Dyer up in Kent.

22 There's been Lisa Haywood -- geez, there's been a

23 lot. I don't remember.

24 Q. And you can't say whether you do more business

25 with one of these firms than any other?

1 A. No, it's hard to say.

2 Q. And you can't even estimate?

3 A. No.

4 Q. How do you decide when a car accident victim with

5 soft-tissue injury doesn't need treatment

6 anymore?

7 A. We assess their pain levels. We look at range of

8 motion. Palpatory findings. Essentially see

9 where their pain level is at compared to day one.

10 See how their injury is affecting their

11 activities of daily living. See if they're back

12 to work. See if they're functional. If they're

13 able to raise their kids, for example or if

14 they're able to go for a walk.

15 It's a subjective and objective thing as to

16 when I decide the patient is to be released.

17 Every patient is different and every patient is

18 treated differently.

19 Though we do whatever is in the best interest

20 of the patient to get them back to pre-accident

21 condition. Many times the patient is well when

22 they're released and many times they're not.

23 Q. You refer your personal injury clients to Dr.

24 Ghoubrial, correct?

25 A. Correct.

1 Q. And what do you do that for?
 2 A. They're injured --
 3 Q. Uh-huh.
 4 A. -- they got high inflammatory levels. The
 5 patient advised me that their medication ran out
 6 from the hospital, they can't sleep, they're in
 7 high levels of pain. They hurt more when they're
 8 working. It helps me get the patient better
 9 faster. I'm not a medical doctor. I can't
 10 prescribe the medication, so, yeah, I refer a lot
 11 of patients to Dr. Ghoubrial, he's a great
 12 doctor.
 13 Q. Are there other doctors that you send your
 14 patients to for similar treatment?
 15 A. Oh, yeah. In the last 15 years I've worked with
 16 many doctors.
 17 Q. Who else besides Dr. Ghoubrial would provide
 18 similar services?
 19 A. Dr. Soni --
 20 MR. KEDIR: Objection.
 21 MR. POPSON: Objection.
 22 A. -- was one of the orthopedic surgeons I referred
 23 patients to for pain management.
 24 Q. Dr. Soni?
 25 A. Dr. Soni.

1 Q. S-o-n-i?
 2 A. Yes. Comprehensive Pain Management is another
 3 place I refer many patients to --
 4 Q. That's the Lababidi's?
 5 A. Yes. And they have -- they have a lot of pain
 6 management specialists there. Center of Neuro &
 7 Spine is another place I refer patients to. Dr.
 8 Chonko, Dr. Tharp, Dr. Pinkowski. There was Dr.
 9 Pogorelec back in the day that would see my
 10 patients.
 11 I'm willing to refer my patients to anybody
 12 who accepts patients injured in car accidents and
 13 sometimes that's very difficult to find.
 14 Q. How did you meet Dr. Ghoubrial?
 15 A. I don't remember.
 16 Q. Well, how did you come to first send your
 17 patients to him?
 18 A. He may have been a mutual treatment with one of
 19 the pain management facilities that have treated
 20 my patients. That's probably where I first saw
 21 his name pop up.
 22 Again, I'm willing to work with any medical
 23 doctor, any physician, that's willing to take on
 24 my patients. And I get new ones or once in a
 25 while I see a report of a patient with a medical

1 doctor, I try to reach out to the doctor and see
 2 if he's willing to accept my patients or to see
 3 patients injured in car accidents or work
 4 injuries, and again, its extremely difficult to
 5 find medical doctors that will treat patients
 6 injured in car accidents, especially in my area.
 7 Q. In Akron?
 8 A. Yeah. I'll send them anywhere. I'll send them
 9 up to Cleveland, Medina, Fairlawn, Kent,
 10 Canton -- they've been down to Canton --
 11 Massillon. Anywhere.
 12 Q. Dr. Ghoubrial will sometimes treat patients at
 13 your office, correct?
 14 A. Yes.
 15 Q. So he'll set up a number of appointments on any
 16 given day and will come there and treat a number
 17 of patients on a particular day?
 18 A. Yeah, that's more recent. Again, I've been
 19 referring patients to Dr. Ghoubrial for many
 20 years. Him coming to the office is more of a
 21 recent thing. I don't remember when he started
 22 but he used to -- I used to refer patients out to
 23 Wadsworth, but it was difficult for the patients
 24 to get there. A lot of patients don't have money
 25 for gas. A lot of patients have not

1 transportation. And he set up an office
 2 somewhere in Akron --
 3 Q. On Brown Street?
 4 A. -- made it easier for my patients -- I think it
 5 was Brown Street -- made it a lot easier for my
 6 patients to get to. But I think ultimately it's
 7 better that he comes to my office.
 8 Q. And why is that?
 9 A. Just easier. It's just easier. The patients
 10 don't have to go anywhere. Again, my patients
 11 don't have the finances to go -- put gas in their
 12 car to go get an MRI. The place I refer for MRI
 13 up in Medina, they provide transportation to my
 14 patients. My patients can't get up there.
 15 Q. Do any other doctors come treat patients at your
 16 office?
 17 A. No. Actually, I should -- I'm sorry, just to go
 18 back. There are a few other doctors that have
 19 come to my office over the last 15 years to treat
 20 patients. Recently, no.
 21 Q. Okay. Who are those doctors that have come to
 22 your office?
 23 A. Dr. Soni was one of the doctors that would come
 24 to my office a few times. Again, he was located
 25 down in -- close to the downtown Canton area.

93

1 And it just got difficult for patients to see him
 2 down there so he would come once in a while, once
 3 a month to see patients in my office. This is
 4 many years ago. Dr. Gunning is another physician
 5 that's come into the office to treat patients --
 6 Q. Dr. Gunning?
 7 A. Dr. Gunning.
 8 Q. Well, he works for Dr. Ghoubrial, correct?
 9 A. Yes. But I'm giving you specific names of
 10 doctors. And those are a couple other
 11 physicians. Dr. Wynn. Dr. -- I forgot the other
 12 gentleman's name. There's been a couple other
 13 ones.
 14 Q. Dr. Wynn?
 15 A. Yeah.
 16 Q. W-y-n-n?
 17 A. Correct.
 18 Q. What kind of doctor is Dr. Wynn?
 19 A. I think she's just a medical doctor. She may be
 20 part of the Dr. Ghoubrial group. I'm not too
 21 sure.
 22 Q. Okay.
 23 A. And just to go on record, I would welcome any
 24 physician that's willing to come to my office to
 25 see any patient. I wish there was one there

94

1 every day.
 2 Q. So you typically do not accept health insurance
 3 payments from a patient who is involved in
 4 litigation, correct?
 5 MR. POPSON: Objection.
 6 A. I'll accept any forms of payment. It doesn't --
 7 I accept Med Pay. Any time they've asked me to
 8 bill their out of network -- I'm out of network
 9 with all insurance companies, many times they've
 10 asked me to bill their health insurance
 11 companies. We've done it, we don't get paid by
 12 them. We're out of network, so I'm not in
 13 network with anybody, but many times some
 14 providers will accept bills and records from us
 15 and then if the patient -- and again, I'm sorry,
 16 I don't know all the terminology in the medical
 17 insurance worlds.
 18 Many times they haven't met their deductible.
 19 Many times, like I said, I'm out of network, they
 20 don't even consider my billing. The same goes
 21 for MRI facilities. Like they need a
 22 preauthorization of some kind to get an MRI and,
 23 again, if they're not represented by a law firm,
 24 their personal health insurance will just deny
 25 it. The patient can't get an MRI. I try my best

95

1 to do whatever is possible. Whatever is best for
 2 the patient. If they ask me to bill an insurance
 3 company, I would do it.
 4 Q. Why don't you affiliate with a network?
 5 MR. KEDIR: Objection.
 6 A. I just haven't. I don't know. I don't know how
 7 to.
 8 Q. Have you ever asked anybody at your company to do
 9 -- to look into that?
 10 A. No. There was a network called Coventry Health
 11 Network that somehow I got affiliated with.
 12 Somebody filled out a document and we were
 13 affiliated with them. And the insurance
 14 companies would run our billing through Coventry
 15 Health Network, but I don't know if they'd review
 16 the bills and say, hey, it's an auto accident
 17 case, we're not paying. Or an insurance company
 18 would run it through that network and say, hey,
 19 we're only paying, you know, 70 percent of the
 20 bill, if they're not represented by an attorney.
 21 So it just varies patient to patient.
 22 Q. You treat many of your patients on a letter of
 23 protection, correct?
 24 A. Yes.
 25 Q. And why do you do that?

96

1 A. Just to get -- I don't really get involved with
 2 the paperwork. A letter of protection, from what
 3 I'm made aware of, it just protects to patient,
 4 the patient's bill, to ensure that we get payment
 5 somehow.
 6 Q. How does that protect the patient?
 7 MR. KEDIR: Objection.
 8 A. I don't know. I guess they want their bills to
 9 be paid. That's my understanding of it.
 10 Q. The patients want their bills to get paid?
 11 A. Oh, yeah. Patients main concern when they come
 12 into our office is who's going to pay this bill?
 13 Like, am I going to be left with any bills here?
 14 That's their main concern. So a letter of
 15 protection protects, I guess, myself, my bill,
 16 and the patient from not owing any money when the
 17 case settles. Again, whether the patient has an
 18 attorney or not, it's the same thing, they want
 19 to have protection, we want to have protection.
 20 And most physicians who treat patients injured in
 21 auto accidents including facilities that do MRI's
 22 and specialists and surgeons, they all want
 23 letter of protections. It's not just my office
 24 that wants a letter of protection in a patient
 25 injured in a motor vehicle accident.

1 We also have patients who are involved in
 2 work injuries sign letter of protections to make
 3 sure that the Bureau of Workers' Compensation
 4 pays the bill as well.
 5 Q. You wouldn't need a letter of protection if the
 6 patient's health insurance was on the hook for
 7 the treatment, correct?
 8 MR. KEDIR: Objection.
 9 A. Oh, we would -- I would always have the patient
 10 sign it. Again, Peter, I've talked to many
 11 patients, Med Pays of their insurance policies,
 12 adjusters that work at these insurance companies,
 13 they won't consider our bill, they won't pay the
 14 bill. They'll say go to the patient, we're not
 15 looking at it.
 16 Q. And why don't they pay your bill?
 17 MR. KEDIR: Objection.
 18 A. They just refuse to because it's in an auto
 19 accident case. You know, an insurance adjuster
 20 had told me in the past, we only pay for patients
 21 in a motor vehicle accident who are injured that
 22 went to the ER the first day. Anything after the
 23 first day, they're not paying the bills. It's a
 24 common thread, it's a common thing. I don't know
 25 why that happens, I don't know why they don't pay

1 Q. If they don't sign the letter of protection, you
 2 will treat them anyway?
 3 A. I will treat every single patient --
 4 MR. KEDIR: Objection.
 5 A. -- that comes into my office. Peter, many times
 6 a patient refuses to sign forms. I don't -- I
 7 don't care. I'm just an employee of Akron Square
 8 Chiropractic. I like getting patients well. If
 9 they sign a letter of protection, if they don't,
 10 it doesn't make any difference to me. I will
 11 treat them, I will give them the best possible
 12 care I can give them. And if we get paid on it,
 13 great, and if we don't, hey, it happens, what are
 14 you going to do? Mr. Carter, who you just
 15 presented me a bill, has never paid his bill from
 16 2015. Maybe he didn't sign his letter of
 17 protection. What am I going to do? He's
 18 injured, I'm going to treat him and we move on.
 19 Q. You've never sued any of your patients for not
 20 paying a bill, have you?
 21 MR. KEDIR: Objection.
 22 A. Oh, I don't know. I haven't sued anybody
 23 personally. I don't know if Akron Square
 24 Chiropractic has. I have no idea, I don't know
 25 what the billing does.

1 the bill, but they just don't.
 2 Q. So you say you always have your patients sign the
 3 letter of protection?
 4 A. Correct. The paperwork is pretty standard in our
 5 office. Like even this paper that you gave me
 6 from Thera Reid, you know, Monique Norris may
 7 have -- may have received the same document --
 8 where is it? Exhibit number -- I'm sorry --
 9 Exhibit No. 6, Monique Norris may have been given
 10 the same document. She may have signed it.
 11 After reviewing the file I saw that KNR had
 12 referred me Monique Norris. She wasn't contacted
 13 by anybody, but she probably would have received
 14 it because the stack of papers that my staff
 15 gives to the patients and many times they'll sign
 16 it, many times they won't and that's it. So a
 17 letter of protection is just a standard paperwork
 18 in my file.
 19 Q. So you have all your clients sign letters of
 20 protection?
 21 A. I don't have anybody sign anything. They're just
 22 part of my file. Like they're just a bunch of
 23 documents that a patient will sign. Do you have
 24 an example of a letter of protection so I can see
 25 it?

1 Q. You're not aware of any instance where that's
 2 happened, are you?
 3 A. No, I wouldn't know. I would have no idea. I
 4 would prefer not to sue any patients.
 5 Q. So if a client comes to Akron Square with
 6 injuries and wants to pay using his own health
 7 insurance, you will accept that form of payment
 8 if -- I mean, do you have a process where your
 9 staff will call the insurance company -- strike
 10 that.
 11 MR. POPSON: You saw me, didn't
 12 you?
 13 MR. PATTAKOS: I could feel you.
 14 Q. If a client comes to your office with injuries
 15 and wants to pay using their own health
 16 insurance, do you have a process by which your
 17 office will contact the insurance company to see
 18 if they will pay?
 19 MR. KEDIR: Objection.
 20 A. No, we don't have a process, but I can tell you
 21 if a patient comes to our office and is
 22 represented by an attorney, they will instruct us
 23 when they're done with therapy, hey, make sure my
 24 attorney gets the bills and the records as soon
 25 as you can.

101

103

1 If the patient doesn't have an attorney, then
 2 we ask them, do you have Med Pay on your policy?
 3 Who's going to pay the bill? Have you talked to
 4 a third-party insurance company. Do you have
 5 health insurance? I'll ask them on their exit
 6 day to see if they have anything. And if they
 7 do, they provide it to us and then we send it out
 8 to the billing office and then they do whatever
 9 they do with it. Whether or not I get paid or
 10 not, I have no idea. I'll tell you this, nine
 11 times out of ten, I probably won't get paid on
 12 that case.
 13 Q. If the client wants to be -- wants to pay using
 14 their health insurance, you won't get paid on the
 15 case, is that what you're saying?
 16 A. I'm out of network. Most of the times they will
 17 not pay us.
 18 Q. Okay.
 19 A. Sometimes they do, actually sometimes they'll pay
 20 us, but mainly the -- my experience with this --
 21 and I don't have much experience with this, the
 22 patient's health care insurance will review the
 23 documents, see that it's a motor vehicle accident
 24 and say, hey, follow up with a third-party payer,
 25 here's the information, State Farm, claim number,

1 Q. Let's talk about the narrative reports.
 2 A. Okay.
 3 Q. When did you first start making the narrative
 4 reports?
 5 A. Oh, I don't remember when they started being
 6 requested from me. I've been typing narrative
 7 reports since my first month in practice.
 8 Q. Let me understand that answer, you said, I don't
 9 remember when they first started requesting them
 10 from me. I've been typing them since I first
 11 came to practice?
 12 A. Yeah. So, to go back, I've been typing
 13 narratives since I started practicing. Probably
 14 the first month after I started practicing at
 15 Akron Square Chiropractic.
 16 Q. So attorneys were requesting them from you since
 17 then?
 18 A. Correct.
 19 Q. And when did you start charging separately for
 20 that?
 21 A. I haven't charged separate. My fee was initially
 22 \$200 for a narrative. That's what it was when I
 23 first started out.
 24 Q. And is that what it is now?
 25 A. I get paid anywhere between 150 and 200 for the

102

104

1 date of accident, adjuster, phone number, facts,
 2 have a nice day. They won't pay it.
 3 I don't know if there's a law in Ohio that
 4 restricts insurance companies from paying bills
 5 with patients in auto accidents but that's my
 6 experience with it.
 7 Q. And what about Medicare or Medicaid, are you an
 8 approved provider for them?
 9 A. I'm out of network with everybody.
 10 Q. Okay. So you're not an approved provider for
 11 Medicare or Medicaid?
 12 A. Correct. I'm out of network with every insurance
 13 company.
 14 MR. PATTAKOS: Why don't we take a
 15 break.
 16 THE VIDEOGRAPHER: We're going off
 17 the record. This is the end of Tape No. 1.
 18 The time is 11:15.
 19 - - - -
 20 (Thereupon, a recess was had.)
 21 - - - -
 22 THE VIDEOGRAPHER: We're back on
 23 the record. This is the beginning of Tape
 24 No. 2. The time is 11:25.
 25 BY MR. PATTAKOS:

1 narrative. It should be a lot more, just saying.
 2 Q. Why should it be a lot more?
 3 A. I spend a lot of time. A lot of weekend time, a
 4 lot of evening time. Time that I should be
 5 spending with my kids spending -- looking over
 6 records and preparing narratives.
 7 Q. How long does it take you to prepare one?
 8 A. Oh, it varies. You know, just looking at the two
 9 patients here, Ms. Reid's hours, hour and half,
 10 two hours to review everything. Ms. Reid -- or
 11 Ms. Norris -- I'm sorry -- probably less because
 12 I only treated her four or five times.
 13 Q. So it depends on the records that you would have
 14 to go through?
 15 A. Yeah. Like Ms. Reid's I had to review over a
 16 hundred documents before I prepared the
 17 narrative. And I had to make a pretty good -- or
 18 try to make the best estimation that I could make
 19 for future medical care. Because, again, Ms.
 20 Reid was ejected off a motorcycle in an accident.
 21 It's very different than Ms. Reid -- Ms. Norris,
 22 I'm sorry -- so definitely hers took a little bit
 23 longer just to make these -- cause -- you know,
 24 future medical expense predictions.
 25 Q. It's a range of time you would spend on the

1 narrative reports; is it fair to say anywhere
 2 between half an hour to two hours for each one?
 3 A. Sometimes can be more than two hours. Again,
 4 it's the reviewing of the documents that come up
 5 with the prognosis and the future medical expense
 6 cost. It can take sometimes, you know, 30
 7 minutes, it can take 45 minutes, it can take two
 8 and a half hours, three hours, it just depends.
 9 Q. Okay. It's not typical for it to take more than
 10 three hours though?
 11 A. Usually not, I would say usually not.
 12 Q. Okay. I should have asked: How many kids do you
 13 have?
 14 A. Two.
 15 Q. How old?
 16 A. Three -- my daughter is three and a half, my son
 17 is two.
 18 Q. Wow. That's a handful.
 19 A. Yeah.
 20 Q. And you're married?
 21 A. No. Common law in Canada.
 22 Q. Okay. Your kids are in Canada?
 23 A. Everyone is in Canada.
 24 Q. So you spend the weekdays here and spend the
 25 weekends in Canada?

1 A. No. Now, it's you spend half the week here and
 2 half the week there.
 3 Q. So you're only in -- you're only treating
 4 patients at Akron Square for half the week?
 5 A. Usually half the week. Sometimes early in the
 6 week, sometimes later in the week, sometimes
 7 middle of the week. It just changes week to
 8 week.
 9 Q. Okay.
 10 A. And that's recent, that's for the last three
 11 years.
 12 Q. Since the kids were born?
 13 A. Yeah, before that I was here usually every day.
 14 Q. And your wife lives in Canada?
 15 A. Correct.
 16 Q. What's your wife's name?
 17 A. Lucy.
 18 Q. Is she Greek?
 19 A. Yes. Not that it matters. It doesn't matter.
 20 Q. I had to ask. Okay. It's just a Greek to Greek
 21 thing. You understand.
 22 A. I hear you.
 23 Q. My wife is not Greek. Of course my mother wasn't
 24 either, so my father started, you know --
 25 A. Okay.

1 Q. -- down the road with the --
 2 A. Sure.
 3 Q. All right. So in your discovery responses, in
 4 your responses to an interrogatory you describe a
 5 narrative report and I'll read your description.
 6 You say a narrative report provides a synopsis of
 7 a patient's experience with his doctor, so that
 8 laypersons, attorneys, can understand the medical
 9 notations in the patient's file so it may be
 10 presented cohesively in the representation of
 11 their client.
 12 The narrative report provides the
 13 chiropractor's expert medical opinion on
 14 causation.
 15 The narrative report relates the client's
 16 injuries and the accident within a degree of
 17 reasonable chiropractic probability. The
 18 narrative report proves the chiropractor's expert
 19 opinion on what treatment was necessary and may
 20 be necessary in the future.
 21 The narrative report provides citations to
 22 published reports that support the chiropractor's
 23 expert opinion.
 24 The narrative report serves as an expert
 25 report which is often required in litigation.

1 The narrative report helps attorneys with
 2 presenting, proving and negotiating personal
 3 injury claims. For these reasons attorneys often
 4 request narrative reports.
 5 Is that an accurate description of what a
 6 narrative report is?
 7 MR. KEDIR: Let me get an
 8 objection because it also lists an
 9 objection earlier I believe in that
 10 response too, so...
 11 A. That's fairly accurate.
 12 Q. Is there anything you want to add to that?
 13 A. It doesn't go into the amount of time I spend
 14 reviewing documents and that. It's not just
 15 typing the report. It's much deeper than that.
 16 It's just not putting paper to pen or typing
 17 something out. It's a lot more detailed than
 18 that.
 19 I put a lot of effort preparing these
 20 narratives. I know a lot of patients, example,
 21 Thera Reid, is -- she's probably suffering today.
 22 I haven't seen her in many, many years, but her
 23 level of injury was very traumatic and it's hard
 24 for me to make a solid prediction on future
 25 medical care.

1 Every deposition that I've ever gone to, your
 2 friend Rob Horton, for example, as recent, the
 3 last several depositions he's taken from me at
 4 Slater & Zurz, he's brought up the narrative all
 5 the time. He asks me specific questions, you
 6 know, about the narrative. Why I came up with
 7 reasons, causations, diagnosis and all that
 8 stuff. So I feel like it's very important in the
 9 case. I feel like it's the best interest of the
 10 case -- best interest of the patient for me to
 11 prepare these narratives for them.

12 Q. Did you write that response to that
 13 interrogatory?

14 MR. KEDIR: Objection.

15 A. With my counsel, yeah.

16 Q. With your attorney. Okay.

17 A. Yes.

18 Q. And there are certain attorneys or law firms with
 19 whom you work that automatically requests a
 20 narrative report from you for all --

21 MR. KEDIR: Objection.

22 Q. -- of the clients of that firm that treat with
 23 you, correct?

24 MR. POPSON: Objection.

25 A. I don't work with any law firms, let's make sure

1 we get that because I don't work with any law
 2 firms. I recommend law firms to patients. Many
 3 law firms request narratives. Some more frequent
 4 than others, but I don't work with any law firms.
 5 I wait until I get a request. I produce records.
 6 Sometimes I produce the narratives, sometimes I
 7 don't. It depends on the request of the law
 8 firm.

9 Q. But if you get the request, you will always make
 10 the report, correct?

11 A. Of course if it's requested, yes. So if they
 12 request records, I have to send the records. If
 13 they request bills, I send the bills. If they a
 14 narrative, I request -- I prepare a narrative.

15 Q. And you're aware that KNR automatically requests
 16 a narrative on every case that you're involved
 17 with, correct?

18 MR. POPSON: Objection.

19 MR. KEDIR: Objection.

20 A. That's far from the truth, Peter, that doesn't
 21 happen. It's not every single case. What if the
 22 patient -- what if I treat the patient 25 times
 23 and there's no insurance. There hasn't been no
 24 established insurance on the car that caused an
 25 accident --

1 Q. Uh-huh.

2 A. -- KNR is usually not going to request a
 3 narrative for that patient.

4 Q. Okay.

5 A. So it's not on every single patient.

6 Q. The great majority of them?

7 MR. KEDIR: Objection.

8 MR. POPSON: Objection.

9 A. It's hard for me to say number wise. It's hard
 10 to say based on what I produced, I don't think
 11 it's anywhere close to every patient, but again,
 12 it's very hard to predict.

13 Q. Okay. Are there any other law firms -- are there
 14 any law firms, I should say, for whom you will
 15 produce a narrative report on every case that
 16 that law firm handles where the patient is
 17 treating with you?

18 A. I don't -- I don't produce any narratives on
 19 every case for any law firm that I have patients
 20 with. It just doesn't happen. So there are
 21 attorneys that request narratives and when the
 22 request comes in, I comply and I produce the
 23 narrative. But it's never on every case for
 24 every law firm.

25 Q. Or on the great majority of them?

1 MR. KEDIR: Objection.

2 MR. POPSON: Objection.

3 A. That's so hard to say, Peter, very difficult to
 4 say.

5 Q. So let me understand your testimony about KNR.
 6 Is it your testimony that you do not produce a
 7 narrative report on the great majority of cases,
 8 KNR cases, where you treat the patients?

9 MR. KEDIR: Objection.

10 MR. POPSON: Objection.

11 A. I can't say it's a great majority or great
 12 minority, it's case-to-case basis. If a patient
 13 -- if I release a patient and KNR sends a request
 14 that asks for a narrative, I'll produce a
 15 narrative. If that request doesn't say produce a
 16 narrative, I won't produce a narrative.

17 Q. I'm not asking you that, I'm asking if you're
 18 denying that on the great majority of KNR cases
 19 where you are treating the patient, you are asked
 20 to produce a narrative report by KNR.

21 Are you denying that or are you saying you
 22 don't know?

23 MR. KEDIR: Objection.

24 MR. POPSON: Objection.

25 A. Yeah, I'm not -- I don't know. I'm not agreeing

113

1 or denying to that, I don't know.

2 Q. That's all I wanted to know. At what point

3 during the patient's course of treatment do you

4 typically prepare this report?

5 A. It's much after -- much later than the last date

6 of their treatment.

7 Q. Much later than the last date of their treatment?

8 A. So when I release a patient, the patient usually

9 calls their attorney within a week, I would say

10 it depends on the paralegal. I guess some are

11 quicker than others. Some will request a

12 narrative two weeks post treatment, some will

13 request a narrative 30 days post treatment, some

14 60, it just depends.

15 Like many times I'll release a patient, but

16 that patient may not be treating. They may be

17 doing -- they might not -- they might not be

18 finished treating at their physical therapist's

19 office, so many times I'll get a request for a

20 narrative four or five months post treatment. It

21 just depends.

22 Q. But it will typically be after the treatment?

23 A. It's not typically, it's always after treatment.

24 Nobody ever asks me for a narrative -- I mean, I

25 guess sometimes I've been asked for a pre-release

114

1 description of future medical costs, but that's

2 very infrequent. It's always after.

3 Q. Well after?

4 A. It can --

5 MR. KEDIR: Objection.

6 MR. POPSON: Objection.

7 A. -- it just varies, like I said.

8 Q. Can you describe the process of creating these

9 reports?

10 A. I think I've already stated that. I review the

11 records, review the documents, and I usually sit

12 at a desk and I review them and I have many, I

13 would say narrative that I use, I guess you call

14 them templates, if you want, and I input data

15 based on each patient, each individual patient's

16 care.

17 Q. How many templates do you have?

18 A. Oh, I don't know. Over 15 years, there's a

19 bunch. I don't know.

20 Q. What's a bunch, like 1,000?

21 A. Oh, there's a lot. There's just different ones,

22 I don't --

23 Q. Or a dozen?

24 A. I don't know, Peter. I have no idea.

25 Q. Closer to a dozen or closer to 1,000?

115

1 A. I don't know.

2 MR. KEDIR: Objection.

3 A. I don't know. They're very similar in nature.

4 There's a few words different on each template,

5 but they're -- generally the same information

6 goes into a narrative report.

7 Q. Okay. How do you -- where are these templates

8 stored?

9 MR. KEDIR: Objection.

10 A. On my computer -- you know, usually in the

11 computer.

12 Q. So there's a file somewhere in your computer

13 where all these templates are?

14 A. Yeah.

15 Q. And then you pull one up, you figure out which

16 one would --

17 A. No, I don't figure out, I just open up a template

18 and just open up one of my narrative reports and

19 I fill in the gaps. It's not -- I don't pick a

20 specific template --

21 Q. Why not?

22 A. -- it's --

23 MR. KEDIR: Objection.

24 A. It's just over the years they're very similar.

25 Like when I say template -- there's no -- there's

116

1 not much variation from one to the other.

2 They're very similar in nature.

3 Q. The templates?

4 A. Yeah, like I've changed a couple -- a little bit

5 of wording here and there on a few of the

6 templates over the years, but it's not -- there's

7 not a big difference between them.

8 Q. You don't use a computer to automatically

9 generate narrative reports, do you?

10 A. No.

11 MR. KEDIR: Objection.

12 A. I wish I did, but I don't.

13 Q. Why do you wish you did?

14 A. Make my life a lot easier.

15 Q. Why don't you do it then?

16 A. I just don't have a system in place for that. I

17 don't know how to do it. I have no idea. I

18 would spend a lot more time with my family if I

19 did, I'll tell you that much.

20 Q. Are you aware that other chiropractors do this?

21 A. I don't know. I've read some -- I've read a lot

22 of narratives over the years. I don't know if

23 they're computer generated or if they prepare

24 them at home. I have no idea. I don't know if

25 you can prepare a -- make an accurate statement

117

1 about causation, about future medical care, using
2 a file open print narrative on any case. I think
3 it's wrong to do that.

4 Q. Have you ever come back and told KNR that there
5 was no causation on a case with one of their
6 clients?

7 A. I wouldn't say no causation. There's been times
8 where the injury is an exacerbation of a previous
9 problem. Most patients that come to my office,
10 come with soft-tissue injuries. A lot of them
11 just come for a basic examination and they have
12 no pain.

13 So I would say if they've treated at my
14 office and I've reviewed the documents, I've
15 already reviewed the crash report, you know, when
16 they first started treating, I've already
17 determined causation usually the first or second
18 day after treating the patient. So there's
19 usually causation.

20 Now whether is it a direct result of the
21 motor vehicle accident or is it an exacerbation
22 of a preexisting problem, that will go in the
23 narrative.

24 So if a patient has a previous lumbar or
25 cervical fusion and they're hit from behind at 40

118

1 miles an hour and they have back pain, well, the
2 pain after the accident may be a nine out of ten,
3 previous to the accident they've been in pain
4 management all their life, their pain is a five
5 out of ten, there's not a direct cause of injury
6 to the low back from the accident, but there's an
7 exacerbation or flare-up because they already
8 have some preexisting problems, so that will go
9 in the narrative as well.

10 And in that case it's very difficult to
11 predict future medical expenses because, you
12 know, they've already had some back pain.

13 Q. So you can't recall an instance where you ever
14 come back and said to KNR there's no causation on
15 this case?

16 MR. KEDIR: Objection.

17 A. I think if the patient -- like if the patient
18 treats at my office for an injury and I've
19 established -- if I've established causation on
20 day one and I've decided to treat the patient,
21 usually there's a causation there.

22 The patient reports to my office with
23 injuries from a motor vehicle accident or a work
24 injury or they fell outside of, you know, Acme,
25 there's a causation to an event. They just don't

119

1 come -- I shouldn't say that, some patients come
2 to my office and say, hey, doc, I want a free --
3 I want a screen, can you tell me if anything is
4 wrong with my neck or my shoulder is misaligned,
5 there's no causation of an event there, it could
6 be bad posture.

7 But the patients that come in injured from
8 something, there's a causation to something.
9 There's some reason why they hurt. And the
10 patients that are in a car accident -- you know,
11 if you review the report and then gone to the ER,
12 I review the records and I do an examination, at
13 that point I've determined causation already. If
14 I'm treating them, there's a reason why I'm
15 treating them. I'm not just treating them just
16 because. There's a diagnosis established from a
17 trauma, like a car accident case.

18 An example for Ms. Reid and Ms. Norris, they
19 both presented to my office with very high levels
20 of pain. I reviewed the crash report with them
21 and causation was established, you know, after my
22 initial examination.

23 But when I prepare the narrative, I've got to
24 go back and re-review it because I may have
25 looked at the crash report, you know, in Thera

120

1 Reid's case five months prior to me preparing the
2 narrative report, so I've got to go back and
3 re-review it.

4 So, sorry, to answer the question is, I would
5 say the majority of patients who I treat who are
6 injured, a causation has already been
7 established. Now is the causation the direct
8 result or is it an exacerbation, that goes into
9 the report.

10 Q. The causation has already been established by you
11 after treating them on the first day or how else
12 was it established?

13 A. Well, yeah. Like the patient comes in
14 complaining of neck pain. Doc, I was rear-ended
15 at 30 miles an hour, my neck hurts, I went to the
16 hospital, I have headaches. Well, I'd review the
17 report, I do my examination, I find problems,
18 causation is established.

19 Q. Is this more likely than not that the accident
20 caused those injuries?

21 A. It depends. Every patient is very unique. If a
22 patient comes in and tells me, doc, I have back
23 pain. Okay. Do the examination, there's some
24 problems there. What's your back pain today?
25 Eight. Okay. Did you have back pain yesterday?

121

123

1 Yes. What was it? Eight. Well, there's no
2 exacerbation of that problem, right? So I've got
3 to refer them back to their physician who they
4 were treating with, or I tell them follow up with
5 me in a week if they have any other problems.

6 In that case I wouldn't produce a narrative
7 because I wouldn't have seen the patient. All
8 right. It happens all the time. You know, this
9 happened last week. A patient came in to see me
10 who was treating with another chiropractor. He
11 had a flare-up, he's had a cervical fusion, he
12 recently had hernia surgery. He had pain in his
13 abdo -- abdominal area. I saw him, he had a
14 little bit of flare-up, he went back to his
15 previous physician, I never saw him again.

16 So for that particular case, I don't think an
17 attorney would ever request a narrative for him
18 because I didn't treat the patient. Right. So
19 in that case, it would never be requested.

20 And I guess you'd have to ask KNR on which
21 cases they request narratives on. I just do it
22 when it's requested of me.

23 Q. It would never be requested because you wouldn't
24 treat the patient, correct?

25 MR. POPSON: Objection.

1 who -- this is the case I'm familiar with for
2 this deposition. These two patients presented to
3 my office both with pain, different levels of
4 injury, different levels of trauma. Both
5 complained of pain in their neck and back. Ms.
6 Reid obviously had a broken arm, shoulder pain.
7 She told me, doc, I'm hurting from this accident.
8 That's her subjective complaints.

9 Objectively I perform an exam. I look at the
10 report and then I make the causation based on my
11 examination. And in that case causation is
12 determined. Treatment is rendered.

13 If the patient comes into me in a car
14 accident with no pain, I don't treat the patient.
15 There's no causation, there's no pain, but they
16 have come to my office in the past just for a
17 checkup, represented by an attorney, not
18 represented by an attorney, it makes no
19 difference.

20 A lot of people after an auto accident want
21 to be sure. They're a little stiff, they're a
22 little sore, let me get it checked out. We check
23 them out, you know what, if you have any problem
24 within 30 days, give us a call back.

25 Q. So if there is pain -- if you find that the

122

124

1 MR. KEDIR: Objection.

2 A. No, no, no, that's wrong. Because I've treated
3 patients, let's say one, two, three times, the
4 patient doesn't come back, they go to their
5 family doctor who refers them to a physical
6 therapist, I don't get a request for a narrative.
7 It's happened many times. It happens all the
8 time. I don't produce a narrative on every
9 patient.

10 Q. Okay. But I want to go back to -- I'm going back
11 to the causation question.

12 A. Okay.

13 Q. So what you're saying is that you won't treat the
14 patient if you don't determine on the first
15 meeting, the first appointment, that there is
16 causation; am I understanding that correctly?

17 MR. KEDIR: Objection.

18 MR. POPSON: Objection.

19 A. No, I think you're misunderstanding what I'm
20 saying.

21 Q. Please.

22 A. I said if the patient comes into my office with a
23 new problem or a flare-up of a previous problem,
24 and they've been involved in recent trauma, for
25 example, I'll use Thera Reid and Monique Norris,

1 patient is in pain --

2 A. Yes.

3 Q. -- and it is new pain that did not exist before
4 the car accident then you will find causation,
5 correct?

6 MR. KEDIR: Objection.

7 A. I'm not finding anything. I don't make up
8 causation. There is causation --

9 Q. You will -- okay. That's what I mean, you will
10 -- your opinion will be that there is causation?

11 A. Yeah. So just to go back, if they've been in
12 trauma, motor vehicle accident, I lifted, you
13 know, a work injury --

14 Q. Fell off a ladder?

15 A. -- fell off a ladder, fell at Acme, slipped on
16 something at a restaurant, they come in with back
17 problems.

18 Q. Uh-huh.

19 A. That's a subjective complaint. Doctor, my back
20 hurts. Okay. I'm not going to examine their
21 abdomen, I'm going to examine their back. An
22 examination is performed, orthopedic tests are
23 done, range of motion, palpation, all kinds of
24 testing is done.

25 If a problem is determined because orthopedic

1 tests are positive or range of motion is
 2 restricted, a treatment plan is formed.
 3 Causation hasn't been determined. We review the
 4 x-rays, we take the x-rays, we come up with a
 5 treatment plan, we have goals in place and
 6 causation at that point, yes, you were injured in
 7 the car accident. Treatment will commence. But
 8 just because they come into the office, doesn't
 9 mean there's causation.

10 Q. Of course. I understand.

11 A. Yeah.

12 Q. I understand. Let's look at some narrative
 13 reports.

14 MR. PATTAKOS: Mark the next four
 15 exhibits.

16 - - - -

17 (Thereupon, Plaintiff's Exhibits 8, 9, 10, 11
 18 were marked for purposes of identification.)

19 - - - -

20 Q. Will you agree that these are four narrative
 21 reports that you produced for KNR clients?

22 A. I don't know who they're clients of, but these
 23 are my narrative reports.

24 Q. Okay. So it looks like they take a different
 25 template. If you look at Exhibits 10 and 11,

1 they're quite different in form from Exhibits 8
 2 and 9; is that fair?

3 A. Yes, that's fair.

4 Q. So why would you use one template in the case of
 5 No. 10 and 11 versus the templates used in --
 6 template or templates used in Exhibits 8 and 9?

7 A. There's no reason. I could have pulled up any of
 8 them and produced a very similar report based on
 9 each specific patient's findings. So I could
 10 have used -- I could have used a system for Thera
 11 Reid, you know, from the Monique Norris style or
 12 I could have used the [REDACTED] style. It
 13 doesn't matter. Just they're all -- they're all
 14 very similar in nature. There's not much
 15 difference here. You know, they all say very
 16 similar things.

17 And when I say template, it's -- like the
 18 Thera -- let's look at Exhibit 9, my template is
 19 just so I don't have to retype patient's
 20 description of pain, diagnosis, treatment,
 21 prognosis. Like there's no --

22 MR. MANNION: You're referring to
 23 the headings?

24 THE WITNESS: Yeah, like the
 25 headings there.

1 A. There's no template where like I push a button
 2 and it's produced, right? Like, so the patient's
 3 description of pain, you know, I type things out.
 4 Diagnosis, I go and I type in cervical sprain,
 5 lumbar sprain, thoracic sprain, right shoulder
 6 sprain. Treatment, you know, type that out.

7 So there's no real -- I see "template", it
 8 just -- so I don't have to type the headings
 9 again.

10 Q. Well, so I see on Exhibits 10 and 11 for Ms.

11 [REDACTED] and Ms. [REDACTED] you answered a series of
 12 questions at numbered points three through
 13 seven --

14 A. Uh-huh.

15 Q. -- it looks like you did not do the same with
 16 Norris and Reid. Why is that?

17 A. I don't -- I don't know. I don't know, Peter.
 18 It's -- every report is a little bit different.

19 It doesn't -- again, I could have used these
 20 points, Exhibit 10's points for Thera Reid. I
 21 don't really have an organized system as to which
 22 report I use. I just know I have to produce a
 23 narrative and that's pretty much it.

24 Q. Okay.

25 A. Like my charge doesn't change here. They're

1 similar. And if I spend -- because this said two
 2 hours on the report, it doesn't matter if
 3 [REDACTED] is -- or Monique Norris -- I
 4 shouldn't say it's less -- whatever looks less to
 5 you it doesn't mean there was less time put into
 6 it. Because what goes -- the typing portion of
 7 the narrative is not -- you know, it doesn't
 8 matter because it's the review of the chart that
 9 matters. It's coming up with these ideas and
 10 these conclusions and expert opinions that
 11 matter. The length of the narrative doesn't
 12 matter. Like I've seen narrative reports that
 13 are a paragraph long from, you know, orthopedic
 14 surgeons or I go to depositions, they show me
 15 opinions from other professionals and sometimes
 16 they're just a paragraph. And they charge
 17 hundreds and hundreds of dollars for these
 18 reports. So it doesn't matter on the style or
 19 the length of the report per se. And there's no
 20 reason to go back to your -- there's no reason
 21 why I use this particular report style for Ms.
 22 Reid. There really is no system.

23 Q. If we look at Monique Norris' report -- well, let
 24 me ask you first, let me back up. Why don't you
 25 -- why don't you put a date on these reports when

1 you write them?
 2 A. I don't know. I really don't know. I could. I
 3 just -- when it's midnight, Peter, I just try to
 4 get through, try to get through them.
 5 Q. So is that standard for you to not put dates on
 6 these reports?
 7 A. I think if I'm looking at these reports, they all
 8 don't have dates on them. So it's, again, I'm
 9 just trying to get it done.
 10 Q. Okay. The Monique Norris report has a fax line
 11 on it, December 3rd, 2013. Do you recognize that
 12 as being from your office?
 13 MR. KEDIR: Objection.
 14 A. I have no idea. I don't -- I have no idea.
 15 Q. Do you think it's likely that Ms. Norris -- that
 16 you produced this report to KNR on December 3rd?
 17 MR. KEDIR: Objection.
 18 A. It's hard to say. I have no idea.
 19 Q. Okay.
 20 A. It may or may not have been.
 21 Q. Okay. I believe her last date of treatment was
 22 September 4th?
 23 A. Correct.
 24 Q. Would that be typical to produce a -- to have a
 25 narrative report requested and then produce it

1 about three months after the last date of
 2 treatment?
 3 MR. KEDIR: Objection.
 4 A. It's hard to say if it's typical or not. But if
 5 I -- again, I just reviewed Monique Norris'
 6 records, she had extreme pain following the
 7 release of treatment. She had had a
 8 hysterectomy, I think a full hysterectomy
 9 surgery, after the second treatment date. And I
 10 believe she told us that she was going to seek
 11 other treatment because the therapy wasn't
 12 helping her pain decrease at the satisfaction
 13 that she wanted to. So it's possible -- and
 14 again, you'd have to ask KNR when they requested
 15 it, but it's possible that Ms. Norris sought
 16 treatment elsewhere, completed her treatment, and
 17 then maybe the request was made.
 18 I don't know if the paralegals over at KNR
 19 send medical requests until the patient is over.
 20 I don't know. It's possible. But I'm assuming
 21 Ms. Norris had more care because she had such
 22 high levels of pain. I hope she got more care
 23 because she had high levels of pain.
 24 Q. When you say, under the prognosis for Monique
 25 Norris, that her prognosis is good, she continues

1 to experience mild symptoms in her left shoulder,
 2 neck and low back --
 3 A. Uh-huh.
 4 Q. -- do you intend that -- from what date are you
 5 -- to what date are you referring there?
 6 A. From the last date of treatment. So what I'm
 7 referring to there is her long-term prognosis
 8 with therapy, right? So she had typical
 9 soft-tissue trauma. She had cervical sprain, a
 10 shoulder sprain, thoracic sprain, headaches,
 11 muscle spasm, myofascitis and lumbar sprain.
 12 With therapy her prognosis would be good. So
 13 typical six-to-eight-week-treatment plan should
 14 probably be enough to have her prognosis -- get
 15 her to the level where she needs to be at, but
 16 again, she said she had pain on her last day of
 17 treatment, so that's where my statement probably
 18 there is coming from.
 19 Q. Okay.
 20 A. So if I produced this several months later, I
 21 would look back, look at the records, look at the
 22 crash report, look at the ER records. Okay?
 23 It's a soft-tissue injury, there's nothing --
 24 there's no possible tear of any, you know,
 25 supraspinatus, rotator cuff, it's not documented

1 in the ER records or my records so with long-term
 2 therapy she should be favorable. So her
 3 prognosis in this case would be good.
 4 Q. So if there's no tear, as you just said,
 5 generally a patient's prognosis will be good?
 6 A. No, I didn't say that. Tear in what way? So
 7 there's -- if she came out with a -- if we
 8 ordered an MRI and she had a blown-out tendon
 9 that required orthopedic consultation, her
 10 prognosis would be fair or guarded --
 11 Q. Uh-huh.
 12 A. -- because that can take up to a year to two to
 13 heal.
 14 Q. Well, a blown-out tendon is a torn tendon?
 15 A. Yes. I'm just looking at the shoulder example
 16 here. I'm just giving you hypotheticals here,
 17 this is not the true case of Monique Norris,
 18 Monique Norris had no tears --
 19 Q. I understand.
 20 A. -- she had microscopic tears at the ligament
 21 level which is a sprain. Okay. There's a strain
 22 and a sprain. A strain is microscopic tears of
 23 the muscle. A sprain is microscopic tears of the
 24 ligament. Those are typical soft-tissue injuries
 25 that we see in our office all the time. That's a

1 common diagnosis.

2 **Q.** A strain is less serious than a sprain?

3 **A.** Correct. Not always -- it's not always the case.

4 Ask LeBron James who's strained his inguinal

5 area. So it depends on where the strain is.

6 Sometimes they heal well --

7 **Q.** Uh-huh.

8 **A.** -- sometimes they don't. But typically in a

9 cervical spine, yes, a sprain is much more

10 significant than a strain. A strain with -- if

11 there's a strain and not a sprain, within a

12 couple weeks of therapy, they should be okay. If

13 there's a sprain, it can take a little bit

14 longer. And again, it depends on the patient's

15 age. Depends on how well the patient responds to

16 therapy. Depends if they have any other

17 secondary problems. For example, Monique Norris,

18 again, she had a hysterectomy problem. A lot of

19 scar tissue in her abdomen. It might take her a

20 little bit longer with therapy, but again,

21 typically the diagnosis is favorable. The

22 outcome is favorable with therapy.

23 **Q.** It's generally easier in talking about the

24 difference between a sprain and a strain, the

25 muscle heals faster and easier than a ligament

1 will, generally --

2 **MR. KEDIR:** Objection.

3 **Q.** -- is that fair?

4 **A.** So muscles have a much higher blood supply than

5 ligaments, right? So a strain around the spine

6 should heal faster than a sprain, but that's not

7 always the case because if you have a strain and

8 it heals with a trigger point and scar tissue

9 builds up and if they have a case of say

10 fibromyalgia where they already have a ton of

11 scar tissue in and around the muscle bellies, it

12 will take a lot longer to fix the strain.

13 So it's -- it's just very -- every patient is

14 different, Peter. Every single patient is

15 different.

16 But going back to Monique Norris here, the

17 prognosis. With the right therapy -- and again,

18 I believe she sought care after, and I hope she

19 did, with chiropractic, with physical therapy,

20 she should have healed well.

21 **Q.** So why is it -- why do you not distinguish under

22 diagnosis between sprain and strain if you look

23 at Monique's report? You see cervical

24 sprain/strain, what does that mean?

25 **A.** She had both cervical sprain and cervical strain.

1 Thoracic, she had both a sprain and a strain.

2 **Q.** Okay.

3 **A.** Lumbar spine, I believe she just had a sprain,

4 not a strain. I didn't feel any nodules, any

5 trigger point problems in her lumbar spine --

6 **Q.** Uh-huh.

7 **A.** -- it doesn't mean she didn't have it because

8 typically if -- look, if you're in a trauma

9 situation and your body is whipped violently in

10 an accident and there's a sprain, a sprain

11 usually results in a strain as well. Like they

12 kind of go hand in hand. If someone has a

13 sprain, it's very unlikely that they wouldn't

14 have had a strain because, you know, there's

15 levels there --

16 **Q.** Of course.

17 **A.** -- beneath the tissue, force of impact is going

18 to tear up to the ligament level. There's

19 muscle, there's skin, there's fat, there's muscle

20 and then there's ligament. So if that ligament

21 is sprained, there's a probably good chance there

22 is a strain involved.

23 **Q.** And you diagnose whether a sprain or strain

24 exists based on your physical examination of the

25 patient?

1 **A.** Correct.

2 **Q.** And based on whether pain is reported?

3 **A.** Correct. So if pain is reported, examination is

4 done and it's determined that they have a

5 sprain/strain -- now, the diagnosis code doesn't

6 change. Like the diagnose code is the same. I

7 don't really know why. In 847.2 is a lumbar

8 sprain and the strain. It's kind of combined,

9 they're not different.

10 **Q.** But you don't -- when you refer to microscopic

11 tears, you're not taking a picture of those

12 tears --

13 **A.** Oh, no, not at all --

14 **Q.** -- and looking at them?

15 **A.** -- no, not at all --

16 **Q.** Okay.

17 **A.** -- not at all.

18 **Q.** When an MRI is performed and when you order an

19 MRI, that is to determine what?

20 **A.** An MRI is to determine a much more significant

21 problem. I'm not looking -- I'm not ordering an

22 MRI to see a possible sprain --

23 **Q.** Right.

24 **A.** -- I already know there's a sprain. There's a

25 much -- remember there's different layers, right?

137

139

1 You've got skin, fat, muscle, tendon, ligament,
 2 disc. So if I'm ordering an MRI, most likely
 3 it's because the patient is involved in a pretty
 4 significant trauma case. Or I believe based on
 5 my testing that it's not just a sprain.
 6 And I don't like guessing, so I'd rather know
 7 that if it's a disc problem, I can alter my
 8 therapy and do different things because disc
 9 patients are much different than a sprain
 10 patient. Much different.
 11 Q. And describe what these disc problems are.
 12 A. Disc injuries -- so, remember we have 26
 13 vertebra, seven in the neck, 12 in the thoracic
 14 spine, five in the lumbar spine. Your entire
 15 spinal column is -- you know, if I can grab this
 16 here, like the entire spinal column is wrapped
 17 around by ligaments, right? All up and down the
 18 spine. But then you have muscles that come in
 19 and at the end of the muscle there's a tendon
 20 that attaches into the spine as well. Below
 21 that, in between each vertebra there's a disc.
 22 So the ligament is pressed up against that disc,
 23 containing that disc within its socket -- now,
 24 there's other things also that hold the disc in
 25 its place, but when that ligament is ruptured or

1 Q. I'm sorry, a radi -- what is it called?
 2 A. An MRI.
 3 Q. MRI.
 4 A. MRI.
 5 Q. I'm sorry. Thank you.
 6 A. But a lot of times you don't need an MRI to make
 7 a diagnosis of a disc injury. There's orthopedic
 8 tests with the lumbar spine like straight leg
 9 raise, Valsalva maneuver, that aren't too
 10 pleasant for the patient, they hurt. And the
 11 diagnosis is made.
 12 Now, if the patient -- you know, a patient
 13 can have radicular symptoms caused by disc and
 14 two, three weeks later that disc resolves with
 15 therapy and they feel fine, they don't need an
 16 MRI. But if treatment isn't helping the problem,
 17 then we go ahead usually, most times, is order an
 18 MRI just to be sure. And if the MRI comes back
 19 positive, then they get referred out to a
 20 specialist for a consultation.
 21 Q. So unless a sprain or a strain is severe, looking
 22 back at Monique Norris' narrative report, then
 23 prognosis will typically be good with continued
 24 treatment?
 25 MR. KEDIR: Objection.

138

140

1 sprained, it weakens the area where the disc is
 2 pressing up against the ligament. So if that
 3 ligament is compromised, that disc can tear, it
 4 can bulge, it can protrude, it can herniate to
 5 different sides. It can leak fluid out to the
 6 nerve root. It's a much more catastrophic
 7 problem. And it's -- different therapy is
 8 required. I usually involved orthopedic
 9 surgeons. I involved neurologists. The patient
 10 probably needs physical therapy after I'm
 11 finished treating them just to strengthen more
 12 muscles, do more aggressive active physical
 13 therapy, but they're two different injuries.
 14 Q. And you would use to be -- strike that.
 15 To diagnose a disc problem, herniated disc or
 16 whatever the other disc problems, that you were
 17 referring?
 18 A. Well, there's disc bulges. There's herniated
 19 disc. There's protrusion of a disc. There's
 20 annular fissure tears. There's a bunch of
 21 different diagnoses, different traumas to discs
 22 that can occur.
 23 Q. So to diagnose that, you'd need an x-ray?
 24 MR. KEDIR: Objection.
 25 A. No, an x-ray doesn't show a disc.

1 A. Yes. If it's just a sprain and a strain with
 2 therapy, based on my clinical experience, you
 3 know, most soft-tissue patients heal pretty well
 4 to therapy, whether it be physical therapy or
 5 chiropractic, in a timely manner. But the
 6 prognosis is usually favorable.
 7 An example like Thera Reid, much different
 8 situation. Much different situation.
 9 Q. How so?
 10 A. Different levels of sprain. Different levels of
 11 trauma. She was ejected off a motorcycle. She
 12 doesn't have a car surrounding her. She has no
 13 buffers. It's Thera Reid versus concrete when
 14 that motorcycle fell. That impact, I'm sure
 15 you'd agree, is far greater than being in a
 16 vehicle being hit from behind or being hit from
 17 the side. Thera Reid's issue is not just
 18 soft-tissue injury, it's hard-tissue injury. She
 19 fractured bones. If you're fracturing bones,
 20 you're causing serious trauma to ligaments
 21 everywhere, not just shoulder, neck, back, hips,
 22 knees, a lot of problems.
 23 Q. When you described your -- when you provided your
 24 description of a narrative report in your
 25 interrogatory answer, you said part of that was

141

1 providing the expert -- the chiropractor's expert
 2 opinion on what treatment was necessary and may
 3 be necessary in the future.
 4 How do you determine what treatment may be
 5 necessary in the future when you make these --
 6 when you put this in a narrative report?
 7 A. Again, I look at -- I look at their pain levels.
 8 I look at the pain levels on day one. I look at
 9 the pain levels in the middle of treatment. I
 10 look at the pain levels at the end of treatment.
 11 Based on that -- again, I'm told to make
 12 predictions every day on my work -- workers'
 13 compensation patients where they ask questions
 14 like what do you expect the flare-ups to be over
 15 the next blank, weeks, months or years. So
 16 you've got to make a prediction. So I look at
 17 that and I determine, okay, you know, Thera Reid,
 18 that level of impact, those ligaments are most
 19 likely going to take multiple years to recover.
 20 And I put down here that she needs probably
 21 -- and again, this is just a -- and it's probably
 22 a weak estimation now that I look at this -- the
 23 cost to stabilize her condition over the next
 24 year, which probably should be two years looking
 25 back at her file, is approximately \$5,000. With

142

1 that \$5,000 I would probably expect her to need a
 2 ton of muscle stimulation, exercises, especially
 3 to the shoulder, manipulation, all kinds of
 4 therapy that she would need. And this is coming
 5 from my office. Like, obviously, if she went to
 6 another specialist and she needed another surgery
 7 for her arm, that's -- I can't make that
 8 determination.
 9 My future medical costs are based on the
 10 therapies that I provide.
 11 Q. As a chiropractor?
 12 A. Well, yeah, as a person treating injured people
 13 injured in auto accidents.
 14 Q. So when you write here the cost to stabilize her
 15 condition over the next year is approximately
 16 \$5,000 --
 17 A. Uh-huh.
 18 Q. -- that means \$5,000 in chiropractic care?
 19 A. Meaning all types of therapy. Whether it be
 20 physical therapy, whether it be chiropractic.
 21 It's all therapy. Any therapy that she can get
 22 somewhere, in my estimation, is based on that. I
 23 know what people charge at Akron General Wellness
 24 Center. For one unit of therapy it is 95 bucks.
 25 Q. So you're not referring to whether surgery would

143

1 be necessary or not?
 2 A. Oh, I never make that determination, I can't.
 3 Q. Okay.
 4 A. I'm not a surgeon. I rely on my -- the
 5 orthopedic surgeons who are so kind to look at my
 6 patients, I rely on their expertise for that.
 7 Q. So when you make a diagnosis for Thera Reid --
 8 A. Uh-huh.
 9 Q. -- that says cervical sprain -- you know what,
 10 strike that.
 11 Let's look at Monique Norris. When you write
 12 this patient's description of pain here in the
 13 first section --
 14 A. Uh-huh.
 15 Q. -- Monique Norris presented to Akron Square
 16 Chiropractic following a motor vehicle accident
 17 with symptoms of moderate left shoulder pain, et
 18 cetera. Where do you get this information from?
 19 A. From her chart, from the ER records --
 20 Q. Okay.
 21 A. -- and my chart. I have examined the patient, I
 22 know what her pain levels are. I've asked her
 23 how the pain affects her activities of daily
 24 living. I saw her left shoulder was a bit
 25 limited, it was sprained, that's where I get that

144

1 information from.
 2 Q. From medical records that either were generated
 3 by your office or were provided to your office --
 4 A. Correct.
 5 Q. -- and that are part of the client's file,
 6 correct?
 7 A. Yes, correct.
 8 Q. Would anything ever appear in this section of the
 9 narrative report that you didn't get from the
 10 records that were in your possession or generated
 11 by your office?
 12 MR. KEDIR: Objection.
 13 A. There could be things that I miss. Again,
 14 sometimes I do these late at night so I'm looking
 15 at the ER records and sometimes I forget to add a
 16 diagnosis or forget to mention a symptom.
 17 Usually I go by what the patient's chart says. I
 18 look at the patient's intake form. I look at my
 19 examination of the patient. And that's where I
 20 kind of get this information from. But is it
 21 possible that I miss something, maybe.
 22 Q. That you miss something in the records?
 23 A. Correct. That's not in the narrative.
 24 Q. I'm sorry, but I'm asking about the other way
 25 around. Would you ever put anything in the

1 narrative report that's not reflected in the
 2 medical records?
 3 MR. KEDIR: Objection.
 4 MR. POPSON: Objection.
 5 MR. MANNION: Objection to
 6 anything.
 7 A. I don't think so.
 8 Q. Okay. Did you understand the question?
 9 A. Well, I'm understanding that, again, my
 10 description of what I put in the narrative comes
 11 from -- I review the chart and based on what I
 12 see in the chart and based on what I see in the
 13 records, I put in my description of pain in the
 14 narrative.
 15 MR. KEDIR: You're talking about
 16 the diagnosis section or the --
 17 A. It's under the description of pain section --
 18 Q. Yes.
 19 A. -- so that's where I kind of gather that
 20 information from. I look at my records and I
 21 transfer that information onto my narrative.
 22 MR. PATTAKOS: This is Exhibit 12.
 23 - - - -
 24 (Thereupon, Plaintiff's Exhibit 12 was marked
 25 for purposes of identification.)

1 Q. This is the SOAP note for the last day of
 2 treatment?
 3 A. That's correct.
 4 Q. Okay. And then we see SOAP notes for August 1st
 5 and August 8th on the next page?
 6 A. Uh-huh.
 7 Q. And what's on the page after that?
 8 A. That's my diagnosis, my diagnosis code sheet.
 9 Q. And this is for September 31st, this was the
 10 diagnosis -- or I'm sorry, July 31st, this is the
 11 diagnosis that you made?
 12 A. Yeah, this is after the first, first consultation
 13 visit.
 14 Q. Okay. And then from there we see some records
 15 from Akron General. These look like the ED
 16 records, correct?
 17 A. Correct, yes.
 18 Q. The emergency department records. And then we
 19 get to a page from the department of radiology at
 20 Akron General Medical Center.
 21 A. Yep.
 22 Q. So it looks like they did an MRI of her left
 23 shoulder, correct?
 24 A. I don't know if it's an MRI or a radiograph. I
 25 can't --

1 - - - -
 2 Q. Okay. These are documents that were recently
 3 produced by your attorney as Monique Norris'
 4 medical records or chiropractic records from your
 5 office.
 6 Does that look accurate to you?
 7 A. Yes, it does.
 8 Q. So if we just walk through these records. This
 9 first page is something that you ask the patient
 10 to fill out?
 11 A. Yes.
 12 Q. The second page is a record of your examination,
 13 correct?
 14 A. That's a -- that's a SOAP note.
 15 Q. A SOAP note?
 16 A. Yeah.
 17 Q. What does that mean?
 18 A. A SOAP note is a record. That's what they're
 19 called, they're called SOAP notes. So every day
 20 a SOAP note is produced and it says Subjective,
 21 Objective, Assessment and Plan. That's what SOAP
 22 note means. This is a SOAP note that I used to
 23 use in the past. It's probably -- I think it's
 24 the last day of treatment that Ms. Norris
 25 received.

1 Q. Okay.
 2 A. -- I think it's an x-ray, I don't think it's an
 3 MRI unless I'm looking at the wrong page.
 4 Q. A radiograph is an x-ray?
 5 A. Yes.
 6 Q. Okay. And the same for the pelvis on the next
 7 page?
 8 A. Correct.
 9 Q. Okay. And then this next page, explanation of
 10 dry hydrotherapy --
 11 A. Yep.
 12 Q. -- this is something that is produced by your
 13 office, correct?
 14 A. Correct. Because this is the 97039. This is the
 15 unlisted modality. And a lot of times insurance
 16 companies will say, hey, what's unlisted
 17 modality? We're not paying for it unless we see
 18 something. What is it? So this would just
 19 include this part of the record.
 20 Q. Okay. And you referred Ms. Norris to Diagnostic
 21 Imaging Consultants for an MRI, correct?
 22 A. No, this is a second reading of my x-ray. So
 23 National Diagnostics Imaging Consultants is Dr.
 24 Dan Hahn [phonetic]. I send all my x-rays to be
 25 read by Dr. Hahn just in case I miss any

1 fracture. I just always like having two eyes on
 2 a film. So this is -- these are the results of
 3 x-rays that I took in my office.
 4 Q. Okay. And then the next page is an authorization
 5 page?
 6 A. Correct.
 7 Q. And this is the record of the ten-point exam that
 8 -- on the next page -- that you provided to Ms.
 9 Norris at her initial appointment with you,
 10 correct?
 11 A. Correct.
 12 Q. And the last page is the narrative report,
 13 correct?
 14 A. Correct.
 15 Q. Okay. So when you write in the patient's
 16 description of pain that Monique Norris presented
 17 to Akron Square following a motor vehicle
 18 accident with symptoms of moderate left shoulder
 19 pain, mild intermittent neck pain and headaches,
 20 where in the records are you getting this from?
 21 A. I look at both my consultation and I look both at
 22 the confidential patient information form, and I
 23 look at the ER records. I look at all that
 24 stuff.
 25 Q. Now, can you show me in this where she talks --

1 where -- I'm sorry. Where it's reflected that
 2 she had symptoms of moderate left shoulder pain
 3 and mild intermittent neck pain and headaches?
 4 A. It's here on my ten-point examination. I have
 5 circled headache, neck pain, upper back pain, mid
 6 back pain, lower back pain. She had reduced
 7 sleep, it was instant post accident. And then I
 8 have a picture of a person and I have the head
 9 circled, I have the neck circled, I have the
 10 upper back circled, I have the left shoulder
 11 circled. She had some left-hand numbness and
 12 tingling, it says MT. And then I have the low
 13 back circled that shows that she had back trauma
 14 there. And then my exam takes place. I have
 15 range of motion findings, examples of when she
 16 hurts, how she rates her pain, how often it is,
 17 her description of the pain. These are the areas
 18 that I examined that day.
 19 Q. Where is her description of the pain here?
 20 A. Quality, achy, dull, burning, throbbing. On the
 21 top right, quality of pain, I asked her can you
 22 describe the pain --
 23 Q. Ah.
 24 A. -- so she told me it's achy, it's burning, it
 25 throbs and it's dull and she told me that it's

1 constant. And she rated it a seven out of ten.
 2 Q. Okay. She was evaluated at the hospital --
 3 A. Uh-huh. Yes.
 4 Q. -- following the motor vehicle accident and
 5 that's apparent from these records. She feels
 6 that she is getting progressively worse every
 7 day. Where is that coming from?
 8 A. What are -- oh. It's just what she reports to
 9 me. It's on my records. I look at visual analog
 10 scale on my records and I see that she had pain
 11 of, you know, constant headaches on the last day
 12 of treatment. She rated her pain an eight out of
 13 ten overall. She told me that her shoulder was
 14 improving slightly. She graded it a four out of
 15 ten. So she had worse pains in her headache.
 16 She had worse pains in her low back. Again, we
 17 like to see a gradual improvement of care.
 18 Unfortunately in Monique Norris' situation there
 19 was secondary problems that were probably
 20 restricting her from getting well. Again, she
 21 had a full-on surgery so that's going to -- it's
 22 going to put you down for a while, right? So
 23 this is where she's getting worse.
 24 She didn't improve as I would have liked her
 25 to improve, but again, she only had, I think, two

1 and a half treatment days at my office. She
 2 didn't go through the whole treatment plan so
 3 that's probably why she didn't get well. And
 4 again, I hope she ended up going somewhere to get
 5 well.
 6 Q. But where in these records does it say she's
 7 getting progressively worse every day? Where are
 8 you taking this from?
 9 A. I'm just looking at the records. I'm just
 10 looking at numbers, right? She came -- on her
 11 first day at my office she reported the pain to
 12 be a seven out of ten.
 13 Q. Can you show me what page you're on?
 14 A. The ten-point page.
 15 Q. On the ten-point examination page. Okay.
 16 A. Yep.
 17 Q. I see. Seven out of ten. Okay.
 18 A. Yeah. Then on the last date which was on --
 19 Q. September 4th?
 20 A. Yeah. And even if you look at August 1st she
 21 rated her pain or graded the pain an eight out of
 22 ten --
 23 Q. Uh-huh.
 24 A. -- so again that's worse. And again we're hoping
 25 that the patient is improving --

1 Q. Okay.

2 A. -- although that's only the next day, right? And

3 then we see a whole month later -- and again this

4 is post surgery. She rated her pain overall --

5 even though she was having some improvement in

6 her shoulder, she still rated her pain an eight

7 out of ten, and she said that she was still

8 having constant headaches, so instead of

9 improving every day, she gets worse every day.

10 Q. Where does it say on this page that she's having

11 constant headaches?

12 A. Top right corner, headaches, sorry, my writing --

13 yeah, that's constant.

14 Q. That says constant?

15 A. Yes.

16 Q. Okay.

17 A. You know, and then she had complaints about her

18 pain in different areas of her body. Constant

19 numbness and tingling. She's just getting worse,

20 right?

21 Q. What does this say here to the right underneath

22 constant?

23 A. Left-hand numbness or tingling. Pain, knots, C9

24 is the most -- or I'm sorry, T9 or L5 is the

25 worst. It shows that she had problems, you know,

1 lifting, standing, personal care, house chores.

2 That's what it says.

3 Q. But what is this writing here in the right?

4 A. Yeah. So that's pain and knots at the L5

5 level --

6 Q. Okay.

7 A. -- I can't make out what the other word says, but

8 it's left-hand numbness and tingling. So she's

9 getting worse, right? She's not get better,

10 she's getting worse. That's why I make that

11 determination.

12 Q. Okay. So the diagnosis here in the narrative

13 report, that comes from this fourth page here,

14 correct?

15 A. You know, the diagnosis comes from every -- I

16 look at all the data. It doesn't come from one

17 page. I look at the ER records. I look at my --

18 I look at my findings here in my objective

19 findings and based on those, I put the diagnosis

20 in. So it's not just one document I look at, I

21 look at everything. And again, this report may

22 have been done who knows, 30 days, 60 days, 90

23 days post accident. So I look at everything, in

24 general, and then I make the determination.

25 Q. Okay. But if we look at the diagnoses that are

1 listed on this report --

2 A. Uh-huh.

3 Q. -- if we see 847.0, that's here on the fourth

4 page --

5 A. Uh-huh.

6 Q. -- we see 840.9, that is here, shoulder sprain on

7 this fourth page --

8 A. Okay.

9 Q. Well, are you looking?

10 A. Yeah, I know what you're talking about.

11 Q. I'm right here (indicating) --

12 A. Yeah.

13 Q. -- on the fourth page.

14 A. Uh-huh.

15 Q. 847.1, thoracic sprain/strain, we see that's

16 checked off here.

17 A. Uh-huh.

18 Q. 784, headaches, that's not one of the -- looks

19 like that's not one of the categories on the

20 diagnosis chart that you have here --

21 A. Yeah.

22 Q. -- but it looks like that was added.

23 A. Yeah.

24 Q. And then 72885, muscle spasm --

25 A. Yes.

1 Q. -- that looks like that's listed here in the

2 medical records.

3 A. Uh-huh.

4 Q. 729.1 myofascia, fascitis, that is checked off

5 here --

6 A. Uh-huh.

7 Q. -- as well as 847.2 lumbar sprain. So all of

8 these are in this document except for the

9 headaches, correct?

10 A. Correct.

11 Q. Okay. What is myofascia or fascitis?

12 A. Just inflammation of the muscle tissue.

13 Q. Anywhere?

14 A. It can be anywhere, yeah. Just general, it's a

15 general --

16 Q. So most of the cases will have that?

17 A. Correct.

18 Q. So for Monique under treatment on the narrative

19 report you write that her treatment included

20 spinal manipulation, extremity mobilization,

21 intersegmental mechanical traction, trigger point

22 manipulative therapy, therapeutic exercises,

23 electrical muscle stimulation and the use of ice

24 and heat.

25 When we went over the ledger for charges,

1 there was no -- there was no record of
 2 therapeutic exercises. So how does that end up
 3 in the narrative report?
 4 A. Well, that was part of my treatment goals, right?
 5 The treatment goals that I prescribed to Ms.
 6 Norris were such, were manipulation, muscle
 7 stimulation, trigger point therapy, exercises
 8 most likely would have come into play --
 9 Q. This isn't under treatment goals though. If you
 10 look at the first sentence right under treatment,
 11 it says treatment for Monique Norris included,
 12 and then you -- on the third line it says
 13 treatment goals included --
 14 A. Uh-huh.
 15 Q. -- so --
 16 A. Well, my treatment plan consists of -- when I
 17 review -- when I go over the x-rays with the
 18 patient and I go over the findings, my treatments
 19 are laid out, right? These are what I do, this
 20 is what we intend on doing, this is what she
 21 needs, right? Whether or not we ended up giving
 22 it to her it doesn't really matter. This is what
 23 she needs. She needs all this stuff.
 24 Q. Okay. Treatment goals include reduced pain,
 25 improved function, improved alignment, increase

1 range of motion.
 2 A. Correct.
 3 Q. That's a treatment goal for pretty much any one
 4 of your clients, isn't it, who's in a car
 5 accident?
 6 A. No. They vary patient to patient. Like some of
 7 them have full function. Some of them have full
 8 range of motion, but they hurt. Most of them, I
 9 would say, are out of alignment if they have a
 10 strain type of injury. Reduced pain is one of
 11 them. Obviously, they hurt. But it's not
 12 consistent on every one, no.
 13 Q. And when you talk about the use of passive
 14 modalities in this section --
 15 A. Uh-huh.
 16 Q. -- you go on to describe the passive modalities
 17 from here all the way down to the prognosis,
 18 correct?
 19 A. Correct.
 20 Q. And this description would apply to any patient
 21 that received these modalities, correct?
 22 A. Yeah. This description could apply to this
 23 situation, yes.
 24 Q. Okay. So this could be in a template, this part
 25 of the report could be in a template that could

1 apply to any patient that received these passive
 2 modalities, correct?
 3 MR. KEDIR: Objection.
 4 A. I guess it could, but it's not, but it could.
 5 Q. So you write this from scratch every time; is
 6 that your testimony?
 7 A. I type it out, yes.
 8 Q. So every time you have a report to describe what
 9 these passive modalities are, you will write it
 10 from scratch every time, you won't use it from
 11 another document?
 12 A. No.
 13 Q. Why is that?
 14 A. I don't know, that's just how I do things.
 15 Q. Okay. And where do you get this information
 16 from? From your head?
 17 A. Just my knowledge that I have, documents,
 18 different documents, journals, books.
 19 Q. So this might be something that you got from a
 20 journal, this content here?
 21 A. A medical journal, yeah.
 22 Q. Okay. And the prognosis you already testified as
 23 to why you believed her prognosis was good. And
 24 then you write she continues to experience mild
 25 symptoms in her left shoulder, neck and low back.

1 That's reflected in her -- in the record of her
 2 last appointment on September 4th, correct?
 3 A. Correct.
 4 Q. And when you write any trauma to the spine or
 5 extremity can result in a lifetime of chronic
 6 conditions, et cetera, that applies to anyone
 7 that suffers trauma to the spine or extremity,
 8 correct?
 9 MR. POPSON: Objection.
 10 A. I don't know if it can apply to anybody. It
 11 applies in this situation.
 12 Q. Well, when you say any trauma to the spine or
 13 extremity can result in a lifetime of chronic
 14 conditions, you mean that, right?
 15 A. Oh, of course, yeah.
 16 Q. And then when you say unfortunately the full
 17 extent of a spinal trauma caused by a collision
 18 of multiple thousand pound vehicles does not
 19 surface for months and many times, years later,
 20 you write that because that's true, correct?
 21 A. Correct.
 22 Q. And that's not just true in Monique Norris' case,
 23 is it?
 24 MR. KEDIR: Objection.
 25 A. It can be true in a lot of different cases. It's

1 especially true in this particular case.
 2 Q. Okay. And then you provide your opinion at the
 3 end of the report. Based on reasonable
 4 chiropractic probability, the injuries Monique
 5 Norris sustained were due to the motor vehicle
 6 accident and the treatments rendered thus far
 7 have been -- you write necessity, I assume you
 8 mean necessary as a result, correct?
 9 A. Correct.
 10 Q. Okay. And why don't you provide an opinion as to
 11 how much treatment is going to be necessary?
 12 A. I don't know. I just didn't. I don't know why I
 13 didn't do that back in 2013.
 14 Q. Okay. Well, was it because she stopped treating
 15 with your office?
 16 A. No, I just couldn't make that --
 17 MR. KEDIR: Objection.
 18 A. -- I guess I couldn't make that prediction. I
 19 mean, looking at Monique Norris' situation is
 20 difficult. She had so much scar tissue in her
 21 abdominal area it's probably very difficult to
 22 make that determination, but again, going back to
 23 2013 I don't know why I didn't do it.
 24 MR. PATTAKOS: Okay. I think we
 25 can take a break for lunch, give me one

1 moment.
 2 Q. If -- strike that.
 3 Monique Norris treated with Dr. Ghoubrial on
 4 August 2nd and that three days after her accident
 5 and two days after she first treated with you,
 6 did you recommend that Ms. Norris treat with Dr.
 7 Ghoubrial? Did you refer her to Dr. Ghoubrial?
 8 MR. KEDIR: Objection.
 9 A. I don't know if I did for sure, no. I don't
 10 know.
 11 Q. Who else would have?
 12 MR. POPSON: Objection.
 13 A. I don't know. I have no idea.
 14 Q. If you did refer Ms. Norris to Dr. Ghoubrial,
 15 wouldn't it be reflected in your records?
 16 MR. KEDIR: Objection.
 17 A. It could. Sometimes it is, sometimes it isn't.
 18 Q. Okay. So not -- it wouldn't necessarily be
 19 reflected in your records?
 20 A. No.
 21 Q. It doesn't appear to be reflected in these
 22 records, do you agree?
 23 A. Correct.
 24 Q. Does that seem strange to you?
 25 A. Nope.

1 MR. KEDIR: Objection.
 2 Q. And why is that?
 3 A. Sometimes I write just notes on top of the file
 4 or behind the chart. Like I'll just document as
 5 I'm rushing. But she was in pain, she needed
 6 medication, from my understanding, just by
 7 looking at this record, so I can see myself
 8 referring her to Dr. Ghoubrial or any physician
 9 she chose to go to.
 10 Q. Well, if Ms. Norris testifies that you referred
 11 her to Dr. Ghoubrial, would you have any reason
 12 to disagree with that?
 13 MR. KEDIR: Objection.
 14 A. In that particular case, no.
 15 Q. If Dr. Ghoubrial is providing treatment to your
 16 patients concurrently with you, don't you want to
 17 keep track of what Dr. Ghoubrial is doing?
 18 MR. KEDIR: Objection.
 19 A. Sometimes I do or sometimes I just ask the
 20 patient and the patient reports back to me.
 21 Q. And you don't want to record that?
 22 MR. KEDIR: Objection.
 23 A. I record it in their pain levels. I don't record
 24 anything what Dr. Ghoubrial does in my records.
 25 I record what I do in my records. It's my story

1 of the pain in my office.
 2 Q. And you never obtain records from Dr. Ghoubrial's
 3 office?
 4 A. Oh, never -- of course I do. It's not all the
 5 time, but many times I do.
 6 Q. More often than not?
 7 A. It's hard to say. It just depends.
 8 Q. Well, I'm not asking whether it depends on
 9 anything or not, I'm asking you if in the
 10 majority of cases where you and Dr. Ghoubrial are
 11 treating the same patient, will you receive
 12 records from Dr. Ghoubrial's office?
 13 MR. KEDIR: Objection.
 14 A. It's hard to say. Sometimes I do, sometimes I
 15 don't. It just depends. It depends on the
 16 situation, it depends on if the patient is
 17 complaining of any extra pain. It depends on a
 18 lot of things.
 19 Q. Well, does this happen rarely or does it happen
 20 frequently?
 21 A. I have no idea --
 22 MR. POPSON: Objection.
 23 MR. KEDIR: Objection.
 24 A. -- Peter. There's a lot of patients that Dr.
 25 Ghoubrial sees of mine and sometimes I do and

165

1 sometimes I don't.

2 Q. Okay. When you describe the narrative report

3 again as proving that chiropractors expert

4 opinion on what treatment was necessary and maybe

5 necessary in the future, you were talking about

6 this before, you said you look at the pain levels

7 and you make a prediction.

8 Typically, would you agree, that if there is

9 no objective injury, if it's a soft-tissue case,

10 no disc issues, that a patient's injuries will

11 resolve after a certain limited period of time?

12 MR. KEDIR: Objection.

13 MR. POPSON: Objection.

14 A. That is so wrong. That is so false. If that was

15 the case, no athlete would ever get care, right?

16 They're just going to get better on their own.

17 That just doesn't happen, right?

18 When a person is injured, they need therapy.

19 If they don't get therapy, they may suffer

20 serious complications and problems down the road.

21 You know, you're a sports fan you said,

22 LeBron James sprains his ankle, he's not leaving

23 the arena without do therapy on his ankle.

24 So to say sprains and strains are

25 self-limiting, there would be nobody with back

166

1 problems. Half of America has a back problem.

2 If you're saying they're self-limiting, that's

3 completely offside.

4 Q. Well, what does self-limiting mean? I didn't use

5 that term.

6 A. No, it means -- you did use -- although you

7 didn't use that word, but you intended to say

8 that, you're saying that the injury is going to

9 heal on it's own --

10 Q. No, no, no, that is not what I said --

11 A. That is what you said.

12 Q. -- I asked you if you would agree that in most

13 circumstances a soft-tissue injury will resolve

14 after a limited period of time with treatment.

15 A. With treatment?

16 Q. Sure.

17 A. Oh, yeah. The patient will get better with

18 treatment, yes.

19 Q. Okay. And it is easy enough for you to predict

20 at a certain level what the soft tissue -- with a

21 soft-tissue injury, how long it will take?

22 MR. KEDIR: Objection.

23 A. It's hard to do. It's not -- I don't do that

24 with ease. It's very difficult to predict that.

25 Again, it's based on -- if a patient has, you

167

1 know, low levels of pain when I discharge them,

2 chances are they won't need much care. Like they

3 might need, you know, 30 days up to a couple

4 hundred dollars worth of care.

5 In Ms. Reid's situation, like I said, I said

6 she probably needs \$5,000 worth of care because

7 of the level of injury and the level of pain that

8 she had leaving my office and the complication of

9 the injury that she had. Everybody is different.

10 There's no situation where it's the exact same.

11 Every patient is unique and its own

12 circumstances.

13 Q. Well, Ms. Reid had broken bones.

14 A. She didn't only have broken bones, that was one

15 of her major problems. Ms. Reid had a lot of

16 problems, a lot of problems. A lot of damage to

17 her ligament, a lot of trauma to her muscles,

18 just a lot of trauma to her joints. It's not a

19 typical situation. Her case is very unique and

20 again, she's probably in pain today.

21 Q. She would tell you that she is, I think.

22 MR. PATTAKOS: Okay. We can break

23 for lunch.

24 THE VIDEOGRAPHER: We're going off

25 the record. The time is 12:42.

168

1 - - - -

2 (Thereupon, a recess was had.)

3 - - - -

4 THE VIDEOGRAPHER: We're back on

5 the record. This is the beginning of Tape

6 No. 3. The time is 1:48 p.m.

7 - - - -

8 (Thereupon, court reporter Kurt Spencer continued

9 deposition.)

10 - - - -

11 BY MR. PATTAKOS:

12 Q. So, the attorneys for KNR just clarified on the

13 break that their response to No. 23, request No.

14 23, in Exhibit 7, that we were looking at, this

15 chart reflects the referrals from -- so the top

16 line that says *Akron Square* and *440*, that means

17 there were 440 referrals from Akron Square to

18 KNR?

19 A. Correct.

20 Q. And, then, 175 recommendations --

21 A. Right.

22 Q. -- from KNR to Dr. Floros, to Akron Square.

23 A. Yeah, that's from KNR to ASC on the bottom.

24 Q. Okay. Does that sound right to you?

25 MR. KEDIR: Objection.

1 A. I have no idea. I don't know what these numbers
 2 are. I have no idea.
 3 Q. Okay. You have no idea whether you sent, whether
 4 you recommended KNR to 440 clients in 2012?
 5 A. I wouldn't have any idea.
 6 Q. But, you don't have any reason to disagree with
 7 KNR's representation there?
 8 MR. KEDIR: Objection.
 9 A. I don't know where KNR came up with these
 10 numbers, so I can't testify to that.
 11 Q. Well, do you think it's wrong?
 12 A. I wouldn't know if it's wrong or right.
 13 Q. Do you think it is wrong, as it is here --
 14 MR. KEDIR: Objection.
 15 Q. -- as you are sitting here, do you believe KNR is
 16 making a misrepresentation of these numbers?
 17 MR. POPSON: Objection.
 18 A. I don't know.
 19 Q. Okay.
 20 - - - - -
 21 (Thereupon, Deposition Exhibit 13 was marked
 22 for purposes of identification.)
 23 - - - - -
 24 Q. Can you identify these documents, as records for
 25 Thera Reid that were produced by your attorneys

1 in this litigation?
 2 A. Yes.
 3 Q. So, Thera Reid was in a serious motor vehicle
 4 accident on April 20th, correct?
 5 A. Correct.
 6 Q. And, she was in your office on April 22nd.
 7 A. That is correct.
 8 Q. Because a telemarketer from your office contacted
 9 her, correct?
 10 MR. KEDIR: Objection.
 11 A. I can't testify to who contacted her.
 12 Q. But, you would agree that the first page of this
 13 document reflects that a telemarketer did, in
 14 fact, contact Thera Reid, correct?
 15 MR. KEDIR: Objection.
 16 A. Like I said, Mr. Pattakos, there's a series of
 17 forms that new patients in the office are given.
 18 And this could have been in there. I don't know
 19 if she was contacted, or not contacted, I have no
 20 idea. I would have no way of knowing that.
 21 Q. But, if Ms. Reid testified that she was, in fact,
 22 contacted by a telemarketer, as she acknowledged
 23 here, would you have any reason to doubt that?
 24 A. I wouldn't know. I can't testify to that or not.
 25 Q. Okay. So, your narrative report form for Ms.

1 Reid has been previously marked, but it's also
 2 the last page of this exhibit.
 3 A. Okay.
 4 Q. If you want to take a look at it.
 5 MR. KEDIR: Exhibit 9.
 6 MR. PATTAKOS: I guess it was
 7 Exhibit 9. Because if you look at
 8 Exhibit 9, it's also the last page of
 9 Exhibit 13, which is the complete file that
 10 Dr. Floros produced.
 11 Q. Is it typical, well, let me back up. You
 12 understand that Ms. Reid had a fractured
 13 humorous, and, also, had multiple fractures in
 14 her shoulder, correct?
 15 A. Correct.
 16 Q. Is it typical for you to perform chiropractic on
 17 someone that has such injuries?
 18 A. We're not performing any chiropractic
 19 manipulation on the shoulder. We're performing
 20 chiropractic manipulation on the spine. So, my
 21 answer is yes, I would perform therapy to a
 22 patient that has a fracture in an area unrelated
 23 to the fracture.
 24 Q. Okay. Beyond Ms. Reid's emergency room visit, do
 25 your records reflect that she received any

1 additional treatment?
 2 A. I don't see any of the records here that she has.
 3 Q. So, from these records, you can't tell what
 4 additional treatment she would have received?
 5 A. Correct.
 6 Q. Apart from what occurred at Akron General,
 7 correct?
 8 A. Correct.
 9 Q. So, when you write in the narrative report about
 10 the patient's description of pain --
 11 A. Uh-huh.
 12 Q. *She presented to Akron Square Chiropractic*
 13 *following a motor vehicle accident with symptoms*
 14 *of moderate to severe spinal soft tissue injury.*
 15 You don't mention the broken bones in this
 16 report.
 17 A. I do not.
 18 Q. Is there a reason for that?
 19 A. I'm not the one to have diagnosed the broken
 20 bone. I just didn't put it in there, knowing
 21 that the, probably, surgeon had a much more
 22 thorough report about the specific break, and the
 23 location of the break. I want to prepare a
 24 report, and testify to what I actually treated on
 25 the patient, as opposed to saying *it's a broken*

173

1 *humerus*, and not knowing the level of the break.

2 Q. What surgeon are you referring to here?

3 A. Whatever orthopedic doctor she was seeing. I

4 don't remember who she was -- I don't know if it

5 was Dr. Chonko. I don't know who it was that she

6 was seeing.

7 Q. So, when you write *she presented with most pain*

8 *through her entire spine and right shoulder. Her*

9 *joint pain was relentless, as a result of the*

10 *motor vehicle accident. She had sleepless*

11 *nights, following the motor vehicle accident.*

12 *She described the pain as being constant, dull,*

13 *burning, and sharp. Ranges of motion were*

14 *restricted throughout her spine, as a result of*

15 *pain, muscle spasms, intersegmental swelling and*

16 *joint dysfunction. She was forced to modify her*

17 *daily activities to accommodate her high pain*

18 *levels. That's all from the medical records,*

19 correct?

20 A. Yes.

21 Q. Let's go through the records, and show me where

22 you're getting this information from.

23 A. So, I'm looking at the 10-point consultation on

24 the examination form.

25 Q. What page are you looking at?

174

1 A. 10-point -- I don't know if they're numbered.

2 Q. I think if we look at the top there may be --

3 A. It's this one right here. It's not too far from

4 the start.

5 Q. Here we go. Okay.

6 A. So, *provocative pain*, if we look at the middle of

7 the chart here, she couldn't bend, lift, twist,

8 look up, look down, turn head, stairs, stand

9 long, house chores, can't sleep. And, also, on a

10 day-to-day record, there are areas where she

11 couldn't do house chores, personal care,

12 sleeping, sitting, bending, lifting. And social

13 life is checked off in a couple different areas.

14 So, throughout the general course of treatment,

15 she had days where she couldn't do something.

16 She had days where she could do something. This

17 is just a general statement of things she

18 couldn't do.

19 Q. And, where do you get the relentless pain from?

20 A. The relentless pain?

21 Q. Yes, where you write *her joint pain was*

22 *relentless, as a result of the motor vehicle*

23 *accident.*

24 A. Peter, she was ejected from a motorcycle. She

25 had pain levels of, like, 10 out of 10. She had

175

1 relentless pain, based on my experience with her.

2 This was a seriously injured patient.

3 Q. Sure.

4 A. If this is relentless pain, then, she had extreme

5 levels of pain.

6 Q. And, that range of motion is naturally reflected

7 here in the 10-point report, as well, the limited

8 range of motion, correct?

9 A. Correct. She had limited range of motion in,

10 pretty much, every part.

11 Q. And, that's what ROM stands for on the

12 consultation, on the 10-point?

13 A. Correct.

14 Q. And, when you say that the range of motion was

15 restricted, as a result of pain, muscle spasms,

16 intersegmental swelling and joint dysfunction, is

17 that reflected here in the 10-point exam, as

18 well?

19 A. Yes, she had range of motion, sorry, repeat that

20 again.

21 Q. Well, you say the reason is that the range --

22 A. Yes. So, when you're looking at that range of

23 motion chart, you see *decrease*.

24 *Positive/positive* means pain. All of these are

25 painful. She had range of motion pain in, pretty

176

1 much, every single plane of motion.

2 Q. So, how do you know -- where is it reflected that

3 it is a result of muscle spasms, intersegmental

4 swelling and joint dysfunction?

5 A. So, if you look underneath that chart there, you

6 see *cervical spine*.

7 Q. Uh-huh.

8 A. She has mechanical aberrancy at C-0 and C-1. She

9 also has C-5, C-6, C-7. Palpatory pain --

10 severe. Muscle spasm -- severe. You go down to

11 the thoracic spine. She has the-3, the-4, the

12 pain problems the-9, 10. She has severe

13 palpatory pain with severe muscle spasm.

14 We come down to the lumbar spine, she has

15 L-3, 4, 5 -- severe pain, severe muscle spasms.

16 She had bruising, road rashes, high levels of

17 pain. I don't even know on this day, if she was

18 taking medication. She may have, because, I

19 guess, she was taking medication from the

20 hospital.

21 So, all the pain that she was having may not

22 have been a true and accurate demonstration of

23 the pain, because she only rated her pain at an 8

24 on that day. But, her worst, obviously, was a 10

25 out of 10, which is relentless pain.

177

1 Q. The pain was, maybe, an 8, because she was on
 2 medication, at the time?
 3 A. It's possible.
 4 Q. Okay. Where do you see anything reflected about
 5 intersegmental swelling here, or joint
 6 dysfunction?
 7 A. Joint dysfunction is 1, 2, 3, 4, 5, 6, 7, 8, 9,
 8 10, 11. Eleven joints out of twenty-six that
 9 were dysfunctional on my examination.
 10 Q. Okay.
 11 A. Mechanical aberrancy is joint swelling,
 12 inflammation, tenderness, this kind of stuff.
 13 Q. Okay.
 14 A. It wasn't functioning properly.
 15 Q. Okay. What about the swelling?
 16 A. Same thing. The joint swelling, the pain, the
 17 inflammation is there. The mechanical aberrancy
 18 involves all those things.
 19 Q. And, you also note swelling right here to the
 20 left, I guess, that says *upper arm swelling*,
 21 though.
 22 A. Yes, *right upper arm swelling*.
 23 Q. Okay. The diagnosis here, well, cervical sprain,
 24 lumbar sprain, thoracic sprain, so those are the
 25 three parts of the spine.

178

1 A. Correct.
 2 Q. So, her entire spine was sprained.
 3 A. Correct.
 4 Q. All the over the place.
 5 A. Correct.
 6 Q. And, then, right shoulder sprain, in addition to
 7 broken bones. But, you don't list the broken
 8 bones.
 9 A. I don't list the broken bones there.
 10 Q. Okay. Then, you again describe the treatment,
 11 and this is similar to Monique's report, where
 12 you list the therapeutic exercises, even though
 13 they are not reflected in the bill, correct?
 14 MR. KEDIR: Objection.
 15 A. I'm almost certain I gave Ms. Reid some home
 16 exercises to do. That would, probably, be
 17 encompassed with therapeutic exercises. And,
 18 many times, we do therapeutic exercise to patient
 19 tolerance. So, if we're doing therapeutic
 20 exercises for even, you know, twenty seconds,
 21 it's not a billable thing. You can't bill twenty
 22 seconds of therapeutic exercises. It's not going
 23 to be documented, but Ms. Reid had a lot of range
 24 of motion style exercises that she couldn't do
 25 throughout her treatment plan, that, probably,

179

1 weren't documented, or charged, because it wasn't
 2 time-proper to bill for it.
 3 Q. Okay. These, then, you go on to talk about risk
 4 factors.
 5 A. Uh-huh.
 6 Q. Under prognosis, you say *multiple risk factors*
 7 *were present*. These risk factors will serve to
 8 significantly lower the threshold for injury, and
 9 to increase the probability for long term
 10 symptoms. That applies to anyone that has these
 11 risk factors, correct?
 12 MR. KEDIR: Objection.
 13 A. It's hard to say. Everybody is different, Peter.
 14 Not everyone is a female. Everybody has poor
 15 head restraint geometry. Everything is
 16 different, right?
 17 Q. But, for the people that do --
 18 MR. MANNION: Let him finish his
 19 answer.
 20 A. Yeah. It's different. You know, if a person is
 21 hit from behind, and they're looking forward,
 22 they're not going to have poor head strain
 23 geometry. Not everybody suffers a moderate to
 24 heavy impact type of collision. Not everybody
 25 has, you know, a higher body mass index. Not

180

1 everybody has an anterior head carriage. Not
 2 everybody is -- you know, these apply to
 3 different people for different situations.
 4 Q. But, my question is, for people that do have
 5 these risk factors, it's true that these risk
 6 factors will serve to significantly lower the
 7 threshold for injury, and increase the
 8 probability for long-term symptoms, correct?
 9 A. Sure. I agree with that.
 10 Q. Okay. And, these risk factors, for whoever has
 11 them, can be subcategorized into risk for acute
 12 injury, and long-term symptoms, correct?
 13 MR. POPSON: Objection.
 14 A. Every case is different. I am not going to
 15 testify that these risk factors apply to
 16 Ms. [REDACTED], or Ms. [REDACTED] --
 17 Q. That's not my question.
 18 A. -- or, Ms. Thera Reid. Every case is very
 19 different.
 20 Q. I'm not asking you that. I'm asking that it's a
 21 general statement to say that risk factors can be
 22 subcategorized into risk for acute injury, and
 23 risk for long-term systems, right?
 24 A. Sure.
 25 Q. That's just two different ways of describing what

1 the risk is for?
 2 A. Sure. But the risk factors vary from patient to
 3 patient.
 4 Q. Of course.
 5 A. So, there are some risk factors that are unique
 6 to each situation. So, in this situation, those
 7 risk factors, in my opinion, were part of Thera
 8 Reid's case. And, again, in Ms. [REDACTED] and Ms.
 9 [REDACTED] reports I have here, they might not
 10 have those same risk factors. But risk factors
 11 can apply to all kinds of different types of
 12 accidents.
 13 Q. And, you have to look at what happened in the
 14 accident, and look at the patient, to determine
 15 what the risk factors are, correct?
 16 A. Correct.
 17 Q. So, it's easy to see that Thera Reid is a female,
 18 as you list here -- *risk factors for acute*
 19 *injury, female sex*. Females are at more risk
 20 than male; is that what you intended to write
 21 here?
 22 A. Correct.
 23 Q. So, what is poor head restraint geometry, and how
 24 did you determine that from these records?
 25 A. Well, she's driving on a motorcycle. Sees the

1 vehicle coming. Head is turned. Head is not
 2 looking straight. Gets crushed by a several
 3 thousand pound vehicle. Head is going to
 4 ricochet off of something. I'm sure we can agree
 5 to that. So, that would definitely have an
 6 effect on this case.
 7 Q. Do you have a record of what her head geometry
 8 was here?
 9 A. No. But, looking at the crash report, we can
 10 make some determinations of where the position of
 11 her head was, when impacted, or what type of
 12 impact her head would have on the concrete on the
 13 road, based on, you know, how she presented to
 14 the office on Day 1.
 15 Q. Why isn't the crash report in these records?
 16 A. I'm not sure. It should be.
 17 Q. Is it?
 18 A. I saw it yesterday.
 19 Q. I think it is.
 20 A. I don't know if it is.
 21 Q. It's in here somewhere.
 22 A. I don't see it here.
 23 Q. Okay.
 24 A. But, it is part of her records. I don't know why
 25 it's not in here.

1 Q. How do you know it's part of her records, if it's
 2 not in here?
 3 A. Because, I saw it yesterday, when I reviewed the
 4 chart.
 5 Q. Where were you reviewing the chart?
 6 A. At my office.
 7 Q. Okay. So, it just wasn't produced?
 8 A. Or, it wasn't copied.
 9 Q. Okay.
 10 A. Or, it's not copied for these records.
 11 MR. POPSON: Or, it wasn't asked
 12 for.
 13 MR. PATTAKOS: Well, if it's in
 14 his records, it was asked for.
 15 THE WITNESS: If it was asked for,
 16 it was produced.
 17 Q. Okay. Position at point of impact --
 18 A. Just, I'm sorry to interrupt you. Just getting
 19 back to the poor head restraint geometry. I
 20 don't know if you've ridden a motorcycle before.
 21 It's very different sitting on a motorcycle, in
 22 back of a motorcycle, compared to sitting in a
 23 vehicle. You're holding onto somebody. Your
 24 head is forward. It's not like you're propped
 25 back in a chair, and you have a headrest there.

1 Like, you're leaning forward. You're holding
 2 onto something. So, poor restraint geometry in a
 3 motorcycle accident is typical.
 4 Q. Okay. And, that would be related to position at
 5 point of impact, as well, right?
 6 A. Correct.
 7 Q. Okay. And, obviously, there was moderate to
 8 heavy impact. What about *body mass index, head*
 9 *neck index, especially, for a female patient,*
 10 what does that mean?
 11 A. Again, just her weight. A lot of times, you
 12 know, if your body type is a certain type, you
 13 can have -- you're at a higher risk of injury and
 14 trauma, if you're not in good shape. You know,
 15 different athletes suffer different injuries,
 16 based on their body type. I play Sunday soccer
 17 -- I hurt. If an athlete plays Sunday soccer,
 18 it's not going to hurt. And, so, this is
 19 specifically related to Ms. Reid.
 20 Q. And, when you talk about risk factors for
 21 long-term symptoms, you identify the female sex,
 22 the body mass index in females only, and the type
 23 of motor vehicle collision. What do you mean by
 24 *type of motor vehicle collision*, just the fact
 25 she was on a motorcycle?

1 A. Motorcycle versus car. Motorcycle is going to
 2 lose all the time.
 3 Q. Okay. Sure.
 4 A. Unfortunately.
 5 Q. Right.
 6 A. Remember, these are just prognose and
 7 discussion-related questions. I know you asked
 8 me *where were these records*. This is just me
 9 thinking out loud on a document. This doesn't
 10 necessarily -- it's just a discussion that I'm
 11 having by reviewing the documents. It doesn't
 12 have to be in the records.
 13 Q. If we go down to the paragraph, it looks like the
 14 largest paragraph on this page, where it says *the*
 15 *time needed for injured soft tissue to heal is*
 16 *dependent upon numerous factors*. You, then, go
 17 on and cite the Quebec Task Force. And, then,
 18 even the paragraph following -- several studies
 19 have made it quite clear that many
 20 whiplash-injured patients have not fully
 21 recovered from their injury at three to six
 22 months. And, then, you go on and cite a few
 23 studies.
 24 This content in these two paragraphs, that is
 25 from a template; is it not?

1 A. I'm not too sure. I don't remember.
 2 Q. Okay.
 3 A. Like I said, I spent a lot of time on this
 4 particular narrative. So, I did some research.
 5 I looked at some things. I definitely got it
 6 from a research article. It looks like I got it
 7 from a research article.
 8 Q. Do you remember working on this particular
 9 report?
 10 A. I remember Thera Reid, pretty well. There are
 11 not many patients that I have that are like Thera
 12 Reid.
 13 Q. Why is that?
 14 A. Just, the level of trauma was very, very high.
 15 It was very high. I remember Thera Reid crying
 16 multiple times in the office. She was in a lot
 17 of pain.
 18 Q. And, you sent Thera Reid to Dr. Ghoubrial,
 19 correct?
 20 A. I don't remember if I did or not. If she saw
 21 Dr. Ghoubrial, I, probably, would have referred
 22 her to Dr. Ghoubrial.
 23 Q. If she treated with Dr. Ghoubrial, at your
 24 office, could you be sure that you referred her
 25 to Dr. Ghoubrial?

1 A. I'll say that if she saw Dr. Ghoubrial, I,
 2 probably, made the referral.
 3 Q. Okay. Would there be circumstances under which a
 4 patient would treat with Dr. Ghoubrial, at your
 5 office, if you didn't make the referral?
 6 A. There has been times, where other chiropractors
 7 have sent their patients to my office to see
 8 Dr. Ghoubrial.
 9 Q. But, what about one of your patients?
 10 A. Say that again.
 11 Q. What about one your patients? If one of your
 12 patients is treating with Dr. Ghoubrial, at your
 13 office, fair to assume that you referred that
 14 patient to Dr. Ghoubrial?
 15 MR. KEDIR: Objection.
 16 A. Yeah. If they were my patient, and they're
 17 seeing Dr. Ghoubrial --
 18 Q. At your office.
 19 A. -- at my office, I, probably, would have made the
 20 referral to Dr. Ghoubrial.
 21 Q. And, if they're your patient, and they're seeing
 22 Dr. Ghoubrial, at all, you also probably made the
 23 referral to Dr. Ghoubrial, correct?
 24 A. If they're my patient, and they're seeing
 25 Dr. Ghoubrial?

1 Q. Yes.
 2 A. Yes.
 3 - - - - -
 4 (Thereupon, Deposition Exhibit 14 was marked
 5 for purposes of identification.)
 6 - - - - -
 7 Q. So, these records reflect that Thera Reid saw
 8 Dr. Ghoubrial on April 27th, May 4th, May 10th,
 9 May 25th and June 1st. Five times. And those
 10 appointments appear to be almost all on the same
 11 day that she treated with you. And, we can look,
 12 and see that on April 27th, she, in fact,
 13 received treatment at your office, if we look
 14 back at page 2 and 3 of Exhibit 13; do you agree?
 15 A. Yeah, if you're saying that is accurate, I'm
 16 going to agree with you.
 17 MR. KEDIR: Objection.
 18 Q. And, if she treated with Dr. Ghoubrial on the
 19 same day that she treated with you, seven days
 20 after the accident, it's likely that she treated
 21 at your office, correct?
 22 A. Correct. I don't know if she saw Dr. Ghoubrial
 23 at my office. You would have to ask Ms. Reid.
 24 Q. And, on April 4th, she also received treatment at
 25 your office from you and Dr. Ghoubrial, well,

189

1 let's say that she received treatment from
 2 Dr. Ghoubrial on May 4th, and, also, received
 3 treatment from you, at your office. Do you
 4 agree?
 5 A. Sure, if that's what the record is saying.
 6 Q. And, it looks like on April 10th, she saw
 7 Dr. Ghoubrial, but -- oh, I'm sorry. This is a
 8 bit confusing, because -- oh, you know what, it
 9 looks like the No. 8 was cut off in the left-hand
 10 margin. It looks like a 10 in the writing, but,
 11 really, the typewritten says May 18th. So, it
 12 looks like she was back to treat with
 13 Dr. Ghoubrial on May 18th, which is another day
 14 that she received treatment at your office.
 15 And, then, on May 25th, she treated with Dr.
 16 Ghoubrial, which was another day she treated at
 17 your office. And, then, again, on June 1st, she
 18 treated with Dr. Ghoubrial, and, also, treated at
 19 your office. Does that sound typical to you?
 20 MR. KEDIR: Objection.
 21 MR. POPSON: Objection.
 22 A. It could happen. A lot of times, patients come
 23 to the office, and there are a lot of people
 24 waiting to see Dr. Ghoubrial. While they're
 25 waiting to see Dr. Ghoubrial, they'll get

190

1 treatment from us, if, in fact, it was -- if
 2 Dr. Ghoubrial was in my office that day. And you
 3 have to ask Ms. Reid about that.
 4 Q. If we look back at Exhibit 13, and the dates that
 5 Ms. Reid was in your office, her injury was on
 6 the 20th, and she was in your office on the 22nd,
 7 the 25th, the 27th, the 3rd, the 4th, the 5th,
 8 the 9th, the 11th, the 13th, is it common for a
 9 patient to have such frequent visits to your
 10 office, after suffering a car accident?
 11 A. She probably needed a lot more. Typical soft
 12 tissue injury cases, and people -- physicians
 13 treat patients three/four times a week,
 14 sometimes, daily on certain situations. Three
 15 times a week is very common.
 16 Q. Okay. Why did you stop treating Thera Reid on,
 17 apparently, on July 12, 2016?
 18 A. She had just reached maximum chiropractic
 19 improvement, at that point, I determined there
 20 was not much more I could do for her.
 21 Q. What was the improvement that she had achieved?
 22 A. Give me a second.
 23 MR. KEDIR: Objection.
 24 A. You said July 12th, correct? Well, her motion in
 25 her shoulder was a lot better. Her range of

191

1 motion in her neck, the pain levels had decreased
 2 quite significantly.
 3 Q. And where do you see -- what page are you on
 4 there for what date?
 5 A. Tuesday, July 12, 2016.
 6 Q. This is the last day of treatment?
 7 A. This is the last day I saw her.
 8 Q. It looks like you saw her on August 4th, no?
 9 A. Um --
 10 Q. Or, is this just when the record was made?
 11 A. August 4th --
 12 Q. If you look at the third to last page, or second
 13 to last page, it says *today's date, August 4th,*
 14 at the top. Is that just the date the record was
 15 made?
 16 A. It's possible. Let me see. Yeah, that's what it
 17 looks like. 'Cause, it looks like all the dates
 18 with her have August 4th. So that's the date the
 19 report was made, the records were printed. But,
 20 her last day was July the 12th.
 21 And, again, throughout the course of her
 22 treatment, getting back to your question, there
 23 was an improvement. It was a gradual slow
 24 improvement over, I think, it was five months, or
 25 so, of improvement. At some point, the patient

192

1 will plateau. That's what I determined at that
 2 point. I advised her, like, I advise a lot of my
 3 patients that suffer this level of trauma, to see
 4 me as needed, whenever they want, anytime they
 5 want. They know when I'm there. They can just
 6 come on in.
 7 Q. Did you tell Ms. Reid that you believe that she
 8 had reached maximum medical improvement?
 9 A. Yes, I had.
 10 Q. You told her on this appointment on July 12th,
 11 correct --
 12 A. Correct.
 13 Q. If it is reflected in the records, *it is my*
 14 *clinical opinion that the patient has reached*
 15 *maximum medical improvement?*
 16 A. I would have had a conversation with her that,
 17 "Look, I'm going to release your records, at this
 18 time, come see me as needed." And, I don't know
 19 if she got any care after that. She may have. I
 20 don't know.
 21 Q. And you can't explain why the treatment with
 22 Dr. Ghoubrial is not reflected anywhere in your
 23 records?
 24 A. A lot of times, I just ask the patient. I don't
 25 have to ask Dr. Ghoubrial for his records all the

1 time. If I'm seeing the patient frequently
 2 enough to document the pain levels, I don't need
 3 another physician's notes to tell me what her
 4 pain levels are, or what they're doing. The
 5 patient usually reports to me, "Hey,
 6 Dr. Ghoubrial gave me this type of medication.
 7 He gave me this injection. He gave me a brace of
 8 some kind of." So, I usually report with the
 9 patient every week, and how they're doing, if
 10 it's helping. Are they improved?
 11 Q. On pages 24 and 25, well, I guess, you can't tell
 12 what page it is from the --
 13 A. What date of treatment are we looking at?
 14 Q. Yeah, well, I should have noted that. Here we
 15 go. If we look at May 31st -- so, it's just a
 16 fax number at the top. There is a fax number,
 17 and it says page 025, at the top of the page.
 18 A. Uh-huh.
 19 Q. It says on May 31st that -- *was informed*
 20 *yesterday that she needs shoulder surgery to*
 21 *repair multiple fractures.*
 22 A. Uh-huh.
 23 Q. And, if we look at, well, strike that.
 24 A. That's, yeah. So --
 25 Q. What were you going to say?

1 A. I was going to say, that's, so my her, sometimes,
 2 I keep certain statements in the records, when I
 3 go back, I can see that, *hey, she had surgery.*
 4 So, that statement is also made on May 25th, and
 5 subsequent visits, prior to.
 6 Q. So, when did this first appear? Oh, I see. It
 7 also says that on May 25th. It looks like May
 8 25th was, maybe, the first day that that appears;
 9 is that fair?
 10 A. Correct.
 11 Q. She already had the broken bone and the humerus
 12 that you knew about, when you first saw her,
 13 because that was treated in the emergency room,
 14 correct?
 15 A. Correct.
 16 Q. Then, it was later determined -- do you know who
 17 made this determination?
 18 A. The shoulder surgeon that she saw. I don't
 19 remember who it was.
 20 Q. Dr. Chonko?
 21 A. Dr. Chonko, if that's who it was, yeah.
 22 Q. Okay.
 23 A. Okay. It was either myself, or Dr. Chonko,
 24 probably, made the referral to Dr. Chonko.
 25 Q. I'm sorry. You just said it was either you, or

1 Dr. Ghoubrial, that had made the referral?
 2 A. I'm assuming it was, yeah.
 3 Q. If she's seeing Dr. Ghoubrial, wouldn't you defer
 4 to him?
 5 A. What do you mean?
 6 Q. On whether to refer a patient to another doctor?
 7 A. No. I don't need to talk to any doctor to refer
 8 a patient anywhere. I refer my patients all the
 9 time to orthopedic surgeons, neurologists,
 10 neurosurgeons. I don't ask permission to refer a
 11 patient somewhere.
 12 Q. But, it doesn't reflect that you referred Thera
 13 Reid to Dr. Chonko anywhere in these records,
 14 does it?
 15 A. I don't know. I haven't reviewed all the records
 16 in detail.
 17 Q. Well, if I told you that it doesn't, would that
 18 make sense to you?
 19 MR. KEDIR: Objection.
 20 MR. POPSON: Objection.
 21 A. I don't know. I'd have to review all the
 22 records, to look in my file.
 23 Q. Well, this is your file. Why don't you look at
 24 it.
 25 A. Again, this is not -- this doesn't show the front

1 page of the actual manila envelope that these
 2 records are kept in. Sometimes, there are some
 3 notes on top of the manila file, or underneath,
 4 maybe, flip the pages, there are some notes
 5 underneath. It's possible that it's there, or
 6 Dr. Ghoubrial may have made the referral.
 7 Q. Okay.
 8 A. And I don't expect Dr. Ghoubrial to confer with
 9 me. If he thinks the patient needs to see a
 10 shoulder surgeon, well, he's going to refer to
 11 the shoulder surgeon.
 12 Q. Why did you refer Thera Reid to Dr. Ghoubrial,
 13 instead of sending her right to an orthopedist?
 14 MR. KEDIR: Objection.
 15 A. I'm not too sure. I know, at the time, she
 16 probably needed medication. She probably ran out
 17 of medication. Again, these are just
 18 assumptions. It's possible. The hospital,
 19 sometimes, gives a limited supply of pain
 20 medication, and she was in extreme levels of
 21 pain. And, that's, probably, why I made the
 22 referral to Dr. Ghoubrial.
 23 Q. But, why Dr. Ghoubrial, and not an orthopedist
 24 that could still prescribe the pain medication?
 25 MR. KEDIR: Objection.

1 A. I don't know. Maybe, she was prescribed an
 2 orthopedist by the ER. The ER documented a
 3 broken humerus. There's a good chance that the
 4 ER would have sent her to an orthopedic surgeon,
 5 or recommended one. You'd have to ask her, if
 6 she followed up with that surgeon, or not.
 7 Q. But, that's not noted anywhere in your records?
 8 A. I don't know.
 9 Q. Okay.
 10 - - - - -
 11 (Thereupon, Deposition Exhibit 15 was marked
 12 for purposes of identification.)
 13 - - - - -
 14 Q. These are records for [REDACTED] that your
 15 attorney just produced Friday. And the narrative
 16 report is on the last page here. Let's talk
 17 about this narrative report.
 18 A. Uh-huh.
 19 Q. You treated her only a few times, it looks like,
 20 from the 27th of September 2017 to October 18,
 21 2017, total charges were \$1,135. It looks like
 22 she was at your office five times. That's a
 23 relatively short course of treatment, correct?
 24 A. Correct.
 25 Q. Do you remember why she stopped treating with

1 you?
 2 A. No, I don't know.
 3 Q. Okay. It looks like you were eventually paid on
 4 her case in April of 2018. So, it looks like her
 5 case was resolved relatively quickly, correct?
 6 MR. POPSON: Objection.
 7 MR. KEDIR: Objection.
 8 A. I don't know if that's quick, or not.
 9 Q. Well, it looks like the accident happened on
 10 September 20th, so by --
 11 A. March, April -- eight months, maybe, seven.
 12 Q. Typically, you'll treat a client for longer than
 13 a month, correct?
 14 MR. POPSON: Objection.
 15 MR. KEDIR: Objection.
 16 A. No, every patient is different. Some patients,
 17 like I said, treat three days. Some people
 18 treat, like, Ms. Reid, seven, eight months. It
 19 just depends on the patient. Everybody is
 20 different.
 21 Q. But, if there is causation in a lawsuit, you'll
 22 typically treat them longer than, well, it looks
 23 like here it was only three weeks; isn't that
 24 correct?
 25 MR. KEDIR: Objection.

1 MR. POPSON: Objection.
 2 A. I don't know with any lawsuits, and, again, I
 3 treat patients based on their need for care, not
 4 based on lawsuits, or anything like that.
 5 Q. Well --
 6 A. Ms. [REDACTED] treated for, you said, 1, 2, 3, 4
 7 times. She had pain at the end of her treatment.
 8 She probably needed more care. I put in my
 9 narrative that she continued to be very
 10 symptomatic. I advised her to continue her
 11 treatment plan of two to three times a week for
 12 the next three to six weeks. She didn't do it.
 13 Everybody completes their treatment plan, Mr.
 14 Pattakos, everybody is very different.
 15 Q. Okay. So, she --
 16 A. Some people have different needs. Some people
 17 just don't want to come back. And some people go
 18 another route. And, that's okay, too.
 19 Q. She was advised to continue her treatment plan of
 20 two to three times a week for three to six weeks?
 21 A. Correct.
 22 Q. And that, you believe, would have been sufficient
 23 for her injuries to resolve?
 24 A. I don't know. Maybe. Like, her pain on last day
 25 of treatment was five out of ten, I think, it

1 was. She had problems with activities of daily
 2 living. She had moderate spasms in her cervical
 3 spine. She had moderate spasms in her thoracic
 4 spine. Had a ton of hyperbola vertebral
 5 segments. C-1, C-6, C-7, the-6, the-7, the-10,
 6 the-11, L-3, 4, 5. Trigger points in the
 7 trapezius muscle. The scapula. The paraspinal
 8 erectors. The quelt (ph). Some treatment was
 9 administered. She was advised to use Biofreeze
 10 at home. She tolerated the care that day, and
 11 that was the last time I saw Ms. [REDACTED] She was
 12 not formally discharged by me.
 13 Q. She just stopped. She just didn't want to come
 14 for treatment anymore.
 15 A. Correct. Or, maybe, she contacted her attorney,
 16 and said, "Hey, settle it up." I don't know.
 17 You'd have to ask her.
 18 - - - - -
 19 (Thereupon, Deposition Exhibit 16 was marked
 20 for purposes of identification.)
 21 - - - - -
 22 Q. Can you identify these as records for a [REDACTED]
 23 [REDACTED] that were produced by your office?
 24 A. Yes.
 25 Q. Okay. And the narrative report is the last two

201

1 pages of this, and, again, you also have it
 2 marked as Exhibit 10. She treated with you, it
 3 looks like, for about two, two-and-a-half months
 4 from November 7th until January 19th, correct?
 5 A. Correct.
 6 Q. And, this was on how many different occasions
 7 here? I'm counting seventeen. Seventeen
 8 appointments for total charges of \$4,010. Am I
 9 reading that correctly?
 10 A. Yes, that is correct.
 11 Q. Okay. So, there are seventeen appointments over
 12 two-and-a-half months that totaled to \$4,010 in
 13 treatment, how is it that you come to the
 14 conclusion, in the narrative report, that the
 15 cost to further stabilize her condition, over the
 16 next two to six months, is approximately \$600?
 17 A. Same way like the other ones, Peter. We look at
 18 the report. We look at how she improved over
 19 time. I estimate, based on how fast she healed
 20 from Day 1, to the last day of treatment. She
 21 improved, I think, it was, like, 50% or 60%.
 22 Frequency of pain decreased over 50%. The need
 23 for further care is necessary.
 24 Ligaments, sometimes, can take up to a year
 25 to fully heal. Even when a patient is completely

202

1 pain free, it doesn't mean there is no problem
 2 that still exists in the body. Ligaments are
 3 unique. Flare-ups can occur. They happen all
 4 the time. I treat patients that go back to work
 5 a little too early. You know, they feel good,
 6 and two weeks later, they're back in the office.
 7 So, I make an estimated guess, based on
 8 looking at the records, how much care they had,
 9 what type of treatment they would need, and in
 10 this case, I estimated one or two modalities over
 11 the next couple months, two to six months, based
 12 on the need for any flare-ups that she may have.
 13 Q. But, you thought that, essentially, she was done,
 14 and had reached close to maximum chiropractic
 15 improvement?
 16 A. No. She hadn't reached maximum improvement. Her
 17 last day was January 19th. She had quite a
 18 significant amount of pain. I don't know why she
 19 discontinued care. I'm not too sure.
 20 Q. Well, if she was only going to need \$600 worth of
 21 treatment to stabilize, then, she was close to
 22 maximum improvement, correct?
 23 MR. KEDIR: Objection.
 24 A. No. That's tough to say. That's future medical
 25 care. Like, it's tough to say. Future medical

203

1 care could be, you know, one treatment every
 2 couple weeks, spine manipulation only, and that
 3 could go for two/three months. She still had
 4 pretty significant pain levels, like, two to
 5 three out of ten is, you know, it's mild pain.
 6 Three to four is mild to moderate pain.
 7 Q. Well, I'm looking at it in terms of cost.
 8 A. Oh.
 9 Q. And, you know, for over two-and-a-half months she
 10 was charged 4,000, and you're saying in this
 11 report that it would cost only about \$600 to get
 12 her to stabilization.
 13 A. Yeah.
 14 Q. So, to me, \$4,000 worth of treatment is getting
 15 pretty close to a total of \$4,600. Does that
 16 make sense?
 17 A. No. That's --
 18 MR. KEDIR: Objection.
 19 A. It doesn't make any sense, at all. I'm glad
 20 you're the lawyer, and I'm the doctor, Peter.
 21 So, what happens here, her last day of treatment,
 22 she had two units on modalities. She had spinal
 23 manipulation, and trigger point therapy.
 24 Over time, things get decreased. They may
 25 only need a couple levels of manipulation. They

204

1 might need muscle stim once or twice. The charge
 2 for muscle stim is \$45. That can extend over two
 3 months, one time every two weeks. It depends on
 4 what therapy she needs. So, it's just an
 5 estimated guess on how much therapy she may need
 6 down the road, if that makes sense?
 7 Q. Okay.
 8 A. Like, she doesn't need, like, if you look early
 9 on in therapy, each visit may have ranged between
 10 \$150 to \$250. By the end of it, it was only, you
 11 know, under \$120. It changes. The modalities
 12 change every time. She might only need
 13 manipulation once every couple weeks. It's two
 14 visits a month. Each charge can be \$65 to \$75.
 15 It can extend over three/four months. It just
 16 depends on every patient.
 17 Q. Well, I guess, what I'm trying to understand is,
 18 if she treated, say, on January 10th, and
 19 received four different modalities that she was
 20 charged a total of, over \$250 for, on one day,
 21 then, again on the 15th, she received four
 22 different modalities, where she was charged
 23 again, well over \$250. And, then, the 19th was
 24 her last day, where she was charged \$150.
 25 Why, all of a sudden, is it only going to

205

1 cost -- I don't understand why, all of a sudden,
 2 she only would need \$600 more of treatment, where
 3 she was getting that much in one week, as her
 4 treatment ended.
 5 MR. KEDIR: Objection.
 6 MR. POPSON: Objection. Is that a
 7 question?
 8 A. The frequency of care decreases, as they move
 9 along. Like, near the end of the treatment,
 10 things get less and less. It can be one time a
 11 week. It could be once every two weeks. It's
 12 just a guess based on looking at my records.
 13 Q. Okay. But, you didn't discharge Ms. [REDACTED], did
 14 you?
 15 A. I didn't discharge her, no.
 16 Q. So had she continued to come to your office, she
 17 would have continued to receive similar
 18 treatment, correct, that she was receiving on the
 19 10th and 15th and 19th?
 20 MR. POPSON: Objection.
 21 A. I don't know.
 22 MR. KEDIR: Objection.
 23 A. I didn't see her after that. I couldn't tell you
 24 what she needed. There's a possibility she may
 25 only have needed two more visits at full therapy.

206

1 I mean, I don't know. I can't tell you what she
 2 may have needed, without actually assessing her,
 3 at the time.
 4 Q. Well, you have the records right here. I would
 5 like you to explain how you end up with that \$600
 6 number --
 7 MR. KEDIR: Objection.
 8 A. Again --
 9 Q. -- when the treatment looks like it was rather
 10 abruptly cut off, and not at your recommendation.
 11 So how does that -- I just want to understand how
 12 that \$600 gets in there, because what you are
 13 saying does not make sense.
 14 A. Well, I think --
 15 MR. KEDIR: Objection.
 16 MR. POPSON: Objection. Move to
 17 strike.
 18 THE WITNESS: Can I go ahead and
 19 answer?
 20 MR. KEDIR: Yes.
 21 A. So, over three weeks, like, her pain was a two
 22 out of three on her neck. In two to three weeks
 23 from January the 19th, it could have been less.
 24 And, that's where I'm getting these numbers from.
 25 She may have only needed five more modalities

207

1 over the next one to two months to get back to
 2 pre-accident condition.
 3 Q. So, then, it's true that she was close to having
 4 her injuries resolved?
 5 A. She was neither.
 6 MR. POPSON: Objection.
 7 MR. KEDIR: Objection.
 8 A. She was doing better. But, again, it's hard to
 9 say. Some people can remain at a four for two
 10 months. It's hard to say. It's hard to make
 11 these predictions.
 12 Q. So, there's been testimony and documents
 13 introduced in earlier depositions, in this case,
 14 showing that, when you are paid a narrative fee
 15 for a report -- paid a fee for a narrative
 16 report, I should say, that the check is cut, and
 17 made out to you, personally. Are you aware of
 18 that?
 19 A. That is correct.
 20 Q. Why is that the case?
 21 MR. KEDIR: Objection.
 22 A. I don't know. You'd have to ask KNR. I don't
 23 know.
 24 Q. KNR said we had to ask you.
 25 A. I have no idea. I'm the one that prepares the

208

1 narratives. I send the narratives out, and they
 2 cut the checks. I do it on my own time. I would
 3 prefer that it's made out to my name, in
 4 specific.
 5 Q. Did you ever ask them to do that?
 6 A. I don't remember ever doing that, no.
 7 Q. Is it possible that you did, and you just don't
 8 remember?
 9 A. I have no idea.
 10 MR. KEDIR: Objection.
 11 Q. Okay. I might have a document that will refresh
 12 your recollection.
 13 - - - - -
 14 (Thereupon, Deposition Exhibit 17 was marked
 15 for purposes of identification.)
 16 - - - - -
 17 Q. Seventeen. Actually, you know what, let's look
 18 back at sixteen real quickly.
 19 A. Okay.
 20 Q. I want to ask you about -- it says *total charges*,
 21 on the second page of [REDACTED] medical records.
 22 It says *total charges \$4,010*, and, then, *total*
 23 *received \$3,200*. It's common for you to accept
 24 less than you bill, correct?
 25 MR. KEDIR: Objection.

1 MR. POPSON: Objection.
 2 A. It is common. We've accepted less on a lot of
 3 different cases.
 4 Q. Most of the cases, correct?
 5 A. No, not most of them.
 6 MR. KEDIR: Objection.
 7 A. It's tough to say. It's hard to say.
 8 Q. Not most of them?
 9 A. It's hard to say.
 10 Q. So, it could be most of them, you just don't
 11 know.
 12 A. It's very tough to say. I don't do all the
 13 billing at the office, right, so, I don't know.
 14 Q. But, don't you have frequent conversations with
 15 Rob Nestico, or haven't you had these
 16 conversations over the years, where he is
 17 negotiating with you to accept a lower fee so
 18 that the cases can get settled?
 19 MR. BARMEN: Objection.
 20 MR. POPSON: Objection.
 21 A. It's been a long time since I've talked to Rob
 22 Nestico about the specific cases. But, yeah,
 23 it's -- in the past, it's happened, where he's
 24 called me to negotiate a bill, and we agreed to
 25 accept a reduced amount. It happens with all law

1 firms not just Rob Nestico.
 2 Q. Sure.
 3 A. Even insurance companies, they all call us to
 4 accept reductions. Nobody wants to pay in full.
 5 Q. Sure. So, there was a time when you were
 6 frequently talking to Rob Nestico about these
 7 reductions, correct?
 8 MR. KEDIR: Objection.
 9 MR. POPSON: Objection.
 10 A. Frequently, is a tough word. It's tough to say.
 11 He would call me, and ask for a reduction on
 12 certain cases. Also, other attorneys have called
 13 me, and asked me for reductions on cases.
 14 Q. So, is it --
 15 A. It's either myself, or the billing office, or
 16 whoever they deal with, at the time.
 17 Q. So, you say it's been a long time since you've
 18 talked to Rob about a specific case, so does that
 19 mean that there are other people you speak with
 20 at KNR about the specific cases?
 21 MR. KEDIR: Objection.
 22 A. Yeah, sometimes, attorneys call us to request a
 23 reduction, call me specifically, ask for a
 24 reduction.
 25 Q. Is that because you're accepting fewer reductions

1 now, or why is it that you --
 2 A. We've --
 3 MR. POPSON: Objection.
 4 MR. KEDIR: Objection.
 5 A. People have tried to negotiate our bills all the
 6 time. It happens always. Everybody wants to
 7 negotiate it down.
 8 Q. But, you don't have these conversations with
 9 Nestico anymore?
 10 MR. KEDIR: Objection.
 11 MR. POPSON: Objection.
 12 A. It's been a long time.
 13 Q. How long?
 14 A. I can't tell you. I don't know.
 15 Q. How many times a week are you on the phone with
 16 attorneys about reductions?
 17 A. It's hard to say. Whenever they call.
 18 Sometimes, my staff will come, and say, "Hey,
 19 Doc, here's the bill. Here's what they're
 20 willing to accept." And, then, I send her back,
 21 "No, we can only accept this amount of
 22 reduction." It's a back-and-forth. It's hard to
 23 say.
 24 Q. Let's go ahead and look at seventeen. Now, this
 25 document has been redacted. It looks like, well,

1 there's an e-mail from you to Redick Nestico and
 2 Brandy on Narratives' List 6/13/12, *have not*
 3 *received*-- now, does this look like a response
 4 from you about sixty-eight narratives that they
 5 are requesting, that KNR is requesting?
 6 MR. KEDIR: Objection.
 7 MR. POPSON: Objection.
 8 MR. MANNION: Objection.
 9 Mischaracterizes.
 10 A. I have no idea. Let me just take a look here.
 11 These -- it's possible that this is an e-mail of
 12 narratives that were produced and not paid. Back
 13 in the day, when I had time, I would keep the
 14 files to the side, and when the narrative and
 15 bill was paid, then, the file would get filed
 16 away. So, it looks like an e-mail that I sent is
 17 there. I produced these e-mails over the past,
 18 God knows how long. That's a lot. And, just,
 19 they hadn't paid me on it.
 20 So, it may be an e-mail to -- this is all
 21 speculative -- to Mr. Redick and Brandy about,
 22 "Hey, I produced all these narratives. Where is
 23 the money for these narratives?"
 24 Q. Well, then, why does it say at the bottom, *that's*
 25 *a crapload of narratives. Any way they can be*

213

1 *done by Thursday at 11 a.m.?*

2 A. 'Cause that's -- so, back in 2002, this is

3 probably when I'd head back to Canada, and,

4 maybe, I said, "Hey, can you have them ready by

5 Thursday?" I don't know. Just on my way out, or

6 just send -- give me them by Thursday, type of

7 thing.

8 Q. You're not asking if you can produce sixty-eight

9 narrative reports by Thursday at 11 a.m.?

10 A. No. That's impossible. That would never happen.

11 It can't happen. It's physically impossible.

12 MR. MANNION: You see this is from

13 him, right, Peter?

14 A. That's my e-mail.

15 MR. MANNION: Come on, stop

16 missing a stroke.

17 MR. PATTAKOS: Well, you know,

18 there are other documents around here.

19 And, we also, we don't know what's been

20 withheld from here. You realize that.

21 MR. POPSON: You're saying you

22 can't tell if he's asking if he paid for

23 these narratives, by looking at this?

24 MR. PATTAKOS: Is this your

25 testimony, Jim?

214

1 MR. MANNION: No. This is just

2 you trying to twist again. Get moving.

3 You've been wasting time.

4 MR. PATTAKOS: Let's take a break.

5 VIDEOGRAPHER: We're going off the

6 record. The time is 2:48.

7 (Whereupon, a break was taken.)

8 VIDEOGRAPHER: We're back on the

9 record. The time is 2:55.

10 Q. So, what is this list from, this list of

11 sixty-eight narratives?

12 A. I have no idea. This e-mail was sent at midnight

13 on Thursday June 14th. I don't know. Are there

14 names here, that were here, that were taken off?

15 Q. Yes.

16 A. It was probably a list of narratives that were

17 completed, and that I hadn't been paid on. But,

18 again, that's a speculative guess, because this

19 happened, what, seven years ago.

20 Q. Do you maintain a list of narratives that you

21 complete?

22 A. No. Back in 2012, I had a weird system, where I

23 would complete the file, review the file, prepare

24 the narrative, and, then, just stack them up.

25 And, then, when I would get paid, I would just

215

1 have the girls file it away. But, since I had my

2 daughter in 2015, I don't -- I have no time to do

3 any of that stuff. So, I don't keep track of any

4 narratives that I complete, or anything like

5 that.

6 Q. So, how do you make sure you get paid on them?

7 A. I don't.

8 Q. But, you used to?

9 A. I used to do it that way, yes.

10 Q. Okay. When you say *any way they can be done by*

11 *Thursday at 11 a.m.*, do you recall what you meant

12 by that?

13 A. I don't know, probably, to have them ready by

14 then. I don't know if they were holding them,

15 not mailing them to me. I have no idea.

16 Q. Have what ready by then?

17 A. The narratives, the narrative checks.

18 Q. The checks?

19 A. The checks for the narratives, yes. And, this

20 was sent on a Thursday at midnight, so I couldn't

21 have expected them to prepare checks by the next

22 morning, obviously, it didn't happen. It says in

23 the subject there *have not received*, so I hadn't

24 got paid on them.

25 Q. Was this normal for you to not get paid on your

216

1 narratives, and follow-up with KNR about it?

2 A. Not really, no.

3 Q. Okay. Do you have any idea what a *red bag*

4 *referral* is?

5 A. I have no idea.

6 Q. You don't keep track of referrals, at all?

7 A. No.

8 Q. And you don't have any documents that would

9 memorialize any policies, or procedures,

10 regarding referring patients to law firms,

11 correct?

12 A. No, that doesn't exist.

13 Q. And you don't have any documents documenting any

14 policies, or procedures, on how to handle calls

15 from new patients, who are car accident victims?

16 A. No.

17 Q. And you don't have any documents relating to

18 telemarketers?

19 A. No.

20 - - - - -

21 (Thereupon, Deposition Exhibit 18 was marked

22 for purposes of identification.)

23 - - - - -

24 (Thereupon, Deposition Exhibit 19 was marked

25 for purposes of identification.)

1 - - - - -
 2 (Thereupon, Deposition Exhibit 20 was marked
 3 for purposes of identification.)
 4 - - - - -
 5 Q. Do you recognize these documents?
 6 A. I think they're the Interrogatories.
 7 Q. Did you prepare these responses?
 8 MR. KEDIR: Objection.
 9 A. I prepared them with my counsel present.
 10 Q. But, you reviewed and verified that everything
 11 was true, to the best of your knowledge, correct?
 12 A. I believe I did so, yes.
 13 Q. And you did that with all the discovery requests,
 14 correct?
 15 A. Yes.
 16 Q. Did you review the responses to the Request for
 17 Production, as well?
 18 - - - - -
 19 (Thereupon, Deposition Exhibit 21 was marked
 20 for purposes of identification.)
 21 - - - - -
 22 Q. Here's Exhibit 21.
 23 A. Yes. I reviewed these, at some point.
 24 Q. And you determined that all of the statements
 25 made in there were true, to the best of your

1 knowledge?
 2 MR. POPSON: Objection.
 3 MR. KEDIR: Objection.
 4 A. Yes.
 5 Q. And same goes for the Request For Admission,
 6 Exhibit 22?
 7 - - - - -
 8 (Thereupon, Deposition Exhibit 22 was marked
 9 for purposes of identification.)
 10 - - - - -
 11 A. Yes.
 12 Q. You reviewed those and you ensured that your
 13 responses were true?
 14 A. Yes.
 15 Q. It looks like you signed an Affidavit on the
 16 Request For Admission.
 17 - - - - -
 18 (Thereupon, Deposition Exhibit 23 was marked
 19 for purposes of identification.)
 20 - - - - -
 21 Q. These are Response to Second Set of
 22 Interrogatories, Exhibit 23. Can you confirm
 23 that you reviewed those, and that they are all
 24 true, to the best of your knowledge.
 25 A. Yes.

1 - - - - -
 2 (Thereupon, Deposition Exhibit 24 was marked
 3 for purposes of identification.)
 4 - - - - -
 5 Q. And Exhibit 24 is your responses to second set of
 6 requests for Production of documents. Did you
 7 review these, and confirm that all of the
 8 statements here are true to the best of your
 9 knowledge?
 10 A. Yes.
 11 - - - - -
 12 (Thereupon, Deposition Exhibit 25 was marked
 13 for purposes of identification.)
 14 - - - - -
 15 Q. Does the same go for Exhibit 25, the third set of
 16 Interrogatories and/or Request for production?
 17 A. Yes.
 18 Q. Okay. The Request For Admission --
 19 MR. KEDIR: Which exhibit is that?
 20 MR. PATTAKOS: It's Exhibit 22.
 21 Q. You were asked to admit that it was routine
 22 practice for Akron Square to directly solicit car
 23 accident victims by phone. You write *denied*.
 24 Why did you deny that request?
 25 A. Which number? I'm sorry.

1 Q. No. 1.
 2 MR. KEDIR: Objection.
 3 A. Because, that's the answer.
 4 Q. So, even though, you have a form you have Thera
 5 Reid execute acknowledging she was solicited by a
 6 telemarketer, it's still your testimony it was
 7 not routine practice to do this?
 8 A. I don't know if it's routine practice or not.
 9 I'm just an employee. I treat the patients.
 10 Q. You don't know, but you deny it here --
 11 A. Correct. I didn't know.
 12 Q. Why didn't you just say you didn't know?
 13 MR. KEDIR: Objection.
 14 A. I don't know.
 15 Q. You could say --
 16 MR. MANNION: Wait a minute. Are
 17 you done?
 18 THE WITNESS: Yes.
 19 A. I just didn't know. I prepared this with
 20 counsel, and I just didn't know.
 21 Q. So, when you write -- when you say you *deny*, on
 22 No. 2, *that it was routine practice for ASC to*
 23 *advise its clients to call KNR offices*, you deny
 24 that?
 25 MR. KEDIR: Objection.

221

1 Q. But, KNR has represented that you made, like,
2 hundreds of recommendations to their firm. So,
3 how can both be true?
4 MR. KEDIR: Objection.
5 MR. MANNION: I'm going to object.
6 This is Akron Square.
7 MR. PATTAKOS: Stop testifying,
8 Tom.
9 MR. MANNION: I made, like, three
10 objections all day.
11 MR. KEDIR: It was also routine
12 practice in Akron Square. Those things are
13 two different -- denied.
14 MR. PATTAKOS: I appreciate your
15 guys' testimony.
16 Q. But, you are a representative of Akron Square,
17 are you not?
18 A. I'm just an employee of Akron Square. I'm not a
19 representative of Akron Square. I just work
20 there.
21 MR. MANNION: Wait. And, I want
22 to know, is this a 30(b)? I didn't see
23 that.
24 Q. So, the basis for your denial here is that Akron
25 Square didn't advise its clients to call KNR

222

1 offices, you, Minas Floros himself did; is that
2 your testimony?
3 MR. KEDIR: Objection.
4 MR. POPSON: Objection.
5 A. I didn't advise anybody to do anything. I
6 provide recommendations to new patients that have
7 legal questions, and it's up to them to contact
8 the patients. I don't advise anything. I don't
9 advise them to call KNR.
10 Q. You just recommend KNR, as a law firm.
11 A. It's one of the recommended attorneys who I refer
12 patients who are injured to contact, yes. And,
13 in the case of Thera Reid and Monique Norris, I
14 did not endorse them or refer them to call
15 anybody.
16 Q. What is Panatha Holdings?
17 A. I don't know.
18 Q. Do you own any real estate with Rob Nestico?
19 A. No.
20 Q. Do you own real estate?
21 A. A house.
22 Q. In Toronto?
23 A. Yes.
24 Q. Do you own any other real estate?
25 A. Some commercial property in Toronto.

223

1 MR. KEDIR: I'm objecting as to
2 the relevance of this.
3 Q. Have you worked with Danny Carron (ph), in
4 connection with any of your real estate
5 investments?
6 A. No.
7 Q. Do you know Danny Carron?
8 A. Yes.
9 Q. Are you friends with Danny Carron?
10 A. No.
11 Q. How do you know Danny?
12 A. Just through acquaintances.
13 Q. Which acquaintances?
14 A. I don't know. I have no idea. I met him in the
15 past many times.
16 Q. So, you own some commercial properties in Canada?
17 A. Yes.
18 MR. KEDIR: Object to the
19 relevance of this, again.
20 MR. PATTAKOS: Well, your
21 objection is noted.
22 MR. KEDIR: Well, if you keep
23 going on it, and keep going into unrelated
24 commercial -- he owns property in Canada,
25 he doesn't have to give that information to

224

1 you.
2 Q. Do you have any partners in your business, your
3 real estate business in Canada?
4 A. My mom.
5 Q. Your mom. Anyone else?
6 A. No.
7 Q. Is that incorporated under a company name, or is
8 it in your name, directly?
9 A. It's in a company name.
10 Q. What's the company name?
11 A. I don't know. It's a numbered company. That's
12 how it works in Ontario.
13 Q. Okay.
14 A. I don't know what the numbered company is.
15 Q. Is it just one holding company that you keep this
16 real estate in?
17 A. Yes.
18 Q. So, apart from this holding company, and the
19 records company that you testified to earlier, I
20 forget the name of it --
21 A. Universal Reports Plus.
22 Q. Right. Are there any other corporations --
23 A. No.
24 Q. -- that you own an interest in?
25 A. No.

225

1 Q. Is there any other real estate that you own any
 2 interest in, besides your house, and these
 3 companies that are -- these commercial properties
 4 in Toronto?
 5 A. No.
 6 Q. And you have no idea what Panatha Holdings is?
 7 A. No.
 8 Q. You have no memory of it?
 9 A. No. I don't know what it is.
 10 Q. Do you ever recall asking Rob Nestico to help you
 11 set up a real estate holding company?
 12 MR. KEDIR: Objection.
 13 A. No.
 14 Q. Do you ever recall asking Rob Nestico to help you
 15 set up any corporation?
 16 A. No. My accountant set up my corporation for
 17 Universal Reports Plus.
 18 Q. Okay. Who is Douglas Friedman?
 19 A. I believe he's employed at Chiropractic
 20 Strategies Group.
 21 Q. Do you know what he does there?
 22 A. No. Strategy strategies.
 23 Q. Have you ever interacted with Mr. Friedman?
 24 A. A couple times over the past several years.
 25 Q. What do you remember about those interactions?

226

1 MR. KEDIR: Objection.
 2 A. I don't remember anything.
 3 Q. You don't remember anything, at all, you don't
 4 remember where they were?
 5 A. No.
 6 MR. KEDIR: Objection.
 7 Q. Were they in Ohio?
 8 A. No, they were not in Ohio.
 9 Q. Where were they?
 10 A. Might be a phone call conversation.
 11 Q. Did you ever see them in Texas?
 12 A. No.
 13 Q. You never saw them in court in Texas, or during
 14 litigation proceedings in Texas?
 15 A. No. I've only been to Texas once.
 16 Q. And that was to testify?
 17 A. Correct.
 18 Q. Describe that.
 19 MR. KEDIR: I'm going to object
 20 just if this involves anything -- if he's
 21 had any attorney conversations with that,
 22 involved in a separate case, don't talk
 23 about that.
 24 THE WITNESS: I have no problem
 25 answering that.

227

1 A. I testified regarding a couple of X-rays that
 2 were taken from previous chiropractors in Texas.
 3 Q. And what did you testify about those X-rays?
 4 A. Just the relevancy of the X-ray. What I saw on
 5 the X-ray. That's what I remember. This was
 6 back in 2007/2008, 2006. I don't remember.
 7 Q. And, this was a case where Akron Square was named
 8 as a Defendant --
 9 MR. KEDIR: Objection.
 10 A. Oh, I don't know. I was asked just to fly in, to
 11 testify on a couple of records, and a couple of
 12 X-rays.
 13 Q. -- that were cases that you were involved with?
 14 MR. KEDIR: Objection.
 15 A. I don't remember which cases they were.
 16 Q. Okay. You don't recall that Akron Square was
 17 named as a Defendant in a fraud lawsuit --
 18 MR. KEDIR: Objection.
 19 Q. -- and alleged racketeering?
 20 A. No. I don't know. I don't know anything about
 21 it.
 22 Q. And, you don't know that that's what the case was
 23 that you testified in?
 24 A. No. I was just told to fly in one day, testify
 25 on records and X-rays, and that was it.

228

1 Q. And, you have no idea what the case is about?
 2 A. No.
 3 Q. Have you ever been asked to fly out of state to
 4 testify in a case before, besides that occasion?
 5 A. Not that I'm aware of.
 6 Q. There's been some testimony, in this case, about
 7 trips to Cancun, some other locations, Las Vegas,
 8 Mississippi, Florida, where KNR employees and
 9 providers, such as yourself, go on the trips
 10 together for recreational purposes. Do you
 11 recall anything about these trips?
 12 MR. KEDIR: Objection.
 13 A. There was one trip I went on with a couple
 14 doctors. We were going to go to Mexico, and
 15 instead of going alone, we found out KNR was
 16 going. We asked if we can join them. They said
 17 yes, and we just went along.
 18 Q. And, that was the only trip that you ever took
 19 with KNR employees?
 20 A. Correct. That's the one remember, yes.
 21 Q. That's the one you remember, but it may be that
 22 you went on other trips, and you just don't
 23 remember?
 24 MR. KEDIR: Objection.
 25 A. No. There hasn't been any other trips.

1 Q. Just one to Cancun?
 2 A. Correct.
 3 Q. Do you remember how it came about that you found
 4 out that KNR was going to be down there?
 5 A. I don't remember. Talking to a couple
 6 paralegals, I would imagine. They were saying
 7 they were going down. We just got together, and
 8 said, "Hey, can we join?" And they said okay, so
 9 we joined.
 10 Q. Did Rob Nestico pay for that trip?
 11 MR. KEDIR: Objection.
 12 A. No. Absolutely not.
 13 - - - - -
 14 (Thereupon, Deposition Exhibit 26 was marked
 15 for purposes of identification.)
 16 - - - - -
 17 Q. Do you recognize this document?
 18 MR. KEDIR: Peter, I'm going to
 19 ask that this financial information be
 20 marked Confidential, Private.
 21 MR. PATTAKOS: Okay.
 22 A. No, I don't know what this is.
 23 Q. Did you ever see the Subpoena that we sent to
 24 your office?
 25 A. I don't think I have, no. I've never seen these

1 documents.
 2 Q. My office sent a subpoena to Akron Square, and
 3 this is Akron Square's formal response executed
 4 by Douglas Friedman. Did you ever communicate
 5 with anyone at Akron Square about this subpoena?
 6 A. No.
 7 Q. Never spoke with them, at all, about it?
 8 MR. KEDIR: Objection.
 9 A. No, not that I remember.
 10 Q. You never spoke with Douglas Friedman about it?
 11 A. No.
 12 MR. KEDIR: Objection.
 13 A. This is the first time I'm seeing this.
 14 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 20 Q. Okay.
 21 MR. KEDIR: Objection, just
 22 confidential reasons with this.
 23 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 3 MR. KEDIR: Objection.
 4 A. I don't know. That's something my accountant
 5 does. I have no idea.
 6 Q. Well, does that number generally sound right, in
 7 terms of what you earn from Akron Square?
 8 A. I don't know. It's different month to month,
 9 year to year. I have no idea.
 10 Q. Do you review profit and loss statements by Akron
 11 Square to ensure that you're being paid,
 12 according to your agreement?
 13 A. No.
 14 MR. KEDIR: Objection.
 15 Q. You don't?
 16 A. No.
 17 Q. You just take what they give you?
 18 A. Correct.
 19 Q. Do you have any reason to believe that any of
 20 these W-2s, reflecting your income, or the income
 21 of Dr. Dumond, are inaccurate?
 22 A. I have no idea.
 23 Q. You have no reason to believe that they are
 24 inaccurate, do you?
 25 MR. KEDIR: Objection.

1 A. Again, I don't know.
 2 Q. You can't, sitting here today, provide any reason
 3 why you would believe these are inaccurate?
 4 MR. KEDIR: Objection. Asked and
 5 answered.
 6 A. Again, I don't know, Peter. I don't even look at
 7 my W-2s.
 8 Q. What did you do to prepare for this deposition?
 9 MR. KEDIR: Objection.
 10 A. Just talked to my counsel, attorney.
 11 Q. Did you talk to anyone else in this room to
 12 prepare for your deposition?
 13 A. No. I talked to Mr. Mannion early on in the case
 14 couple years ago.
 15 Q. How many times?
 16 A. Once that I can remember.
 17 Q. For how long?
 18 A. Half an hour, forty-five minutes.
 19 Q. What did you talk about?
 20 A. He asked me some questions about my job, my work,
 21 what I do.
 22 Q. Did you ever talk with Mr. Nestico about this
 23 case?
 24 A. No. Early on, yeah. I shouldn't say -- yes, we
 25 discussed it, when it first came about. And,

1 that's, kind of, it.
 2 Q. What do you recall about those conversations?
 3 A. I don't recall much. I remember how ridiculous
 4 it was, when we first read it, or when I first
 5 read bits of it.
 6 MR. KEDIR: Objection.
 7 Q. What's ridiculous about it?
 8 MR. KEDIR: Objection.
 9 MR. BARMEN: What isn't?
 10 A. I didn't read the entire thing.
 11 Q. Did you review Gary Petty's deposition
 12 transcript?
 13 A. No, I have not.
 14 Q. Do you know Gary Petty?
 15 A. Yes, I do.
 16 Q. Do you think he's a liar?
 17 A. Yes.
 18 Q. Why?
 19 A. I've had multiple conversations with Mr. Petty
 20 over the last couple years. And every time a
 21 patient wants to talk to one of the attorneys,
 22 and wants KNR, I'm the one that would talk to
 23 Mr. Petty early on, just introduce the patient to
 24 him.
 25 At no time, did Mr. Petty ever tell me

1 anything about a narrative, or not prepare a
 2 narrative, or anything of that nature. At any
 3 point, any attorney, if any attorney, had
 4 contacted me, and asked me not to prepare a
 5 narrative, it should have never been requested,
 6 and I would have complied with that.
 7 Q. Why does that mean that Gary Petty is a liar?
 8 MR. KEDIR: Objection.
 9 A. The bits and pieces that I've read are just
 10 wrong. They're just nonsense. They don't make
 11 any sense.
 12 Q. If Gary Petty is lying, what is the lie that he's
 13 telling?
 14 A. About --
 15 Q. If you're going to call someone a liar --
 16 MR. KEDIR: I'm also going to
 17 object, because there is information that
 18 he got from me, and this is attorney/client
 19 privilege that's involved.
 20 MR. PATTAKOS: Okay.
 21 MR. MANNION: Well, that's your
 22 evidence, allegedly, is, Peter, all
 23 attorney/client privilege. You can laugh
 24 all you want.
 25 MR. PATTAKOS: If you're going to

1 sit here, and call Gary Petty a liar, I
 2 would like to know what he lied about.
 3 MR. KEDIR: Well, some of it
 4 involves the topics that I talked to him
 5 about. You're not entitled to know about
 6 that.
 7 MR. PATTAKOS: I'm entitled to
 8 know what he understands --
 9 MR. KEDIR: No, you're not.
 10 MR. PATTAKOS: -- about why
 11 he thinks --
 12 MR. MANNION: Not if it involves
 13 him.
 14 MR. KEDIR: No, you're not. Not
 15 if it involves me. We've had
 16 conversations -- whether or not we had
 17 conversations about that, you're not
 18 entitled to know that. That's
 19 attorney/client privilege.
 20 Q. So, is it your testimony, Dr. Floros, that you
 21 only believe that Gary Petty is a liar, because
 22 Shaun told you a secret --
 23 MR. KEDIR: Objection.
 24 Q. -- that you can't sit here --
 25 MR. MANNION: Stop it.

1 MR. KEDIR: Don't even answer
 2 that.
 3 A. No.
 4 MR. KEDIR: Don't even answer
 5 that.
 6 A. No.
 7 Q. Why do you think Gary Petty is a liar?
 8 THE WITNESS: Can I answer that
 9 question?
 10 MR. BARMEN: You already answered
 11 it.
 12 MR. PATTAKOS: No, he didn't.
 13 A. Just based on the description of the amended
 14 complaint, or whatever complaint it was, saying
 15 that my narrative was worthless. He didn't
 16 believe it was warranted. He had ample
 17 opportunity, probably, thirty-plus times to tell
 18 me over the phone -- he could have come to my
 19 office, and told me he didn't require a
 20 narrative.
 21 At no point in the time that he worked for,
 22 where your friend, Rob Horton works, Slater &
 23 Zurz, and at KNR, did he ever tell me not to
 24 produce a narrative. At no time did he have his
 25 paralegal ever send an e-mail, call me, not to

237

239

1 produce a narrative. He sent me a document
2 request every single time requesting the
3 narrative.

4 If he had any problem with it, or wanting me
5 to add to it, he could have done so at any time.

6 If he didn't want it produced, he could have
7 called me, and said, "Doc, we don't need your
8 narratives anymore, at no point did he ever do
9 that. He constantly requested them, time and
10 time again, and, at no point, again, did he ever
11 say to me *not to produce a narrative*.

12 Q. So, you're saying that Gary Petty constantly
13 requested narrative reports at Slater & Zurz,
14 when he was working there.

15 MR. KEDIR: Objection.

16 A. He constantly requested them at KNR.

17 Q. No. No. No. I'm asking you about Slater &
18 Zurz.

19 A. Uh-huh.

20 Q. Is it your testimony that Gary Petty constantly
21 requested narrative reports --

22 A. No. No. No.

23 MR. KEDIR: Objection.

24 Q. -- when he was at Slater & Zurz?

25 A. That's not my testimony, no.

1 A. No. 2, a lot of attorneys have requested
2 narratives from me in the past.

3 Q. Right. But, this became a new development.

4 MR. KEDIR: Objection.

5 MR. POPSON: Objection.

6 A. I don't think it is a development at all. It's a
7 request from an attorney to produce a document.
8 I've had endless amounts of requests for a lot of
9 narratives in the past.

10 Q. So, you don't remember who first started asking
11 you for narrative reports, but you know for sure
12 that it wasn't John Lynett?

13 MR. KEDIR: Objection.

14 A. I can't say it was, or was not John Lynett, but
15 there has been a lot of attorneys that request
16 narratives from me in the past.

17 Q. And, you have no memory of how, or why, that
18 started?

19 MR. KEDIR: Objection.

20 A. I think it's just a request, based on an
21 individual patient getting injured in a car
22 accident. It's nothing started -- it's something
23 that I know attorneys have asked doctors for
24 years, even before I was born, for narrative
25 reports.

238

240

1 Q. Okay. Who was the first lawyer to ever ask you
2 for a narrative report?

3 A. Well, it's been many years ago. I don't
4 remember.

5 Q. It was John Lynett, wasn't it?

6 A. No, it wasn't.

7 MR. KEDIR: Objection.

8 Q. It wasn't?

9 A. I don't think it was, no.

10 Q. Well, how do you know it wasn't John?

11 MR. KEDIR: Objection.

12 A. There's been so many narratives produced in the
13 last fifteen years, I don't remember. But, I
14 don't think it was John Lynett.

15 Q. Well, it's true that John Lynett was the first
16 attorney that started requesting narrative
17 reports from you on every case that he handled,
18 isn't it?

19 MR. KEDIR: Objection.

20 A. No, several things. No. 1, he doesn't request
21 narratives on every case.

22 Q. Most of his cases, though, correct?

23 MR. KEDIR: Objection.

24 A. It's hard to say.

25 MR. KEDIR: Please let him finish.

1 Q. What incentive, if any, does Gary Petty have to
2 lie about you?

3 MR. KEDIR: Objection.

4 A. I have no idea. I don't know him that well. I
5 just know I've talked to him many, many times on
6 the phone, and, at no time, did he ever tell me
7 anything negative about my narrative, ever.

8 Q. Well, Gary Petty's testimony was that he never
9 asked you for a narrative --

10 MR. KEDIR: Objection.

11 Q. -- until they started appearing on his cases at
12 KNR, because the KNR paralegals were requesting
13 them.

14 A. I don't know when he started requesting them or
15 not. I don't know when he started working at
16 KNR. I don't know which specific files he was
17 on. But, if they wanted a narrative, they would
18 request a narrative, either him or his paralegal.

19 Q. But, do you recall Gary Petty ever, specifically,
20 asking you for a narrative report?

21 MR. KEDIR: Objection.

22 A. No. Attorneys don't call me on the phone, and
23 say, "Hey, Doc, we don't -- there's no need for a
24 narrative here." Or, "Don't produce a narrative.
25 Send the records." It comes in the form of mail.

241

1 They ask for medical requests -- that includes
 2 narrative, billing, records, I mean, documents,
 3 referral slips, that's what we send out.
 4 Q. So, it's not true that Gary Petty was calling
 5 you, and talking to you about narrative reports,
 6 right?
 7 MR. KEDIR: Objection.
 8 MR. POPSON: Objection to form.
 9 A. No. But, again, I've talked to Mr. Petty
 10 numerous times, and, at no time on the phone, if
 11 he was so against my narratives, which, again,
 12 based on my little reading that I've done on this
 13 case, he really bashed my narratives. If he
 14 didn't like them that much, all he had to do was
 15 say, "Hey, Doc, we don't need any of your
 16 narratives." Not a problem.
 17 Q. Well, he tried to do that at KNR, and, then, got
 18 fired two weeks later, as soon as he did that.
 19 MR. MANNION: Objection. Come on.
 20 Q. Were you aware of that?
 21 A. I don't know any of that.
 22 MR. MANNION: That's just bulge.
 23 You know it is.
 24 MR. POPSON: Objection. Move to
 25 strike.

242

1 MR. MANNION: Oh, you think the
 2 facial expression will change his opinion?
 3 MR. PATTAKOS: I can't believe you
 4 can sit here, and say that, Tom.
 5 MR. MANNION: Oh, come on.
 6 MR. PATTAKOS: You sat in here at
 7 Gary Petty's deposition, and you're still
 8 going to say this.
 9 MR. MANNION: You mean the guy who
 10 said that he doesn't even look at a value
 11 of a case?
 12 MR. PATTAKOS: Tom, it's a real
 13 shame.
 14 MR. MANNION: It is a real shame,
 15 your conduct. You've mischaracterized the
 16 evidence and testimony all the time. Are
 17 you going to read him the perjury statute
 18 now, like you did other witnesses?
 19 MR. PATTAKOS: Dr. Gunning's
 20 deposition --
 21 MR. MANNION: You want to
 22 misconstrue to him?
 23 MR. PATTAKOS: -- was a shame,
 24 too.
 25 MR. MANNION: You want to

243

1 misconstrue -- really?
 2 MR. POPSON: Objection. Move to
 3 strike.
 4 MR. MANNION: What about your
 5 client that puts her head in her face, and
 6 goes, "He's right. I shouldn't be the
 7 class rep." What about Matt Johnson, who
 8 says "dumb eff" on the record? What about
 9 those two?
 10 MR. PATTAKOS: Tom, you really
 11 dumped on Thera and Matt. I hope you are
 12 proud of yourself.
 13 MR. MANNION: What are you talking
 14 about?
 15 MR. PATTAKOS: You're probably --
 16 MR. MANNION: He lied.
 17 MR. PATTAKOS: You are really
 18 proud --
 19 MR. MANNION: Lied under oath.
 20 They lied under oath.
 21 MR. PATTAKOS: You're really proud
 22 of yourself for what you did to Thera and
 23 Matt, aren't you?
 24 MR. MANNION: I didn't do anything
 25 to Matt. He lied, outright lied.

244

1 MR. PATTAKOS: Okay.
 2 Q. Gary Petty testified that you, Dr. Floros, handle
 3 so many of these cases for the same firms that
 4 the result is your involvement ends up hurting
 5 the client, because the insurance companies look
 6 at your involvement with skepticism.
 7 MR. KEDIR: Objection.
 8 Q. Have you ever considered this possibility?
 9 MR. POPSON: Objection.
 10 MR. KEDIR: Objection.
 11 A. Why -- I would have no idea to know how he
 12 handles the cases with the insurance companies.
 13 I would have no idea.
 14 Q. Have you changed any of your business practices
 15 in response to this lawsuit?
 16 MR. KEDIR: Objection.
 17 MR. POPSON: Objection.
 18 A. No.
 19 Q. Any of your practices, at all?
 20 A. No.
 21 MR. KEDIR: Objection.
 22 Q. Well, when Gary says that -- he's, essentially,
 23 saying familiarity breeds contempt in these
 24 circumstances.
 25 MR. KEDIR: Objection.

1 MR. MANNION: Objection. He never
 2 once said that.
 3 Q. Does that seem reasonable to you?
 4 MR. POPSON: Objection. Move to
 5 strike.
 6 A. I don't know. I can't answer, as to what he
 7 testified to. If it's --
 8 Q. Well, I'm asking --
 9 A. If he has an opinion, that's his opinion. I
 10 don't know anything about that.
 11 Q. Does it seem reasonable to you, when Gary Petty
 12 says that when you handle so many of these cases
 13 for the same law firms that your involvement ends
 14 up hurting the client, because the insurance
 15 companies become more interested in your
 16 relationship with the law firm, than with the
 17 client's injuries?
 18 MR. MANNION: Objection.
 19 MR. KEDIR: Objection.
 20 MR. PATTAKOS: That is what he
 21 testified to.
 22 MR. POPSON: Objection.
 23 A. Peter, I can't answer. I can't comment on that.
 24 I don't know that to be true or not true. I
 25 can't answer that.

1 Q. Have you ever considered it?
 2 A. No, I don't consider that.
 3 Q. Okay.
 4 A. Peter, my job is to treat every single patient
 5 who is injured that comes into my office. That
 6 is my job. Whether he has an opinion about me,
 7 that's his opinion. I can't change his opinion
 8 about me.
 9 Q. Do you understand why an insurance company might
 10 look on a provider with skepticism, if they see
 11 him providing the same treatments to the same
 12 type of clients at the same firm in hundreds and
 13 hundreds of cases every year?
 14 MR. POPSON: Objection to form.
 15 MR. KEDIR: Objection.
 16 MR. BARMEN: Objection.
 17 A. I talk to insurance adjusters weekly, all the
 18 time. At no point has any insurance company
 19 knocked on me for treating patients injured in
 20 car accidents, or recommending attorneys for
 21 patients. I've never heard that in my life.
 22 Q. Well --
 23 A. I've been giving depositions for my patients in
 24 front of insurance adjusters, in front of
 25 attorneys for insurance adjusters. That's never

1 come up. That's not an issue.
 2 Q. What have you -- well, hold that thought. But,
 3 what are you talking to insurance adjusters every
 4 week for?
 5 A. They call me for negotiating my bill, ask for
 6 records. Questions about certain off-work slips,
 7 how much time did the patient miss work, was it
 8 necessary, how much longer does the patient have
 9 to treat. And, again, reductions, all insurance
 10 companies never want to pay in full.
 11 Q. And, these conversations with insurance adjusters
 12 would typically happen, where the client is not
 13 represented by an attorney?
 14 A. Yes.
 15 Q. Because, if the client is represented by the
 16 attorney, then, the attorney will talk to the
 17 adjusters, correct?
 18 A. I believe so.
 19 Q. Okay. It's true, Dr. Floros, that adjusters have
 20 attacked your relationship with the KNR law firm.
 21 You don't deny that?
 22 MR. KEDIR: Objection.
 23 A. I have no idea. I don't know that to be true.
 24 Q. Well, I mean, there are published opinions out
 25 there by the Ninth District Court of Appeals. We

1 can look at one, I guess.
 2 - - - - -
 3 (Thereupon, Deposition Exhibit 27 was marked
 4 for purposes of identification.)
 5 - - - - -
 6 MR. KEDIR: Objection.
 7 MR. PATTAKOS: What is the
 8 objection?
 9 MR. KEDIR: You're showing him a
 10 case.
 11 MR. PATTAKOS: It's a case where
 12 --
 13 MR. POPSON: Giving a non-lawyer a
 14 significant --
 15 MR. MANNION: He reads case law?
 16 MR. PATTAKOS: It is a case where
 17 he was involved, and they talk about a
 18 deposition that he was in.
 19 MR. MANNION: Do you have other
 20 copies?
 21 MR. PATTAKOS: I don't.
 22 MR. MANNION: Well, then, let's
 23 make some copies, or do something. Why do
 24 you do that, Peter? We have a right to
 25 receive this, before you ask questions.

1 MR. PATTAKOS: Tom, you did the
 2 same thing at the depositions you have
 3 taken.
 4 MR. MANNION: No, I didn't.
 5 MR. PATTAKOS: Sure you did.
 6 MR. MANNION: No. This hasn't
 7 even been in --
 8 Q. So, if we look at page 5 --
 9 MR. MANNION: Stop it.
 10 MR. BARMEN: Regardless, I've been
 11 asking you since 9:07 this morning to
 12 provide us copies of exhibits. You said
 13 you would do it.
 14 Q. If you look at page 5 paragraph 10 --
 15 MR. MANNION: How are they going
 16 to look at it?
 17 MR. BARMEN: Yeah, how am I
 18 supposed to look at that? I would like a
 19 copy of the exhibit that you are
 20 questioning the witness on, please. I
 21 don't think it is an unreasonable request
 22 here.
 23 Q. 2014-Ohio-4651 --
 24 MR. PATTAKOS: Do you want to take
 25 a break? We can take a break.

1 Q. Do you recall giving deposition testimony, in
 2 this case, *Chambers v. Lee*?
 3 A. No, I don't remember.
 4 MR. KEDIR: Objection.
 5 Q. How many times have you given a deposition?
 6 A. Twenty times, maybe, more. I don't remember the
 7 exact number.
 8 Q. Well, it says in paragraph 2 of the Opinion on
 9 page 1, that you were, in fact, deposed. It
 10 says, *after Ms. Chambers, Mr. Woods, and Dr.*
 11 *Floros were deposed*, there in the third sentence.
 12 You don't deny that you were deposed in this
 13 case, do you?
 14 A. I don't remember. Do you know who counsel was
 15 for the patients?
 16 Q. Well, it's KNR, it looks like. You see that Mark
 17 Lindsey and Christopher Van Blargan are
 18 representing [REDACTED] who was your
 19 patient in the case, do you remember [REDACTED]
 20 [REDACTED]
 21 A. I don't remember her. That was back in, what,
 22 2000 and --
 23 Q. 2014.
 24 MR. KEDIR: No, the Opinion was
 25 2014. Testimony was --

1 MR. MANNION: Here you go, Brad,
 2 you can look at this one, and I'll look
 3 over your -- do you have one?
 4 MR. BARMEN: No, I don't have one.
 5 THE WITNESS: You can look at
 6 this. I don't even know what this is.
 7 MR. BARMEN: I need one. Just
 8 make a copy, Peter.
 9 Q. Do you remember this case *Chambers v Lee*?
 10 A. No, I don't.
 11 MR. BARMEN: Again, wait a minute, I thought
 12 you were going to take a break.
 13 MR. PATTAKOS: If you guys want to
 14 take a break, we can take a break.
 15 MR. BARMEN: I really don't want
 16 to. It's just protocol.
 17 MR. MANNION: Can't you just make
 18 a copy of that date, instead of doing --
 19 MR. PATTAKOS: Let's take a break.
 20 VIDEOGRAPHER: We are going off
 21 the record. The time is 3:31.
 22 (Whereupon, a break was taken.)
 23 VIDEOGRAPHER: We're back on the
 24 record. This is the beginning of Tape
 25 No. 4. The time is 3:37.

1 A. 2012.
 2 MR. KEDIR: -- before 2012, or, at
 3 least --
 4 A. I don't remember.
 5 Q. Well, it says in paragraph 10 on page 5, if you
 6 look in the second half of the paragraph, where
 7 it says *similarly*, right where I'm pointing.
 8 A. Is that No. 10?
 9 Q. Yes, paragraph 10. *Similarly, to this case, the*
 10 *Defendant in Susanu*, which is another case that
 11 the Court is talking about here, *sought to show*
 12 *an interdependent relationship between the*
 13 *treating physician and Plaintiff's counsel that*
 14 *suggested a medical bias, which resulted in*
 15 *overtreatment and inflated damages.*
 16 *Also similar to this case, the Eight District*
 17 *noted that several appeals to their court*
 18 *involved the same scenario in Susanu, wherein*
 19 *attorneys for accident victims referred their*
 20 *clients to the same medical office.*
 21 You would agree, Dr. Floros, that here the
 22 Court is talking about how an insurance company
 23 is attacking your relationship with the KNR law
 24 firm, correct?
 25 MR. KEDIR: Objection.

1 MR. MANNION: You're asking him to
 2 interpret what a Court says.
 3 A. Yeah. I'm not going to comment, and I'm not
 4 going to agree with you on anything that this
 5 says, because I don't really understand it.
 6 Q. Okay.
 7 MR. POPSON: Did you tell him what
 8 the outcome was?
 9 MR. PATTAKOS: I don't think the
 10 outcome is relevant.
 11 MR. MANNION: Right. The fact
 12 that it was properly excluded.
 13 Q. Okay. So, you're saying that you can't
 14 understand that the insurance company that
 15 represented the Defendant, in this case, was
 16 attacking your relationship with the KNR firm?
 17 MR. MANNION: Objection.
 18 MR. KEDIR: Objection.
 19 MR. POPSON: Objection.
 20 Q. You never became aware of that?
 21 A. No. I've treated, like I said, many patients,
 22 and I've never been made aware of that.
 23 Q. And, you never advised your clients of any
 24 skepticism that insurance companies have over the
 25 relationship between you and KNR, or any law

1 firm, have you?
 2 MR. KEDIR: Objection.
 3 MR. MANNION: Objection. Assumes
 4 facts not in evidence.
 5 A. I don't agree with you that there is any
 6 skepticism. I don't think there is. I treat
 7 patients who are injured, and that's it.
 8 Q. Whether you agree with me or not, the question
 9 is, you don't advise clients about this, do you?
 10 MR. KEDIR: Objection.
 11 A. I don't know what to advise them about. I don't
 12 understand your question.
 13 Q. Well, if you don't agree that the insurance
 14 companies, for example, in this case, *Chambers v.*
 15 *Lee*, are attacking your relationship with the law
 16 firm, as is said very clearly here in this
 17 paragraph 10 --
 18 MR. MANNION: Objection. You're a
 19 lawyer.
 20 Q. -- you certainly don't advise your clients of
 21 that, do you?
 22 MR. KEDIR: Objection.
 23 MR. MANNION: Objection. Asking
 24 him to interpret a legal decision.
 25 A. I don't even know what this means. I have no

1 comment on this case.
 2 Q. Okay.
 3 - - - - -
 4 (Thereupon, Deposition Exhibit 28 was marked
 5 for purposes of identification.)
 6 - - - - -
 7 Q. Do you remember *McDade v Morris* and State Farm?
 8 MR. KEDIR: Objection.
 9 A. No. What year was this in? I don't know. I
 10 don't remember this.
 11 Q. You don't remember treating [REDACTED]
 12 A. No.
 13 Q. Or, testifying --
 14 A. No.
 15 Q. -- in this case, at all?
 16 A. No.
 17 Q. Okay. Page 2 paragraph 3, it says *Ms.* [REDACTED]
 18 *believed it was Mr. Morris' intention to defend*
 19 *the lawsuit against him by discrediting*
 20 *Dr. Floros, in particular, she believed Mr.*
 21 *Morris meant to argue that Dr. Floros had an*
 22 *arrangement with certain law firms, and routinely*
 23 *profited from referring his patients legal*
 24 *counsel.* You never became aware of that?
 25 MR. KEDIR: Objection.

1 MR. POPSON: Objection.
 2 A. No. Again, I don't know what any of this means.
 3 I don't know.
 4 Q. Okay.
 5 MR. PATTAKOS: Let's take a short
 6 break. I think I'm almost done. I think I
 7 only have a few minutes, but let me
 8 confirm.
 9 VIDEOGRAPHER: We're going off the
 10 record. The time is 3:48.
 11 - - - - -
 12 (Thereupon, a recess was had.)
 13 - - - - -
 14 THE VIDEOGRAPHER: We're back on
 15 the record. The time is 3:53.
 16 MR. PATTAKOS: We have no further
 17 questions, Dr. Floros. Thank you for your
 18 time today.
 19 THE WITNESS: Thank you.
 20 MR. POPSON: Just one quick thing
 21 to follow up on.
 22 - - - - -
 23 EXAMINATION OF MINAS FLOROS, DC
 24 BY MR. POPSON:
 25 Q. Dr. Floros, my name is Jim Popson. I represent

1 the KNR Defendant's in this case. There is just
 2 one little thing I want to clear up with you.
 3 You mentioned that when you started your
 4 practice, you were writing reports within a few
 5 months, after you started?
 6 A. Correct.
 7 Q. Were you writing reports for law firms, other
 8 than KNR --
 9 A. Oh, yeah.
 10 Q. -- at that time?
 11 A. Yes.
 12 Q. Was KNR the first firm that you ever wrote
 13 reports for?
 14 A. No.
 15 Q. Do you remember who some of the other firms were?
 16 A. Back when I first started, I remember Tom
 17 Magliner (ph). I don't remember. I mean, it's
 18 just so many. I don't remember.
 19 Q. Okay. But, there were more than one? There were
 20 several others?
 21 A. Correct.
 22 Q. You just can't recall the names?
 23 A. Correct.
 24 Q. And, were you getting paid for writing those
 25 reports?

1 A. Correct. Yeah, I produce a report, and, then,
 2 the law firm would pay the fee for the narrative.
 3 Q. Okay.
 4 MR. POPSON: All right.
 5 MR. PATTAKOS: I'll follow up,
 6 then.
 7 - - - -
 8 RE-EXAMINATION OF MINAS FLOROS DC
 9 BY MR. PATTAKOS:
 10 Q. And, Dr. Floros, was that on soft tissue cases
 11 that had very little likelihood to go to trial,
 12 or were those on cases that were advanced into
 13 litigation, or had a strong possibility of
 14 litigation?
 15 MR. KEDIR: Objection.
 16 MR. POPSON: Objection.
 17 A. I have no way to know if any case is a strong
 18 case for litigation. I treat the patient. The
 19 patient gets better. They get released. They
 20 get a request. I don't know what they are asking
 21 the narrative for, but I produce a narrative upon
 22 request.
 23 Q. You've been paid significantly more than \$200 for
 24 a narrative report before, haven't you?
 25 A. I don't remember.

1 Q. You don't remember either way?
 2 A. No.
 3 Q. Okay.
 4 MR. PATTAKOS: No further
 5 questions.
 6 MR. MANNION: I just have one
 7 question.
 8 - - - -
 9 EXAMINATION OF MINAS FLOROS DC
 10 BY MR. MANNION:
 11 Q. So, Rob Nestico didn't invent the narrative
 12 report?
 13 A. No, he didn't.
 14 Q. Okay.
 15 MR. PATTAKOS: Well, I think the
 16 testimony is that Rob invented the practice
 17 of using it as a kick-back.
 18 MR. MANNION: That's not what the
 19 testimony was.
 20 MR. PATTAKOS: That's what Gary's
 21 testimony --
 22 MR. MANNION: Okay, well, you said
 23 that. Wait a minute. Whoa.
 24 BY MR. MANNION:
 25 Q. Have you ever provided any type of kickback, or

1 cash payment, to KNR, Rob Nestico or Rob Redick?
 2 A. No. Never.
 3 Q. Is that something you would ever do?
 4 A. I would never do that.
 5 - - - -
 6 RE-EXAMINATION OF MINAS FLOROS DC
 7 BY MR. PATTAKOS:
 8 Q. Have you received any cash kickbacks from
 9 Dr. Ghoubrial?
 10 A. Absolutely not.
 11 MR. BARMEN: Thanks for asking him
 12 what I was going to ask.
 13 MR. PATTAKOS: Okay. I think
 14 we're done. Thanks, guys.
 15 MR. KEDIR: We'll read.
 16 VIDEOGRAPHER: We are now off the
 17 record. The time is 3:55.
 18
 19
 20
 21
 22
 23
 24
 25

1 SIGNATURE OF DEPONENT
 2
 3 I, the undersigned, MINAS FLOROS, DC, do
 4 hereby certify that I have read the foregoing
 5 deposition and find it to be a true and
 6 accurate transcription of my testimony, with
 7 the following corrections, if any:

8 PAGE LINE CHANGE REASON
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22

23
 24 MINAS FLOROS, DC
 25

1
 2
 3 C E R T I F I C A T E
 4
 5 The State of Ohio,) SS:
 6 County of Cuyahoga.)

7 I, Brian A. Kuebler & Kurt Spencer Notary
 8 Publics within and for the State of Ohio,
 9 authorized to administer oaths and to take and
 10 certify depositions, do hereby certify that the
 11 above-named witness was by me, before the giving
 12 of their deposition, first duly sworn to testify
 13 the truth, the whole truth, and nothing but the
 14 truth; that the deposition as above-set forth was
 15 reduced to writing by me by means of stenotypy,
 16 and was later transcribed by computer-aided
 17 technology under my direction; that this is a
 18 true record of the testimony given by the
 19 witness; that said deposition was taken at the
 20 aforementioned time, date and place, pursuant to
 21 notice or stipulations of counsel; that I am not
 22 a relative or employee or attorney of any of the
 23 parties, or a relative or employee of such
 24 attorney or financially interested in this
 25 action; that I am not, nor is the court reporting
 firm with which I am affiliated, under a contract
 as defined in Civil Rule 28(D).

18 IN WITNESS WHEREOF, I have hereunto set my
 19 hand and seal of office, at Cleveland, Ohio, this
 20 ____ day of _____, A.D. 20 ____.

21
 22 _____
 23 Brian A. Kuebler, Kurt Spencer, Notary Public,
 24 State of Ohio
 25 55 Public Square, Suite 1332
 Cleveland, Ohio 44113
 My commission expires June 12, 2022

1

1 IN THE COURT OF COMMON PLEAS
2 SUMMIT COUNTY, OHIO
3 MEMBER WILLIAMS, et al.,
4 Plaintiffs,
5 -vs- CASE NO. CV-2016-09-3928
6 KISLING, NESTICO
7 & REDICK, LLC, et al.,
8 Defendants.

9 - - - -
10 Videotaped deposition of RICHARD GUNNING, MD,
11 taken as if upon examination before Brian A.
12 Kuebler, a Notary Public within and for the State
13 of Ohio, at the Hilton Akron-Fairlawn Hotel and
14 Suites, 3180 W. Market Street, Fairlawn, Ohio, at
15 8:53 a.m. on Tuesday, April 9, 2019, pursuant to
16 notice and/or stipulations of counsel, on behalf
17 of the Plaintiffs.

18 - - - -
19 JK COURT REPORTING
20 55 PUBLIC SQUARE
21 SUITE 1332
22 CLEVELAND, OHIO 44113
23 (216)664-0541
24 www.jarkub.com
25

3

1 ALSO PRESENT :
2 John J. Reagan, Esq.
3 Peter Graves - videographer
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2

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 On behalf of the Plaintiffs;
9
10 Thomas P. Mannion, Esq. (Via phone)
11 Lewis Brisbois
12 1375 East 9th Street, Suite 2250
13 Cleveland, Ohio 44114
14 (216) 344-9467
15 tom.mannion@lewisbrisbois.com
16 and
17 James M. Popson, Esq.
18 Sutter, O'Connell
19 3600 Erieview Tower
20 1301 East 9th Street
21 Cleveland, Ohio 44114
22 (216) 928-2200
23 jpopson@sutter-law.com
24 On behalf of the Defendants,
25 Kisling, Nestico & Redick, LLC;

 Brad J. Barmen, Esq.
 Lewis Brisbois
 1375 East 9th Street, Suite 2250
 Cleveland, Ohio 44114
 (216) 344-9467
 On behalf of the Defendants,
 Sam N. Ghoubrial, MD;

 David M. Best, Esq.
 David M. Best Co., LPA
 4900 West Bath Road
 Akron, Ohio 44333
 (330) 665-1855
 dmbest@dmbestlaw.com
 On behalf of the Defendants,
 Kisling Nestico & Redick, LLC
 and Ghoubrial, Inc.

4

1 I N D E X
2
3 EXAMINATION
4 RICHARD GUNNING, MD
5 BY MR. PATTAKOS 5

EXHIBIT 4

5

1 THE VIDEOGRAPHER: We're now
 2 ready to begin the deposition. Will the
 3 court reporter please swear in the doctor.
 4 RICHARD GUNNING, MD, of lawful age, called by the
 5 Plaintiffs for the purpose of examination, as
 6 provided by the Rules of Civil Procedure, being
 7 by me first duly sworn, as hereinafter certified,
 8 deposed and said as follows:
 9 EXAMINATION OF RICHARD GUNNING, MD
 10 BY MR. PATTAKOS:
 11 Q. Good morning, Dr. Gunning.
 12 A. Good morning.
 13 Q. As you know, my name is Peter Pattakos and I
 14 represent the Plaintiffs in this lawsuit in which
 15 you're here to provide additional testimony.
 16 A. Yes.
 17 Q. You understand that we are continuing your
 18 deposition that began last December, correct?
 19 A. That's right.
 20 Q. And you understand that there was a court order
 21 requiring you to return for your deposition?
 22 A. That's correct.
 23 THE REPORTER: You've got to keep
 24 your voice up.
 25 THE WITNESS: Okay. Sorry.

6

1 Q. Have you taken any medication or ingested any
 2 substances of any kind that would impair your
 3 ability to remember events accurately or testify
 4 truthfully today?
 5 A. No, I have not.
 6 Q. Is there any other reason you would be unable to
 7 remember events accurately or testify truthfully
 8 today?
 9 A. Not that I can think of.
 10 Q. You testified at your deposition in December that
 11 the majority of patients that are treated through
 12 Dr. Ghoubrial's personal injury clinic are KNR
 13 clients. Do you recall that?
 14 MR. BARMEN: Objection. Wait a
 15 minute. Peter, you've got five areas of
 16 inquiry. We're not rehashing things so get
 17 to the issues that we're here for.
 18 MR. PATTAKOS: I'm not rehashing
 19 anything, this is my first question.
 20 MR. BARMEN: Your question should
 21 be related to these five things.
 22 MR. PATTAKOS: It is --
 23 MR. BARMEN: That one is a
 24 question that you've already asked.
 25 MR. PATTAKOS: -- it is, Brad. It

7

1 is. I'm asking him --
 2 MR. BARMEN: Well, I'm going to
 3 hold you to --
 4 MR. PATTAKOS: I'm providing
 5 context, okay?
 6 MR. BARMEN: We don't need you to
 7 provide context. Ask questions that you're
 8 permitted to ask and get this man done.
 9 MR. PATTAKOS: The court order
 10 says that I'm permitted to ask about these
 11 four subject areas and any follow-up
 12 questions that Plaintiffs deem necessary.
 13 MR. BARMEN: Well, you're starting
 14 --
 15 MR. PATTAKOS: That's what our
 16 motion asked -- no, I'm not starting with
 17 questions for context. Brad, it's fine.
 18 Your objection is noted.
 19 MR. BARMEN: No, ask the questions
 20 that you're permitted to ask --
 21 MR. MANNION: Wait. I'd like to
 22 put an objection on the record as well.
 23 The court order says follow-up on those
 24 four areas, not follow-up on any other
 25 areas.

8

1 MR. BARMEN: Right.
 2 MR. PATTAKOS: That's not what it
 3 says.
 4 MR. BARMEN: That is what it says.
 5 MR. PATTAKOS: Our motion
 6 requested -- our motion requested these
 7 four areas and any follow-up questions that
 8 Plaintiffs deem necessary --
 9 MR. BARMEN: Wrong.
 10 MR. PATTAKOS: -- okay? I'm
 11 trying to --
 12 MR. MANNION: That's totally --
 13 MR. PATTAKOS: -- I'm trying to
 14 move quickly.
 15 MR. MANNION: -- that's totally a
 16 misinterpretation --
 17 MR. PATTAKOS: I don't expect to
 18 be here for more than an hour.
 19 MR. MANNION: -- (unintelligible).
 20 MR. PATTAKOS: Okay.
 21 MR. BARMEN: You're here to ask
 22 him questions --
 23 BY MR. PATTAKOS:
 24 Q. Dr. Gunning, you told me when we spoke on the
 25 phone that Dr. Ghoubrial would refer to trigger

9

11

1 point injections as "nigger point injections",
 2 n-i-g-g-e-r, didn't you?
 3 MR. BARMEN: Objection. Go ahead.
 4 A. Yes, I did.
 5 Q. And why did you tell me that?
 6 A. I -- at the time I was angry, I was upset, I
 7 didn't want to be dragged into this lawsuit. I
 8 felt like I was being dragged into it and I was
 9 venting.
 10 Q. And you told me that because it's true, correct?
 11 A. It's true.
 12 Q. And you understood that when Dr. Ghoubrial used
 13 that term, he did so to refer to the racist slur
 14 for African Americans, correct?
 15 MR. BARMEN: Objection.
 16 A. He doesn't use it as a racist slur.
 17 Q. How does he use it then, sir?
 18 A. He uses it as part of casual conversation and
 19 frequently as a term of endearment. I've
 20 actually never heard him use the term directed
 21 toward people of color. Sam himself, if you
 22 know, is not white, he's not Caucasian. He
 23 considers himself African American. Possibly
 24 more legitimately than any of our patients since
 25 he was actually born in Africa. For an Egyptian,

1 A. Yes, I did.
 2 Q. And --
 3 A. But he uses it in casual conversation.
 4 Q. The term "afro puncture"?
 5 A. And I may have heard him say that twice.
 6 Q. To describe the personal injury clinic?
 7 MR. BARMEN: Objection.
 8 A. Not to describe the clinic, but to describe a
 9 particular injection technique.
 10 Q. And did you understand this to refer to the fact
 11 that the personal injury clinic treats a large
 12 proportion of African Americans?
 13 MR. BARMEN: Objection.
 14 A. We do. Although I covered for that clinic two
 15 weeks ago when Sam was, I think, predisposed to
 16 something else, and on that particular day over
 17 60 percent of the patients were not African
 18 American but white.
 19 Q. So what do you understand the "afro puncture"
 20 reference to refer to?
 21 MR. BARMEN: Objection.
 22 A. Well, I think it was his colloquial way of using
 23 the term "acupuncture".
 24 Q. But he doesn't perform acupuncture, does he?
 25 A. No. But there was a time in that clinic when

10

12

1 he's particularly dark skinned and he's moved to
 2 America and he feels that he has the right to use
 3 the term as legitimately as any black rapper and
 4 uses it in casual conversation. He has referred
 5 to me -- addressed me as the N word. A mutual
 6 friend in the gym, who is also white, he has
 7 addressed using the N word. And a mutual friend
 8 of ours who is a very white multimillionaire he
 9 has used that word to address him.
 10 So in Sam's world, it's probably not a
 11 stretch to think that choosing a word that might
 12 rhyme with trigger point, he might come up with
 13 that term as part of casual conversation, not
 14 with any malice.
 15 Q. So he used this term casually?
 16 A. Yes.
 17 Q. How many times have you heard him use this term?
 18 A. Maybe seven or eight times over the last eight or
 19 nine years.
 20 Q. You also told me when we spoke on the phone that
 21 Dr. Ghoubrial would refer to his practice as
 22 "afro puncture", correct?
 23 A. Well, that is another rhyme of acupuncture.
 24 Q. Is it true, Dr. Gunning, that you did tell me
 25 that on the phone?

1 acupuncture was available. In fact, I myself
 2 received acupuncture as part of my treatment.
 3 Q. What do you remember about when you heard Dr.
 4 Ghoubrial use this term?
 5 MR. BARMEN: Objection. At any
 6 particular time, Peter? Can you be a
 7 little more specific on that one?
 8 MR. PATAKOS: He said he only
 9 heard him use it twice, so I want him to
 10 tell me what he remembers about both
 11 instances.
 12 MR. BARMEN: Objection. Go ahead.
 13 A. I think one of those -- I don't recall all of the
 14 instances. I do remember one instance was at his
 15 house at a Christmas party.
 16 Q. Do you remember anything else about this?
 17 A. He thought it was a funny term or phrase.
 18 Q. Who did he say it to?
 19 A. I think he said it to -- well, I was there and
 20 his brother-in-law may have overheard that
 21 comment.
 22 Q. Julie's brother?
 23 A. I think so, yeah.
 24 Q. Do you remember the sentence it was used in or
 25 anything like that?

13

1 A. It was eight or so years ago, so, no, I don't.
 2 Q. Okay. You don't recall why Dr. Ghoubrial would
 3 have been referring to needles at this Christmas
 4 party?
 5 MR. BARMEN: Objection.
 6 A. We frequently discuss office stuff sometimes out
 7 of the office.
 8 Q. Another subject that I asked you about at the
 9 deposition in December was Dr. Ghoubrial's
 10 actions concerning his divorce. Do you recall?
 11 A. I think so.
 12 Q. And one of the questions that you did not -- that
 13 you were instructed not to answer related to what
 14 you told me about Ghoubrial's actions regarding
 15 his practice, regarding his medical practice,
 16 both medical practices, vis-a-vis the divorce.
 17 Do you remember that?
 18 MR. BARMEN: Objection.
 19 A. I'm not quite sure the context, but I know we
 20 discussed something like that, yes.
 21 Q. Do you recall what you told me on the phone about
 22 Dr. Ghoubrial and his divorce?
 23 MR. BARMEN: Objection. Can you
 24 ask a specific question?
 25 MR. PATTAKOS: That is a specific

14

1 question.
 2 MR. BARMEN: Well, there are two
 3 specific areas outlined.
 4 A. Offhand I don't recall -- there's a lot of the
 5 phone conversation that I don't recall. I do
 6 recall that there was a lot of rumors going on in
 7 the office as to how he and Julie were handling
 8 the divorce.
 9 Q. Do you recall telling me that you heard from
 10 other employees of the practice that Dr.
 11 Ghoubrial wanted to make sure that Julie's name
 12 stays on their home mortgage so that her
 13 debt-to-asset ratio stays so high that she has to
 14 live in an apartment for the rest of her life?
 15 MR. BARMEN: Objection.
 16 A. The story sounds familiar. I remember hearing it
 17 from a nurse who said she overheard another nurse
 18 talk about a phone conversation that she heard
 19 that involved Sam and some unknown individual on
 20 the other end of the line. And her
 21 interpretation of what she heard was that Sam
 22 wanted to keep Julie's name on the mortgage. So
 23 I sort of heard it third-hand.
 24 MR. MANNION: Objection. Motion
 25 to strike, triple hearsay.

15

1 MR. BARMEN: Join.
 2 Q. Do you recall telling me those specific words,
 3 that her debt-to-asset ratio stays so high that
 4 she has to live in an apartment for the rest of
 5 her life?
 6 MR. BARMEN: Objection.
 7 A. I don't recall those specific words, but that was
 8 the gist of what I overheard.
 9 Q. You said that you couldn't -- strike that.
 10 Dr. Gunning, do you recall being extremely
 11 upset after your deposition at my office last
 12 December?
 13 A. I was --
 14 MR. BARMEN: Objection. Wait a
 15 minute. How is that in any way related to
 16 any of these issues that you're permitted
 17 to question him about today?
 18 Q. Please answer the question, sir.
 19 MR. BARMEN: Don't answer that
 20 question. How is it related to any of the
 21 issues that you're permitted to question
 22 him about today, Peter?
 23 MR. PATTAKOS: It relates to his
 24 testimony as a whole and the credibility of
 25 it, okay?

16

1 MR. BARMEN: That's not on --
 2 that's not at issue today.
 3 MR. PATTAKOS: It absolutely is.
 4 MR. BARMEN: It is not.
 5 Don't answer the question. You
 6 can go -- you can go back to the Court on
 7 that one because that is completely off
 8 base.
 9 BY MR. PATTAKOS:
 10 Q. Dr. Gunning, do you recall that after the
 11 deposition you were near your car and an employee
 12 of the pizza shop next door to my office said
 13 "hello" to you?
 14 MR. BARMEN: Objection. Don't
 15 answer that question. How is that in any
 16 way related to what you are permitted to
 17 question him about today, Peter?
 18 Q. Do you recall that, Dr. Gunning?
 19 MR. BARMEN: Don't answer the
 20 question. Move on.
 21 Q. Do you recall that you were sobbing
 22 uncontrollably after the deposition out in the
 23 parking lot, Dr. Gunning?
 24 MR. BARMEN: Objection. Don't
 25 answer the question.

17

1 MR. PATTAKOS: Why won't you let
2 him answer that question, Brad? What are
3 you afraid of?

4 MR. BARMEN: Because we are here
5 under an order that permits you to question
6 him on five specific areas and anything
7 that's arguably related to those areas.

8 MR. PATTAKOS: This is all --

9 MR. BARMEN: You are now trying --

10 MR. PATTAKOS: -- arguably related
11 because it goes to his credibility.

12 MR. BARMEN: Will you let me
13 finish?

14 MR. PATTAKOS: It goes to the fact
15 that he is intimidated by his employer and
16 that his testimony that he was giving was
17 very much influenced by his fear of his
18 employer, Defendant Ghoubrial.

19 MR. BARMEN: Move to strike --

20 MR. MANNION: Maybe it goes to the
21 fact that he didn't enjoy your behavior and
22 the way you treated him --

23 MR. BARMEN: That's also true.

24 MR. MANNION: -- including reading
25 a perjury statue.

18

1 MR. PATTAKOS: Okay --

2 MR. BARMEN: Peter, wait a minute

3 --

4 MR. PATTAKOS: -- well, let's let
5 him answer.

6 MR. BARMEN: -- wait a minute.
7 Allow me to finish and respond because you
8 asked me the basis and then you started
9 talking over me.

10 MR. PATTAKOS: I didn't ask you
11 anything, Brad.

12 MR. BARMEN: You did.

13 MR. PATTAKOS: No, I didn't.

14 MR. BARMEN: You are not permitted

15 --

16 MR. PATTAKOS: Brad, I didn't --

17 MR. BARMEN: -- to re-depose this
18 witness, you are not permitted to try and
19 get a second bite of the apple --

20 MR. PATTAKOS: This isn't a second
21 bite of the apple.

22 MR. BARMEN: -- you are not
23 permitted to try and go to areas that are
24 not related to the basis of your motion and
25 the Judge's order. I will not permit him

19

1 to answer a single question that is not
2 related to those areas.

3 MR. PATTAKOS: This is --

4 MR. BARMEN: And if you want to
5 run back to the Judge and whine and cry the
6 way you do, go ahead. If you want to
7 question him on what we're permitted to do
8 today, I will allow him to answer. I will
9 not permit him to answer a single question
10 that you want to run off on a tangent on.

11 Q. Dr. Gunning, it's true, isn't it?

12 MR. BARMEN: Objection. Don't
13 answer that question. Don't answer it.

14 MR. BEST: I just want to put on
15 the record that now we've reached the stage
16 where this goofy lawyer's source of data is
17 apparently a pizza employee, some unknown
18 location at some unknown time with some
19 unknown word. What a glorious thing the
20 law profession has come to. You should be
21 very proud of yourself.

22 MR. PATTAKOS: Why won't you let
23 him answer the question then if this is all
24 so goofy?

25 MR. BARMEN: No, no, me --

20

1 MR. BEST: I'm just putting on the
2 record --

3 MR. BARMEN: -- I'm the one not
4 allowing him to answer the question.

5 MR. BEST: -- how debased you have
6 become. How disgustingly inappropriate you
7 have become that your attempt to create
8 this fictional claim has now led you to the
9 gutter of anonymous pizza-source -- pizza
10 employee sources. It's very, very
11 disheartening that that's where the legal
12 profession has allowed you to have a
13 license to come.

14 MR. PATTAKOS: He's not anonymous,
15 David. He's not anonymous.

16 MR. BEST: Well, it doesn't matter
17 --

18 MR. PATTAKOS: And it's not an
19 undisclosed location.

20 MR. BEST: -- if that's your
21 source of the universe, pizza employees who
22 are creating fictional lies --

23 MR. PATTAKOS: A witness --

24 MR. BEST: -- you should be
25 ashamed of yourself.

21

1 MR. PATTAKOS: -- a witness who
 2 saw Dr. Gunning after his deposition that
 3 tried to say hello saw him sobbing
 4 uncontrollably --
 5 MR. BEST: That's a damn lie.
 6 MR. MANNION: (Unintelligible).
 7 MR. BARMEN: Objection.
 8 MR. PATTAKOS: Is it a lie?
 9 MR. MANNION: Supplement your
 10 discovery responses then if this is a new
 11 witness. If you had this knowledge, why
 12 didn't you supplement your discovery
 13 responses?
 14 MR. PATTAKOS: Are you still going
 15 to instruct the witness not to answer the
 16 question?
 17 MR. BARMEN: I'm going to instruct
 18 the witness not to answer any question
 19 that's not related to the issues that you
 20 are permitted to --
 21 MR. PATTAKOS: This is related to
 22 those issues. And it's completely
 23 ridiculous for you to suggest otherwise.
 24 MR. BARMEN: You're right --
 25 MR. PATTAKOS: But I --

22

1 MR. BARMEN: -- you are completely
 2 ridiculous.
 3 MR. PATTAKOS: -- understand -- I
 4 understand, Brad, that -- the way --
 5 MR. BARMEN: Do you? Do you,
 6 Peter?
 7 MR. PATTAKOS: -- that you're
 8 trying to defend this case, that it's --
 9 MR. BARMEN: Go ahead, it's what?
 10 MR. PATTAKOS: It is what it is.
 11 MR. BARMEN: It is. Move on or
 12 let this witness go.
 13 BY MR. PATTAKOS:
 14 Q. How long did you work with Frank Lazzerini at Dr.
 15 Ghoubrial's practice?
 16 A. I don't remember when he joined our practice, but
 17 I remember he left in August of 2012. I think he
 18 had been there for maybe two years,
 19 approximately, but I don't recall exactly when he
 20 started with us.
 21 Q. And why did he leave?
 22 MR. BARMEN: Objection. Go ahead.
 23 A. He and Sam came to an irreconcilable disagreement
 24 over who should run the practice.
 25 Q. You testified about that. Correct.

23

1 Did you agree with his method of treating
 2 patients?
 3 MR. BARMEN: Objection. At what
 4 time?
 5 Q. While he was with Dr. Ghoubrial's practice.
 6 MR. BARMEN: How is that related
 7 to the issue of his indictment after the
 8 practice, which is the permissible area
 9 you're allowed to question him on?
 10 Q. Dr. Gunning?
 11 MR. BARMEN: Counsel, how does
 12 that relate to the issue that you are
 13 permitted to question him on?
 14 MR. PATTAKOS: Are you going to
 15 instruct him not to answer this question
 16 too, Brad?
 17 MR. BARMEN: It depends on your
 18 answer to my inquiry.
 19 MR. PATTAKOS: I don't need to
 20 answer your question. Are you instructing
 21 this witness not to answer this question?
 22 MR. BARMEN: I am trying --
 23 MR. PATTAKOS: Are you continuing
 24 to obstruct my examination of this witness?
 25 MR. BARMEN: I am holding you to

24

1 the scope of your motion and the order. I
 2 am simply asking you a question.
 3 MR. PATTAKOS: You are not doing
 4 that, Brad. You're obstructing it
 5 intensely. You have learned nothing from
 6 the Court's orders. It's fine, we will go
 7 back to Court.
 8 MR. BARMEN: It's cute you talk
 9 about --
 10 MR. MANNION: Excuse me, excuse
 11 me, I'd like to just object. I don't think
 12 that doctor's treatment is an issue at all
 13 with any of the plaintiffs or respective
 14 class members. I want to put that on the
 15 record.
 16 MR. BARMEN: Nor is it within the
 17 scope of the permissible questions and even
 18 what you put in your own motion about the
 19 indictment which you know happened after he
 20 left Ghoubrial's employ. So I'm just
 21 trying to get from you how that's somehow
 22 related. It's a reasonable inquiry. I
 23 have not instructed him not to answer.
 24 BY MR. PATTAKOS:
 25 Q. You are aware, Dr. Gunning, that the Stark County

25

1 prosecutor has accused Dr. Lazzerini -- or I
 2 should say Mr. Lazzerini of overprescribing pain
 3 medications for profit, correct?
 4 MR. BARMEN: Objection. Go ahead.
 5 A. I have read that and heard that in the media,
 6 yes.
 7 Q. Based on your experience working with Dr.
 8 Lazzerini -- Mr. Lazzerini, excuse me -- do you
 9 believe there is merit to those accusations?
 10 MR. BARMEN: Objection. Go ahead
 11 to the extent you possibly could know that.
 12 A. I -- based on my own experience with him in the
 13 office, I cannot say because I did not see any of
 14 that behavior when he was working with us.
 15 Q. At your deposition you testified that you
 16 couldn't remember certain things about our phone
 17 call because you had taken Ativan just before the
 18 call --
 19 MR. BARMEN: Objection.
 20 Q. -- do you recall that?
 21 MR. BARMEN: Objection. How is
 22 that in any way related to the issues that
 23 you're permitted to question him on? He
 24 already testified regarding that issue, why
 25 are you asking him again?

26

1 Q. Do you recall that, Dr. Gunning?
 2 MR. BARMEN: Peter, why are you
 3 asking him again something you already
 4 questioned him on?
 5 MR. PATTAKOS: I have not
 6 questioned him on this. It is a necessary
 7 follow-up question. You are obstructing so
 8 much at the deposition that there were a
 9 number of questions I was not able to ask,
 10 this is one of them.
 11 Q. Dr. Gunning, please --
 12 MR. BARMEN: You did ask -- he
 13 testified to the fact of what he was on at
 14 the time you talked to him --
 15 MR. PATTAKOS: Okay. So fine.
 16 MR. BARMEN: -- otherwise you
 17 wouldn't know that to question him now
 18 because he testified to it then. I'm just
 19 trying to find out why you're asking him
 20 again.
 21 BY MR. PATTAKOS:
 22 Q. Did you take more than a normal dose of Ativan
 23 that day, Dr. Gunning?
 24 A. No.
 25 MR. BARMEN: Objection. Go ahead

27

1 Q. Did you have a prescription for Ativan --
 2 MR. BARMEN: Objection.
 3 Q. -- when you took it?
 4 MR. BARMEN: Objection. Don't
 5 answer that question. Again, you are
 6 absolutely going far afield. File your
 7 motion, go to the Court. That's wholly
 8 inappropriate and you know it.
 9 Q. Did you, Dr. Gunning, have a prescription for
 10 Ativan when you took it that day?
 11 MR. BARMEN: Objection. Don't
 12 answer the question.
 13 MR. PATTAKOS: You're instructing
 14 this witness not to answer this question
 15 about the drug that he took --
 16 MR. BARMEN: Where is it in the
 17 motion or the order?
 18 MR. PATTAKOS: Do you want me to
 19 show you? Do you want to hand me the
 20 motion?
 21 MR. BARMEN: Where is it in the
 22 five areas of inquiry that you are
 23 permitted --
 24 MR. PATTAKOS: Let me show you the
 25 motion --

28

1 MR. BARMEN: -- to ask him about?
 2 MR. PATTAKOS: -- let me see the
 3 motion, I'll show you where it is.
 4 MR. BARMEN: Give me the Judge's
 5 order, Peter.
 6 MR. PATTAKOS: The Judge's order
 7 granted the motion. Do you want to let me
 8 see the motion?
 9 MR. BARMEN: Peter, you've already
 10 questioned him on this.
 11 MR. PATTAKOS: I have not
 12 questioned him on this.
 13 BY MR. PATTAKOS:
 14 Q. Dr. Gunning, do you have a prescription -- did
 15 you have a prescription for the Ativan when you
 16 took it?
 17 MR. BEST: Dr. Gunning, my thought
 18 is your personal medical history --
 19 MR. BARMEN: Agreed.
 20 MR. BEST: -- is none of this
 21 goofball's knowledge or nor is it of his
 22 right to inquire and you have the right to
 23 tell him, "none of your business."
 24 MR. BARMEN: And I would instruct
 25 you to do so. Your medical treatment is

29

1 none of his business.
 2 MR. MANNION: Well, I think the
 3 only thing that's relevant is if any
 4 medication is impacting his testimony or
 5 memory, right? If it's not, what relevance
 6 does it have?
 7 MR. BARMEN: Right.
 8 MR. PATTAKOS: He's already
 9 testified that it impacted his memory, so
 10 I'm asking him if he had a prescription for
 11 it.
 12 MR. BARMEN: Whoa, whoa, whoa,
 13 wait, wait, when he talked to you on
 14 October 2nd. When he testified in
 15 December, you asked him if he was on
 16 anything that would impact his ability to
 17 remember a question and he said no. I let
 18 you ask him that question here today and he
 19 said no. Move on.
 20 BY MR. PATTAKOS:
 21 Q. Dr. Gunning, did you have a prescription for that
 22 Ativan?
 23 MR. BEST: You're asking --
 24 MR. BARMEN: Objection.
 25 MR. BEST: -- HIPPA-protected

30

1 information --
 2 MR. BARMEN: Don't answer that
 3 question.
 4 MR. BEST: -- there is no basis
 5 for you to get into this --
 6 MR. PATTAKOS: Sure, there is.
 7 MR. BEST: -- Mr. Pattakos.
 8 MR. PATTAKOS: It goes to his --
 9 it goes directly to his credibility.
 10 MR. MYERS: Rich, you're not going
 11 to waive the privilege today. Don't --
 12 it's confidential.
 13 MR. MANNION: What, an Ativan
 14 prescription goes to his credibility, are
 15 you kidding me?
 16 MR. BARMEN: You're unbelievable.
 17 BY MR. PATTAKOS:
 18 Q. How often do you take Ativan?
 19 MR. BARMEN: Objection.
 20 MR. MANNION: Oh, my God.
 21 MR. BARMEN: Don't answer that
 22 question.
 23 MR. PATTAKOS: On what basis? He
 24 said he couldn't remember our conversation
 25 because he had taken Ativan.

31

1 MR. BARMEN: Right. He's already
 2 testified to that.
 3 MR. PATTAKOS: Yeah, and I'm
 4 asking -- I'm getting to the basis of that
 5 claim because I don't believe him.
 6 MR. MYERS: Peter, that wasn't his
 7 full response either. That was --
 8 MR. BARMEN: First off, you are so
 9 --
 10 MR. MYERS: -- a response he gave
 11 to your question at that time, so perhaps
 12 the full -- if you read his full response
 13 back then you'll know.
 14 MR. BARMEN: You are so wholly
 15 inappropriate --
 16 MR. PATTAKOS: He claimed -- he
 17 said, I don't -- this is at page 32 lines
 18 one through six -- he said, "I don't recall
 19 the actual words I said that day. I was
 20 very anxious, upset, angry. I had taken
 21 some Ativan prior to talking with you. And
 22 the conversation was two months ago. I
 23 don't think I can recall the actual
 24 quotations."
 25 Then later at page 84, lines 13 to

32

1 22 he again said, "I do know that I was
 2 very upset and angry and anxious when I
 3 called. As I said, I took some Ativan
 4 beforehand and I don't recall the actual
 5 things that I said."
 6 MR. BARMEN: Right, he's already
 7 testified to it.
 8 BY MR. PATTAKOS:
 9 Q. Does Ativan usually cause you to lose your
 10 memory, Dr. Gunning?
 11 MR. BARMEN: Objection. Don't
 12 answer that question.
 13 MR. PATTAKOS: Why can't he answer
 14 that question?
 15 MR. BARMEN: Because it has
 16 nothing to do with what we're here for.
 17 You are harassing this witness, you are way
 18 off base, you are wholly inappropriate.
 19 MR. PATTAKOS: I think we should
 20 try to get the Court on the phone right
 21 now.
 22 MR. BARMEN: Knock yourself out.
 23 MR. MANNION: The Judge actually
 24 instructed us not to do that during
 25 depositions.

33

1 MR. PATTAKOS: Well, you know
 2 what, this is so extreme that I think it's
 3 worth calling Ms. Backer.
 4 MR. BARMEN: Ms. Backer is not the
 5 Court.
 6 MR. MANNION: Because you want to
 7 get into his medical history?
 8 MR. PATTAKOS: Well, I'm going to
 9 -- I don't have the Court's number, so I'm
 10 going to call -- I'm going to call --
 11 MR. BEST: Here's what I would
 12 suggest, I would suggest that you ask
 13 whatever other relevant questions you have
 14 because I have a feeling that Dr. Gunning
 15 is going to be walking out shortly so --
 16 MR. PATTAKOS: We're going to go
 17 -- we're going to take a break and I'm
 18 going to try to contact the Court --
 19 MR. BARMEN: We can take it off
 20 the video but I want to stay on the record.
 21 MR. BEST: Yeah, we're not going
 22 off the record. And I'm suggesting that
 23 the appropriate thing to do is to finish
 24 the rest of your questioning because under
 25 no circumstances is his personal lawyer or

34

1 his corporate counsel or his litigation
 2 lawyer going to allow him to answer medical
 3 questions.
 4 MR. PATTAKOS: That's why I'm
 5 calling the Court, David.
 6 MR. BEST: Okay. Let me explain
 7 this to you --
 8 MR. PATTAKOS: I don't need you to
 9 explain anything to me.
 10 MR. BEST: -- I don't care what
 11 the Judge says --
 12 MR. PATTAKOS: Oh, okay.
 13 MR. BEST: -- the Judge has no
 14 authority to instruct a witness to waive
 15 his medical HIPPA privilege. So that would
 16 require an appeal to the Court of Appeals
 17 and if they missed it, then it would go to
 18 the Supreme Court.
 19 MR. PATTAKOS: Do you represent --
 20 MR. BEST: No judge -- no judge
 21 can order any witness on planet earth to
 22 waive his medical privilege, it is not
 23 within their authority. So call anybody
 24 you want on the planet, it doesn't matter
 25 what they say.

35

1 MR. PATTAKOS: He already waived
 2 the privilege by telling me that he was on
 3 Ativan --
 4 MR. MYERS: No, he didn't.
 5 MR. BEST: You can --
 6 MR. PATTAKOS: -- so I'm allowed
 7 to ask him questions --
 8 MR. BEST: -- think that all you
 9 want but --
 10 MR. BARMEN: No, you're not.
 11 MR. BEST: -- it's not happening
 12 without the Supreme Court of Ohio, if they
 13 accept it, answering the question.
 14 MR. PATTAKOS: Okay.
 15 MR. BEST: The trial judge will
 16 not, under any circumstances, result in
 17 this witness testifying about his personal
 18 medical history no matter what his order
 19 says. With all due respect, he would be
 20 wrong.
 21 MR. PATTAKOS: There is no
 22 privilege for him to talk about his own
 23 condition. What privilege applies?
 24 MR. BEST: You're asking him --
 25 MR. BARMEN: Yes, there is.

36

1 MR. BEST: Oh, my God --
 2 MR. PATTAKOS: No, If I -- what
 3 privilege protects me asking him does
 4 Ativan usually cause you to lose your
 5 memory?
 6 MR. BARMEN: You can ask him, he
 7 doesn't have to answer.
 8 MR. PATTAKOS: How is that -- what
 9 privilege protects that?
 10 MR. BEST: You should really go to
 11 law school, it might be helpful to you.
 12 MR. BARMEN: Do you want to
 13 continue this deposition or can I let him
 14 go?
 15 MR. BEST: Yeah, that's really the
 16 question. If you have questions that you
 17 want to ask, ask them. If you don't, then
 18 let's leave and move on with the rest of
 19 the day.
 20 MR. PATTAKOS: What privilege is
 21 it, David?
 22 MR. BARMEN: Just don't even
 23 engage with him.
 24 MR. BEST: If you're making a
 25 phone call, my suggestion is Dr. Gunning go

37

1 back to work. Do you have any questions?
 2 MR. PATTAKOS: It's 9:16 --
 3 MR. BEST: I don't care what time
 4 it is. I don't care if it's 9:00 p.m. If
 5 you have questions, I would recommend you
 6 ask them. If you want to make a phone
 7 call, I would suggest to Dr. Gunning you go
 8 back to work, that would be my advice.
 9 MR. BARMEN: Are we done here,
 10 Peter?
 11 MR. PATTAKOS: No, I'm going to
 12 call the Court.
 13 MR. BEST: Then I would suggest
 14 you go back to work, Dr. Gunning. You
 15 don't have to sit here and let him padiddle
 16 around, that's not a requirement for a
 17 deposition.
 18 MR. PATTAKOS: You are obstructing
 19 to an extreme degree and I'm calling --
 20 MR. BARMEN: You are offensive to
 21 --
 22 MR. PATTAKOS: -- and I'm calling
 23 to --
 24 MR. BARMEN: -- an extreme degree.
 25 MR. PATTAKOS: I'm calling to

38

1 connect with court staff to see if we can
 2 get the Judge on the phone for an immediate
 3 ruling against this obstruction.
 4 THE VIDEOGRAPHER: Do we agree
 5 that we go off the record?
 6 MR. PATTAKOS: We're not going to
 7 go off the record. You can go off video.
 8 MR. BARMEN: Off video, but on
 9 record.
 10 MR. BEST: No, why go off
 11 anything? You never know when Peter is
 12 going to do the most outrageous thing, so
 13 --
 14 MR. BARMEN: Yeah, but that won't
 15 be on video it --
 16 MR. BEST: You'll hear it.
 17 MR. BARMEN: -- we'll still have
 18 it on the record.
 19 MR. BEST: You'll hear it.
 20 MR. BARMEN: If you want to get up
 21 and move around so the camera is not in
 22 your face, feel free.
 23 MR. BEST: Do you have any more
 24 questions, Pattakos, or do you not?
 25 MR. PATTAKOS: I do.

39

1 MR. BEST: Then ask them.
 2 MR. PATTAKOS: I'm calling the
 3 Court first.
 4 MR. BEST: We've already sat here
 5 for five minutes while you've accomplished
 6 nothing.
 7 MR. PATTAKOS: Well, it's not my
 8 fault that you're instructing the witness
 9 not to answer these questions.
 10 MR. BEST: I haven't instructed
 11 the witness not to do anything.
 12 MR. BARMEN: That's been me and
 13 it's based on the fact that you are asking
 14 wholly inappropriate questions and you know
 15 it and you don't care.
 16 MR. BEST: Well, my view is the
 17 doctor does not have to sit here and listen
 18 to silence while Peter tries --
 19 MR. PATTAKOS: You all can take a
 20 break then.
 21 MR. BEST: No, there's not a
 22 break. It's either --
 23 MR. PATTAKOS: If you want to find
 24 me a better number for the court, then go
 25 ahead.

40

1 MR. BARMEN: I don't want to have
 2 to come back a third time, David. I agree
 3 with you, but I don't want to have to make
 4 him come back a third time.
 5 MR. BEST: He doesn't have a right
 6 to make a witness sit here while he
 7 padiddles around. There's no rule that
 8 provides for that.
 9 MR. BARMEN: What time did this
 10 break start?
 11 THE REPORTER: 9:18.
 12 MR. PATTAKOS: Oh, here we go,
 13 Leanne Backer's phone number.
 14 MR. BARMEN: The last seven
 15 minutes --
 16 MR. PATTAKOS: You know, I called
 17 the court's -- I called the main number for
 18 the court and I'm not able to get through
 19 to the executive office. I'm now calling a
 20 number for Ms. Backer. I know she may be
 21 out of the office, but maybe someone will
 22 answer this.
 23 MR. BARMEN: And that will
 24 accomplish what?
 25 MR. PATTAKOS: Hopefully getting

41	43
1 the Judge on the phone for a ruling.	1 can't remember, but I don't recall that.
2 MR. BEST: He can't make a ruling	2 Somebody said it earlier.
3 on the phone.	3 MR. BARMEN: Tom said it.
4 MR. PATTAKOS: He sure can.	4 MR. POPSON: Oh, it was Tom.
5 MR. BEST: No, he cannot. He	5 MR. BARMEN: I think that preceded
6 speaks from his docket, that is the only	6 my involvement in the case.
7 way a judge speaks.	7 MR. POPSON: I just want the
8 (Answer machine message was played)	8 record to reflect that the defendants, at
9 UNIDENTIFIED VOICE: Summit County	9 least the KNR defendants, did not request
10 civil indictments.	10 that the Court be contacted.
11 MR. PATTAKOS: Hello. This is	11 MR. BARMEN: Well, neither did --
12 Attorney Peter Pattakos. I'm here on a	12 MR. BEST: No defendant.
13 case where visiting Judge Brogan is	13 MR. PATTAKOS: That's fine, that's
14 presiding. And we are sitting here in a	14 fine, I -- there's not a dispute about
15 deposition and the parties have reached a	15 that.
16 dispute over whether a witness should be	16 MR. MANNION: My understanding was
17 required to answer a certain question, so	17 the Court specifically stated not to call
18 we are hoping that we can get the judge on	18 him during a deposition.
19 the phone to perhaps make a ruling if this	19 MR. POPSON: I have that
20 is possible.	20 recollection, too, Peter, but I can't
21 UNIDENTIFIED VOICE: I'm not -- I	21 remember where it comes from.
22 -- honestly, I don't have Judge Brogan's	22 MR. BARMEN: Well, we know Peter's
23 contact information, so --	23 rules trump everyone else's.
24 MR. PATTAKOS: Is Patricia	24 MR. MANNION: Except when the
25 Himelrigh in today by chance?	25 Court orders him to answer contention
42	44
1 UNIDENTIFIED VOICE: I believe she	1 discovery --
2 is. Let me see if she's at her office.	2 MR. BARMEN: Well, yeah, there's
3 She might be sitting in in one of the	3 that.
4 courts. Let me double check. One moment.	4 UNIDENTIFIED VOICE: Attorney
5 MR. PATTAKOS: Thank you.	5 Pattakos?
6 UNIDENTIFIED VOICE: You're	6 MR. PATTAKOS: Yes.
7 welcome. What was your name again, I'm	7 UNIDENTIFIED VOICE: Yeah, okay.
8 sorry?	8 I cannot get ahold of Patty, but I can give
9 MR. PATTAKOS: I'm Peter Pattakos.	9 you her direct extension if you would like
10 UNIDENTIFIED VOICE: Peter	10 to call her.
11 Pattakos. Okay. One moment.	11 MR. PATTAKOS: Great.
12 MR. POPSON: I'd just like the	12 UNIDENTIFIED VOICE: I tried
13 record to reflect that the decision to defy	13 calling her. She might not be at her desk
14 the Judge's instructions not to call him,	14 and I'm not sure where -- if she's assigned
15 there's no "we" in this --	15 somewhere, I'm not sure where that is, but
16 MR. PATTAKOS: When did --	16 I can give you her extension if you want to
17 MR. POPSON: -- it's Mr. Pattakos	17 leave her a message.
18 only.	18 MR. PATTAKOS: Thank you.
19 MR. PATTAKOS: -- when did the	19 UNIDENTIFIED VOICE: Okay. You're
20 Judge instruct us that?	20 welcome. Her number is (330)643-7653.
21 MR. POPSON: I can't remember, but	21 MR. PATTAKOS: Thank you so much.
22 it definitely occurred that we were told	22 And will you please let her know that we
23 that he didn't want to be interrupted, he	23 called -- or that I called.
24 didn't want to be intervening in	24 UNIDENTIFIED VOICE: Yes.
25 depositions. It's been so long, Peter, I	25 MR. PATTAKOS: Okay. Thanks so

45

1 much. And my number -- can I give you my
 2 number, cellphone number?
 3 UNIDENTIFIED VOICE: Oh, yeah,
 4 that's fine.
 5 MR. BARMEN: Why are you yelling?
 6 MR. PATTAKOS: It's (330) --
 7 UNIDENTIFIED VOICE: Uh-huh.
 8 MR. BEST: He always yells.
 9 MR. BARMEN: He's insecure.
 10 MR. PATTAKOS: -- 285-2998.
 11 UNIDENTIFIED VOICE: Okay. This
 12 is your mobile number?
 13 MR. PATTAKOS: Yes.
 14 UNIDENTIFIED VOICE: Okay.
 15 MR. PATTAKOS: And we're at --
 16 we're in depositions all day today.
 17 UNIDENTIFIED VOICE: Okay. All
 18 right. I will pass the information along.
 19 MR. PATTAKOS: Thank you so much.
 20 UNIDENTIFIED VOICE: You're
 21 welcome. Bye, bye.
 22 - - - -
 23 (Thereupon, the phone call ended.)
 24 - - - -
 25 MR. BARMEN: Would you care to

46

1 continue the deposition now?
 2 MR. PATTAKOS: I'm going to call
 3 Ms. Himelrigh and see if I can get ahold of
 4 her.
 5 MR. BEST: You were just told
 6 she's not there and didn't answer her
 7 phone. How thick are you?
 8 MR. PATTAKOS: Well, I'm going to
 9 leave her a voicemail.
 10 MR. BEST: Do you think Ms.
 11 Himelrigh has any authority to do anything
 12 in this case?
 13 MR. PATTAKOS: She might get the
 14 Judge on the phone.
 15 - - - -
 16 (Thereupon, a phone call was made.)
 17 - - - -
 18 (Thereupon, an answering machine message was
 19 played.)
 20 - - - -
 21 MR. BEST: What a surprise.
 22 MR. PATTAKOS: Hello, Ms.
 23 Himelrigh, this is Attorney Peter Pattakos,
 24 I'm calling on the Williams v. KNR case.
 25 We are here at Dr. Gunning's

47

1 continued deposition and I am -- I regret
 2 having to do this, but I'm calling to see
 3 if it is possible to get Judge Brogan on
 4 the phone for a ruling on whether Dr.
 5 Gunning is required to answer certain
 6 questions that the defendants' attorneys
 7 are now instructing him not to answer.
 8 So if that is possible --
 9 MR. BEST: Attorney.
 10 MR. PATTAKOS: -- I would
 11 appreciate a phone call back or an e-mail.
 12 My cellphone is (330)285-2998,
 13 (330)285-2998.
 14 What I'm trying to avoid is having
 15 to file another motion for Dr. Gunning to
 16 come back yet a third time especially so
 17 close to the discovery deadline and class
 18 certification deadline. And the -- well,
 19 I'll leave it at that. Thank you so much.
 20 Hope to hear from you.
 21 MR. BEST: Do you have any
 22 questions of this witness?
 23 MR. PATTAKOS: Well, we can --
 24 well, you're not letting me answer them --
 25 you're not letting me ask them, so why are

48

1 you --
 2 MR. BARMEN: Anything that has to
 3 do with these five areas or that's in any
 4 way reasonably related to those areas, of
 5 course I will let you answer. What I will
 6 not let you do is ask new questions,
 7 questions you could have asked the last
 8 time, questions that have to do with things
 9 that you learned after his deposition that
 10 have nothing to do with these areas of
 11 inquiry, that's the issue -- oh, and
 12 questions also that would violate his right
 13 to privacy regarding his own medical care,
 14 other than that, have at it.
 15 MR. PATTAKOS: He waived that
 16 right to privacy by telling --
 17 MR. BEST: You don't get to make
 18 the ruling --
 19 MR. PATTAKOS: -- us that he
 20 couldn't remember --
 21 MR. BEST: -- you don't get to
 22 make the ruling and the Judge didn't order
 23 him to talk about any of his medical
 24 conditions, so --
 25 MR. PATTAKOS: But you get to make

49

1 a ruling, but I don't and you're so afraid
 2 of what this witness has to say that you
 3 are not allowing him to answer the
 4 question.
 5 MR. BEST: You know, why don't you
 6 turn over your tax returns? Why don't you
 7 answer all your personal stuff. This is a
 8 human being, he's allowed to have privacy,
 9 you fool.
 10 MR. BARMEN: What medication were
 11 you on when you were flopping around that
 12 jury box?
 13 MR. MANNION: And by the way,
 14 Peter, you objected and instructed Thera
 15 Reid --
 16 (Telephone ringing).
 17 MR. MANNION: -- not to answer any
 18 questions about whether she received any
 19 treatment for mental illness or --
 20 MR. PATTAKOS: This is Peter --
 21 MR. BARMEN: Hang on, Tom.
 22 MS. HIMELRIGH: Mr. Pattakos, this
 23 is Patricia Himelrigh, I'm returning your
 24 phone call.
 25 MR. PATTAKOS: Hello. I'm sitting

50

1 here with defense counsel and we are here
 2 with Dr. Gunning. We are on the record.
 3 They -- the defendants' lawyers are
 4 instructing Dr. Gunning to not answer
 5 questions that are relevant to his
 6 deposition -- relevant to this case and
 7 relevant to his prior testimony. And what
 8 I am hoping is that we can get the Judge on
 9 the phone to make a ruling as to whether he
 10 should be required to answer these
 11 questions or not, if that is possible.
 12 MR. BEST: Even though the Judge
 13 specifically said don't call him.
 14 MR. PATTAKOS: I don't recall
 15 that. If he did say that, I'm sorry, but
 16 we're right up against the discovery
 17 deadline here. I do not want to have to
 18 file another motion to make Dr. Gunning
 19 come back yet a third time, I'm trying to
 20 avoid that. The discovery deadline is
 21 April 15th, here it is April 9th --
 22 MR. BARMEN: I think it's the
 23 tenth.
 24 MR. PATTAKOS: It is the ninth.
 25 MR. BARMEN: Oh, it's the ninth.

51

1 MS. HIMELRIGH: Okay. What kind
 2 of -- what kind of questions are they
 3 instructing him not to answer?
 4 MR. PATTAKOS: So Dr. Gunning
 5 testified at his last deposition, I can
 6 refer you specifically to the transcript
 7 both at page 32, lines one through six, and
 8 then at page 84, lines 13 to 22, he said
 9 that he could not remember what he told me
 10 on our two-hour phone call when he called
 11 me to report that Dr. Ghoubrial forced him
 12 to submit an affidavit against his will.
 13 He said, "I took some Ativan and I don't
 14 recall the actual things I said."
 15 So I want to ask him some
 16 follow-up questions about the Ativan that
 17 he took. How much he took. Whether it is
 18 normal for him to lose his memory when he
 19 takes Ativan. Why he takes Ativan if and
 20 when it makes him lose his memory and et
 21 cetera, which all is highly relevant to his
 22 credibility and the credibility of his
 23 crucial testimony. And the defendants are
 24 instructing him not to answer.
 25 What I would like is a ruling as

52

1 to whether he should be required to answer
 2 those questions or not.
 3 MR. BARMEN: I would like an
 4 opportunity --
 5 MS. HIMELRIGH: What is the basis
 6 for defendants' objection or instruction
 7 not to answer?
 8 MR. BARMEN: This is Brad Barmen,
 9 Ms. Himelrigh. I represent Dr. Gunning and
 10 Dr. Ghoubrial. I instructed the witness
 11 not to answer these questions for a couple
 12 of reasons. One, we are here for the
 13 supplemental deposition based on a motion
 14 to compel that Plaintiffs filed because I
 15 instructed the witness in the prior
 16 deposition not to answer questions on five
 17 specific areas under the local rule because
 18 they were wholly irrelevant to the issues
 19 in the case.
 20 Despite that, the Judge did grant
 21 the motion to compel so we are here to
 22 answer questions relative to those five
 23 specific areas where I instructed him
 24 previously not to answer and any questions
 25 reasonably related to those areas of

53

1 inquiry.

2 The issue with the Ativan is

3 problematic for several reasons. One, he's

4 already testified that he had taken Ativan,

5 not prior to his last deposition, but prior

6 to the phone call he had with Mr. Pattakos.

7 So that's already been established. It

8 wasn't part of the motion to compel, it's

9 not part of the Judge's order on the five

10 areas of inquiry and its goes beyond that

11 because now Mr. Pattakos has asked him

12 about his prescription, his dosage, the

13 side effects, et cetera, et cetera, and Dr.

14 Gunning has a protected HIPPA right to his

15 own personal private medical information,

16 which is what Mr. Pattakos is trying to get

17 into now.

18 On advice of counsel, the doctor

19 will not waive his own personal medical

20 privilege. It is private, it is protected,

21 it is wholly irrelevant to any issue in

22 this case.

23 He is here prepared to answer

24 questions that were outlined in the motion

25 to compel, which the Judge granted. They

54

1 are five specific areas of inquiry. He

2 previously testified that he had taken

3 Ativan. There is no reason to go down that

4 road again. And there's certainly no

5 reason to expand upon it into his personal

6 medical information.

7 Dr. Gunning is a third-party

8 witness. He is not a party in this action.

9 And what is -- the questions that are

10 asking -- are being asked are not only

11 outside the scope of what's permissible,

12 they're offensive, they're abusive and they

13 invade his own privilege which he cannot be

14 ordered to waive.

15 MR. PATTAKOS: Ms. Himelrigh, if I

16 may briefly respond to that, two things,

17 No. 1, the motion to compel, that was

18 granted by the Court, requested that Dr.

19 Gunning be ordered to return to his

20 deposition to answer four specific areas of

21 inquiry and any related follow-up questions

22 that Plaintiffs deem necessary.

23 Now the Court just granted that

24 motion, the court said the motion was

25 granted. It did not make any other

55

1 specific ruling, so I would ask the Court

2 to consider that obstruction that we were

3 facing at Dr. Gunning's deposition was so

4 extreme that we would have naturally

5 withheld questions like this about the

6 Ativan based on the obstruction we were

7 getting.

8 We are here -- we are back here,

9 this witness is back on the record, this

10 testimony is very relevant to his

11 credibility and his claim that he doesn't

12 remember anything.

13 As to any claims of privilege, he

14 clearly waived it by telling us he was on

15 Ativan in the first place. So I want to

16 know why a doctor who treats patients

17 regularly is taking Ativan when it causes

18 him to lose his memory. That seems

19 extremely problematic and it seems

20 extremely, frankly, impeaching of Dr.

21 Gunning's testimony and his claim that he

22 doesn't remember.

23 So that -- I think that's my only

24 response that I have at this point.

25 MS. HIMELRIGH: Okay. All right.

56

1 I will try to get ahold of Judge Brogan. I

2 know he is -- I talked to him yesterday

3 about the case, we're still ruling on

4 motions, so I know he's tied up in another

5 case down in Dayton. I will try to get

6 ahold of him, but you're going to have to

7 continue that deposition now, try to get

8 through what you can get through, and I

9 will try and get back to you hopefully

10 within the next 20 minutes or so to either

11 give you a response or simply order you to

12 file a brief on it, okay?

13 MR. PATTAKOS: Okay. Thank you

14 very much.

15 MS. HIMELRIGH: All right. Thank

16 you. Bye.

17 - - - -

18 (Thereupon, the phone call ended.)

19 - - - -

20 MR. BARMEN: And you've wasted 25

21 minutes.

22 MR. BEST: And she told you to do

23 what I said long ago, ask the balance of

24 your questions, if you have any.

25 MR. BARMEN: Do you have any more

1 questions for this witness?
 2 MR. PATTAKOS: I don't have any,
 3 so we'll wait for the Court to call back.
 4 MR. BEST: He doesn't have to wait
 5 for the Court to call back.
 6 MR. BARMEN: No -- wait.
 7 Understand that there are other areas of
 8 inquiry that you are permitted to ask him
 9 about that I am willing to -- that I will
 10 certainly let you ask him about that and
 11 he's prepared to answer. If you are
 12 waiving your right to ask those questions,
 13 fine. But he is not coming back to -- the
 14 only way he would ever come back is if the
 15 Judge orders him to come back and ask the
 16 questions -- answer the questions that we
 17 have instructed him not to answer here.
 18 You're not going to get a third bite at the
 19 apple. So if you want to continue any
 20 further, go ahead. If you're done, say
 21 you're done.
 22 MR. PATTAKOS: Ms. Himelrigh said
 23 she would get back to us within 20 minutes.
 24 This witness was expecting to be here until
 25 at least 10:00 a.m.

1 MR. BEST: She told to you finish
 2 your questioning --
 3 MR. BARMEN: Right.
 4 MR. BEST: -- what we are telling
 5 you. What I --
 6 MR. PATTAKOS: I told you that I'm
 7 finished with my questioning --
 8 MR. BEST: So you are waiving the
 9 right --
 10 MR. MANNION: (Unintelligible) --
 11 MR. PATTAKOS: -- for now until --
 12 MR. BARMEN: No, no, no --
 13 MR. BEST: Tom, don't talk for a
 14 minute. You're waiving your right to ask
 15 any other questions aside from questions
 16 regarding his private medical conditions,
 17 is that what you're telling us on the
 18 record?
 19 MR. PATTAKOS: Okay. Let me go
 20 back to some of these other questions while
 21 we're here.
 22 MR. BEST: Gee, what a surprise.
 23 MR. BARMEN: Shocking, I know.
 24 BY MR. PATTAKOS:
 25 Q. Dr. Gunning, you were also aware that -- you told

1 me -- pardon me -- that the employees of your
 2 office were all concerned that Dr. Ghoubrial was
 3 deliberately running the office in a way so as to
 4 cause it to lose money. Do you remember telling
 5 me that?
 6 MR. BARMEN: Objection. Hearsay.
 7 Go ahead.
 8 A. I do recall bringing that up, yes.
 9 Q. And you told me that because it is true, correct?
 10 MR. BARMEN: Objection.
 11 A. I can't vouch for it being true. It was hearsay.
 12 Q. Who did you hear it from?
 13 A. Various people in the department. I don't recall
 14 particular individuals at this point who may have
 15 said that, but when people are getting divorced
 16 and there's a lot of contention going on, we all
 17 wonder, and that was one of the things we
 18 wondered about.
 19 Q. You didn't have that concern yourself based on
 20 what you observed?
 21 A. What I observed was what my -- what I observed
 22 was what my colleagues was saying Sam himself
 23 never said anything to me about that particular
 24 item.
 25 MR. BARMEN: Can you keep your

1 voice up a little bit with the air blowing?
 2 THE WITNESS: Sorry.
 3 MR. BARMEN: No, it's okay. I
 4 just want to make sure everybody can hear
 5 you.
 6 A. I repeated on the phone what I had heard at the
 7 office.
 8 Q. And you don't recall any of the individuals who
 9 said that?
 10 MR. BARMEN: Objection. Asked and
 11 answered. Go ahead.
 12 A. At this point I'd probably be stating things that
 13 I didn't know for sure.
 14 Q. Do you recall any facts that these people
 15 discussed to support their belief that he was
 16 deliberately causing the office to lose money?
 17 MR. BARMEN: Objection. Go ahead.
 18 A. It seemed that he wasn't seeing as many patients
 19 for a while, but I don't know if that was his
 20 doing or if it was just vagaries of scheduling
 21 or what, but --
 22 MR. BARMEN: The question was, do
 23 you know of any facts?
 24 A. No, I don't know of any facts.
 25 Q. Was that based on your own observance?

61

1 MR. BARMEN: Objection. Was what
 2 based on?
 3 A. It was based on what I heard.
 4 Q. Well, when you say it seemed like he -- it seemed
 5 like he wasn't seeing as many patients, is that
 6 based on your own observation of the number of
 7 patients he was seeing?
 8 A. I never followed the number of patients that he
 9 was seeing, this is what I heard in the office.
 10 Q. And you don't remember who you heard it from?
 11 A. I could throw out a number of names, but I would
 12 be --
 13 MR. BARMEN: Do you know who you
 14 heard it from?
 15 THE WITNESS: No.
 16 Q. Did you ever hear patients complain about Frank
 17 Lazzerini?
 18 MR. BARMEN: Objection. How is
 19 that in any way related to the permissible
 20 scope of what we're here for?
 21 MR. BEST: To the criminal
 22 complaint that he asked about.
 23 MR. BARMEN: Right. So you're
 24 talking about after he left -- after
 25 Lazzerini left Ghoubrial, did he -- did Dr.

62

1 Gunning hear any of his patients from that
 2 practice complain, is that what you're
 3 asking?
 4 BY MR. PATTAKOS:
 5 Q. Have you ever heard any patients complain about
 6 Dr. Lazzerini?
 7 MR. BEST: Object. The scope of
 8 the questioning is about a 272 --
 9 MR. BARMEN: Right.
 10 MR. BEST: -- count indictment, is
 11 that what you're asking about?
 12 MR. PATTAKOS: This relates to --
 13 MR. BEST: Or are you asking about
 14 whether he --
 15 MR. PATTAKOS: -- this relates to
 16 --
 17 MR. BEST: -- was late for an
 18 appointment 12 years ago?
 19 MR. PATTAKOS: This relates to
 20 that question.
 21 MR. BARMEN: How so? If you know
 22 the indictment came after he left
 23 Ghoubrial's practice and when he was in his
 24 practice after that, so how does any
 25 complaints from patients while he was

63

1 working with Ghoubrial relate to what
 2 occurred after he left Ghoubrial?
 3 MR. PATTAKOS: It goes to Dr.
 4 Gunning's experience working with Dr.
 5 Lazzerini and the question -- the subject
 6 of our motion was Dr. Gunning's experience
 7 working with Lazzerini.
 8 MR. BEST: He already said he --
 9 you don't listen. He already said, I
 10 didn't see anything --
 11 MR. BARMEN: Right.
 12 MR. BEST: -- that suggested the
 13 ultimate behavior of this guy years
 14 later --
 15 MR. BARMEN: And actually --
 16 MR. BEST: -- while he was working
 17 for Dr. Ghoubrial.
 18 MR. BARMEN: And the subject --
 19 MR. BEST: He already testified to
 20 that.
 21 MR. BARMEN: And the subject of
 22 your motion -- and I'm quoting from it --
 23 is whether Gunning believes that the
 24 currently pending 272 felony count
 25 indictment against former Ghoubrial

64

1 employee Frank Lazzerini pertaining to the
 2 charges that Lazzerini overprescribed pain
 3 medication for profit has merit based on
 4 Gunning's personal experience working with
 5 Lazzerini under Ghoubrial.
 6 MR. BEST: He answered that
 7 question.
 8 MR. BARMEN: He answered that
 9 question already.
 10 MR. PATTAKOS: Based on his
 11 personal experience.
 12 MR. BARMEN: And he answered that
 13 question. You asked him --
 14 MR. PATTAKOS: And I'm allowed to
 15 ask him follow-up questions and this is a
 16 related follow-up question.
 17 MR. BARMEN: You're asking him the
 18 same question.
 19 MR. BEST: Same exact question.
 20 BY MR. PATTAKOS:
 21 Q. Did you ever hear a patient complain about Dr.
 22 Lazzerini?
 23 MR. BARMEN: Objection. Tell him
 24 again.
 25 MR. BEST: Prescribing drugs, is

65

1 that what you're asking?
 2 MR. PATTAKOS: No, that's not what
 3 I'm asking.
 4 MR. BEST: Well, that's what the
 5 Judge's order is. So if you're trying to
 6 ask him did he hear a patient complain that
 7 he was late or that they didn't like his
 8 tie, how is that relevant to a 272 count
 9 criminal indictment for drug dealing.
 10 MR. PATTAKOS: Are you instructing
 11 the witness not to answer the question?
 12 MR. BEST: I'm asking you to
 13 explain why --
 14 MR. BARMEN: No, we're asking you
 15 to --
 16 MR. BEST: -- you don't understand
 17 what the Judge ordered and why you're not
 18 following his rule, that's what I don't
 19 understand.
 20 MR. BARMEN: Right. And certainly
 21 if the question is problematic, I'm allowed
 22 to ask for clarification, that's all I'm
 23 doing, Peter. I'm not instructing him not
 24 to answer the question, I'm just trying to
 25 figure out what you're asking and how it's

66

1 related to the permissible scope of the
 2 questioning here today.
 3 MR. PATTAKOS: It's very obviously
 4 related to his personal experience working
 5 with Dr. Lazzerini. I don't --
 6 MR. BARMEN: He's already told you
 7 he never saw anything while working with
 8 Lazzerini that was problematic or related
 9 to the indictment that Lazzerini faces now.
 10 MR. PATTAKOS: Whether he sees
 11 something is problematic or not is
 12 irrelevant to this question.
 13 BY MR. PATTAKOS:
 14 Q. Did you ever hear a patient complain about Dr.
 15 Lazzerini?
 16 MR. BARMEN: Relative to the
 17 prescription of narcotics?
 18 MR. PATTAKOS: Relative to his
 19 treatment of the patient.
 20 MR. BEST: Relating to the
 21 prescription of narcotics?
 22 MR. PATTAKOS: No, that's not my
 23 question.
 24 MR. BEST: That's the scope. If
 25 you ask that question, I'm sure that Brad

67

1 will allow him to answer.
 2 MR. BARMEN: I'll allow him to
 3 answer.
 4 MR. PATTAKOS: That's great. I'm
 5 asking him this question. Are you
 6 instructing him not to answer?
 7 MR. BARMEN: So you're asking him
 8 if in the two years he worked with
 9 Lazzerini he ever heard any patient
 10 complain about anything at all having to do
 11 with Lazzerini.
 12 MR. PATTAKOS: Having to do with
 13 the treatment he provided.
 14 MR. BARMEN: Yeah, that's too
 15 broad. Narrow it down and I'll let him
 16 answer it.
 17 BY MR. PATTAKOS:
 18 Q. Did you ever hear anyone else complain about Dr.
 19 Lazzerini and the treatment he provided to
 20 patients at your practice?
 21 MR. BEST: Relating to narcotics.
 22 MR. BARMEN: You mean
 23 non-patients? Who are you talking about
 24 when you say "anyone else", Peter.
 25 Q. Anyone else, non-patients.

68

1 MR. BARMEN: Any person at any
 2 time?
 3 MR. PATTAKOS: Yes.
 4 MR. BARMEN: It's too broad.
 5 Narrow it down.
 6 MR. PATTAKOS: Okay.
 7 MR. BEST: Why don't you just ask
 8 the question about narcotics. He's
 9 answered it and I'm sure he'll answer
 10 whatever Brad allows him, but I'll assume
 11 he'll answer anything related to
 12 narcotics --
 13 MR. BARMEN: Absolutely will.
 14 MR. BEST: -- but you won't ask
 15 the question that way.
 16 MR. BARMEN: You're setting up --
 17 (Phone ringing).
 18 MR. BEST: You wouldn't know if
 19 they didn't like his tie.
 20 MR. PATTAKOS: This is Peter,
 21 you're on the record.
 22 MS. HIMELRIGH: Okay. All right.
 23 I talked to Judge Brogan. He has ordered
 24 Dr. Gunning to answer the questions posed.
 25 All of this information is relevant and

69

1 discoverable.
 2 Any alleged HIPPA privilege is
 3 doubtful, but the Judge says to put it in a
 4 brief and keep it under seal until he has
 5 the opportunity to review that objection
 6 fully, okay?
 7 MR. PATTAKOS: Thank you.
 8 MS. HIMELRIGH: All right. Thank
 9 you. Bye.
 10 MR. BARMEN: No, the HIPPA stuff
 11 -- the way I understand that is he doesn't
 12 have to answer the HIPPA stuff. If they
 13 want that, they've got to brief it.
 14 MR. PATTAKOS: There's no HIPPA
 15 stuff. She just ordered -- the Court just
 16 ordered him to answer these questions, so
 17 --
 18 MR. BARMEN: No. No, no, no.
 19 Then why would the court say if anything
 20 related to HIPPA, file a brief, Peter? Do
 21 you want to go back and ask --
 22 MR. MANNION: Well, why don't you
 23 -- call her back and get clarification.
 24 MR. BEST: No, it doesn't make any
 25 difference. I mean, my advice as corporate

70

1 counsel is don't answer the questions, it's
 2 your personal privilege, it doesn't matter
 3 what the Judge --
 4 MR. BARMEN: That would be my
 5 advice as well.
 6 MS. HIMELRIGH: This is Patricia
 7 Himelrigh.
 8 MR. PATTAKOS: Hi, Ms. Himelrigh.
 9 The defendants are now claiming that Dr.
 10 Gunning doesn't have to answer these
 11 questions because something you said about
 12 putting something into a brief and I'm not
 13 sure --
 14 MS. HIMELRIGH: Okay. No, that is
 15 -- that is incorrect. Judge Brogan was
 16 very direct with me that Dr. Gunning is to
 17 answer the question posed at this
 18 deposition.
 19 MR. BARMEN: Well, then what about
 20 the -- you mentioned something about if
 21 there were HIPPA concerns, put it in a
 22 brief.
 23 MS. HIMELRIGH: Yes, he wants that
 24 issue fully briefed; however, this
 25 deposition will stay under seal and if

71

1 something is certainly privileged, it will
 2 remain that way and it will remain under
 3 seal and out of the public eye, but this
 4 deposition needs to be concluded in its
 5 entirety and that means answering the
 6 questions posed.
 7 MR. PATTAKOS: Ms. Himelrigh,
 8 there are some other questions that they
 9 have instructed him not to answer including
 10 about the fact that he was sobbing
 11 uncontrollably in the parking lot after his
 12 deposition the first day, I assume that the
 13 Court's order applies to things like that
 14 as well?
 15 MS. HIMELRIGH: The Court's order
 16 applies to all the questions in this
 17 follow-up deposition. This follow-up
 18 deposition has been ordered. Dr. Gunning
 19 is instructed to answer the questions
 20 posed. If anything is alleged to be
 21 privileged, it will remain under seal.
 22 MR. BARMEN: Just so I'm clear and
 23 the record is clear, the Judge is ordering
 24 this witness to waive his personally
 25 protected medical privilege?

72

1 MS. HIMELRIGH: No, that is -- he
 2 said -- he finds that objection doubtful,
 3 but he would like you to brief it so that
 4 he has the full and complete picture on it,
 5 okay?
 6 MR. BARMEN: Well, wait a minute,
 7 by -- that's what I'm looking for clarity
 8 on. Whether the Judge finds it doubtful or
 9 not, the doctor does have a right to his
 10 own protected medical information. Is the
 11 Judge saying that the doctor has to answer
 12 those questions despite the fact that it
 13 involves his own medical care and
 14 treatment?
 15 MR. BEST: I mean, we have
 16 videographers in the room, we have court
 17 reporters in the room, this is not subject
 18 to discovery, period.
 19 MR. BARMEN: I don't understand --
 20 I just want to make sure that we're clear
 21 because certainly I am going to comply with
 22 what the Judge orders, but I want to make
 23 sure that I'm clear what that -- the scope
 24 of that order is.
 25 THE JUDGE: The scope of the order

1 is that anything that is alleged to be
 2 privileged, whether it's under HIPPA or
 3 not, is going to remain under seal so that
 4 the Judge can review it. If it is indeed
 5 -- if the judge does determine that it is
 6 indeed privileged, then it will be struck
 7 and kept out of the record.
 8 MR. BEST: He has no authority to
 9 order a videographer to not go out and put
 10 it in the Plain Dealer.
 11 MR. PATTAKOS: The videographer is
 12 working subject to the protective order in
 13 this case, David.
 14 MR. BEST: There is no protective
 15 order on this because it hasn't been
 16 addressed.
 17 MR. PATTAKOS: This is under seal.
 18 The deposition is under seal like
 19 everything else in this case.
 20 MR. BEST: Then you brief --
 21 MS. HIMELRIGH: It is and the
 22 depositions stay under seal under the Judge
 23 has an opportunity to review them.
 24 MR. BEST: And Peter Pattakos has
 25 been told by this Judge --

1 MR. PATTAKOS: Oh, boy.
 2 MR. BEST: -- that he's
 3 misrepresented stuff, put it on his
 4 website, violated the order, he has no
 5 sense of pride or honor in the medical --
 6 in the legal profession. He published
 7 everything no matter what the Judge says,
 8 we know it, we have the hard copy. So how
 9 does that -- how does this, you know,
 10 verbal communication that we're getting
 11 through you protect this doctor's personal
 12 health information from people in a room?
 13 It's just not legitimate. I'm sorry, with
 14 all due respect to the Judge, it's not
 15 legitimate. I don't trust Pattakos to tell
 16 me that the sun comes up, he's not an
 17 honorable man.
 18 MR. PATTAKOS: This is David Best
 19 speaking, by the way, that's --
 20 MR. BEST: It sure is.
 21 MR. PATTAKOS: -- that just made
 22 that soliloquy, in case there was any
 23 doubt.
 24 MR. BEST: It sure is.
 25 MR. MANNION: Well

1 (unintelligible) --
 2 MR. PATTAKOS: Are there any more
 3 questions about the Court's order?
 4 MR. BARMEN: Ms. Himelrigh, I
 5 would like to speak to the Judge about
 6 this, is that possible?
 7 MS. HIMELRIGH: I will try to get
 8 ahold of him again. I know that he is busy
 9 in another case. I don't think that we're
 10 going to be able to get this resolved by an
 11 over-the-phone conversation, so I'll try,
 12 but I guess if, you know, if it comes down
 13 to it then we're just going to have to
 14 brief everything and obviously that's going
 15 to delay the case even further so I don't
 16 know what to tell you.
 17 The Judge was very clear to me
 18 that Dr. Gunning is to answer the questions
 19 that are being posed.
 20 MR. BARMEN: And I understand
 21 that. The only issue that I have is with
 22 the judge ordering him over the phone to
 23 waive his own HIPPA rights, which frankly I
 24 don't know if that's proper.
 25 MR. PATTAKOS: He said it's

1 questionable -- he said that that claim is
 2 questionable, so --
 3 MR. BARMEN: Your claims are
 4 questionable yet here we are, so I guess
 5 we'll proceed how we feel we need to
 6 proceed. Thank you.
 7 MS. HIMELRIGH: Okay. Great.
 8 MR. PATTAKOS: Thank you, Ms.
 9 Himelrigh.
 10 MR. BARMEN: Let's take a break.
 11 MR. PATTAKOS: Take a break?
 12 MR. BARMEN: Yeah, let's take a
 13 break.
 14 MR. PATTAKOS: There's questions
 15 pending.
 16 MR. MYERS: We're taking a break.
 17 MR. BARMEN: Come on. I'm going
 18 to have a discussion with him that may help
 19 you.
 20 MR. PATTAKOS: About how to answer
 21 the questions?
 22 MR. BARMEN: Yes, exactly.
 23 THE VIDEOGRAPHER: We're going off
 24 the record. The time is 9:54.
 25 - - - -

77

1 (Thereupon, a recess was had.)
 2 - - - -
 3 THE VIDEOGRAPHER: We're back on
 4 the record. The time is 10:07.
 5 MR. BARMEN: Before we begin we
 6 want to state something on the record.
 7 Understanding what the Judge is
 8 instructing us to do -- and obviously
 9 believing the Judge is incorrect regarding
 10 this witness' privacy rights regarding his
 11 medical treatment, we are going to proceed
 12 on a question-by-question basis leading
 13 toward letting him answer the questions
 14 with the understanding that you don't get
 15 too far afield and then we'll hopefully be
 16 able to get this done today.
 17 I'll proceed that way if you agree
 18 that if we end up to the point where any
 19 issue has to be briefed, you would agree to
 20 file that brief under seal. If you don't
 21 agree to that, then we're going to end up
 22 just stopping now and going to the Court on
 23 the brief.
 24 MR. PATTAKOS: That's fine, I'll
 25 -- I'm governed by the protective order --

78

1 MR. BARMEN: Okay.
 2 MR. PATTAKOS: -- to file things
 3 under seal --
 4 MR. BARMEN: I just want to --
 5 MR. PATTAKOS: -- under the
 6 protective order.
 7 MR. BARMEN: I just want it --
 8 MR. BEST: Including any brief.
 9 MR. BARMEN: I want it on the
 10 record that any brief that's filed as a
 11 result of this will be filed under seal. I
 12 also want to point out that during the
 13 deposition of your client, Thera Reid, she
 14 was asked about treatment for mental
 15 illness and you refused -- or you
 16 instructed her not to answer that question
 17 on HIPPA grounds. So I trust that when we
 18 get her again, that's now fair game.
 19 MR. PATTAKOS: The circumstances
 20 are entirely different here and Thera Reid
 21 isn't claiming -- Thera Reid isn't claiming
 22 that she can't remember something because
 23 of a --
 24 MR. MYERS: Peter --
 25 MR. BARMEN: No, no, no --

79

1 MR. PATTAKOS: Drug that she took.
 2 MR. MYERS: -- Peter, as long as
 3 there's an affirmative response from you on
 4 the record that if you file a brief, that
 5 any of this testimony regarding his medical
 6 issues, it's filed under seal, that's fine.
 7 If not, we're going to have -- it's going
 8 to be an issue, we're not going to go
 9 forward.
 10 MR. PATTAKOS: The Summit County
 11 Clerk will not allow -- first of all, let's
 12 be clear, the Summit County Clerk will not
 13 allow a motion to be filed under seal
 14 unless the Court specifically grants it.
 15 So to even file the motion under seal, we
 16 would first have to file a motion to file
 17 the motion under seal.
 18 MR. MYERS: And that's fine.
 19 MR. BARMEN: And you agree to do
 20 that?
 21 MR. MYERS: You have to do that
 22 then.
 23 MR. PATTAKOS: Okay.
 24 MR. BARMEN: Yes, you agree to do
 25 that?

80

1 MR. PATTAKOS: That's what we'll
 2 do if this -- I don't see why this should
 3 be briefed at all. The Judge said the
 4 witness is to answer the questions.
 5 MR. BARMEN: Well, I understand
 6 what the Judge said, but --
 7 MR. MYERS: If it's --
 8 MR. BARMEN: -- the Judge can't
 9 order someone to waive their HIPPA rights.
 10 MR. PATTAKOS: He already waived
 11 his HIPPA right.
 12 MR. MYERS: Peter, if it's going
 13 to be in any brief that you file down the
 14 pike, you're going to have to agree that
 15 you're going to move to file it under seal
 16 which we won't object to --
 17 MR. POPSON: We'll stipulate.
 18 MR. MYERS: -- but we want --
 19 you've got to agree to that because I don't
 20 want this doctor's personal medical history
 21 spewing throughout the record in this case.
 22 MR. BARMEN: Agreed.
 23 MR. PATTAKOS: Okay.
 24 MR. MYERS: Is that -- do you
 25 agree to that?

1 MR. PATTAKOS: I will agree to
 2 that.
 3 MR. MYERS: And if you don't
 4 there's going to be -- if it gets spewn
 5 into the record, there's going to be a
 6 problem.
 7 MR. BARMEN: All right. He
 8 agreed. But is it your position that a
 9 third -- a non-party witness' medical
 10 history and treatment is fair game but a
 11 named plaintiff's is not?
 12 MR. PATTAKOS: Yes, when that
 13 non-party witness calls me and spends two
 14 hours on the phone to report serious
 15 misconduct and widespread fraud and is then
 16 subject to intimidation by his employer and
 17 his employer's lawyers and then says that
 18 he can't remember anything he said over an
 19 extremely detailed, extremely passionate
 20 two-hour conversation, then absolutely it
 21 is very different.
 22 MR. BARMEN: I move to strike your
 23 garbage. Continue.
 24 MR. MANNION: Are you a witness,
 25 Peter? Who's going to take this case over?

1 A. One of the reasons.
 2 MR. BARMEN: -- to
 3 characterization.
 4 Q. What were the other reasons?
 5 MR. MANNION: Objection.
 6 A. I'm not used to seeing that kind of behavior.
 7 Lawyers standing up yelling at each other,
 8 reaching across the table, pointing fingers. If
 9 I witnessed that kind of behavior in my office, I
 10 would have called security and I would have every
 11 right to. That was an entirely new very unusual
 12 and very upsetting experience to me and it was a
 13 whole day of it. And I had a great release
 14 afterwards by going back to my car and letting it
 15 out.
 16 Q. What do you recall about this behavior by the
 17 lawyers in the room?
 18 MR. BARMEN: Objection.
 19 A. Basically what's going on now. People bickering
 20 back and forth, getting up, angrily arguing with
 21 each other. Apparently that's what you guys do,
 22 but I'm not used to that kind of behavior. I
 23 even remember asked, I said how can you do this
 24 and they said, well, that's our bread and butter,
 25 that's what we do every day. Well, it's not

1 MR. BARMEN: Rachel, she's much
 2 smarter.
 3 MR. PATTAKOS: File your -- well,
 4 let's proceed.
 5 BY MR. PATTAKOS:
 6 Q. Dr. Gunning, you do recall being extremely upset
 7 after your deposition at my office last December,
 8 correct?
 9 MR. BARMEN: Objection. Go ahead.
 10 A. Yes, I was.
 11 Q. And you recall crying in the parking lot after
 12 the deposition, do you not?
 13 MR. BARMEN: Objection. Go ahead.
 14 A. Yes, I do. It was a very stressful day and I was
 15 relieved it was over.
 16 Q. Is it normal for you to cry?
 17 MR. BARMEN: Objection.
 18 A. No, but it's also not normal for me to sit in a
 19 deposition where I'm being attacked all day long.
 20 Q. You felt like you were being attacked at the
 21 deposition?
 22 A. Yes, I did.
 23 Q. And that is why you were sobbing uncontrollably
 24 in the parking lot after the deposition?
 25 MR. BARMEN: Objection --

1 mine. I don't function like that. And it was a
 2 very unusual experience for me and I found it
 3 very upsetting.
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 MR. BEST: It doesn't work like
 15 that in Summit County.
 16 MR. BARMEN: Oh, okay.
 17 MR. BEST: You can't do a
 18 continuing.
 19 MR. MYERS: Just say the word
 20 objection afterwards and we'll know what
 21 it's for.
 22 MR. BARMEN: You guys are weird in
 23 Summit County.
 24 MR. BEST: Just the Court of
 25 Appeals, the ruling years ago.

1 MR. BARMEN: Objection.
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 yourself, you can bleed and you can bleed
 2 nonstop.
 3 MR. BARMEN: The question was did
 4 you ever hear anybody complain about Dr.
 5 Lazznerini.
 6 A. Yeah. Okay. Sorry.
 7 MR. BARMEN: Just answer the
 8 question that he asks you --
 9 THE WITNESS: Yes.
 10 MR. BARMEN: -- and then let him
 11 ask the next question.
 12 THE WITNESS: Yes.
 13 A. He took her off the blood thinner because --
 14 MR. BARMEN: Wait, wait, you
 15 answered the question.
 16 A. -- of the fall and then she did have a stroke.
 17 And so he made a decision based on her fall and
 18 the stroke did occur as a result of that decision
 19 and that was a complaint I heard.
 20 Q. Did you ever hear anyone complain about Dr.
 21 Lazznerini who was not a patient of your office?
 22 MR. BARMEN: Objection. Are you
 23 talking about while he worked with him,
 24 Peter or --
 25 MR. PATTAKOS: I'm talking about

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. Have you ever heard patients complain about Dr.
 8 Lazznerini?
 9 MR. BARMEN: Objection. Go ahead.
 10 A. Once. And it wasn't about him prescribing
 11 something, but it was about him actually
 12 withdrawing a medication. I don't remember the
 13 patient's name. I do know she was an elderly
 14 patient of mine who had been taking a blood
 15 thinner because she had atrial fibrillation.
 16 When you have Afib, you run the risk of
 17 developing a blood clot in your heart, which can
 18 be expelled from the heart and cause a stroke.
 19 And so people with Afib typically often usually
 20 take a blood thinner unless there is a
 21 contraindication to taking the blood thinner.
 22 She had come back -- she didn't see me, she
 23 saw Dr. Lazznerini -- and this was after she had
 24 suffered a fall. Falls pose a great risk when
 25 you're taking a blood thinner because if you hurt

1 generally.
 2 MR. BARMEN: Objection. Go ahead.
 3 A. I -- not to me. I've heard stories --
 4 MR. BARMEN: You answered it,
 5 that's the answer.
 6 THE WITNESS: Okay.
 7 MR. BARMEN: Stop talking when you
 8 answer the question. Let him ask the next
 9 question.
 10 BY MR. PATTAKOS:
 11 Q. You've heard of people complain about Dr.
 12 Lazznerini to other people?
 13 MR. BARMEN: Objection.
 14 A. No, I heard what I heard in the media.
 15 Q. I see. Okay. So you never became aware of Dr.
 16 Lazznerini overprescribing pain medications?
 17 A. Not --
 18 MR. BARMEN: Objection.
 19 A. -- while he worked with us.
 20 Q. Okay. And it's your testimony that Dr. Ghoubril
 21 does not overprescribe pain medications?
 22 MR. BARMEN: Objection.
 23 A. Yeah. Very much so that he does not
 24 overprescribe pain medications.
 25 MR. PATTAKOS: Okay. Dr. Gunning,

1 well, we don't need any more of your time
2 this morning. Thank you. Best wishes to
3 you.

4 THE WITNESS: Thank you.

5 MR. BARMEN: He'll read it.

6 THE VIDEOGRAPHER: This concludes
7 the deposition. We're going off the
8 record. The time is 10:21.

3 C E R T I F I C A T E

4 The State of Ohio,) SS:
5 County of Cuyahoga.)

6
7 I, Brian A. Kuebler, a Notary Public within
8 and for the State of Ohio, authorized to
9 administer oaths and to take and certify
10 depositions, do hereby certify that the
11 above-named witness was by me, before the giving
12 of their deposition, first duly sworn to testify
13 the truth, the whole truth, and nothing but the
14 truth; that the deposition as above-set forth was
15 reduced to writing by me by means of stenotypy,
16 and was later transcribed by computer-aided
17 technology under my direction; that this is a
18 true record of the testimony given by the
19 witness; that said deposition was taken at the
20 aforementioned time, date and place, pursuant to
21 notice or stipulations of counsel; that I am not
22 a relative or employee or attorney of any of the
23 parties, or a relative or employee of such
24 attorney or financially interested in this
25 action; that I am not, nor is the court reporting
firm with which I am affiliated, under a contract
as defined in Civil Rule 28(D).

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office, at Cleveland, Ohio, this
20 ____ day of _____, A.D. 20 ____.

21
22 Brian A. Kuebler, Notary Public, State of Ohio
23 55 Public Square, Suite 1332
24 Cleveland, Ohio 44113
25 My commission expires June 12, 2022

1 SIGNATURE OF DEPONENT

2 I, the undersigned, RICHARD GUNNING, MD, do
3 hereby certify that I have read the foregoing
4 deposition and find it to be a true and
5 accurate transcription of my testimony, with
6 the following corrections, if any:

7 PAGE LINE CHANGE REASON

24 RICHARD GUNNING, MD

1

2 IN THE COURT OF COMMON PLEAS

3 SUMMIT COUNTY, OHIO

4 MEMBER WILLIAMS, et al.,

5 Plaintiffs,

6 -vs- CASE NO. CV-2016-09-3928

7 KISLING, NESTICO

8 & REDICK, LLC, et al.,

9 Defendants.

10 - - - -

11 Videotaped deposition of SAM N. GHOUBRIAL, MD,

12 taken as if upon examination before Brian A.

13 Kuebler, Chana Margaretten, Notary Publics within

14 and for the State of Ohio, at the Hilton

15 Akron-Fairlawn Hotel and Suites, 3180 W. Market

16 Street, Fairlawn, Ohio, at 10:39 a.m. on Tuesday,

17 April 9, 2019, pursuant to notice and/or

18 stipulations of counsel, on behalf of the

19 Plaintiffs.

20 - - - -

21 JK COURT REPORTING

22 55 PUBLIC SQUARE

23 SUITE 1332

24 CLEVELAND, OHIO 44113

25 (216)664-0541

www.jarkub.com

3

1 David M. Best, Esq.

2 David M. Best Co., LPA

3 4900 West Bath Road

4 Akron, Ohio 44333

5 (330) 665-1855

6 dmbest@dmbestlaw.com

7

8 On behalf of the Defendants,

9 Kisling Nestico & Redick, LLC

10 and Ghoubrial, Inc.

11

12 ALSO PRESENT:

13

14 John J. Reagan, Esq.

15 Peter Graves - videographer

EXHIBIT 5

2

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 rhazelet@pattakoslaw.com

9 On behalf of the Plaintiffs;

10

11 Thomas P. Mannion, Esq. (Via phone)

12 Lewis Brisbois

13 1375 East 9th Street, Suite 2250

14 Cleveland, Ohio 44114

15 (216) 344-9467

16 tom.mannion@lewisbrisbois.com

17 and

18 James M. Popson, Esq.

19 Sutter, O'Connell

20 3600 Erieview Tower

21 1301 East 9th Street

22 Cleveland, Ohio 44114

23 (216) 928-2200

24 jpopson@sutter-law.com

25 On behalf of the Defendants,

Kisling, Nestico & Redick, LLC;

Brad J. Barmen, Esq.

Lewis Brisbois

1375 East 9th Street, Suite 2250

Cleveland, Ohio 44114

(216) 344-9467

On behalf of the Defendants,

Sam N. Ghoubrial, MD;

4

1 I N D E X

2 EXAMINATION

3 SAM N. GHOUBRIAL, MD

4 BY MR. PATTAKOS 7

5

6 EXHIBIT INDEX

7 Plaintiff's Exhibit 1 8

8 Plaintiff's Exhibits 2, 3 72

9 Plaintiff's Exhibit 4 116

10 Plaintiff's Exhibit 5, 6, and 7 151

11 Plaintiff's Exhibit 8 163

12 Plaintiff's Exhibit 9 166

13 Plaintiff's Exhibit 10 167

14 Plaintiff's Exhibit 11 176

15 Plaintiff's Exhibit 12 181

16 Plaintiff's Exhibit 13 190

17 Plaintiff's Exhibit 14 203

18 Plaintiff's Exhibit 15 206

19 Plaintiff's Exhibit 16 213

20 Plaintiff's Exhibit 17 218

21 Plaintiff's Exhibit 18 222

22 Plaintiff's Exhibit 19 231

23 Plaintiff's Exhibit 20 234

24 Plaintiff's Exhibit 21 237

25 Plaintiff's Exhibit 22 238

Plaintiff's Exhibit 23 242

Plaintiff's Exhibit 24 245

Plaintiff's Exhibit 25 261

Plaintiff's Exhibit 26 262

Plaintiff's Exhibit 27 269

Plaintiff's Exhibit 28 279

Plaintiff's Exhibit 29 282

Plaintiff's Exhibit 30 292

Plaintiff's Exhibit 31 300

Plaintiff's Exhibit 32 317

Plaintiff's Exhibit 33 322

Plaintiff's Exhibit 34 326

Plaintiff's Exhibit 35 328

Plaintiff's Exhibit 36 335

Plaintiff's Exhibit 37 343

Plaintiff's Exhibit 38 345

Plaintiff's Exhibit 39 366

Plaintiff's Exhibit 40 366

Plaintiff's Exhibit 41 368

Plaintiff's Exhibit 42 376

Plaintiff's Exhibit 43 379

Plaintiff's Exhibit 44 391

		5
1	Plaintiff's Exhibit 45	396
	Plaintiff's Exhibit 46	401
2	Plaintiff's Exhibit 47	403
	Plaintiff's Exhibit 48	407
3	Plaintiff's Exhibits 49, 50, and 51	410
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

7

1 MR. MANNION: You're the one who

2 puts stuff on the record, not me.

3 MR. PATTAKOS: Okay.

4 THE VIDEOGRAPHER: Stand by,

5 please.

6 THE WITNESS: Yes.

7 THE VIDEOGRAPHER: We're now ready

8 to begin the deposition. Will the court

9 reporter please swear in the doctor.

10 SAM N. GHoubRIAL, MD, of lawful age, called

11 by the Plaintiffs for the purpose of examination,

12 as provided by the Rules of Civil Procedure,

13 being by me first duly sworn, as hereinafter

14 certified, deposed and said as follows:

15 EXAMINATION OF SAM N. GHoubRIAL, MD

16 BY MR. PATTAKOS:

17 Q. Good morning, Dr. Ghoubrial.

18 A. Good morning, sir.

19 Q. You understand that I'm Peter Pattakos and I

20 represent the plaintiffs in this lawsuit?

21 A. Yes, sir.

22 Q. Can you please state your name for the record?

23 A. Sam Ghoubrial.

24 Q. And your birth date?

25 A. March 13th, 1965.

6

1 MR. PATTAKOS: Tom, what did you

2 say about Thera Reid's medical records?

3 MR. MANNION: Peter, I'm not under

4 oath, nor do I need to say a single word

5 here. We'll deal with Thera Reid on

6 Friday.

7 MR. PATTAKOS: You'll deal with

8 Thera Reid on Friday. Tom, didn't you just

9 say I can't wait to have Thera Reid answer

10 questions about her medical records?

11 MR. MANNION: I didn't say about

12 her medical records, actually that's not

13 what I said.

14 MR. PATTAKOS: What did you say,

15 Tom?

16 MR. MANNION: It doesn't really

17 matter nor am I'm going to be

18 cross-examined on the record. We can deal

19 with her on Friday, she's being deposed,

20 but I didn't say medical records, by the

21 way.

22 MR. PATTAKOS: Okay. Tom.

23 MR. MANNION: Okay. Peter.

24 MR. PATTAKOS: Do you have

25 anything else you want to say?

8

1 Q. And your place of birth?

2 A. I was born in Cairo Egypt, North Africa.

3 Q. Have you ingested any substances today, any

4 medication or any substances at all, that would

5 impair your ability to testify truthfully?

6 A. No.

7 Q. Is there any other reason you would not be able

8 to remember events accurately or testify

9 truthfully today?

10 MR. BARMEN: Objection. Go ahead.

11 A. No, sir.

12 - - - -

13 (Thereupon, Plaintiff's Exhibit 1 was marked

14 for purposes of identification.)

15 - - - -

16 Q. I'm going to hand you Exhibit 1. Does this look

17 like a true and accurate copy of your resume?

18 A. Yes.

19 Q. Is this up to date?

20 A. To my knowledge, yes.

21 Q. Can you take a look at all three pages just to

22 make sure.

23 A. Yes, it looks up to date.

24 Q. Okay. And this reflects that you graduated from

25 Cleveland State University with pre-med -- with a

9

1 pre-med education in 1988; is that accurate?
 2 A. Correct.
 3 Q. Is all the information on this resume accurate,
 4 to your knowledge?
 5 A. Yeah. I was able to actually get into medical
 6 school just before I graduated, so I -- they took
 7 me in based on my academic performance.
 8 Q. And that was at the Medical College of Ohio?
 9 A. Yes, sir.
 10 Q. Where is that?
 11 A. Now it's called the University of Toledo, College
 12 of Medicine.
 13 Q. And what was your focus in medical school, if you
 14 had one?
 15 A. In medical school you don't really have a focus.
 16 They give you a curriculum. It wasn't until
 17 after medical school that I decided to
 18 specialize.
 19 Q. And what did you decide to specialize in?
 20 A. In internal medicine.
 21 Q. And that is, in fact, what you completed your
 22 residency in, correct?
 23 A. Yes, sir.
 24 Q. Internal medicine?
 25 A. Yes, sir.

10

1 Q. And that was from 1993 to 1996?
 2 A. Yes, sir.
 3 Q. Where did you go to high school?
 4 A. Walsh Jesuit High School.
 5 Q. What year did you graduate?
 6 A. 1983.
 7 Q. When did you move to the United States?
 8 A. My family immigrated from North Africa in 1968 or
 9 '69.
 10 Q. How old were you?
 11 A. I was four.
 12 Q. When you say immigrated from North Africa you
 13 mean Egypt?
 14 A. Yes.
 15 Q. Did you ever live anywhere else in North Africa
 16 other than Egypt?
 17 A. No.
 18 Q. Have you ever lived anywhere in Africa besides
 19 Egypt?
 20 A. I believe we lived in Alexandria for a little
 21 bit, which is also part of Egypt.
 22 Q. It's a city in Egypt, correct?
 23 A. Yes, sir.
 24 Q. So there's no other country that you lived in in
 25 Africa other than Egypt, correct?

11

1 A. That's is correct, sir.
 2 Q. Okay. It says here under medical practice that
 3 you are the president and owner of Sam N.
 4 Ghoubrial M.D. Inc., Wadsworth's largest primary
 5 care practice. Is that true?
 6 A. To my knowledge, yes.
 7 Q. And the address there is 195 Wadsworth Road,
 8 Suite 402, Wadsworth, Ohio 44281.
 9 A. Yes.
 10 Q. Is that a current address?
 11 A. Yes, sir.
 12 Q. How do you know you're Wadsworth's largest
 13 primary care practice?
 14 A. Well, there were several practices that had
 15 gotten bought up by the hospital and so that left
 16 us with the most doctors and the largest patient
 17 base by virtue of attrition. And we acquired
 18 some other doctors in the area.
 19 Q. Does this -- are you taking into account --
 20 strike that.
 21 Does Sam N. Ghoubrial M.D. Inc encompass both
 22 your family practice and the personal injury
 23 practice?
 24 A. No, sir.
 25 Q. What is the personal injury practice named?

12

1 A. The dba is Clearwater.
 2 Q. Okay. Why isn't that listed here under medical
 3 practice?
 4 A. Well, it's not part of my medical practice in the
 5 strict sense of primary care, it's an adjunct,
 6 but it is a practice. It's just not something
 7 that we listed here --
 8 (Phone ringing).
 9 A. -- pardon me.
 10 MR. BARMEN: If you could turn
 11 that ringer off.
 12 THE WITNESS: The hospital may get
 13 ahold of me periodically.
 14 Q. But it is a medical practice, the personal injury
 15 practice, correct?
 16 A. Correct.
 17 Q. And it says here you are board certified in
 18 internal medicine?
 19 A. I'm actually in the process -- I'm board
 20 certified in '97, 2007 and I'm in the process of
 21 getting recertified now.
 22 Q. So your board certification in internal medicine
 23 has expired?
 24 A. Right. We're getting recertified.
 25 Q. When did that expire?

1 A. I believe it was '17 or '18.
 2 Q. What does it mean to be board certified?
 3 A. It means you completed an accredited residency,
 4 you took the boards, passed the boards and then
 5 ten years later I also passed the recertification
 6 part.
 7 Q. So why did the board certification expire?
 8 A. I just haven't had time to take it.
 9 Q. Are you allowed to practice without it?
 10 A. Yes.
 11 Q. Okay.
 12 A. I'm board eligible.
 13 Q. How does it impact your practice to have your
 14 board certification expire --
 15 MR. BARMEN: Objection.
 16 Q. -- if at all?
 17 MR. BARMEN: Objection. Go ahead.
 18 A. It didn't -- it's not uncommon for us to take
 19 some time due to circumstances. I just simply
 20 didn't have the time to renew it and so they --
 21 they allow you a leeway of several years before
 22 you can get recertified again. So I remain board
 23 eligible.
 24 Q. And is your Ohio licensure still current?
 25 A. Yes.

1 Q. It looks like you did pretty well in school.
 2 A. I tried. Thank you.
 3 Q. And under medical practice experience, is this
 4 all the jobs that you've held as a doctor?
 5 A. Yeah. A lot of that was -- part of it was
 6 moonlighting when I was a resident. So, for
 7 instance, there was a place called physician
 8 staffing and a lot of that was moonlighting, and
 9 a lot of it was different medical directorships
 10 and speaker opportunities that came up over the
 11 years.
 12 Q. Okay. So if you -- if you gave a speech, that
 13 would be listed here?
 14 A. Yes, sir.
 15 Q. Okay. It says here that your private practice
 16 was opened in 1998 in Rittman, Ohio?
 17 A. Yes, sir.
 18 Q. As internist?
 19 A. Yes, sir.
 20 Q. And that is -- that is the practice that you
 21 continue to operate today?
 22 A. Yes, sir.
 23 Q. And was that Sam N. Ghoubrial MD Inc?
 24 A. Yes. We moved it to Wadsworth because we outgrew
 25 our space.

1 Q. Okay. So when you refer to the speaker jobs, it
 2 says here underneath -- underneath where it says
 3 private practice opened in 1998, it says speaker
 4 for Bayer Corporation, speaker for Forrest
 5 Pharmaceuticals, speaker for Pfizer and speaker
 6 for Monarch Pharmaceuticals.
 7 Are these all of the speaker positions you
 8 were referring to just now?
 9 A. These are remote. Those things I did 15 years
 10 ago when I was starting out. And the laws have
 11 since changed, but back then they allowed primary
 12 care physicians in the community to speak to
 13 other primary care physicians and so, yeah, that
 14 is.
 15 Q. What does the job entail? Speak to them about
 16 what?
 17 A. Basically they would have a drug that they would
 18 want that I felt was a good drug. I would get
 19 detailed on the drug, I would do research on the
 20 drug, and I would just simply present it to my
 21 colleagues in the form of an informal luncheon or
 22 dinner.
 23 Q. And what year was -- did the regulations change
 24 on this?
 25 A. Oh, I think it would have been back in 2002,

1 2003. I don't know exactly when. I couldn't
 2 give you an exact date.
 3 Q. What years did you do this?
 4 A. Oh, gosh, I can't recall, to be honest with you.
 5 Q. What were the speaker -- what were the -- sorry,
 6 strike that.
 7 What were the particular medications for
 8 these companies that you were a speaker for?
 9 A. I can't even recall, Peter, it's been so long
 10 ago.
 11 Q. You can't recall any of them?
 12 A. The only one I can recall is Avelox. That was
 13 probably 15 years ago.
 14 Q. What company was that for?
 15 A. I don't recall.
 16 Q. "Aveloxin" you said?
 17 A. "Avelox". A-v-e-l-o-x.
 18 Q. You don't recall what you spoke about for Pfizer?
 19 A. It was a long time ago.
 20 Q. Was it one drug for each of these or was it
 21 multiple drugs?
 22 A. I don't recall. I don't necessarily recall that
 23 they were all speaking engagements. They -- some
 24 of them were honorariums, some of them were
 25 speaking engagements that were local, so I don't

17

1 know the exact details.

2 Q. Drug companies were providing doctors with

3 honorariums?

4 MR. BARMEN: Objection. How is

5 any of this relevant?

6 A. On occasion.

7 Q. How does that work?

8 A. I don't know. It's been so long, I can't recall.

9 We're talking about 16, 17 years ago.

10 Q. And this section on "Firms and Attorneys", what

11 does that refer to?

12 A. Well, over the years I've been asked to testify

13 on both behalf of plaintiffs and defense in

14 various med-mal cases.

15 Q. And these are some of the firms that you've

16 worked with?

17 A. Right.

18 Q. Not all of them though, correct?

19 A. No, not even close.

20 Q. You worked with close to 70 firms you would say?

21 A. At least, yeah.

22 Q. At least. Okay. This is just a few of the maybe

23 bigger ones?

24 A. I don't even --

25 MR. BARMEN: Objection.

18

1 A. -- know if it's that. It's just a few that I've

2 done at the time that we assembled this list.

3 Q. Okay. These hospital committees and appointments

4 that are listed here. Do you still hold any of

5 these positions?

6 A. No, unfortunately the hospital closed.

7 Q. The hospital in Wadsworth?

8 A. Yes, sir.

9 Q. So these all relate to the same hospital?

10 A. Yes, sir.

11 Q. The Wadsworth-Rittman Hospital. Okay.

12 So when you opened the family practice in

13 1988 -- well, strike that.

14 Can you describe the family practice to me?

15 MR. BARMEN: Objection.

16 A. First it was '98. We took care of patients in a

17 rural community, Rittman, Ohio. And we addressed

18 all adult primary care needs.

19 Q. And that's what a family practice does, correct?

20 A. An internist, yes.

21 Q. An internist?

22 A. Yes.

23 Q. So an internist has a family practice, is that --

24 is it fair to say that those terms are

25 synonymous?

19

1 MR. BARMEN: Objection.

2 A. No. A family practice doctor can see children.

3 I very seldom do that. My focus is on people

4 generally 17 and 18 on up.

5 Q. Does anyone in the family practice see children,

6 typically?

7 A. You mean in my practice?

8 Q. Yes.

9 A. I believe some of them do, yes. So we're family

10 practice trained, they do.

11 Q. But you don't?

12 A. Very rarely.

13 Q. Okay. So typically you're treating adults?

14 A. Yes, sir.

15 Q. And who are your patients in the family practice

16 today?

17 MR. BARMEN: Objection. What do

18 you mean?

19 Q. I mean generally, what population do you serve?

20 MR. BARMEN: Objection.

21 A. We take care -- I take care of patients in the

22 nursing home, in the office, occasionally house

23 calls, assisted living, and in the office.

24 Q. Residents of Wadsworth or the surrounding area

25 that need primary care; is that fair?

20

1 A. That's exactly right.

2 Q. And you treat them as a primary care physician,

3 correct?

4 A. Yes, sir.

5 Q. Do you provide any other treatment to these

6 patients besides primary care in your family

7 practice?

8 MR. BARMEN: Objection.

9 A. No. I refer them out if they need, you know,

10 surgery or some sort of speciality care, but I

11 provide predominantly primary care.

12 Q. Okay. Can you describe the difference between

13 the family practice and the personal injury

14 clinic?

15 MR. BARMEN: Objection.

16 A. Sure.

17 MR. BEST: I object. He's

18 corrected you multiple times. It's not a

19 family practice. Those are different

20 specialities and you keep saying it. So I

21 don't know if that's a habit you like to

22 misquote people. He's never once described

23 his practice as family.

24 Q. What would you prefer that I call the practice

25 that's based out of the Wadsworth location?

1 A. Internal medicine.
 2 Q. The internal medicine practice.
 3 A. Yes, sir.
 4 Q. All right. That's what we'll call it.
 5 MR. BEST: That's what it is --
 6 Q. Well, Doctor -- I believe Doctor --
 7 MR. BEST: -- if you know anything
 8 about medicine, but you don't know anything
 9 about medicine so that's okay, keep going
 10 with your uninformed questioning, it's very
 11 helpful.
 12 Q. I believe Dr. Gunning referred to it as a family
 13 practice and that was the terminology that we
 14 developed during that deposition --
 15 MR. BEST: Perhaps you should know
 16 more about medicine before you venture into
 17 it.
 18 MR. PATTAKOS: Do you have
 19 anything else you want to talk to me or
 20 tell me about medicine before we continue,
 21 Mr. Best? So we can proceed? Okay.
 22 Thanks.
 23 BY MR. PATTAKOS:
 24 Q. Can you please, Dr. Ghoubrial, describe the
 25 difference between the personal injury clinic and

1 the internal medicine practice?
 2 A. Personal injury clinic, almost all those patients
 3 have been involved in some sort of accident
 4 whether it be a slip/fall or a motor vehicle
 5 accident.
 6 The primary care internal medicine practice,
 7 that's involved in managing chronic conditions
 8 like high blood pressure or diabetes, wellness
 9 checks, things like that.
 10 Q. What's the purpose of keeping the personal injury
 11 clinic separate?
 12 MR. BARMEN: Objection.
 13 A. I'm sorry?
 14 Q. What's the purpose of keeping the personal injury
 15 clinic separate from the internal medicine
 16 practice?
 17 MR. BARMEN: Objection.
 18 A. Well, they're two different populations of
 19 patients. One population is geared towards
 20 conventional, just primary care. The other
 21 populat -- group of patients are just almost
 22 exclusively related to accidents. So it's a
 23 completely different patient population.
 24 Q. Well, why would that require two separate
 25 clinics?

1 MR. BARMEN: Objection.
 2 Q. Two separate businesses?
 3 MR. BARMEN: Objection. He didn't
 4 say it required it.
 5 A. I didn't say it required it, it just made more
 6 sense because the two entities are completely
 7 separate. They have separate sets of
 8 credentialing. In other words, one is
 9 credentialed through insurance and the other one
 10 is not credentialed by the way of insurance
 11 companies.
 12 Q. What does it mean to be credentialed through an
 13 insurance company?
 14 A. Well, it's a long arduous process where you have
 15 to get credentialed through Anthem, Medicare,
 16 Medicaid, et cetera. And so the primary care
 17 practice is set up for that, whereas the personal
 18 injury practice is not.
 19 Q. What does the process of getting certified by an
 20 insurance company entail?
 21 MR. BARMEN: Credentialed not
 22 certified.
 23 Q. Credentialed.
 24 MR. BARMEN: Objection. Go ahead.
 25 MR. PATTAKOS: Thank you. Thank

1 you.
 2 BY MR. PATTAKOS:
 3 Q. What does the process of getting credentialed by
 4 an insurance company entail?
 5 A. It's a very lengthy process. You have to submit
 6 the credentialing paperwork. It entails an
 7 on-site visit, you have to submit the
 8 applications on behalf of all the providers.
 9 Then you have to apply to get into their network.
 10 Then there's contractual obligations and things
 11 that need to be negotiated. So it's a pretty
 12 tedious long-term process.
 13 Q. And that is what you need to go through in order
 14 to have insurance companies compensate you for
 15 care provided to their insureds, correct?
 16 A. Correct.
 17 Q. And you went through that -- you have gone
 18 through that process with various insurance
 19 companies with respect to the internal medicine
 20 practice, correct?
 21 A. Correct.
 22 Q. And why did you do that?
 23 A. Well --
 24 MR. BARMEN: Objection.
 25 A. -- that's the way we were set up in 1998. That's

25

27

1 the way the practice was set up originally.
 2 Q. Who set it up?
 3 A. I did.
 4 Q. And why did you set it up that way?
 5 A. Because that's the only type of patient we were
 6 seeing.
 7 Q. A patient -- what type of patient? A patient
 8 with insurance?
 9 A. No. Patients who are diabetic, glaucoma,
 10 hypertension. Primary-care type internal
 11 medicine patients.
 12 Q. Well, what is it about those type of patients
 13 that would cause you to go through the process of
 14 becoming credentialed by insurance companies?
 15 MR. BARMEN: Objection. Go ahead.
 16 A. That patient base and that patient population has
 17 health care and they're fortunate enough to have
 18 health insurance and so it made sense for us to
 19 get credentialed so we could see those patients
 20 in the nursing home and the hospital and in the
 21 office setting.
 22 Q. So why did you not go through that process of
 23 getting credentialed with respect to the personal
 24 injury clinic?
 25 A. Several reasons. First of which, it's an

1 understanding that it's not to the patient's
 2 benefit because No. 1 most of them don't even
 3 have it anyway. And, No. 2, if they did have it,
 4 they would -- it's my understanding that they
 5 probably wouldn't agree to pay since usually the
 6 at-fault party, as you know, is some sort of
 7 automobile insured.
 8 Q. How did you come to that understanding?
 9 MR. POPSON: Objection.
 10 A. Well, first of all, we didn't bother getting
 11 credentialed and then I just heard through my
 12 network of providers that most of them don't
 13 bother getting it because they don't pay for it.
 14 Q. You used a lot of pronouns there, I just want to
 15 make sure I'm understanding this. You said you
 16 heard from your network of providers that most of
 17 them don't bother getting it because they don't
 18 pay for it. Who is "most of them" and who is
 19 "they"?
 20 A. Well --
 21 MR. BARMEN: Objection.
 22 A. -- I talked to many of the chiropractors and they
 23 said, look, don't even bother because they don't
 24 even acknowledge the care and when they do, they
 25 say there's another at-fault party. And that's

26

28

1 extremely arduous and cumbersome process to do.
 2 No. 1, most of my patients have -- in the
 3 personal injury setting, they don't have any
 4 insurance. And No. 2, we won't get paid anyhow
 5 by the insurance company because it's usually a
 6 motor vehicle accident that's at fault. So it
 7 didn't make any sense for us to do it at the time
 8 because it was very expensive, very costly, very
 9 time consuming and it provided no benefit to the
 10 patient.
 11 Q. How is it that it didn't provide any benefit to
 12 the patients?
 13 A. Well, most of them didn't have health insurance
 14 to begin with.
 15 Q. During what time period did most of the patients
 16 of the personal injury clinic not have health
 17 insurance?
 18 MR. BARMEN: Objection.
 19 A. Ongoing, until this day. Most of them don't have
 20 it and even if they do, they generally -- my
 21 understanding, they don't accept the claim.
 22 Q. Insurance companies won't accept claims relating
 23 to auto accidents?
 24 MR. BARMEN: Objection.
 25 A. I don't have any firsthand knowledge, but it's my

1 come up before in depositions, and that's what we
 2 said.
 3 Q. Isn't it true, Dr. Ghoubril, that when a patient
 4 has insurance, that that insurance company is
 5 typically obligated by contract to pay for the
 6 patient's reasonably necessary health care for
 7 injuries that they suffered?
 8 MR. BARMEN: Objection. Are you
 9 talking about any specific company or
 10 contract?
 11 A. I'm not sure what you're referring to.
 12 Q. I'm referring to how insurance works generally.
 13 MR. BARMEN: Objection.
 14 A. Can you give me an example?
 15 MR. BARMEN: He's not here as an
 16 insurance expert.
 17 MR. PATTAKOS: I'm asking about
 18 his own personal knowledge of how insurance
 19 works. If I'm in a car accident and I get
 20 hurt --
 21 MR. BEST: Objection. He's
 22 already testified to this --
 23 MR. PATTAKOS: -- and I get --
 24 MR. BEST: -- so I don't know why
 25 we're repeating it.

1 MR. PATTAKOS: -- and I get
 2 medical treatment, I have medical
 3 insurance, say I break my arm -- to use a
 4 hypothetical --
 5 MR. BARMEN: He's not an expert,
 6 he's not doing hypotheticals.
 7 MR. PATTAKOS: I'm asking him to
 8 testify based on his own understanding of
 9 how insurance works. I'm not asking him --
 10 MR. BEST: He has already told
 11 you.
 12 BY MR. PATTAKOS:
 13 Q. If I break my arm, I have health insurance,
 14 whether it be through Medicaid or a private
 15 provider, I'd show up at an in-network physician
 16 that accepts that insurance, my medical insurance
 17 is obliged to pay for fixing my broken bone; are
 18 they not?
 19 MR. BARMEN: Objection.
 20 A. Again, I don't know. I'm not involved in the
 21 billing coding, insurance policies and
 22 procedures, so I can't give you an honest answer,
 23 Peter.
 24 Q. Can you recall any or describe any circumstance
 25 where why a health insurance company would not be

1 on the hook for that treatment merely because
 2 someone else caused the injury?
 3 MR. BARMEN: Objection. Improper
 4 hypothetical. He's not an expert.
 5 A. Again, as I say, I just treat the patient. I
 6 don't know what goes on with regards to the
 7 insurance companies, et cetera. I'm just telling
 8 you what I know. I focus on the patient. There
 9 are two different populations that we're talking
 10 about here, so I think your question would best
 11 be directed at somebody who's an expert in
 12 insurance.
 13 Q. Why is it that most of your patients don't have
 14 insurance in the personal injury clinic?
 15 MR. BARMEN: Objection.
 16 A. They just don't. Or even if they do, they say
 17 their primary care doctor won't see them.
 18 Q. The law requires everyone to have health
 19 insurance, does it not --
 20 MR. BARMEN: Objection.
 21 Q. -- Dr. Ghoubrial?
 22 MR. BARMEN: Objection. Legal
 23 conclusion --
 24 A. Not to my knowledge.
 25 MR. BARMEN: -- he's not an

1 expert.
 2 A. I can tell you I've seen thousands of patients
 3 with no health insurance.
 4 Q. You understand what ObamaCare is, don't you?
 5 MR. BARMEN: Objection. Same --
 6 A. I do.
 7 MR. BARMEN: -- objection.
 8 Q. You understand the Affordable Care Act?
 9 A. Not really, no.
 10 Q. Well, you're aware that the Affordable Care Act
 11 when it was enacted during President Obama's
 12 presidency, that a major provision of that was
 13 that it required everyone by law to have some
 14 kind of medical insurance, a baseline level,
 15 correct?
 16 MR. BARMEN: Objection. Wait.
 17 Objection. Misstates. He's not an expert.
 18 Are you saying everyone in the country now
 19 has health insurance, Peter?
 20 Q. Do you understand that to be the case --
 21 MR. BARMEN: Objection.
 22 Q. -- Dr. Ghoubrial?
 23 A. No, I don't.
 24 Q. You never became aware of that major provision of
 25 ObamaCare?

1 MR. BARMEN: Objection.
 2 MR. BEST: What part don't you --
 3 why do you keep repeating the same
 4 question?
 5 MR. PATTAKOS: I just want to make
 6 sure --
 7 MR. BEST: He just said he didn't
 8 understand it that way at all.
 9 MR. PATTAKOS: I want to make sure
 10 that he's not misunderstanding my question.
 11 MR. BARMEN: If he's
 12 misunderstanding your question, he will
 13 tell you, counsel. Move on.
 14 MR. PATTAKOS: Well, his answer
 15 suggests that maybe he's not understanding
 16 the question, so I'm going to --
 17 MR. BARMEN: His answer suggests
 18 that maybe your question is asinine. Move
 19 on.
 20 Q. Dr. Ghoubrial, please answer the question.
 21 MR. BARMEN: Tell him again.
 22 A. I'm not an expert in insurance, but I can tell
 23 you, I've seen thousands of patients in the
 24 personal injury setting who have no insurance
 25 till this day, including just last week.

1 Q. It's your testimony that most of the patients of
 2 the personal injury clinic do not have health
 3 insurance?
 4 A. Either that or their primary care doctor doesn't
 5 want to see them.
 6 Q. Okay. Well, which is it?
 7 A. Both.
 8 MR. BARMEN: Objection.
 9 Q. How many -- what percentage of the patients in
 10 the personal injury clinic do not have health
 11 insurance? What's your best estimate --
 12 MR. BARMEN: Objection.
 13 Q. -- based on your experience treating them?
 14 A. A significant number.
 15 Q. What's that significant number?
 16 A. I couldn't tell you.
 17 Q. Is it more than half?
 18 A. A substantial number.
 19 Q. Is it more than half?
 20 MR. BARMEN: Objection.
 21 A. I can't tell you the exact number, Peter. I'm
 22 sorry.
 23 Q. Is it -- does significant mean 15 percent?
 24 MR. BARMEN: He's answered your
 25 question. He's not going to guess. His

1 answer is his answer.
 2 A. I can't guess, Peter. I'm telling you to the
 3 best of my knowledge, it's been a significant
 4 number.
 5 Q. Okay. You understand the government provides
 6 health insurance for people that are below a
 7 certain income level, correct?
 8 MR. BARMEN: Objection.
 9 Q. You understand what Medicaid is?
 10 MR. BARMEN: Objection.
 11 A. Yes.
 12 Q. Can you describe what Medicaid is --
 13 MR. BARMEN: Objection.
 14 Q. -- for the record?
 15 A. Medicaid is just another vendor like any other
 16 insurance company.
 17 Q. That provides highly, heavily subsidized
 18 healthcare to individuals with low income,
 19 correct?
 20 MR. BARMEN: Objection.
 21 A. I don't get involved with the insurance. We have
 22 a staff that does that. My job, Peter, is always
 23 to focus on the individual needs of the patient
 24 irrespective of whether they have insurance,
 25 whether they're in a car accident, whether

1 they're diabetic, whether they're in a nursing
 2 home, my job is to see the patient. I don't even
 3 look at the fact to what insurance they have.
 4 Q. So is it fair to say from all this testimony that
 5 you provided, is it fair to conclude that the
 6 real reason that you do not run the personal
 7 injury practice and the internal medicine
 8 practice as one business is that you want to
 9 accept insurance in one and you don't want to
 10 accept insurance in the other?
 11 MR. BARMEN: Objection.
 12 A. What I said is it's simply not feasible in the
 13 other.
 14 Q. Why is that?
 15 A. I already told you.
 16 MR. BARMEN: Yes, multiple times.
 17 Q. What's the answer, sir?
 18 A. I said it twice --
 19 MR. BARMEN: The same answer he's
 20 given you.
 21 A. -- first of all, No. 1, the credentialing process
 22 is extremely cumbersome. No. 2, most of the
 23 patients, a vast majority of the patients, don't
 24 even have the health insurance. And No. 3, I've
 25 heard through a network of doctors and I have a

1 whole host of doctors in my family, both my
 2 sisters, that if patients are involved in a car
 3 accident -- I've heard it through numerous
 4 sources -- usually it's the responsibility of the
 5 auto insurance, so they deny the claim. So
 6 that's my knowledge and that's where it ends.
 7 Q. What doctors have told you that health insurance
 8 companies deny a claim for medical care for the
 9 reason that an auto insurance company may be
 10 liable for that care?
 11 A. I don't --
 12 Q. Who are the people that told you that?
 13 A. I don't recall, it's been a while.
 14 Q. How many people have told you that?
 15 A. Several.
 16 Q. Twenty or five?
 17 A. I don't know.
 18 Q. Is it closer to 20 or five?
 19 A. I can't give you a number, Peter.
 20 Q. Okay. Are you -- but you can't, sitting here,
 21 recall any specific example where that actually
 22 happened, can you?
 23 MR. BARMEN: Objection.
 24 A. Of what?
 25 Q. Where an auto -- where a health insurance company

37

1 denied coverage for legitimate, reasonable and
 2 necessary care because an auto insurance policy
 3 would eventually be liable for the damage?
 4 MR. BARMEN: Objection.
 5 A. As I tell --
 6 MR. MANNION: Object
 7 (unintelligible).
 8 A. I don't get involved with that, I just focus on
 9 the patient and their problems. Peter, I'm a
 10 doctor.
 11 Q. So the answer is you cannot come up with a single
 12 example where you can recall that happening --
 13 MR. BARMEN: Objection.
 14 Q. -- is that true?
 15 A. No, I think you're putting words in my mouth.
 16 MR. BARMEN: Yeah, he likes to do
 17 that.
 18 A. I didn't say that at all. I said my job is to
 19 treat the patient irrespective of what they have.
 20 Sometimes I get paid, whether it's personal
 21 injury or insurance, sometimes I don't.
 22 Q. Dr. Ghoubrial, are you aware of an example of
 23 that happening, that you can recall, on the
 24 record --
 25 MR. BARMEN: Objection.

38

1 MR. BEST: Objection.
 2 MR. BARMEN: Asked and answered.
 3 Q. -- where an insurance company, a health insurance
 4 company, denied coverage because the injuries
 5 were caused in an auto accident?
 6 MR. BARMEN: Objection. Asked and
 7 answered.
 8 A. I think I answered that question three times.
 9 MR. BARMEN: You have, multiple
 10 times.
 11 Q. You have not answered the question yet --
 12 MR. BARMEN: Yeah, you just don't
 13 like his answer, Peter.
 14 Q. I have not heard an answer, I'm going to ask
 15 it --
 16 MR. BARMEN: Open your ears.
 17 MR. MANNION: Peter --
 18 Q. -- one more time.
 19 MR. MANNION: -- ask some of your
 20 own witnesses.
 21 Q. Please, sir --
 22 MR. BARMEN: Objection. Asked and
 23 answered.
 24 Q. -- can you recall an example?
 25 MR. BARMEN: I will permit you to

39

1 answer this question one more time and
 2 that's it.
 3 A. As I said, I don't get involved with the
 4 insurance companies with what their source of
 5 payer is. I just see the patients. I'm told by
 6 the patients that say, look, my doctor won't see
 7 me because he doesn't want to get involved or I
 8 don't have insurance. So I heard it directly
 9 from the patients on hundreds of occasions if not
 10 thousands.
 11 Q. Do you keep separate malpractice policies for
 12 each clinic for your internal medicine practice
 13 and the personal injury clinic?
 14 MR. BARMEN: Objection.
 15 A. We have coverage for both.
 16 Q. Is it separate coverage or is it under one
 17 policy?
 18 A. I don't know, I'd have to look at the policy.
 19 Q. Dr. Gunning testified that he works for both
 20 practices; is that true?
 21 A. Yes.
 22 Q. Do you pay him separately from each --
 23 A. No.
 24 Q. -- practice?
 25 A. No.

40

1 Q. You pay him under one --
 2 A. Correct.
 3 Q. -- one business?
 4 What do you pay him under?
 5 A. Sam Ghoubrial MD Inc., and he only covers on
 6 occasion lately.
 7 Q. He used to -- he used to treat patients in the
 8 personal injury clinic more frequently, correct?
 9 A. A little bit more frequently, yeah.
 10 Q. And why doesn't he did treat patients in the
 11 personal injury clinic as frequently as he use
 12 to?
 13 A. You know, unfortunately we lost some doctors and
 14 we were short and so what ended up happening is
 15 Dr. Gunning was drawn out of there, he was doing
 16 a great job in both settings, but we needed him
 17 more in the office and I took over more of the
 18 personal injury work. We just simply -- there
 19 just isn't enough of us to go around, Peter.
 20 Q. Who's all worked as a doctor in your practice in
 21 either one of the practices since you opened
 22 them?
 23 A. Dr. Gunning, myself, Dr. Bianco, Dr. Jones, Dr.
 24 Esterle.
 25 Q. Can you please give me first names and last

1 names? Who's Bianco?
 2 A. Michael Bianco, Lisa Esterle, Dr. Joshua Jones,
 3 Dr. Sam Ghoubril, Dr. Richard Gunning, and at
 4 one time Dr. Lazzerini, Frank.
 5 Q. What year did you open the personal injury
 6 clinic?
 7 A. I couldn't give you the year. Roughly eight or
 8 nine years ago maybe, in that vicinity.
 9 Q. Around 2010?
 10 A. Roughly 2010, 2011.
 11 Q. But you can go back and look at your books and
 12 come up with a definite date, couldn't you?
 13 MR. BARMEN: Objection.
 14 A. I don't know how far they go back.
 15 Q. How do you split your time between the two
 16 practices?
 17 A. I do a little bit of both.
 18 Q. How often are you -- how many days a week do you
 19 treat personal injury patients versus family
 20 practice -- sorry -- internal medicine practice
 21 patients?
 22 A. Sometimes three half days a week in personal
 23 injury, sometimes a little more. Sometimes two
 24 half days a week plus some additional time for
 25 nursing home and office, so it's split up.

1 Q. You don't publish advertisements for the personal
 2 injury clinic, do you?
 3 A. No.
 4 Q. So how does the personal injury clinic get its
 5 business?
 6 MR. BARMEN: Objection.
 7 A. Well, the patients request the chiropractors feel
 8 the need for them to be seen by an allopathic
 9 provider. Because their modalities, as you know
 10 in the personal injury setting, you need to take
 11 a multidisciplinary approach, and I've testified
 12 to that before. The modalities the chiropractor
 13 can't do and the modalities I can't do, so the
 14 best approach to these patients is a
 15 multidisciplinary approach. So generally it's
 16 usually done by the patient and the chiropractor.
 17 Q. When you said the chiropractors in this answer,
 18 which chiropractors?
 19 A. Several. Like I'll be available, as you
 20 mentioned, in one of the chiropractic clinics,
 21 and they'll say, look, we have a doctor on board,
 22 if you can't see your doctor, you're more than
 23 happy to see one we have here, and so they make
 24 the choice together.
 25 Q. The chiropractor and the patient?

1 A. Correct. The patient has the final say.
 2 Q. So the personal injury clinics' patients come
 3 primarily from chiropractors' offices and in
 4 recommendations from the chiropractors' offices?
 5 MR. BARMEN: Objection.
 6 A. I think it's more of a need that the patient has
 7 that the chiropractor can't fulfill.
 8 Q. But the majority of the patients that you treat
 9 in that clinic were treating with a chiropractor
 10 who recognized that a need that they could not
 11 fill; is that fair?
 12 A. That's fair, absolutely.
 13 Q. Would you say the great majority?
 14 MR. BARMEN: Objection.
 15 A. Yes.
 16 Q. Would you say all of the patients of the personal
 17 injury clinic are referred by chiropractics?
 18 A. I can't say for sure, but I'd say the vast
 19 majority.
 20 Q. How did you get into this business of treating --
 21 of receiving these chiropractic referrals?
 22 A. Actually that's a great question, it was an
 23 attorney by the name of Jim Slater. He met me
 24 for dinner and he said, Sam, we're having a great
 25 deal of difficulty of getting these patients

1 seen. It's an underserved community,
 2 predominantly minority, they don't have a lot of
 3 health insurance, they can't get in to see a
 4 doctor, can you help us out? So I did. And so
 5 it was actually Jim Slater who got me involved.
 6 Q. Of the Slater & Zurz law firm?
 7 A. Yes.
 8 Q. You said primarily minority, what do you mean by
 9 that?
 10 A. Many of them are minority patients and many of
 11 them are socioeconomically disadvantaged.
 12 Q. You mean minority ethnic groups?
 13 A. Some. You know, some Latino, some African
 14 American, some from various parts of the world,
 15 some from the Middle East. And so these patients
 16 have yet to get established, yet to have
 17 insurance, yet to establish a primary care.
 18 So it's an underserved area where they're
 19 looking for doctors to sort of take care of these
 20 patients. And it's hard enough for them to
 21 receive care in the conventional setting and
 22 certainly they can't find it in a setting like
 23 the one you're referring to.
 24 Q. What's that?
 25 A. Personal injury.

1 Q. So how did it develop from there with -- from
 2 your conversation with Mr. Slater?
 3 MR. BARMEN: Objection. Go ahead.
 4 A. Well, eventually started talking to a few
 5 chiropractors, they said, yeah, you know, we have
 6 a need because these patients can't get seen,
 7 they kept having to go back to the ER, back to
 8 the ER, the family doctor won't see them. They
 9 don't have health insurance, they don't have
 10 anybody that will take care of them and they need
 11 to be treated. Can you help us out, so I did.
 12 Q. Who was the first chiropractor you worked with in
 13 this way?
 14 A. You know, I don't recall.
 15 Q. Who are the chiropractors that you work with in
 16 this way?
 17 MR. BARMEN: Today?
 18 MR. PATTAKOS: Over time.
 19 A. Gosh, there's been so many. Some of them have
 20 come and gone --
 21 Q. Uh-huh.
 22 A. -- but there's been quite a few.
 23 Q. Who are the ones that send you the most patients?
 24 MR. BARMEN: Objection. Go ahead.
 25 A. Again, I don't keep track of that, so I don't

1 know.
 2 Q. Well, you only travel to so many clinics,
 3 correct?
 4 A. Correct.
 5 Q. What are the clinics that you travel to?
 6 A. We go to Detroit Shoreway, Columbus, Akron,
 7 Canton.
 8 Q. What are the clinics in these cities that you go
 9 to to treat?
 10 A. They're chiropractic clinics.
 11 Q. Right. What are the clinics? What clinic in
 12 Columbus: Town & Country?
 13 A. Yeah. Town & Country is the name of one of them,
 14 yeah.
 15 Q. Do you treat at any other clinics in Columbus?
 16 A. No, sir.
 17 Q. And in Akron you treat patients at Akron Square
 18 Chiropractic, correct?
 19 A. I don't know what it's called, but --
 20 Q. Dr. Floros' --
 21 A. Dr. Floros' --
 22 Q. -- practice?
 23 A. Yes, yes, sir.
 24 Q. On Arlington Street.
 25 A. Yes, sir.

1 Q. And Town & Country is Dr. Khan, correct?
 2 A. I think Dr. Khan is there but there's a few other
 3 doctors.
 4 Q. Dr. Rendek, her husband, correct?
 5 A. Yeah, but there's also chiropractors that they
 6 hire, so I think it's more than just them.
 7 Q. Who are the chiropractors at the Detroit Shoreway
 8 Clinic?
 9 A. I believe it's Dr. Cawley, Eric Cawley.
 10 MR. PATTAKOS: What is -- David,
 11 why are you showing him notes in the middle
 12 of his testimony? You want to produce that
 13 and make it an exhibit, David?
 14 BY MR. PATTAKOS:
 15 Q. Dr. Ghoubrial, what's on the note that David Best
 16 just showed you?
 17 MR. BARMEN: Objection.
 18 A. It was nothing pertaining to this case.
 19 Q. Okay. Who are the attorney -- sorry. What's the
 20 name of the chiropractic in Canton where you
 21 treat patients?
 22 A. Canton Injury.
 23 Q. And that's Dr. Tassi, correct?
 24 A. I don't know he's there anymore.
 25 Q. But he used to be there, correct?

1 A. At one point I believe he was.
 2 Q. You have traveled to Toledo to treat patients at
 3 a chiropractic clinic, haven't you?
 4 A. Yes.
 5 Q. And what's the clinic there where you would treat
 6 patients?
 7 A. I don't know what it was called.
 8 Q. Who are the chiropractors there that you would
 9 work with?
 10 A. I can't recall. It was a woman chiropractor. I
 11 don't know.
 12 Q. Patrice?
 13 A. Patrice De-Iesaon [sic].
 14 Q. Lee-Sayon?
 15 A. Lee-Sayon, yeah.
 16 Q. That's her in Toledo?
 17 A. Yeah.
 18 Q. Have you traveled to Dayton or Cincinnati to
 19 treat patients at chiropractic clinics?
 20 A. We have.
 21 Q. What clinics do you treat at in those cities?
 22 A. That's been probably seven or eight years ago, so
 23 I don't recall.
 24 Q. Okay. But the ones, Detroit Shoreway, Columbus,
 25 Akron and Canton and Toledo, are those all

1 ongoing?

2 A. Toledo is not anymore, I wish it were, but there

3 just isn't enough of me to go around.

4 Q. And you fly on your private plane to go to these

5 places?

6 MR. BARMEN: Objection.

7 A. Not anymore, no.

8 Q. Not anymore. When did you stop doing that?

9 A. You know, we haven't done that for probably about

10 four or five years maybe, four years.

11 Q. And why is that?

12 MR. BARMEN: Objection.

13 A. Well, some of the girls were afraid to fly and we

14 decided we could probably -- since we stopped

15 going to Toledo and Cincinnati, we really didn't

16 have much need for it so we stopped.

17 Q. Some of the girls, who are the girls?

18 A. Oh, I don't know. They come and they go.

19 Q. But when you're referring to them, that's the

20 people that would accompany you on these trips?

21 A. Yes.

22 Q. To help you?

23 A. Yes, sir.

24 Q. Treat the patients?

25 A. Yes.

1 Q. And were they physician assistants? Doctors?

2 Nurses?

3 A. Some were administrative, some were medical

4 assistants.

5 Q. You would take an administrative assistant with

6 you to these clinics?

7 A. Yeah, clerical assistant.

8 Q. And what would they do?

9 A. They would assist with preparing documentation,

10 paperwork, things like that.

11 Q. When did you start traveling to chiropractic

12 clinics to treat patients?

13 A. I don't recall, it's been some time.

14 Q. Did you sell your interest in the airplane?

15 MR. BARMEN: Objection.

16 A. I no longer have it, yeah.

17 Q. When -- well, how did it come to be that you no

18 longer have it?

19 MR. BARMEN: Objection.

20 A. Sold it.

21 Q. Who did you sell it to?

22 MR. BARMEN: Objection.

23 A. I don't know, I'm not the manager.

24 Q. The manager of what?

25 A. Well, there's a group who manages the plane and

1 so I was just a small fractional owner.

2 Q. There were eight owners of the plane, I believe;

3 is that correct?

4 A. It changes from time to time. I didn't know who

5 the owners were.

6 Q. Well, you know Mr. Nestico was an owner, correct?

7 MR. BARMEN: Objection.

8 A. No, I'm unaware.

9 Q. You knew that Danny Karam was an owner, correct?

10 MR. BARMEN: Objection.

11 A. I believe I knew Dan was, yeah.

12 Q. Do you remember who any of the other owners were?

13 A. Not off the top of my head.

14 Q. You don't remember that you had any friendships

15 or relationships with any of the other owners?

16 MR. BARMEN: Objection.

17 A. No --

18 MR. BARMEN: He doesn't remember

19 who they are, Peter.

20 A. -- not really. I don't remember who they are.

21 MR. PATAKOS: Well, maybe it

22 would refresh his recollection to suggest

23 that maybe it was some of his friends.

24 MR. BARMEN: Cute. Go ahead.

25 Q. It does not?

1 A. No.

2 Q. Okay. Mr. Nestico testified he knew who they all

3 were. I believe we have the documents.

4 MR. BARMEN: Objection. I don't

5 believe that was the testimony, but go

6 ahead.

7 Q. Who were the chiropractors in Dayton?

8 A. That's been so long ago, I have no idea.

9 Q. And Cincinnati?

10 A. Again, I don't know.

11 Q. The clinics that you worked with were mostly

12 owned by Michael Kent Plambeck; isn't that true,

13 sir?

14 MR. BARMEN: Objection.

15 A. I do not know who the owners were.

16 Q. So the Plambeck affiliation doesn't mean anything

17 to you?

18 MR. BARMEN: Objection.

19 A. I've heard the name, but I don't know what he

20 owns.

21 Q. Okay. Do you recall how you started doing

22 business with KNR?

23 MR. BARMEN: Objection.

24 MR. POPSON: Objection.

25 A. I think we were introduced socially at some

1 point. And through the chiropractors we got to
 2 know each other socially.
 3 Q. Through the chiropractors you got to know each
 4 other socially, am I understanding that?
 5 A. Right, yeah.
 6 Q. Which chiropractors introduced you to KNR?
 7 A. Oh, gosh, it's hard to say. It may have been Dr.
 8 Floros.
 9 MR. BARMEN: Don't guess. If you
 10 know, tell him what you know.
 11 Q. Do you know what the proportion is of your
 12 personal injury clientele that is KNR clients as
 13 opposed to other firms?
 14 A. I have no idea.
 15 Q. Are there any other law firms that you work with
 16 in as high a volume as you do with KNR?
 17 MR. BARMEN: Objection.
 18 A. I couldn't tell you for sure, but I think there's
 19 over 60 or 70 different law firms that we work
 20 with, so...
 21 Q. And based on documents that you provided to us,
 22 you collected millions of dollars in fees from --
 23 in treating KNR patients?
 24 MR. BARMEN: Objection.
 25 A. You know, I really don't look at that, Peter. I

1 A. Yes.
 2 Q. Are you friends with Dr. Khan?
 3 A. I would consider her a friend, yes.
 4 Q. Do you remember how you met Dr. Khan?
 5 A. Again, it was socially. I have family in
 6 Columbus, so I got down there from time to time.
 7 Q. Do you remember who introduced you?
 8 A. No.
 9 Q. In your interrogatory responses -- and I'm
 10 referring now to the first set, No. 42, I asked
 11 you to identify the reasons why you do not accept
 12 payment from Medicare or any health insurance
 13 organization for the work you perform on behalf
 14 of KNR clients.
 15 The Court ordered you to answer this
 16 interrogatory. And after that court order was
 17 made you provided the following answer:
 18 Objection. This interrogatory is not reasonably
 19 calculated to lead to the discovery of admissible
 20 evidence. It contains vague and undefined terms
 21 and it is not related to class certification nor
 22 does the information sought overlap with any
 23 issues related to class certification. Further
 24 answering, and without waiving said objections,
 25 it is a business decision based on experience so

1 give that to my accountant. And, you know,
 2 there's considerable overhead with that, so I
 3 couldn't comment one way or the other, I'm not an
 4 accountant.
 5 Q. So you have no idea as to whether another law
 6 firm drives as much business to your personal
 7 injury practice?
 8 MR. BARMEN: Objection.
 9 A. Well, first of all, I don't think it's a law firm
 10 that drives it, I think I made that clear. The
 11 patient makes a decision with the chiropractor.
 12 It has nothing to do with Slater, it has nothing
 13 to do with Elk, it has nothing to do with
 14 Nestico, it has nothing to do with Redick, it
 15 just depends. It's not -- every circumstance is
 16 different. I don't even know who the attorney is
 17 at the time I treat the patient. I have no idea.
 18 Q. How did you meet Dr. Floros?
 19 A. I think I met him socially as well.
 20 Q. Socially how?
 21 A. I don't recall, it's been some time ago.
 22 Q. You're friends with Dr. Floros, correct?
 23 A. I would consider him a friend, yes.
 24 Q. And you're friends with Mr. Nestico as well,
 25 correct?

1 I am compensated for the services I provide.
 2 Is that a true answer to that interrogatory?
 3 MR. BARMEN: Objection.
 4 A. I haven't read -- you're reading it to me. I
 5 haven't had the opportunity to look at what
 6 you're looking at, so I don't know. I assume
 7 you're reading it verbatim. I would have to
 8 confer with my attorney.
 9 Q. You can't testify as to whether that's true or
 10 not, that your -- the reasons you don't accept
 11 payment for Medicare or any other health
 12 insurance organization is that it is a business
 13 decision based on experience so that you are
 14 compensated for the services you provide?
 15 MR. BARMEN: Well, it consists --
 16 this consists to what he already testified
 17 to, Peter.
 18 A. It's basically the same answer I already
 19 testified to. No. 1, we're not credentialed.
 20 And, No. 2, most of these patients don't have
 21 insurance anyway. Same answer.
 22 Q. So those are the business reasons that -- I guess
 23 -- let me ask you a different question. Are
 24 there any other business reasons or experience
 25 that you're referring to in this interrogatory

1 response other than what you've already described
 2 today?
 3 A. Only what I already told you. No. 1, we're not
 4 credentialed, and No. 2 most of these patients
 5 don't have insurance. And if they do, their
 6 primary care doctor won't see them.
 7 Q. Would you agree that part of the service you
 8 provide to the personal injury clients is your
 9 ability and willingness to serve as an expert
 10 witness in their case?
 11 MR. BARMEN: Objection.
 12 A. On occasion.
 13 Q. You do do that, correct?
 14 A. Yes.
 15 Q. Mr. Nestico testified that one of the reasons so
 16 many of his patients treat with your firm --
 17 treat with you I should say and your practice is
 18 that you are willing to participate in the
 19 litigation; is that true?
 20 MR. BARMEN: Objection.
 21 A. That's fair.
 22 Q. And if the client needs an expert report, you'll
 23 provide it, correct?
 24 A. Correct.
 25 Q. And it's true that you are a qualified expert in

1 the injuries caused by car accidents?
 2 A. I consider myself so, yes.
 3 Q. What are your qualifications as an expert?
 4 MR. BARMEN: Objection.
 5 A. I've been doing it for ten years.
 6 Q. You weren't an expert when you first started
 7 though, were you?
 8 A. No.
 9 Q. So how did you become an expert?
 10 A. Clinical experience.
 11 Q. Well, you're not experimenting on your patients,
 12 are you?
 13 MR. BARMEN: Objection.
 14 A. Of course not.
 15 MR. BEST: He said clinic
 16 experience, not experiments.
 17 Q. Well, you review medical research and you've
 18 received training to maintain your qualifications
 19 to treat these patients, correct?
 20 A. Of course.
 21 Q. You regularly do that, correct?
 22 A. Yes.
 23 Q. And you have to do that to maintain your
 24 qualifications as an expert, correct?
 25 A. Yes, sir.

1 Q. Can you identify any research that you've
 2 reviewed recently or training that you've
 3 received recently to maintain your qualifications
 4 as an expert as to the injuries caused by car
 5 accidents?
 6 MR. BARMEN: Objection.
 7 A. Well, we do quite a bit of continuing medical
 8 education and some of the medical education, in
 9 general, internal medicine, pertains to back
 10 pain, back injuries, neck pain, and how to best
 11 manage those patients. So it's a combination of
 12 practical experience and textbook knowledge.
 13 Q. Can you identify any continuing medical education
 14 sessions that you attended that pertain to
 15 personal injury?
 16 A. Well, I used the MKSAP. And in that they go over
 17 how to treat these soft tissue injuries, but also
 18 over time you gain experience in how to treat
 19 these, and I read some of the literature on my
 20 own.
 21 Q. What -- did you say M-K-S-A-P?
 22 A. A-P, right.
 23 Q. What does that stand for?
 24 A. Medical Knowledge Self Assessment and Plan.
 25 Q. And what is that?

1 A. It's a form of keeping -- it's a study guide for
 2 staying up to date on your internal medicine.
 3 Q. Who publishes that?
 4 A. The American Board of Internal Medicine, the
 5 American College of Physicians. That among other
 6 sources.
 7 Q. What other sources?
 8 A. Several.
 9 Q. Can you identify them?
 10 A. I don't know what they are off the top of my
 11 head. I'm sure I can get them for you, but I
 12 don't know what they are.
 13 Q. Can you identify any continuing medical education
 14 programs that you've attended that pertain to
 15 your expertise as a personal injury expert?
 16 A. Like I said, I do the reading, I stay up on the
 17 MKSAP, I read some journals and that's it.
 18 Q. What journals do you read?
 19 A. I read several. Sometimes I look at UpToDate.
 20 Sometimes I look at stuff published by the
 21 American College of Physicians. It's a whole
 22 litany of things. I can't point to any one
 23 thing. I can certainly provide you a list at a
 24 later date if you'd like.
 25 Q. I asked you to do that and the Court ordered you

61

1 to do that but that has still not been provided
 2 to date.
 3 MR. BARMEN: Objection. Move to
 4 strike.
 5 Q. Well, we can talk about it. Interrogatory No.
 6 26, in our first set of interrogatories that the
 7 Court ordered you to answer on February 5th,
 8 requires you to identify all evidenced-based
 9 studies, medical research, or surveys of which
 10 you are aware that supports or informs your
 11 treatment of KNR clients with injections?
 12 MR. BARMEN: Right, that was
 13 specific to injections, exactly.
 14 A. Yeah.
 15 Q. And you wrote after lodging -- re-lodging some
 16 objections that you quote, rely upon your
 17 education, training, experience and professional
 18 judgment in treating patients --
 19 A. Correct.
 20 Q. -- is that true?
 21 A. Yes.
 22 Q. Does this mean that there are no evidence-based
 23 studies, medical research, or surveys of which
 24 you are aware that supports or informs your
 25 treatment of KNR clients with injections?

62

1 MR. BARMEN: Objection.
 2 A. Well, first of all, it's not just KNR clients,
 3 it's all clients. I don't treat any client
 4 differently no matter what they are. But, no, I
 5 do look at the literature.
 6 Q. Can you identify any evidence-based studies,
 7 medical research or surveys of which you are
 8 aware that supports your treatment of these
 9 clients with injections?
 10 MR. BARMEN: Objection.
 11 A. There's been several articles published on
 12 myofascial pain and the treatment modalities, I
 13 don't know what they are, but I can certainly
 14 bring that up at a later time.
 15 Q. You can't remember who wrote these studies or
 16 where they were published?
 17 A. No. You have to understand that I look at
 18 hundreds and hundreds of documents every week so
 19 I can't, you know...
 20 Q. But there's not one particular study that you
 21 think is especially good or one that you think is
 22 especially advanced or that has been especially
 23 helpful to your patients?
 24 MR. BARMEN: Objection.
 25 A. There have been several.

63

1 Q. Please identify them.
 2 A. Again, like I said, there's a whole litany of
 3 things. I don't recall what they are off the top
 4 of my head.
 5 MR. PATTAKOS: Why don't we take a
 6 short break.
 7 THE VIDEOGRAPHER: We're going off
 8 the record. The time is 11:39.
 9 - - - -
 10 (Thereupon, a recess was had.)
 11 - - - -
 12 THE VIDEOGRAPHER: We're back on
 13 the record. The time is 11:51.
 14 BY MR. PATTAKOS:
 15 Q. Dr. Ghoubrial, you testified that the patients of
 16 your personal injury practice were typically
 17 involved in some kind of accident, correct?
 18 A. Correct.
 19 Q. And most of those patients in your personal
 20 injury practice are treating with you for pain
 21 resulting from soft tissue injuries, correct?
 22 A. Correct.
 23 Q. And that's as opposed to broken bones or
 24 herniated discs or something like that?
 25 A. We see some herniated discs.

64

1 Q. But you don't treat broken bones, correct?
 2 A. Typically not.
 3 Q. Dr. Floros testified that he sends patients to
 4 you in cases where they are -- they have high
 5 inflammatory levels, where their pain medication
 6 that they receive from the emergency room ran
 7 out, they can't sleep, high pain levels, et
 8 cetera. Does that sound accurate to you?
 9 MR. BARMEN: Objection. Go ahead.
 10 A. Yes.
 11 Q. Is there anything else you would add to that?
 12 A. No.
 13 Q. You describe how you treat a patient that comes
 14 to you from a chiropractor for pain resulting
 15 from a car accident?
 16 MR. BARMEN: Objection.
 17 MR. BEST: Objection.
 18 MR. BARMEN: Any -- I mean, how do
 19 you expect him to do that when it's --
 20 MR. PATTAKOS: He's done it
 21 thousands of times. I would --
 22 MR. BARMEN: Right, exactly, it's
 23 all individual.
 24 MR. PATTAKOS: I would just like
 25 him to describe the general process.

1 MR. BARMEN: Objection. If you
 2 can.
 3 A. Sure. The most important thing is it's
 4 individualized. Every single patient is
 5 different. I take a subjective history. I do a
 6 past medical history to include a surgical
 7 history, medication history, history of their
 8 medical problems, history of their allergies.
 9 And then I get a list of their medications. And
 10 then I perform a objective exam. And then I come
 11 up with an assessment and a plan.
 12 But each and every patient is completely
 13 different. They come in different ages,
 14 different problems, different medications,
 15 different contraindications, and I have to sort
 16 out what the best treatment modality is for these
 17 patients given their age, given their
 18 medications, given the contraindications to their
 19 medications, given the potential interactions
 20 between any medications that I give them and
 21 medications they're on. Whether or not I feel
 22 they'll respond to that or whether they need to
 23 use adjunctive therapy or whether they need to be
 24 referred out.
 25 Q. Do you take a social history?

1 Q. Typically they're not. Why not?
 2 MR. BARMEN: Objection.
 3 A. Patient comes in, they don't have the records
 4 with them and they need help.
 5 Q. The chiropractor doesn't sent them with records?
 6 MR. BARMEN: Objection.
 7 A. No.
 8 Q. So you typically don't review prior records or
 9 imaging or any testing related to patients that
 10 come see you in the personal injury clinic?
 11 MR. BARMEN: Objection.
 12 A. That's correct.
 13 Q. What are the diagnoses that you most commonly
 14 treat in your personal injury practice?
 15 MR. BARMEN: Objection.
 16 A. There's a whole litany of diagnoses, but more
 17 importantly it's the approach to each one of
 18 those that's different. I'll see patients with
 19 rotator cuff injury, ligament injuries to the
 20 knee, cervical strain, thoracic strain, lumbar
 21 strain, knee injury, ankle sprain, foot sprain,
 22 post-concussion syndrome, insomnia, cephalgia,
 23 visual defects. Anything that can result from a
 24 motor vehicle accident, but more important than
 25 that is the individual nature of the treatment.

1 A. Yes.
 2 Q. Do you take a family history?
 3 A. Yes. Occasionally.
 4 Q. And you, of course, perform a physical exam,
 5 correct?
 6 A. Yes.
 7 Q. What all do you check on your exam?
 8 A. I check head, neck, listen to their heart, lungs,
 9 abdomen. Do a complete musculoskeletal exam. I
 10 check their gait, their tone. I do a --
 11 Q. Muscle tone?
 12 A. Yes. Neurologic exam. I do an exam of the
 13 spine. I examine their extremities.
 14 Q. How do you perform a neurologic exam? What type
 15 of neurologic exam?
 16 A. I perform a neurological exam the same way. I
 17 check for tone, strength and range of motion and
 18 any sensory deficits or radicular findings.
 19 Q. Is there anything else you do as part of your
 20 workup?
 21 MR. BARMEN: Objection. Go ahead.
 22 A. It varies from patient to patient.
 23 Q. Maybe another key step, you review prior records,
 24 correct?
 25 A. If they're available. Typically they're not.

1 While two patients or three patients or eight
 2 patients may come in with a diagnosis of thoracic
 3 strain, all eight of them will probably receive
 4 some sort of different modality. Some may
 5 receive nothing other than some
 6 antiinflammatories. Some may receive trigger
 7 point injections. Some may be referred to a
 8 massage therapist. Some may be referred to an
 9 orthopedic. Some may need an MRI. Some may get
 10 trigger point injections. Some may get a TENS
 11 unit. Some may get a TENS unit and a brace. It
 12 varies. No patients are alike. While they may
 13 carry the same diagnosis, the treatment approach
 14 is very seldom the same.
 15 Q. But you would agree that most of the patients
 16 that you see in your personal injury practice are
 17 diagnosed with some type of strain or sprain,
 18 correct?
 19 MR. BARMEN: Objection. Go ahead.
 20 A. For the most part, yes.
 21 Q. The great majority of patients in the personal
 22 injury practice have that diagnosis, correct?
 23 MR. BARMEN: Objection. Go ahead.
 24 A. Yes, sir.
 25 Q. And the majority of patients who treat with your

69

1 personal injury practice receive trigger point
 2 injections, correct?
 3 MR. BARMEN: Objection.
 4 A. No.
 5 Q. "No"?
 6 A. No.
 7 Q. Are you sure of that?
 8 A. Yes.
 9 Q. How are you sure of that?
 10 A. I can tell you that not all patients need trigger
 11 point injections. Some patients need them, some
 12 don't. I can't tell you that the great majority
 13 of the patients need them. Because, No. 1, I
 14 don't know and, No. 2, to the best of my
 15 recollection they don't. They just simply aren't
 16 beneficial for everyone. Remember what I was
 17 telling you earlier about each patient being
 18 individual.
 19 Q. Can you describe what a trigger point injection
 20 is?
 21 A. Yes. You introduce a needle filled with a
 22 mixture of Marcaine, which is a local anesthetic,
 23 and Kenalog, which is a steroid, directly into
 24 the focal area of pain, spasm or discomfort.
 25 Q. But you wouldn't just inject any area of pain,

70

1 spasm or discomfort, correct?
 2 A. Only if it's indicated.
 3 Q. Only if there's a trigger point, correct?
 4 A. Correct.
 5 Q. And only if it is an active trigger point that's
 6 causing pain, correct?
 7 A. Correct.
 8 Q. You won't inject a latent trigger point, correct?
 9 A. It depends. If there's an area that's been
 10 treated conservatively and the patient will come
 11 in and say, doctor, I still have quite a bit of
 12 discomfort despite the use of the TENS, despite
 13 the therapy, despite the massage. And I say,
 14 well, we can try a little bit of Kenalog and
 15 Marcaine, would you be interested in that? And
 16 more often than not, it's quite successful.
 17 Q. Okay. So you'll only treat a latent -- I'm
 18 sorry. Strike that.
 19 You will only inject a latent trigger point
 20 after more conservative therapy has failed?
 21 A. Patient-by-patient case.
 22 Q. Can you describe what a trigger point is?
 23 MR. BARMEN: Objection.
 24 A. I just did.
 25 MR. BARMEN: He just did.

71

1 MR. PATTAKOS: No, I don't think
 2 he did.
 3 Q. You described what a trigger point is, not the
 4 injection. What is a trigger point?
 5 MR. BARMEN: Go ahead.
 6 A. I described it earlier, but I'll repeat it. What
 7 it is is it's an area of myofascial pain,
 8 guarding, tenderness or spasm that elicits
 9 objective discomfort on the patient.
 10 Q. There are other defining qualities of a trigger
 11 point that you're leaving out of this definition;
 12 are you not, Doctor?
 13 MR. BARMEN: Objection.
 14 A. Those are the ones that I use.
 15 Q. Let's take a look at a couple of exhibits. Let
 16 me ask you first: Do you agree that a
 17 fundamental characteristic of a trigger point is
 18 that it produces referred pain?
 19 MR. BARMEN: Objection.
 20 A. Not necessarily. It can be referred, it can be
 21 focal, it can be asymmetrical, it can be
 22 bilateral, it can be unilateral.
 23 Q. So you disagree with that?
 24 A. Yeah.
 25 - - - -

72

1 (Thereupon, Plaintiff's Exhibits 2, 3 were
 2 marked for purposes of identification.)
 3 - - - -
 4 Q. Here's Exhibit 2 -- oh, sorry. We'll call this
 5 the Alvarez study. It's by Dr. David Alvarez and
 6 Dr. Pamela Rockwell of the University of Michigan
 7 Med School. This was published in the Journal of
 8 the American Family Physician.
 9 Do you agree that's a credible journal, sir?
 10 MR. BARMEN: Objection.
 11 MR. BEST: 17 years ago? Make
 12 sure I have this right.
 13 MR. BARMEN: It appears to be 17
 14 years ago.
 15 MR. BEST: Oh, interesting. Very
 16 up to date.
 17 A. I don't know, I haven't read it, so I don't know.
 18 Q. Well, do you agree that the American Family
 19 Physician is a credible journal?
 20 MR. BARMEN: Objection.
 21 A. I don't read it, so I don't know.
 22 Q. Do you agree that the ProQuest Medical Library is
 23 a credible source for medical research?
 24 MR. BARMEN: Objection.
 25 A. I have no idea.

73

1 Q. You have no idea. Okay. Have you ever seen this
 2 study before? I'm sorry did you testify you have
 3 not seen this before?
 4 A. I've never seen this, no.
 5 Q. If we look at -- all right. Page 1 it says,
 6 trigger points are discreet -- and this is in the
 7 second paragraph -- trigger points are discreet
 8 focal, hyperirritable spots located in a taut
 9 band of skeletal muscle. The spots are painful
 10 on compression and can produce referred pain,
 11 referred tenderness, motor dysfunction and
 12 autonomic phenomena.
 13 Do you agree that?
 14 A. Absolutely.
 15 Q. Okay.
 16 MR. BEST: I object to any
 17 reference to this. This is family practice
 18 from 17 years ago. An article that he has
 19 not read or had a chance to look at.
 20 Q. How do you identify a trigger point?
 21 MR. BEST: And no one has
 22 testified that it's been validated or
 23 verified in anything. This is somebody who
 24 wrote a 20-year-old article. This is
 25 ridiculous.

74

1 Q. How do you identify a trigger point?
 2 A. I believe I testified to that.
 3 MR. BARMEN: Yeah, objection.
 4 It's already been done.
 5 A. It's an objective finding. I typically palpate
 6 along the paraspinal musculature. And so I
 7 locate a band of musculoskeletal guarding,
 8 tenderness or spasm that elicits some sort of
 9 objective finding that's in concert with their
 10 subjective complaints and that's how I locate a
 11 trigger point.
 12 Q. If you look at page 3 of this document under
 13 "Evaluation", it's the last paragraph on the page
 14 where it says, palpation of a hypersensitive
 15 bundle or nodule of muscle fiber of harder than
 16 normal consistency is the physical finding most
 17 often associated with a trigger point.
 18 Do you agree with that?
 19 MR. BARMEN: Objection. Go ahead.
 20 A. What page are you referring to?
 21 Q. Page 3, the last paragraph under the heading
 22 Evaluation.
 23 A. I already testified to that, that's exactly what
 24 I just told you.
 25 Q. Okay. And localization of a trigger point is

75

1 based on the physician's sense of feel, assisted
 2 by patient expressions of pain and by visual and
 3 palpable observations of local twitch response.
 4 You agree with that correct?
 5 MR. BARMEN: Objection.
 6 A. That's exactly what I just told you.
 7 Q. And this palpation will elicit pain over the
 8 palpated muscle and/or cause radiation of pain
 9 toward the zone of reference in addition to a
 10 twitch response.
 11 Do you agree with that?
 12 MR. BARMEN: Objection.
 13 A. Not necessarily radiation, occasionally
 14 radiation.
 15 MR. BARMEN: If you're going to
 16 keep questioning him on tidbits from this,
 17 I'm going to want him to have the
 18 opportunity to read the whole article,
 19 Peter.
 20 Q. You agree that the determination of whether a
 21 trigger point exists is largely subjective,
 22 correct?
 23 MR. BARMEN: Objection.
 24 MR. BEST: Objection.
 25 A. No, I just -- it's objective and subjective both.

76

1 Q. You agree that there is typically a lack of an
 2 objective -- objective measurements for trigger
 3 points?
 4 MR. BARMEN: Objection.
 5 MR. BEST: I'm going to object.
 6 He just testified to the opposite. Why do
 7 you do this? You're embarrassing.
 8 Q. Well, let's take a look at some more research.
 9 MR. BARMEN: Yes, your hand-picked
 10 research, let's do that.
 11 MR. BEST: Yeah, who cares --
 12 MR. PATTAKOS: Well, you didn't
 13 provide any. You had an opportunity to
 14 send me research, sir, and you didn't send
 15 me any.
 16 MR. BARMEN: Right. Because I'm
 17 not obligated nor is he to dig through
 18 years and years and years of the hundreds,
 19 literally thousands of things he receives
 20 to find the ones that are specific to your
 21 request and you know it and I know it,
 22 so...
 23 MR. PATTAKOS: We'll see what the
 24 jury thinks about that.
 25 MR. BARMEN: It's good that you

1 think you'll ever get there.
 2 MR. MANNION: Well, I would just
 3 refer to Mr. Harbor who says they were
 4 effective.
 5 MR. BARMEN: But, Tom, facts don't
 6 matter here, you know that.
 7 MR. MANNION: I forgot about that.
 8 Q. If we see paragraph two of the introduction
 9 here --
 10 MR. BARMEN: I'm sorry, do you
 11 have one for the lawyer? Thank you.
 12 MR. PATTAKOS: I thought you
 13 didn't care about these.
 14 MR. BARMEN: I really don't, but
 15 it's just appropriate to pass them out.
 16 Hey, this one is only seven years old --
 17 I'm sorry, eight years old.
 18 Q. Are you familiar with this study?
 19 A. No.
 20 Q. Are you familiar with PubMed?
 21 A. I've heard of it.
 22 Q. What is PubMed?
 23 A. They publish a series of articles, they archive a
 24 series of articles on various topics.
 25 Q. And that's a federal government body that

1 here.
 2 A. No problem.
 3 MR. BEST: I'm sure some of this
 4 is right and some of it's wrong. That's
 5 the way every publication is.
 6 MR. PATTAKOS: Is that your tes --
 7 do you have any other testimony you want to
 8 offer, David? Do you want to coach the
 9 witness any further?
 10 MR. BEST: No, I'm just saying if
 11 you want to ask him about these articles,
 12 that's fine, but we're going to take a
 13 break and he gets to read them. Because he
 14 gets to read the whole article, not one
 15 sentence that you get to ask him about, so
 16 he can put it in context because he's the
 17 professional, you're not.
 18 MR. PATTAKOS: I'm asking him
 19 about his own treatment of these patients
 20 and I'm asking him if he agrees with
 21 certain statements here.
 22 MR. BEST: But you're asking him
 23 about articles that are published that may
 24 be accurate and may be inaccurate.
 25 MR. PATTAKOS: If you have issues

1 archives these articles, correct?
 2 A. Right.
 3 Q. Which body is that, sir?
 4 A. I don't know.
 5 MR. BARMEN: Objection.
 6 Q. It's the National Institute of Health; is it not?
 7 A. I don't know, you tell me.
 8 Q. You agree that information that's published and
 9 made available to the public by the National
 10 Institute of Health carries some indicia of
 11 credibility, sir?
 12 MR. BARMEN: Objection.
 13 MR. POPSON: Objection.
 14 A. Everything you pointed out here so far, Peter,
 15 supports my use of the trigger point
 16 injections --
 17 Q. Okay.
 18 A. -- so if you want to keep going with this --
 19 Q. I do.
 20 A. -- you're not helping yourself.
 21 MR. BARMEN: Just answer his
 22 questions.
 23 A. The answer is yes.
 24 MR. BARMEN: Don't engage.
 25 Q. Sir, I'm just trying to ask you some questions

1 with the articles, you can take them up
 2 later.
 3 MR. BEST: No, we --
 4 MR. PATTAKOS: We have a
 5 deposition to --
 6 MR. BEST: No, you're asking him
 7 about this, I want -- do you want to read
 8 this, Sam? If he wants to ask you about
 9 it, would you like to read the whole
 10 article before?
 11 THE WITNESS: It would have been
 12 nice to furnish these beforehand.
 13 MR. BEST: Yeah. Well, let's just
 14 take a break and we'll read the article.
 15 BY MR. PATTAKOS:
 16 Q. You agree -- you agree, Dr. Ghoubril --
 17 MR. BEST: No, we're going to take
 18 a break and he's going to read the article
 19 and then we'll come back.
 20 MR. BARMEN: Are you going to
 21 question him on this?
 22 MR. MANNION: (Unintelligible).
 23 MR. PATTAKOS: Okay. That's fine,
 24 we'll be here all day. Go ahead, take your
 25 time.

81

1 MR. BARMEN: We're going to be
 2 here all day anyway.
 3 MR. BEST: We're going to be here
 4 all day anyway --
 5 MR. PATTAKOS: We'll be here for
 6 two days --
 7 MR. BEST: Well, we'll see about
 8 that.
 9 MR. PATTAKOS: -- we're going to
 10 be here for two days.
 11 MR. BEST: I doubt it, but if you
 12 want to ask a witness about an article, the
 13 witness is entitled to read the article.
 14 MR. BARMEN: Go ahead and read it.
 15 MR. BEST: You think that's
 16 unreasonable?
 17 MR. PATTAKOS: I think in this
 18 context it is.
 19 MR. BEST: Well, it's not.
 20 MR. MANNION: You've never been to
 21 a deposition of a physician, Peter, ever?
 22 MR. BEST: I've been in practice
 23 for 44 years, we always read the articles
 24 before you respond because frequently
 25 lawyers, such as yourself, take something

82

1 out of context. Can you imagine? And
 2 they'll try to take one sentence and the
 3 witness won't know that the lawyer is being
 4 inappropriate. So the way you avoid that
 5 is you allow the witness to read the entire
 6 medical article and then he testifies. And
 7 that's happened for 44 years. So if you
 8 think it should be different today, you're
 9 wrong.
 10 MR. PATTAKOS: I think somebody
 11 who --
 12 Q. Dr. Ghoubrial, please read the article?
 13 THE VIDEOGRAPHER: Are we going
 14 off?
 15 MR. PATTAKOS: Are we going to
 16 take a --
 17 MR. BEST: Every article you want
 18 to read, he has a right, if he chooses, to
 19 read the article.
 20 MR. PATTAKOS: Okay. That's fine.
 21 MR. BARMEN: You may as well just
 22 give them all over now.
 23 MR. PATTAKOS: No, I'm going to do
 24 that.
 25 MR. BEST: If you want him to

83

1 answer the question -- it's up to him, but
 2 if he wants to read the article, he's
 3 entitled to read the entire article.
 4 MR. PATTAKOS: Why don't -- how
 5 about, why don't we do it this way, okay?
 6 I'm going to ask him about specific
 7 statements and if he doesn't feel
 8 comfortable answering the question without
 9 reading the entire article, then we can
 10 take a break.
 11 MR. BARMEN: No, we're not going
 12 to do it that way. If you're going to
 13 question him --
 14 MR. MANNION: I object. I object.
 15 That's inappropriate.
 16 MR. BARMEN: If you're going to
 17 question him off these articles, he's going
 18 to read the articles first. That's just
 19 the way we're going to do it, so...
 20 MR. PATTAKOS: Go ahead, read the
 21 article. We'll be here for -- this
 22 deposition will take three days.
 23 THE VIDEOGRAPHER: We're going off
 24 the record. The time is 12:10.
 25 - - - -

84

1 (Thereupon, a recess was had.)
 2 - - - -
 3 THE VIDEOGRAPHER: We're back on
 4 the record. It's the beginning of Tape No.
 5 2. The time is 12:21.
 6 BY MR. PATTAKOS:
 7 Q. You've had the opportunity to review the articles
 8 that were marked as Exhibits 2 and 3?
 9 A. I skimmed them over, yes.
 10 Q. Is there anything that bothers you about them?
 11 MR. BARMEN: Objection.
 12 A. Much of the information I agree with, some of it
 13 I disagree with.
 14 Q. Okay. You know, that's all I really want to know
 15 is what you disagree with and what you agree with
 16 and why.
 17 A. Sure.
 18 MR. PATTAKOS: So, you know, this
 19 will go a lot faster if we don't have to
 20 stop every -- for ten minutes every time I
 21 show him a study to ask him if he agrees
 22 with something. I just want to get that on
 23 the record. Dr. Ghoubrial is confident in
 24 his treatment of patients in his use of
 25 trigger point injections, so I don't see

85

1 the need for it. So, for what it's worth,
 2 it's fine, if you guys will insist on it,
 3 I'm not going to tell you that --
 4 obviously, I can't make you keep him in the
 5 room, but I'm telling you we will be here a
 6 long time if we need to stop for ten
 7 minutes every time I show him an exhibit of
 8 publically-available research that is
 9 available to him in this field in which he
 10 is an expert and has treated thousands of
 11 patients --

12 MR. BARMEN: Well, okay --

13 MR. PATTAKOS: -- and billed
14 millions of dollars.

15 MR. MANNION: Wait a minute, wait
 16 a minute, guys. I want to be able to put
 17 an objection on as well. Tom Mannion. And
 18 I object. Physicians do not come to
 19 conclusions about research articles based
 20 on one sentence or based on a ten-second
 21 review. They have to be given an
 22 opportunity to review that. If you wanted
 23 to ask questions of him, you should have
 24 provided these beforehand.

25 MR. BARMEN: And I'll take it one

86

1 step further as to his counsel here today,
 2 frankly, based on your conduct in this
 3 case, I don't trust your representations.
 4 So it is incumbent upon me to be able to
 5 read the articles as well because you've
 6 been known to misrepresent things as
 7 already has been determined by Judge
 8 Brogan. Continue.

9 MR. PATTAKOS: Brad, these
 10 articles do you think that if I
 11 misrepresent one of these articles that
 12 there wouldn't be hell to pay, you really
 13 think I would do that?

14 MR. BEST: Yes, you would do that
15 --

16 MR. PATTAKOS: Would I do that?

17 MR. BEST: -- for sure.

18 MR. BARMEN: In a heartbeat.

19 MR. PATTAKOS: When have I done
20 anything like that?

21 MR. BEST: You are a dishonest,
22 unreliable attorney.

23 MR. PATTAKOS: Okay.

24 MR. BEST: You shouldn't really be
25 practicing law.

87

1 MR. PATTAKOS: My clients don't
2 seem to think so.

3 MR. BEST: They will. When
4 everything comes to light, they will.

5 MR. PATTAKOS: Things are coming
6 to light all right, David.

7 BY MR. PATTAKOS:

8 Q. So if you look at this Wong study, I'll call it,
9 published in PubMed --

10 MR. BARMEN: That is Exhibit 3?

11 MR. PATTAKOS: Exhibit 3.

12 Q. Clara Wong and Steve H. S. Wong. They're from
 13 the department of anesthesiology in Hong Kong at
 14 Queen Elizabeth Hospital. Page 1, section 1 in
 15 the introduction, paragraph 2 reads, despite the
 16 popularity of trigger point injections, the
 17 pathophysiology of myofascial trigger points
 18 remains unclear. Localization of a trigger point
 19 is often based on the physician's examination.
 20 However, such physical examination is often
 21 unreliable. Lack of objective clinical
 22 measurements has also been a barrier for
 23 critically evaluating the efficacy of the
 24 therapeutic methods.

25 Do you agree with that?

88

1 MR. BARMEN: Objection.

2 A. No.

3 Q. You do not?

4 A. No.

5 Q. Why is that?

6 A. Because when I administer a trigger point, I
 7 always have both subjective and objective
 8 findings on these patients. And my charts, as
 9 you have Mr. Harbor's, demonstrate clearly the
 10 efficacy of each and every trigger point that we
 11 give and the relief that the patient gets.

12 Q. How do the charts demonstrate that?

13 A. If you take a look at any of the charts, it will
 14 say trigger point injections brought their pain
 15 down. They received from -- benefit from the
 16 trigger point injection, trigger point injection
 17 took their pain from an eight to a six. They
 18 feel another round may be helpful. And I do
 19 that. Or they will say, they were completely
 20 helpful at which point I don't need to give them
 21 anymore. Or on rare occasion they say, I didn't
 22 get much help from them and we try and find
 23 another modality. Fair enough?

24 Q. So this is based entirely on what you are writing
25 in the records about what the patient tells you,

1 correct?

2 A. No, it's based on my physical exam, my 20 years

3 of experience, the patient's subjective and

4 objective findings and the actual follow-up care

5 after administering the injections. So follow-up

6 care here is critical. As I told you each and

7 every patient is different. Where you administer

8 the trigger points, what kind of relief they get,

9 what injunctive therapy is associated with it, so

10 I follow-up with these patients to make sure that

11 they got relief.

12 Q. What objective indicator could someone else look

13 at, a third party, beside you and the patient,

14 look at and say there was a trigger point --

15 there was a trigger point here that was properly

16 treated with a trigger point injection?

17 A. Then we do --

18 MR. BARMEN: I'm going to

19 object -- wait a minute. Objection. Go

20 ahead.

21 A. They need to examine the patient. You just can't

22 take a look at it and say, boy, I'm going to look

23 at this chart. You have to physically examine,

24 put your hands on the patient, talk to the

25 patient, review the circumstances of the patient.

1 Each and every patient is individual.

2 Q. So once a trigger point resolves --

3 A. Uh-huh.

4 Q. -- there is no way you can prove that it once

5 existed, correct?

6 A. No, actually that's great proof that it existed.

7 Once you administer a trigger point and the pain

8 goes away, as I've seen in thousands of cases,

9 then you can be sure that not only did you

10 localize the trigger point, you treated the

11 trigger point with the proper medication, you

12 introduced it into the proper area and got the

13 desired result.

14 Q. How do you know the pain wasn't being caused by

15 something else?

16 MR. BARMEN: Objection.

17 A. Because I examined the patient.

18 Q. Okay. We'll get into that. My question though

19 is different from the one you answered. My

20 question was: A trigger point itself, whether

21 you inject it or not, let's say you don't inject

22 the trigger point, when a trigger point forms in

23 a patient and resolves, there is no way that you

24 can tell -- there's no way that you can prove it

25 once existed after it resolved unless you took an

1 ultrasound, correct?

2 MR. BARMEN: Objection.

3 MR. POPSON: Objection.

4 A. Even with an ultrasound you couldn't necessarily

5 prove it.

6 Q. Okay. And you don't use ultrasound to find

7 trigger points, correct?

8 A. Absolutely not.

9 Q. And why not?

10 A. Absolutely not necessary.

11 Q. And insurance companies aren't going to pay for

12 it, right?

13 MR. POPSON: Objection.

14 A. I don't know, I've never used it.

15 Q. It's not generally medically accepted to use

16 ultrasound to identify trigger points, is it,

17 sir?

18 MR. BARMEN: Objection.

19 A. It's not necessary for what I do.

20 Q. And it's not typically done in the practice of

21 medicine, is it, Doctor?

22 MR. BARMEN: Objection.

23 A. No, it is.

24 Q. It is. Who does it?

25 A. I do.

1 Q. You use ultrasound?

2 A. No, I use trigger points.

3 Q. Doctor, I'm asking you about the use of

4 ultrasounds to identify --

5 A. I don't use ultrasound.

6 Q. And you're not aware of anyone doing that, are

7 you? Of using ultrasound to --

8 A. Not to my knowledge, no.

9 Q. -- identify -- okay. Thank you.

10 Essentially to know for sure whether a

11 trigger point ever existed, you would have had to

12 either felt the trigger point as the person who

13 was afflicted by it or you would have had to have

14 physically examined the patient yourself,

15 correct?

16 A. You need to do two things and I'll say it again,

17 you need to get a subjective history from the

18 patient, then you have to support that with

19 objective findings, and then you administer the

20 trigger point, you reevaluate them and see how

21 they did. So there's three components. There's

22 a subjective component, the objective component,

23 the administration and then finally the

24 follow-up.

25 Q. How do you decide whether a trigger point is

1 worth injecting?
 2 **A.** Again, based on the subjective and objective
 3 findings.
 4 **Q.** Please explain.
 5 **A.** I have.
 6 **Q.** Which part of your testimony answers this
 7 question?
 8 **MR. BARMEN:** The last 35 minutes.
 9 **MR. PATTAKOS:** That's good.
 10 **MR. BARMEN:** Objection. Do you
 11 understand what he's asking?
 12 **A.** Each patient has a subjective history and they
 13 have objective findings. I examine the areas
 14 that they complain about in the subjective exam.
 15 If I find a focal area, spasm, irritation,
 16 guarding, occasional radiation, tightness,
 17 discomfort, I deem that a trigger point, and I
 18 inject it if there are no contraindications.
 19 **Q.** What are the contraindications?
 20 **A.** Well, for instance, occasionally a patient can be
 21 on blood thinner, which is an absolute
 22 contraindication. It's a relative one. If the
 23 patient is diabetic, then you have to make some
 24 adjustments to their insulin. If the diabetes is
 25 out of control, I typically don't do it. If, in

1 fact, the patient has an extreme phobia of
 2 needles, I won't do it then. If they have some
 3 sort of bleeding diathesis, I don't do it. If
 4 they have an allergy to the medication, whether
 5 it be Marcaine or the Kenalog, I don't do it
 6 then.
 7 **Q.** Any other contraindications?
 8 **A.** There may be, but off the top of my head that's
 9 what I can recall.
 10 **Q.** When you're administering trigger point
 11 injections, do you distinguish between key
 12 trigger points and satellite trigger points?
 13 **MR. BARMEN:** Objection. Go ahead.
 14 **A.** No.
 15 **Q.** Why not?
 16 **A.** It's not necessary. It's either a trigger point
 17 or not a trigger point.
 18 **Q.** Can you describe the difference between key
 19 trigger points and satellite trigger points?
 20 **A.** Satellite trigger points are referred, to my
 21 knowledge. The key trigger points are the ones
 22 that I use. I don't treat the satellite ones,
 23 the referred ones, as you're referring to here.
 24 I typically treat the ones -- it's my
 25 understanding, that the satellite ones are the

1 ones that are secondary surrounding the trigger
 2 point. I treat the main focal trigger point, not
 3 the referred ones.
 4 **Q.** So you treat the key trigger point?
 5 **A.** Right.
 6 **Q.** So you do distinguish between key trigger points
 7 and satellite trigger points?
 8 **A.** Yes --
 9 **MR. BARMEN:** Objection.
 10 **A.** -- but I don't treat the satellite trigger
 11 points.
 12 **Q.** Right.
 13 **A.** Right.
 14 **Q.** So you have to distinguish between them to
 15 determine which one is worth injecting, correct?
 16 **A.** Well, I don't think it's necessary to inject the
 17 satellite ones because if you inject the primary,
 18 it's my experience, that the satellite ones go
 19 away. And there's no need to perform an
 20 unnecessary procedure.
 21 **Q.** And that's what it says on this article that you
 22 just reviewed under section 2 on page 2, if you
 23 look at the third paragraph it says, trigger
 24 points have also been further classified into key
 25 or satellite. An active key trigger point in one

1 muscle can induce an active satellite trigger
 2 point in another muscle. Inactivation of the key
 3 trigger point often also inactivates its
 4 satellite trigger point without treatment of the
 5 satellite trigger point itself.
 6 **A.** That's exactly what I just said.
 7 **Q.** Okay. That's true, right?
 8 **A.** These articles are helpful. Thank you.
 9 **Q.** Okay. And you of course distinguish between
 10 active and latent trigger points in deciding
 11 whether to administer an injection, correct?
 12 **A.** Correct.
 13 **Q.** Can you please describe the difference between
 14 active and latent trigger points?
 15 **A.** A latent trigger point is typically one that's
 16 four to six weeks out, they've had some
 17 chiropractic care, they still have myofascial
 18 tenderness and they have objective findings
 19 there and occasionally, depending on the case,
 20 depending on the contraindications,
 21 circumstances, how latent it is, I may or may not
 22 choose to inject those patients.
 23 **Q.** Do you agree that for an active trigger point --
 24 strike that.
 25 You wouldn't use an injection on a trigger

1 point that isn't causing pain, correct?
 2 A. No.
 3 Q. Is that correct?
 4 A. Yes.
 5 Q. Do you agree that latent trigger points are more
 6 commonly found than active trigger points?
 7 MR. BARMEN: Objection. Go ahead.
 8 A. Not necessarily.
 9 Q. If we look at section 2, paragraph 2, of the Wong
 10 study, in the middle of the paragraph it says
 11 latent trigger points are more commonly seen.
 12 A. That's in myofascial pain syndrome, which is
 13 fibromyalgia. It doesn't pertain to the acute
 14 strains/sprain that I see. When you're referring
 15 to myofascial pain syndrome, that's another
 16 synonym for the word "fibromyalgia".
 17 Q. That's not true, is it, Doctor? You understand
 18 that myofascial pain syndrome and fibromyalgia
 19 are two separate and distinct diagnoses, correct?
 20 MR. BARMEN: Objection. He just
 21 testified to what he testified.
 22 A. I'm telling you myofascial pain syndrome is a
 23 catch basin that includes fibromyalgia. It's a
 24 synonymous term, in my mind.
 25 Q. Not all patients with myofascial pain syndrome

1 have fibromyalgia, correct?
 2 MR. BARMEN: Objection.
 3 A. The vast majority of those do.
 4 Q. How do you know that?
 5 A. I've treated fibromyalgia --
 6 MR. BEST: Because he's a doctor
 7 and you're not.
 8 A. -- I've treated fibromyalgia for 22 years.
 9 Q. Okay. Do you distinguish between trigger points
 10 and tender points in deciding whether to
 11 administer an injection?
 12 MR. BARMEN: Objection.
 13 A. Yes.
 14 Q. And how do you do that?
 15 A. Well, tender areas are some area of soreness, but
 16 if there's no significant palpable tightness or
 17 band, sometimes I may inject it, sometimes I may
 18 not, depending on the patient's clinical
 19 disposition.
 20 Q. So sometimes you will just inject a tender area?
 21 A. On occasion.
 22 Q. Even though it's not a trigger point?
 23 A. Rarely, but on occasion, yeah.
 24 Q. And what's the basis for doing that?
 25 A. Well, if the patient is in a significant amount

1 of discomfort and I want to avoid the use of
 2 narcotic analgesics at all costs because we're in
 3 the midst of an opioid epidemic here, I prefer
 4 the use of a drug that's not habit forming, that
 5 provides immediate relief and long-acting relief
 6 so occasionally I'll do it.
 7 Q. What's the difference between a trigger point and
 8 a tender point?
 9 MR. BARMEN: Objection. Go ahead.
 10 MR. BEST: He just answered that
 11 question.
 12 A. A trigger point has more objective findings to it
 13 than a tender point.
 14 Q. You agree that a tender point is a fundamental
 15 characteristic of fibromyalgia, correct?
 16 MR. BARMEN: Objection.
 17 A. Correct.
 18 Q. If someone has trigger points and not tender
 19 points, then they have MPS and they don't have
 20 fibromyalgia, correct?
 21 MR. BARMEN: Objection.
 22 A. Not necessarily, no.
 23 Q. So if someone has trigger points, but no tender
 24 points, your testimony is that they could also
 25 have a proper fibromyalgia diagnosis, is that

1 what you're saying?
 2 MR. BARMEN: Objection.
 3 A. Possible, yeah.
 4 Q. Have you seen that?
 5 A. Yes.
 6 Q. In one of your personal injury patients?
 7 A. Yes.
 8 Q. You made that diagnosis?
 9 A. Based on their history, yeah.
 10 Q. Okay. If we look back at the Alvarez study.
 11 MR. BARMEN: Exhibit 2?
 12 MR. PATTAKOS: Exhibit 2.
 13 Q. This study explains the difference between a
 14 trigger point and a tender point. If you look on
 15 the second page in the middle of the paragraph
 16 the sentence beginning with "thus" about seven
 17 lines up. It says, thus a classic trigger point
 18 is defined as the presence of discreet --
 19 MR. BEST: Lower your voice.
 20 Q. -- focal tenderness --
 21 MR. BEST: Quit yelling.
 22 Q. -- located in a palpable taut band of skeletal
 23 muscle which produces both referred regional pain
 24 zone of reference and a local twitch response.
 25 Trigger points help define myofascial pain

1 syndromes. Tender points by comparison are
 2 associated with pain at the site of palpation
 3 only are not associated with referred pain and
 4 occur in the insertion zones of muscles, not in
 5 taut bands in the muscle belly. Patients with
 6 fibromyalgia have tender points by definition.
 7 Do you agree with that?
 8 MR. BARMEN: Objection. Go ahead.
 9 A. I think that's a broad brush. I don't agree with
 10 it on every case, but I think I agree with it
 11 partially, but not universally.
 12 Q. And why is it that you don't agree with it
 13 universally?
 14 A. Because some fibromyalgia patients have
 15 significant fibromyalgia that causes myofascial
 16 pain and spasm not just at the insertion site.
 17 Q. And that's what this study says and I don't think
 18 I've been arguing with you about that, it says
 19 concomitantly -- if you read the next sentence --
 20 patients may also have trigger points with
 21 myofascial pain syndrome. So thus these two pain
 22 syndromes may overlap in symptoms and be
 23 difficult to differentiate without a thorough
 24 examination by a skilled physician.
 25 You agree with that, correct?

1 A. That wasn't -- I said there's an overlap.
 2 MR. BARMEN: Stop misrepresenting
 3 things, please, if you're able to stop
 4 misrepresenting things.
 5 Q. So you agree then that not every patient with
 6 myofascial pain syndrome also has fibromyalgia,
 7 correct?
 8 A. What I testified to earlier and I'll say it
 9 again, I said a large percentage of those
 10 patients with myofascial pain syndrome have
 11 fibromyalgia and in some circles it's considered
 12 synonymous.
 13 Q. Okay. So you agree that there are some people
 14 that have myofascial pain syndrome that do not
 15 also have fibromyalgia, correct?
 16 A. I've already conceded that, yes.
 17 Q. Okay. You agree that trigger points are a
 18 chronic condition, correct?
 19 MR. BARMEN: Objection.
 20 MR. BEST: Objection.
 21 A. No.
 22 Q. "No"?
 23 A. No.
 24 Q. They are not a chronic condition?
 25 A. No.

1 MR. BEST: Objection.
 2 MR. BARMEN: Objection.
 3 MR. BEST: I don't believe there's
 4 any claim in this entire case from any of
 5 your plaintiffs about a myofascial pain
 6 syndrome. I don't know why we're talking
 7 about this.
 8 Q. Do you -- you agree with this, what I just read
 9 from this statement --
 10 MR. BARMEN: Objection. Go ahead.
 11 Q. -- from this report?
 12 A. I don't -- I don't agree fully. I think there's
 13 an overlap syndrome so I agree with the last part
 14 that some patients have both features.
 15 Q. Well, you were testifying earlier that there was
 16 really no difference between MPS and
 17 fibromyalgia. Are you going to withdraw that
 18 testimony now?
 19 A. No.
 20 MR. BARMEN: Objection.
 21 Q. Okay. So you believe that every patient that has
 22 myofascial pain syndrome also has fibromyalgia,
 23 you're going to stick by that?
 24 MR. BARMEN: Objection. First of
 25 all, that wasn't his testimony.

1 Q. What are they?
 2 A. In the setting that we're talking about here,
 3 they're an acute condition as a result of a motor
 4 vehicle accident. They come in, they've been
 5 rear-ended, hit, they develop these spasmodic
 6 tender cords, areas of spasm, and they are, in
 7 fact, just the opposite of what you say for this
 8 patient population, acute, not chronic.
 9 Q. So you disagree that trigger points are something
 10 that develop over time?
 11 MR. BARMEN: Objection.
 12 Q. They just materialize instantly?
 13 A. Again, as a result of the patient population that
 14 we're talking about, motor vehicle accident
 15 patients, they're an acute event.
 16 Q. So your testimony is that a car accident can
 17 immediately cause a trigger point?
 18 A. Absolutely.
 19 MR. BARMEN: Objection.
 20 Q. Okay. If we look at this Alvarez study at page
 21 3 -- I'm sorry. I'm sorry, this is page 2 under
 22 "Pathogenesis". It says starting in the second
 23 sentence of the pathogenesis paragraph, many
 24 researchers agree that acute trauma or repetitive
 25 microtrauma may lead to the development of a

1 trigger point. Lack of exercise, prolonged poor
 2 posture, vitamin deficiencies, sleep disturbances
 3 and joint problems may all predispose to the
 4 development of microtrauma. Occupational or
 5 recreational activities that produce repetitive
 6 stress on a specific muscle or muscle group,
 7 commonly cause chronic stress in muscle fibers
 8 leading to trigger points. Examples of
 9 predisposing activities include holding a
 10 telephone receiver between the ear and shoulder
 11 to free arms. Prolonged bending over a table,
 12 sitting in chairs with poor back support,
 13 improper height of arm rests or none at all and
 14 moving boxes using improper body mechanics.
 15 Acute sports injuries caused by acute sprain or
 16 repetitive stress, eg, pitchers or tennis elbow,
 17 golf shoulder, surgical scars and tissues under
 18 tension, frequently found after spinal surgery
 19 and hip replacement may also predispose a patient
 20 to the development of triggers points.
 21 Do you agree with that?
 22 MR. BARMEN: Objection. Go ahead.
 23 A. Yes. Especially the part where you read about
 24 acute because that's the population that we're
 25 dealing with. Many researchers agree that acute

1 trauma or repetitive microtrauma may lead to the
 2 development of trigger points, which is exactly
 3 what I said --
 4 Q. Well --
 5 A. -- so these articles are extremely helpful to me.
 6 Q. Well, the development of trigger points. It does
 7 not say the instantaneous materialization of
 8 trigger points does it there, Doctor?
 9 A. It says --
 10 MR. BARMEN: Objection.
 11 MR. POPSON: Objection.
 12 A. Are you going to let me answer or predict?
 13 Q. Please.
 14 A. It says acute.
 15 Q. It says acute injuries lead to the development of
 16 trigger points?
 17 MR. BARMEN: Objection.
 18 A. Thus my patient population exactly. They're
 19 involved in an acute injury by way of a car
 20 accident and they come in with trigger points.
 21 So this speaks perfectly. Do you have any more
 22 literature like this?
 23 Q. And your testimony is that when they're in the
 24 car accident, the trigger point immediately
 25 develops, it immediately materializes?

1 MR. BEST: He never said
 2 immediate --
 3 MR. BARMEN: Objection.
 4 MR. BEST: -- that's you trying to
 5 be the witness.
 6 MR. BARMEN: That was never his
 7 testimony.
 8 MR. PATTAKOS: I'm trying to --
 9 MR. BEST: You're way over your
 10 head.
 11 MR. PATTAKOS: I'm trying to
 12 understand the witness here.
 13 MR. BEST: Oh, you're trying to
 14 be --
 15 A. When they get to me, Peter, three, four, five
 16 days later, they have the clinical subjective and
 17 objective criteria to meet the trigger point and
 18 we treat it as such. That's all I'm saying.
 19 Q. There's nothing here that says anything about car
 20 accidents, is there?
 21 A. Acute --
 22 MR. BEST: So you choose an
 23 article that doesn't --
 24 Q. Well, you'll see that most of the -- most of
 25 what's described in this pathogenesis section

1 refers to repetitive stress. In fact, almost
 2 everything that's specifically described here
 3 refers to repetitive stress --
 4 MR. BARMEN: Except the part that
 5 says "acute".
 6 Q. -- suggesting that these things develop over
 7 time --
 8 MR. BARMEN: Objection.
 9 Q. -- is that significant to you?
 10 MR. BARMEN: Objection.
 11 A. For our patient population, Peter, I'll say it
 12 again, it's acute.
 13 MR. BARMEN: He heard you the
 14 first time he just doesn't like it.
 15 Q. You would only inject a chronic trigger point
 16 though, wouldn't you, Doctor?
 17 MR. BARMEN: Objection.
 18 MR. BEST: I object. This is
 19 absurd.
 20 A. No.
 21 Q. Why is that?
 22 MR. BARMEN: Other than what he's
 23 already told you?
 24 A. We just cited -- you were kind enough to provide
 25 the reason why right here (indicating), you

109

1 provided it for me.
 2 Q. Explain, please.
 3 A. You were kind enough to provide the literature
 4 that hurts your own position. It clearly says
 5 here many researchers agree that acute trauma or
 6 repetitive microtrauma. So, no, I don't just
 7 treat chronic trigger points, I treat the acute
 8 ones.
 9 Q. Doctor, at this point I understand what your
 10 interpretation of that article is --
 11 MR. BARMEN: No, no, no, that's
 12 what it says, Peter.
 13 Q. -- what you just referred to is the development
 14 of trigger points, I'm talking about something
 15 different now, which is whether a trigger point
 16 is properly treated with an injection or not, do
 17 you understand the difference?
 18 MR. BARMEN: Stop, stop, stop,
 19 stop. That's not a question. You're
 20 misrepresenting his testimony, you're
 21 misrepresenting the article you gave him.
 22 Please try and refrain from doing that.
 23 Q. Let me ask you the question again, Dr. Ghoubrial,
 24 I think this is pretty simple actually. The
 25 question is --

110

1 MR. BEST: It's not for you.
 2 Q. -- do you agree that injections are only
 3 effective for treating chronic trigger points?
 4 MR. BARMEN: Objection. Asked and
 5 answered.
 6 A. Absolutely not --
 7 Q. And why do you --
 8 A. -- for the third time.
 9 Q. -- why do you disagree with that?
 10 A. I'll read you the article again --
 11 MR. BARMEN: No, you don't need
 12 to.
 13 MR. BEST: No, don't read the
 14 same --
 15 Q. Tell me what about that article talks about the
 16 efficacy of injections? What you just read me is
 17 the section on patho --
 18 MR. BEST: Don't get hung up on
 19 this stupid article.
 20 Q. -- pathogenesis, sir?
 21 MR. BARMEN: Wait --
 22 A. Acute --
 23 MR. BARMEN: -- wait, wait. Is
 24 there a question in there?
 25 MR. PATTAKOS: I'm trying to

111

1 explain why he doesn't --
 2 MR. BARMEN: No, no, no. Stop
 3 explaining, start asking.
 4 Q. I'm sorry, I misspoke. I'm trying to
 5 understand --
 6 MR. BARMEN: You tend to do that.
 7 Q. -- I'm trying to understand why you disagree with
 8 the notion that injections are only effective for
 9 treating chronic trigger points. You said
 10 absolutely not. And you point to this section on
 11 pathogenesis in the Alvarez article, but nothing
 12 in this section of the article that you're
 13 pointing to talks about the use of injections and
 14 whether they are effective at treating these
 15 trigger points?
 16 MR. BEST: I object. You brought
 17 these stupid articles.
 18 MR. BARMEN: Wait a minute --
 19 MR. BEST: He's got a medical
 20 degree and 20 years of experience. He's
 21 read thousands of articles. Listen to his
 22 testimony. I know your wife explained this
 23 to you, but she didn't get through to you
 24 apparently. Listen to his testimony and he
 25 doesn't have to rely on one stupid article

112

1 that you happen to pick. There's 10,000
 2 that you can Google by sitting here.
 3 MR. BARMEN: The question that you
 4 just tried to pose about treating chronic
 5 trigger points with injections is not what
 6 you previously asked. You asked him if he
 7 only treats chronic trigger points with
 8 trigger point injections. Now you're
 9 trying to spin it into something else. So
 10 I think there might be some confusion based
 11 on that. Take a step back and start again
 12 asking the question you want him to answer.
 13 MR. PATTAKOS: The record is
 14 clear, so I don't --
 15 MR. BARMEN: You're right, the
 16 record is clear.
 17 MR. PATTAKOS: -- I don't think I
 18 need to do that. I want to ask the doctor
 19 why does he disagree that -- why would he
 20 treat a -- why would he inject a trigger
 21 point that is not a chronic trigger point
 22 and what about this section of the article
 23 that he was pointing to has anything to
 24 do with it. Please explain.
 25 MR. BEST: You get to ask one

113

1 question at a time.
 2 MR. BARMEN: Yeah, please do
 3 that --
 4 MR. BEST: One question at a time.
 5 MR. BARMEN: -- ask one question.
 6 MR. BEST: Which one do you want
 7 him to answer?
 8 MR. POPSON: Objection.
 9 MR. PATTAKOS: I'm referring to
 10 the answer he provided. I asked him why he
 11 disagreed and why he believed that it was
 12 appropriate to inject nonchronic trigger
 13 points, he said I just said it, it's right
 14 here --
 15 MR. BEST: And let him answer the
 16 question.
 17 MR. PATTAKOS: -- and he pointed
 18 to --
 19 MR. BEST: -- quit talking --
 20 MR. PATTAKOS: -- he pointed to
 21 this section --
 22 MR. BEST: Ask the question, then
 23 be quiet --
 24 MR. PATTAKOS: -- you asked me for
 25 an explanation and then you tell me to quit

114

1 talking, David. I really --
 2 MR. BEST: I said which question
 3 do you want him to answer? You asked
 4 three. Which one do you want him to
 5 answer?
 6 MR. PATTAKOS: You guys seem to be
 7 allergic to allowing --
 8 MR. BEST: Ask one --
 9 MR. PATTAKOS: -- this witness to
 10 testify.
 11 MR. BEST: -- ask one question.
 12 He can explain it to you. He actually
 13 knows, you don't. You're the one who's way
 14 over his head. Ask him one question about
 15 trigger points, he will answer it, I
 16 guarantee you.
 17 BY MR. PATTAKOS:
 18 Q. Doctor, it's a simple question, when I asked you
 19 do you agree that injections are only effective
 20 for treating chronic trigger points, you said
 21 absolutely not, I want to know why?
 22 MR. BARMEN: Go ahead.
 23 A. Acute trigger points develop posttraumatically,
 24 as cited by this article. Acute trauma can lead
 25 to the development of trigger points. As I have

115

1 seen treating thousands of patients and can be
 2 relieved by trigger point injections as I've seen
 3 thousands and thousands of times over.
 4 Q. Do you have any research supporting this?
 5 MR. BARMEN: Objection. Go ahead.
 6 A. There's several articles, and the literature that
 7 you were fortunate enough to provide, too, that
 8 support it, and that's all I can tell you.
 9 Q. Okay. Well, let's look at another exhibit then.
 10 MR. BEST: Is it your claim that
 11 it's malpractice on the part of -- on
 12 behalf of Dr. Ghoubrial the way he treats
 13 trigger point problems, is that what your
 14 claim is?
 15 MR. PATTAKOS: My claim is I don't
 16 have to answer your questions now, David.
 17 Thank you.
 18 MR. BEST: Well, it appears that
 19 that's what we're talking about here.
 20 You're trying to get standard of care
 21 treatment regarding trigger points. If
 22 that's the basis then this is a medical
 23 malpractice case.
 24 MR. PATTAKOS: Why don't you file
 25 a motion, David.

116

1 MR. BEST: If you want to continue
 2 to talk about medical treatment then you
 3 have to declare that this is a medical
 4 case, which happens to be my expertise. I
 5 know a lot more about it than you do. So
 6 you keep talking about the medical
 7 indications, the medical conclusions, the
 8 medical judgements. What I want to know,
 9 put on the record, is that your claim in
 10 this case? Is that why this is relevant?
 11 MR. PATTAKOS: Here's what I'm
 12 going to put on the record, David, this
 13 isn't your deposition, it's mine, and I
 14 don't have to answer your questions.
 15 - - - -
 16 (Thereupon, Plaintiff's Exhibit 4 was marked
 17 for purposes of identification.)
 18 - - - -
 19 BY MR. PATTAKOS:
 20 Q. Dr. Ghoubrial --
 21 MR. BARMEN: Wait --
 22 Q. -- I just want to ask you about the indication
 23 section --
 24 MR. BARMEN: -- let him read it
 25 first.

1 Q. Actually I want to ask you about the background
 2 section.
 3 A. Okay. What would you like to ask?
 4 Q. It says not all trigger points require injection
 5 or needling. Many active trigger points will
 6 respond to physical therapy especially in the
 7 earlier stages of trigger point formation.
 8 However for chronic trigger points, trigger point
 9 injection and needling is an effective treatment.
 10 Do you agree with that?
 11 A. No.
 12 Q. And your reason for disagreeing with that is what
 13 you just described?
 14 A. Correct.
 15 Q. And you have nothing to add to that response?
 16 A. Correct.
 17 Q. When you treat a trigger point, it's true that
 18 you're treating something other than a muscle
 19 strain or a sprain, correct?
 20 A. No. I'm treating a combination of a strain,
 21 sprain, spasm, and pain both subjectively and
 22 objectively.
 23 Q. So you -- it's your testimony that you treat
 24 muscle strains and sprains with trigger point
 25 injections?

1 A. They have to have all the features. There has to
 2 be a subjective complaint, there has to be
 3 objective findings of discomfort. There has to
 4 be objective findings in difficulty in range of
 5 motion. There has to be focal area of guarding,
 6 spasm, palpable cord.
 7 All those things or any number of those
 8 things or any three or four of those things,
 9 depending on the context, each patient is
 10 individual may or may not mandate the use of a
 11 trigger point.
 12 Q. I understand that. What I'm asking is just if
 13 someone has a sprain and no trigger points and no
 14 active trigger points that are causing pain,
 15 you're not going to inject a sprain with a
 16 trigger point injection, correct?
 17 MR. BARMEN: Objection. Go ahead.
 18 A. Unlikely, but possible.
 19 Q. Possible. Under what circumstances would you
 20 inject a sprain with a trigger point injection in
 21 the absence of any active trigger points?
 22 MR. BEST: Do you mean the
 23 medication of the trigger point injection?
 24 What are you talking about? By your
 25 definition of your question, you say would

1 you treat a non-trigger point with a
 2 trigger point injection, it wouldn't be a
 3 trigger point injection.
 4 MR. PATTAKOS: David, stop
 5 testifying for the witness. If the witness
 6 doesn't understand my question --
 7 MR. BEST: Your questions are
 8 nonsensical that not even a first-year
 9 lawyer would ask these silly questions.
 10 Ask an appropriate question. Do you mean
 11 --
 12 MR. PATTAKOS: David, If I --
 13 MR. BEST: -- the same medication
 14 that's used in a trigger point?
 15 MR. PATTAKOS: David, I'm going to
 16 ask you to stop making speaking objections.
 17 I'm going to note on the record that this
 18 is inappropriate and you're testifying for
 19 the witness and you're suggesting testimony
 20 to the witness. I know you'll keep doing
 21 it, I just want to make my objection now.
 22 Thank you.
 23 MR. MANNION: Hey, I just found an
 24 article saying yoga is not effective. I
 25 just want to let you know, Peter, in case

1 you want to stop giving lessons.
 2 MR. PATTAKOS: You can e-mail that
 3 to me, Tom. Thank you.
 4 MR. MANNION: I'll send it right
 5 over.
 6 MR. PATTAKOS: Thank you.
 7 MR. BARMEN: Tom, as a yogi myself
 8 I would disagree with the findings in that
 9 article but I guess we can have different
 10 opinions.
 11 MR. MANNION: Apparently there's
 12 disagreement in the field.
 13 BY MR. PATTAKOS:
 14 A. Can you ask me the question again, please.
 15 Q. I want to know under what circumstances would you
 16 use a trigger point injection on a muscle strain
 17 or a sprain in the absence of an active trigger
 18 point that's causing pain?
 19 MR. BARMEN: Objection. Go ahead.
 20 A. When I make the diagnosis of lumbar strain or
 21 thoracic strain or cervical strain, I always --
 22 if I give a trigger point, they usually have the
 23 -- both the subjective and objective findings.
 24 On rare occasion if they haven't gotten better,
 25 they may get an injection or if it's an acute

121

1 event.

2 **Q.** Explain that last part, "or if it's an acute

3 event".

4 **A.** If it's an acute event and the patient -- again,

5 like I said, it's patient specific. If they have

6 contraindications. If they have numerous

7 allergies. If they can't tolerate narcotics. If

8 they're, for example, on methadone. If they

9 can't take NSAIDs and our treatment options are

10 limited. So the safest route is to try a mixture

11 of Marcaine and Kenalog and to do it that way.

12 So like I said, each patient is different

13 depending on their history, their medications,

14 the adverse outcomes, their social history, their

15 history of narcotic use in the past. So it

16 varies patient to patient. If you're looking for

17 a catchall answer, I can't give it to you.

18 **Q.** I just -- as long as I'm understanding that you

19 will use a trigger point injection on a muscle

20 sprain or strain even when there's no active

21 trigger point found?

22 **MR. BARMEN:** Objection.

23 **A.** Like I said, on occasion, depends on the patient.

24 **Q.** Okay. So when you treat a car accident victim

25 with trigger -- with a trigger point injection --

122

1 let me ask this a different way. Strike that.

2 What are the diagnoses that you would treat

3 with a trigger point injection?

4 **MR. BEST:** Objection. He's

5 already discussed this.

6 **MR. BARMEN:** Objection. Go ahead.

7 **A.** It's based on a multitude of factors. I take

8 into consideration their subjective complaints,

9 the medications they're on, their objective

10 findings. Whether their objective findings are

11 consistent with their subjective findings.

12 Whether they have a contraindication to any other

13 alternative modality. Whether they meet the

14 criteria for trigger point injection. And if

15 they do, are they suited for it. So it varies

16 from patient to patient.

17 **Q.** Dr. Ghoubrial, I'm not asking what the factors

18 are that determine your decision, I asked very

19 specifically, what are the diagnoses that you

20 would treat with a trigger point injection?

21 **MR. BARMEN:** Objection. He

22 answered your question.

23 **A.** There's numerous diagnoses.

24 **Q.** What are they?

25 **MR. BARMEN:** Objection.

123

1 **A.** Any sort of thoracic, lumbar, cervical injury,

2 that meets the criteria for trigger points will

3 be treated. Whether it's a lumbar strain with

4 spasm, guarding and tenderness, those features

5 together, they get a trigger point. If it's just

6 a tender spot, may or may not.

7 **Q.** That meets the criteria for trigger points?

8 **A.** Correct.

9 **Q.** What criteria?

10 **A.** I went over that.

11 **MR. BARMEN:** Objection.

12 **MR. BEST:** Objection. Asked and

13 answered.

14 **Q.** What are they?

15 **MR. BARMEN:** How many times,

16 Peter, do we have to go down the same road?

17 **Q.** Doctor, what are the criteria for trigger points

18 that you're referring to here?

19 **MR. BARMEN:** Objection. Asked and

20 answered multiple times. Tell him once

21 more.

22 **A.** It's a combination of subjective and objective

23 findings and individualized based on every single

24 patient. There isn't one uniform way to say this

25 patient is going to get a trigger point 100

124

1 percent of the time because they have a cervical

2 injury. That's not the case. Each patient is

3 different. So they have to fall into the

4 criteria and the criteria includes not just the

5 objective findings, but the presence of any

6 contraindications, any adverse reactions, any

7 allergies, any phobias, any multiple myriad of

8 things. That's the best way I can answer it,

9 Peter.

10 **Q.** Okay. When you are injecting car accident

11 victims with trigger point injections, you are

12 not typically treating them for myofascial pain

13 syndrome, are you?

14 **MR. BARMEN:** Objection.

15 **A.** I'm treating them for acute events. We discussed

16 this already.

17 **Q.** And that is not myofascial pain syndrome,

18 correct?

19 **MR. BARMEN:** Objection.

20 **A.** Well, if you're referring to fibromyalgia, no, it

21 isn't.

22 **Q.** Myofascial pain syndrome is a chronic condition,

23 correct?

24 **A.** Correct.

25 **Q.** So when -- so myofascial pain syndrome does not

1 fall under the list of diagnoses for which you
 2 are treating car accident victims with trigger
 3 point injections, correct?
 4 A. As I told you, myofascial pain -- and I'll say it
 5 again -- that's a broad brush. It can encompass
 6 acute myofascial strain/sprain, trigger points in
 7 a car accident and it can encompass some patients
 8 who have fibromyalgia. So I've answered that
 9 question.

MR. BARMEN: Several times.

11 Q. Dr. Ghoubrial, have you ever diagnosed a patient
 12 for myofascial pain syndrome in your personal
 13 injury clinic?

MR. BARMEN: Objection.

15 A. No.

16 Q. You listed some contraindications for trigger
 17 point injections earlier?

18 A. Uh-huh.

19 Q. Let me go over this list. You said if the
 20 patient was on blood thinner, if the patient is
 21 diabetic, phobia of needles, bleeding diathesis,
 22 is that what you said?

23 A. Right.

24 Q. What is "diathesis"?

25 A. In other words, if they have a tendency to bleed

1 because they're on -- they have a blood-clotting
 2 disorder. Some of these are relative, some of
 3 them are absolute contraindications. Recent
 4 surgery at the site. Those would -- that would
 5 be another contraindication. All those things.

6 Q. Allergy you also said?

7 A. Allergy, correct.

8 Q. You agree that systemic or local infection would
 9 also be a contraindication?

MR. BARMEN: Objection. Go ahead.

11 A. On occasion, yes.

12 Q. And of course if the patient refuses a trigger
 13 point injection, that's a contraindication?

14 A. Absolutely.

15 Q. And isn't it true, Dr. Ghoubrial, that acute
 16 muscle trauma is also a contraindication for
 17 trigger point injections?

18 A. No.

19 Q. All of the patients you see in the personal
 20 injury clinic have some form of acute muscle
 21 trauma, correct?

MR. BARMEN: Objection. Go ahead.

23 A. For the most part.

24 Q. And you're denying that acute muscle trauma is a
 25 contraindication?

1 MR. BARMEN: Objection. Asked and
 2 answered. Go ahead.

3 A. Acute muscle trauma is an indication provided it
 4 meets the criteria for trigger points.

5 Q. So you dis -- so you're denying that it is a
 6 contraindication?

MR. BARMEN: Objection.

8 A. Yes.

MR. BARMEN: He said that twice already.

11 Q. Okay. Well, let's take a look back at the
 12 Alvarez study, that's Exhibit 2. We see table 3
 13 and that is on page 657 in the bottom right and
 14 it's the fifth page. The table in the upper
 15 left-hand corner lists contraindications to
 16 trigger point injection and it says acute muscle
 17 trauma, and then it says information is from
 18 references 10 and 18. So that's the footnotes
 19 quote to study by Simons & Travell, and then
 20 quotes a study by Fischer, New Approaches in
 21 Treatment of Myofascial Pain.

Do you believe those studies are faulty?

MR. BARMEN: Objection.

24 A. I agree with a portion of those. I agree with
 25 acute muscle trauma because I think that paints

1 it with a broad brush. Patients who are involved
 2 in motor vehicle accidents have acute muscle
 3 trauma and they also meet the criteria, on
 4 occasion patient-specific depending on case, for
 5 a trigger point. So I disagree with that
 6 particular statement.

7 Q. Isn't the point, Dr. Ghoubrial, that when a
 8 patient suffers acute muscle trauma, it's
 9 impossible to tell whether the pain is coming
 10 from a trigger point or not, which is why you
 11 wait for the acute pain to resolve before
 12 you identify a trigger point?

MR. BARMEN: Objection. Go ahead.

14 A. That's not the case. I've treated thousands of
 15 these patients, I can guarantee you more than the
 16 authors of these articles and I've seen the
 17 benefits of the trigger point injections and I
 18 know when to give them, how to give them, where
 19 to give them and when not to give them.

20 Q. Have you ever published a study on trigger point
 21 injections?

22 A. I have not.

23 Q. You think that's something you might do one day?

MR. BARMEN: Objection.

25 A. I don't know, never gave it any thought.

1 Q. You ever publish a research paper?
 2 MR. BARMEN: Objection.
 3 A. No.
 4 Q. Well, if we look back at Kishner, that is -- I'm
 5 sorry -- Exhibit 4, if we look at the
 6 "indications" section on the first page, again it
 7 says, conditions involving widespread --
 8 MR. BEST: Lower your voice.
 9 Q. -- pain complaints -- conditions involving
 10 widespread pain complaints such as fibromyalgia
 11 or endocrine disorder, are not suitable for
 12 injections. In addition -- this is in the third
 13 sentence --
 14 MR. BEST: Can you keep your
 15 voice --
 16 MR. PATTAKOS: David, I'm --
 17 MR. BEST: -- at a normal
 18 conversational tone or we'll take a break
 19 until you can get yourself under control.
 20 MR. PATTAKOS: David, you know,
 21 I'm not out of control --
 22 MR. BEST: Yeah --
 23 MR. PATTAKOS: -- this is on
 24 video.
 25 MR. BEST: Great.

1 MR. PATTAKOS: Please stop making
 2 ridiculous interruptions. Anyone can watch
 3 this video and hear that you are lying
 4 about me raising my voice.
 5 MR. BARMEN: No, no, you were
 6 raising your voice.
 7 MR. PATTAKOS: If I'm raising my
 8 voice, it's not at any level that's --
 9 MR. BARMEN: You're doing it
 10 again.
 11 MR. PATTAKOS: -- inappropriate --
 12 oh, I'm doing it now, yeah.
 13 MR. BARMEN: Well, you were doing
 14 it before when you where questioning the
 15 witness.
 16 MR. PATTAKOS: I'm sorry, you want
 17 me to keep a monotone, David, is that what
 18 you're purporting to require me that I
 19 conduct this deposition in monotone?
 20 MR. BEST: What you're going to do
 21 is you're going to keep a conversational
 22 tone or the deposition won't go forward.
 23 MR. PATTAKOS: David, this tone is
 24 as conversational as is appropriate and I
 25 know you know that, so please stop. Okay?

1 Your tricks, your little chaos-sewing
 2 mechanisms when you're worried about what
 3 your witness is going to say, it's very
 4 transparent, okay? So please stop. You're
 5 not helping yourself and you're not helping
 6 your client.
 7 BY MR. PATTAKOS:
 8 Q. Dr. Ghoubrial, I'm going to read this again, it's
 9 the second paragraph of the "indications"
 10 section. Conditions involving widespread pain
 11 complaints such as fibromyalgia or endocrine
 12 disorder are not suitable for injections. Then
 13 the third sentence, In addition, the finding of
 14 tenderness alone is not an indication for trigger
 15 point injection, because patients with
 16 fibromyalgia may also have myofascial pain
 17 trigger points.
 18 Do you disagree with that?
 19 MR. BARMEN: Objection.
 20 A. Yes. In fact, many of the rheumatologists that
 21 we refer to do inject fibromyalgia patients with
 22 trigger points.
 23 Q. Who are those rheumatologists?
 24 A. Several. Jim Goske who's in the practice a while
 25 ago and there's others that use it.

1 Q. Who else?
 2 A. I don't know off the top of my head, but I know
 3 when I was in training they said that on occasion
 4 they use trigger point injections.
 5 Q. Any other reason you disagree with this other
 6 than what you've already stated today?
 7 A. I've treated thousands of patients with
 8 fibromyalgia and typically they respond well to
 9 some tricyclics, but on occasion they may need
 10 trigger point injections.
 11 Q. Well, when you administer trigger point
 12 injections, how do you know the patient's pain is
 13 related to a trigger point and not the soft
 14 tissue trauma or other issues related to their
 15 accident?
 16 MR. BARMEN: Objection.
 17 A. Because they come in after the accident. They
 18 were pain free before and now they have pain
 19 afterwards. They have subjective and objective
 20 findings to support it.
 21 Q. But, Doctor, you're also giving them narcotics,
 22 you're giving them other pain medication, you're
 23 giving them muscle relaxers, they're undertaking
 24 chiropractic treatment -- every single one of
 25 them is undertaking chiropractic, how do you know

1 they're not getting better because of those
 2 things --
 3 MR. POPSON: Objection.
 4 MR. BARMEN: Objection.
 5 Q. -- or how do you know that their injuries simply
 6 aren't resolving over time; how can you tell?
 7 MR. BARMEN: Objection.
 8 A. First of all --
 9 MR. BARMEN: Wait, wait, whoa.
 10 Which of those questions do you want him to
 11 answer?
 12 MR. BEST: Is it 20 or --
 13 Q. Please, Doctor --
 14 MR. BARMEN: No, no, no --
 15 MR. BEST: -- all 20 --
 16 Q. -- Please, Doctor.
 17 MR. BEST: -- or just four of
 18 them?
 19 MR. BARMEN: Which question do you
 20 want him to answer?
 21 MR. PATTAKOS: Mr. Kuebler, please
 22 read the question again.
 23 - - - -
 24 (Thereupon, the requested portion of the record
 25 was read by the reporter.)

1 - - - -
 2 MR. BARMEN: Whoa, whoa, whoa.
 3 That was eight questions. Which one do you
 4 want him to answer?
 5 A. I'll start with --
 6 MR. BARMEN: No, no, no. Stop.
 7 Which one of those eight questions do you
 8 want him to answer first?
 9 BY MR. PATTAKOS:
 10 Q. Dr. Ghoubrial, how do you know that it's the
 11 trigger points that are making the patients
 12 better?
 13 MR. BARMEN: Answer that question.
 14 MR. BEST: I object. He's
 15 answered it multiple times. I'm going to
 16 object.
 17 A. I'll answer it again. It's an acute injury.
 18 They were pain free before they came in. A
 19 patient like, for instance, many of the ones --
 20 Mr. Harbor, they weren't having the pain before.
 21 They came in after the accident with the pain.
 22 So therefore, it's an acute event. I administer
 23 the trigger point injections, ask for indication,
 24 they get resolution.
 25 Now, to the second question, in the interest

1 of time, as far as narcotics I don't use
 2 narcotics on every patient. In fact, that's one
 3 of the reasons that I like to use trigger points,
 4 when appropriate is to avoid the use of
 5 narcotics. Muscle relaxers, again, it's patient
 6 specific.
 7 I can't emphasize to you enough that there is
 8 no class of patients where I just give everything
 9 to everyone. Each individual is specific.
 10 Q. Dr. Ghoubrial, how do you know that it's not the
 11 chiropractic care or other medication that
 12 they're taking that's causing the pain to
 13 resolve?
 14 MR. BARMEN: Objection. Go ahead.
 15 A. As I testified to before, these patients get
 16 better in a multidisciplinary manner. You treat
 17 them with allopathic care. You treat them with
 18 chiropractic and physical therapy and
 19 occasionally pharmacological care that expedites
 20 their treatment. I know that because I've been
 21 doing it for ten years on thousands of patients.
 22 They wouldn't be seeing me had the chiropractor
 23 been sufficient. They would have simply said,
 24 I'm doing okay with the chiropractor.
 25 Q. So you're saying it's better to provide as much

1 treatment and as many different kinds of
 2 treatment as possible and the patient is more
 3 likely to get better that way?
 4 MR. BARMEN: Objection.
 5 MR. BEST: Objection.
 6 MR. BARMEN: That's not what he
 7 said.
 8 A. That's not what I'm saying. I'm saying that
 9 patients improve when you take a
 10 multidisciplinary approach to their care.
 11 Q. What is a multidisciplinary approach?
 12 MR. BARMEN: Objection.
 13 A. In other words, depending on the patient, like I
 14 said it's patient specific, there's no one class
 15 of patients here. If a patient comes in -- and
 16 I'll use an example. They have cervical pain
 17 with guarding, spasm, and they also have a disc
 18 injury. So I can treat the cervical strain with
 19 some antiinflammatories, possibly with some
 20 trigger points. When I find out about the disc,
 21 the chiropractor may do some traction. If the
 22 disc is significant after the MRI, we may refer
 23 them to pain management. They can do some
 24 epidurals to try and shrink the disc. If that
 25 doesn't work, then they may require surgical

1 amelioration. A long term opioid use at which
2 point we refer them. So every patient is
3 specific.

4 If you're looking for one answer that covers
5 all patients, it just simply doesn't exist.

6 Q. I'm just looking for an answer of when you're
7 injecting a patient with a trigger point
8 injection within a week or two after they get
9 into a car accident and they get better, I just
10 want to know how you know that it's the trigger
11 point injection and not the chiropractic care
12 that they're receiving or not the
13 antiinflammatory medications, muscle relaxers or
14 narcotics that they may be taking or that the
15 injury is simply not resolving over time, you
16 haven't explained that?

17 MR. BARMEN: Objection.

18 MR. POPSON: Objection.

19 MR. BARMEN: He has.

20 Q. If you don't have a better answer than what
21 you've provided, then let me know. But if you
22 do, please, now would be the time to provide it.

23 MR. BARMEN: Objection. Move to
24 strike the inappropriate narrative. Asked
25 and answered.

1 A. Is that fair?

2 Q. If you say so. Let me ask you then a different
3 question --

4 A. Okay.

5 MR. BARMEN: Super.

6 Q. -- let's talk a hypothetical individual, unique
7 individual patient --

8 A. One patient?

9 Q. One patient that came to you from a chiropractor
10 is receiving continued chiropractic care, you
11 inject them with a trigger point injection after
12 a week -- a week after their car accident --
13 let's say even more than one trigger point
14 injection as you sometimes do where you inject
15 three areas, however many, you use the trigger
16 point injections. You also prescribed them
17 muscle relaxers, narcotics, or even an
18 antiinflammatory, nonsteroidal antiinflammatory.
19 How would you ever know when that patient comes
20 back three weeks later and says that they feel
21 better, how would you ever know that this unique
22 individual patient got better because of the
23 trigger point injection and not because of any of
24 those other modes?

25 MR. BARMEN: Objection.

1 MR. MANNION: Objection.

2 Plaintiff's counsel's ignorance as to the
3 medical issues is not a proper method to
4 impeach a witness.

5 MR. BEST: Sustained.

6 BY MR. PATTAKOS:

7 A. As I told you, each patient is different. You're
8 looking for one answer that fits all patients --

9 Q. Any answer that would fit any patient --

10 MR. BEST: Don't interrupt him.

11 A. No, no, no, there's no such thing.

12 MR. MANNION: Objection.

13 Interrupting the witness.

14 A. There's no such thing, Peter. Peter, I wish I
15 could give you the answers you're looking for,
16 but I can only tell you the truth. The truth is
17 each and every one of the patients that I treat
18 is a unique individual by virtue of their age, by
19 virtue of their problems, by virtue of the
20 medications they're on, by virtue of the
21 contraindications, by virtue of when they
22 present, how they present. So there is no
23 uniform answer that I can give you, I can just
24 tell you it's patient specific.

25 Q. Okay.

1 MR. POPSON: Objection. Form.

2 MR. MANNION: Objection.

3 Incomplete hypothetical.

4 MR. BARMEN: Improper

5 hypothetical. To the extent you can, go
6 ahead.

7 A. I've had ten years of experience doing this. I
8 know when to give them and I know when not to
9 give them. If it's an acute event and I give the
10 trigger point injection and I alleviate their
11 pain and they're happy, I'm going to do it,
12 Peter. If I can avoid the use of narcotics while
13 I'm doing it, I'm going to do it. If I only need
14 a week's worth of narcotics and a couple of
15 trigger points, I'll take that route.

16 I want to get the patient back to being
17 productive and working and pain free as quickly
18 as possible.

19 Q. How do you know it's the injections that are
20 working, Doctor --

21 MR. BARMEN: Objection.

22 A. Because --

23 Q. -- and not any of those other things?

24 A. They come back -- like I said, it's based on ten
25 or 12 years of experience. They come back and

141

1 they say, hey, these trigger point injections did
 2 great. I was in horrible pain before, after
 3 these injections, I'm now able to go back to
 4 work --
 5 Q. How would the patient --
 6 A. -- so your hypothetical --
 7 Q. How would the patient know?
 8 MR. BARMEN: Objection.
 9 A. The patient tells me.
 10 Q. Well, how do they know it's the injections --
 11 A. I examine --
 12 Q. -- and not any of these other modes of treatment?
 13 MR. BARMEN: Don't argue with him,
 14 don't speak over him and don't raise your
 15 voice to him. Let him finish the answer to
 16 the question you asked.
 17 A. Each patient, Peter, is an individual. I treat
 18 that patient according to their symptoms,
 19 according to their circumstances. And when they
 20 come back and tell me, Doctor, thank you, I've
 21 been able to get back to work within a few days
 22 of those cortisone shots that you gave me, I
 23 really appreciate it, I don't need to have them
 24 anymore, I know it was the medication.
 25 Because on the flip side I've seen patients

142

1 who've had prolonged absence of care or gap in
 2 treatment that continue to suffer until they get
 3 the trigger point injections. So it's clinical
 4 experience, it's knowledge, it's academics.
 5 Q. Do you always use Marcaine and Kenalog in the
 6 trigger point injections?
 7 A. I try to, yes.
 8 Q. Why do you use those?
 9 A. Marcaine is a short-acting, roughly ten to 12
 10 hour local anesthetic and that gives the patient
 11 immediate relief until the cortisone kicks in.
 12 Q. The cortisone is the Kenalog?
 13 A. Yes, sir.
 14 Q. And what does the Kenalog do for the patient?
 15 A. It's a long-acting antiinflammatory. It brings
 16 down the swelling, the inflammation. It
 17 decreases the release of the xylokines and the
 18 inflammatory cells in the local setting that's
 19 causing them the pain.
 20 Q. Do you ever use trigger point injections with any
 21 other medication besides Marcaine and Kenalog?
 22 A. Typically -- occasionally I use lidocaine, but
 23 usually it's Marcaine.
 24 Q. You use lidocaine to replace the Marcaine?
 25 A. Yes, sir.

143

1 Q. But the Kenalog will be there, too?
 2 A. Yes.
 3 Q. Do you ever do a trigger point injection without
 4 a steroid?
 5 A. Never.
 6 Q. You agree that trigger point injection is an
 7 invasive procedure, correct?
 8 A. Minimally.
 9 Q. But it is invasive correct?
 10 A. Minimally invasive, yes.
 11 Q. You agree that it is an aggressive treatment,
 12 correct?
 13 MR. BARMEN: Objection.
 14 A. Not at all. Just the opposite.
 15 Q. You've testified before that it is an aggressive
 16 treatment, are you going back on your prior
 17 testimony?
 18 MR. BARMEN: Objection.
 19 A. When you're referencing in this setting, to me an
 20 aggressive treatment is a -- getting your back
 21 cut open by a scalpel when you can get a
 22 cortisone shot with some Marcaine instead.
 23 Q. I suppose it's all relative.
 24 MR. BARMEN: Objection. Move to
 25 strike.

144

1 A. Yes, sir.
 2 Q. You understand there are many less invasive ways
 3 to treat back pain or trigger points, correct?
 4 A. Yes.
 5 Q. What are some of those ways?
 6 A. Sometimes I just simply say, look, I think the
 7 best course of treatment for you -- I've done
 8 this hundreds of times -- is to just simply go to
 9 massage therapy and continue with your
 10 chiropractor and I see them for one visit and
 11 that's it. Sometimes I say, look, your pain is
 12 so significant here that I think you need to go
 13 to pain management. I refer them to pain
 14 management. When they have a multiple disc issue
 15 and they need a fusion, I refer them to
 16 neurosurgery.
 17 Well, there's many, many ways to treat these
 18 patients. No one patient is the same as the
 19 second.
 20 Q. Do you provide -- I'm sorry, sir. What are other
 21 modalities that you would recommend to your
 22 patients beside -- other less invasive modalities
 23 you would recommend to your personal injury
 24 patients besides massage?
 25 A. Well --

1 MR. BARMEN: Objection. Other
 2 than what he just told you?
 3 MR. PATTAKOS: Yes.
 4 A. If those patients are already under chiropractic
 5 care, if they're not, I recommend physical
 6 therapy. I'm not a physical therapist or a
 7 chiropractor so I think that's one less invasive.
 8 Occasionally TENS units, those are helpful.
 9 Q. Anything else?
 10 A. Yes. On occasions braces.
 11 Q. What about RICE therapy?
 12 MR. BARMEN: Objection.
 13 A. Never used it.
 14 Q. Do you understand what it is?
 15 A. No.
 16 Q. Rest, ice, compression, elevation.
 17 A. Those are modalities that the chiropractor would
 18 recommend. By the time they get to me, they're
 19 not candidates for that. Or if they are, I send
 20 them back to the chiropractor.
 21 Q. Do you provide trigger point injections to
 22 patients in your family -- I'm sorry, your
 23 internal medicine practice?
 24 MR. BARMEN: Objection. Go ahead.
 25 A. Typically I do joint injections there. Very

1 seldom do I do trigger point injections.
 2 Q. Why is that?
 3 A. Well, it's a different patient population, as I
 4 discussed before. The patients in my practice
 5 are senior citizens who have arthritis in their
 6 shoulders, their knees, so I'll inject their
 7 knees, I'll inject their shoulders, occasionally
 8 I'll prescribe a systemic form or I refer them
 9 out.
 10 Q. So you don't typically use trigger point
 11 injections in the internal medicine practice?
 12 A. No.
 13 MR. BARMEN: Objection.
 14 Q. But you get people coming for back pain in your
 15 internal medicine practice all the time, don't
 16 you, Doctor?
 17 MR. BARMEN: Objection.
 18 A. On occasion, yeah.
 19 Q. Why wouldn't trigger points be a suitable
 20 treatment for back pain that your patients come
 21 to your internal medicine practice with?
 22 MR. BARMEN: Objection.
 23 Q. Typically the patients I see -- again, I'm an
 24 internist so generally they're in their 60s, 70s
 25 or 80s, so it's generally an arthritic problem or

1 it's a disc problem and I refer those for
 2 epidural injections. I get an MRI, locate the
 3 disc, and I send them either to neurosurgery or
 4 to pain management. So again, my patient
 5 population is different.
 6 MR. PATTAKOS: Why don't we break
 7 for lunch.
 8 THE VIDEOGRAPHER: We're going
 9 off the record. The time is 1:25.
 10 - - - -
 11 (Thereupon, a recess was had.)
 12 - - - -
 13 THE VIDEOGRAPHER: We're back on
 14 the record. This is the beginning of tape
 15 No. 3. The time is 2:54.
 16 BY MR. PATTAKOS:
 17 Q. Under what circumstances do you provide TENS
 18 units to your patients?
 19 A. It's one of the modalities that we utilize for
 20 patients who have myofascial back pain, lumbar
 21 strain. We utilize that in concert as an
 22 adjunctive treatment.
 23 Q. As -- you use that in concert as a what
 24 treatment?
 25 A. An adjunctive treatment.

1 Q. What does "adjunctive treatment" mean?
 2 A. Additional treatment modality.
 3 Q. And you were using the TENS units to treat for
 4 which diagnoses?
 5 A. We treat a variety. Some cervical, some
 6 thoracic, some lumbar, some unilateral, some
 7 bilateral, some trapezius, some periscapular, any
 8 number.
 9 Q. You're referring to body parts there. What type
 10 of injuries? Sprain and strains; is that what
 11 you're primarily referring to?
 12 A. Lumbar strains, sprain, et cetera.
 13 Q. Okay. How does the TENS Unit work to provide
 14 relief to the patients?
 15 A. There was -- delivers low dose electrical
 16 frequency, it stimulates the muscle, and provides
 17 some relief.
 18 Q. Does it provide relief to patients suffering from
 19 myofascial pain syndrome?
 20 MR. BARMEN: Objection.
 21 A. If you are talking in the context of
 22 fibromyalgia, are you talking in the context of
 23 the myofascial pain syndrome that we see in the
 24 motor vehicle accident setting?
 25 Q. Either one.

1 A. It does provide benefits in both settings, in my
 2 opinion.
 3 Q. You rely on any research or peer-reviewed studies
 4 to support your use of TENS units?
 5 A. Over the years, I've seen many articles that have
 6 pointed to the benefits of utilizing TENS units.
 7 And further more, it's another modality that
 8 allows us to avoid narcotics, when possible.
 9 Q. Could you -- do any articles specifically come to
 10 mind, either the author or the specific contents
 11 of the articles?
 12 A. There's -- I have seen dozens of articles, but
 13 none of them come to mind.
 14 Q. Do you use the TENS units to treat patients for
 15 anything, other than strains or sprains?
 16 A. Predominantly, that's it.
 17 Q. Does the same go for back braces?
 18 A. No. Back braces, I typically use in a patient
 19 who not only has lumbar strain, pain on range of
 20 motion, and may be engaged in some sort of
 21 physical activity or is trying to get to work and
 22 needs to be braced in order to give him some
 23 additional support.
 24 Q. Okay. And that's typically for strains or
 25 sprains to the lumbar region?

1 MR. BARMEN: Objection.
 2 A. In the case of the back brace, yes, it's strain,
 3 sprain, but also it's significant pain on range
 4 of motion. Again, each patient is individual.
 5 And I can't say that enough times.
 6 If the individual is sedentary, I probably
 7 wouldn't use a brace. But if I have a gentleman,
 8 who let's say, working on a forklift, and he was
 9 involved in a motor vehicle accident, he wants to
 10 get up, wants to be able to work, wants to be
 11 able to participate in the workplace, I try to
 12 use that as a modality. It's a great benefit to
 13 the patient. It's a nonnarcotic. He doesn't
 14 need medications and allows him to get to work
 15 quicker.
 16 Q. Do you prescribe any other types of braces in the
 17 personal injury practice, other than lumbar
 18 supports?
 19 A. No, sir.
 20 Q. Great. Okay. I'm going to show you some
 21 spreadsheets that you produced last week in this
 22 litigation. We will mark them as Exhibits 5, 6,
 23 and 7.
 24 This is one document, so I'm going to take
 25 the paper clips off. I don't have hard copies of

1 these, so we'll just -- I e-mailed counsel
 2 yesterday.
 3 - - - -
 4 (Thereupon, Plaintiff's Exhibit 5, 6, and 7
 5 were marked for purposes of identification.)
 6 - - - -
 7 A. Thank you, sir.
 8 Q. Do you recognize these documents, sir?
 9 MR. BARMEN: Wait a second. I
 10 just want to make sure.
 11 A. Yes.
 12 Q. Could you explain what these are and what each
 13 chart represents?
 14 A. The first one you gave me is payments. It says
 15 basically what we were paid, which is a reduced
 16 amount of what we billed. So it's paid. The
 17 deductible here always reflects zero, because
 18 it's regular insurance software.
 19 So, for instance, on the \$1,500 charge on the
 20 very first one that you saw the \$1,500, we got
 21 paid, represents a cut of anywhere from 30 to 50
 22 to 60 percent in most cases.
 23 Q. How do you know that? How could I tell from that
 24 chart or are you just --
 25 A. You can't tell from that chart. This just

1 reflects what we were -- what we actually were
 2 paid. But I know on 99.9 percent of the cases,
 3 we receive a reduction.
 4 Q. Okay.
 5 A. But --
 6 Q. And you said it's typically about 30 or 40 or
 7 50 percent, that reduction?
 8 A. I wish it were that good. It varies anywhere
 9 from 30 percent to, you know -- I just settled a
 10 case now for 75 percent reduction.
 11 So what you're seeing here is the paid
 12 amount, which represents a reduced figure from
 13 what's billed. The only way to find out would be
 14 to go through each individual patient and find
 15 out what was billed. The software doesn't do
 16 that.
 17 Q. Okay. I just want to pull these up on my
 18 computer, if you give me one moment here.
 19 Okay. Here we are. Okay. So, the
 20 deductible field on this first exhibit, I'm
 21 sorry, it's Exhibit 5?
 22 A. Yes.
 23 Q. That's essentially meaningless, because that only
 24 pertains to insurance, correct?
 25 A. Correct.

153

1 Q. Okay. So this just shows the amount paid on
 2 individual files; is that correct, that each --
 3 each -- each line represents a particular case
 4 that was settled?
 5 A. Yeah.
 6 Q. Okay. So if you treated someone more than once,
 7 if they had more than one case with KNR, then
 8 they would appear as two separate lines?
 9 A. Correct.
 10 Q. I see. Okay. And this is all of the payments
 11 that you have received from KNR since you started
 12 the personal injury practice?
 13 A. Well, I think since we immortalized the software.
 14 I don't know how far back it goes, so it depends.
 15 So I think this represents a significant number,
 16 yes.
 17 Q. You don't know how far back it goes?
 18 A. I don't. I don't do the billing or the coding.
 19 But it looks like a substantial number.
 20 Q. Who created this? Who created this?
 21 A. The office staff. I have billers and coders, so
 22 there is billing software, we talked about, that
 23 creates this.
 24 Q. So someone would be able to tell you what year
 25 that goes back to?

154

1 A. Yes, sir.
 2 Q. Okay. So your office, this -- this software that
 3 you use, allows you to track payments made by
 4 various law firms, whose clients you treat?
 5 A. Correct.
 6 Q. And this is information that gets tracked in the
 7 system?
 8 A. I don't know exactly how it gets tracked. I'm
 9 not involved in it. But it keeps a log or a
 10 diary of the patients and what we were paid on
 11 them.
 12 And then if you find -- if you want to find
 13 out what we billed, you would have to look at
 14 each individual chart.
 15 Q. Sure. Okay. We counted 6,065 entries on this
 16 spreadsheet.
 17 MR. BARMEN: Which exhibit?
 18 MR. PATAKOS: This is Exhibit 5.
 19 Q. Does that sound right to you?
 20 MR. BARMEN: Objection.
 21 A. I don't know. If it's there, I'm sure the
 22 information is --
 23 Q. We might have made a counting error. I think
 24 it's somewhere in the ballpark.
 25 Does that sound about right to you in terms

155

1 of how many KNR clients you would have treated
 2 over the years?
 3 MR. BARMEN: Objection.
 4 A. I'll take your word on it, but I don't know for
 5 sure.
 6 Q. Okay. But sitting here, that number doesn't
 7 sound like it's necessarily wrong to you,
 8 correct?
 9 MR. BARMEN: Objection.
 10 A. Not necessarily, no.
 11 Q. Again, we might have made a counting error. I'm
 12 sure we could get it verified and come to an
 13 agreeable number.
 14 So let's look at the bigger spreadsheet. Is
 15 that Exhibit 7?
 16 A. Yeah.
 17 Q. Please tell me what this represents.
 18 A. Unfortunately, these represents -- this
 19 represents patients that we were paid zero on.
 20 Q. That's -- that's the first -- the first group of
 21 pages?
 22 A. Right.
 23 Q. And this number at the top is \$5,742,363.53?
 24 A. Yeah.
 25 Q. That's the amount of patient billing that you

156

1 collected zero on?
 2 MR. BARMEN: Objection. Go ahead.
 3 A. To my knowledge, that sounds about right.
 4 Q. Okay. So if we scroll down on this -- I'm
 5 scrolling. I'm on my computer. I will ask you
 6 to turn to page -- okay. At 165, the -- the
 7 zeros in the paid column and --
 8 MR. BARMEN: When you say "165",
 9 are you talking about the Bates number?
 10 MR. PATAKOS: I'm talking about
 11 the Bates number, Ghoubrial000165.
 12 Q. And then there is a blank page and then there is
 13 a new spreadsheet -- or new columns that begins
 14 with zero adjusted and just the amounts paid.
 15 What is the significance of this? Is this --
 16 and the amount, I will -- I will show you --
 17 A. Let me separate these out.
 18 Q. Sure. The amount that's at the top of this page,
 19 which is Ghoubrial000167 is approximately 7.9
 20 million dollars that was paid, which also is
 21 consistent with the 7.911 paid that's showing in
 22 the paid column of the Exhibit 5?
 23 A. Are you talking about the 5 million dollars we
 24 collected zero on?
 25 MR. BARMEN: No, he's saying --

1 Q. No. Go back to Exhibit 5, sir.

2 A. I'm confused. I'm looking -- I'm looking at

3 Exhibit 7 now. We didn't finish that. So this 5

4 million dollars that we collected zero on. And

5 now you're on this exhibit showing that we

6 collected 7 million.

7 So you're talking -- you're not talking about

8 the 5 million dollars that we collected zero,

9 you're talking about the 7 millions that we

10 actually collected.

11 Q. Yes, sir.

12 A. Yes, I understand.

13 Q. Okay. And that's actually still in the same

14 exhibit. So the same Exhibit 7 contains both of

15 those documents. So that -- what I'm asking you

16 is about why that 7.9 million would be consistent

17 with the 7.9 million that's listed at the top of

18 Exhibit 5? Are these the same, essentially the

19 same sheets?

20 A. I don't know. I can't speak to that, because I

21 didn't generate this. I don't know how the

22 computer generates the software. I would have to

23 get some clarity on it, but I don't know.

24 Q. What was reflected -- what is reflected in the

25 second half of this Exhibit 7, then?

1 A. Which one are you talking about? This one here?

2 Q. Right there. Yes, sir.

3 A. This looks to be like the amount that was

4 actually paid, less the write-offs, because we

5 take a write-off on each --

6 Q. But it doesn't show -- it doesn't show what the

7 write-offs were, does it?

8 A. Yes, because the problem is, since this isn't

9 health insurance, but it's the same software, it

10 doesn't show that there is a deductible, because

11 it's not a conventional health insurance, but

12 it's -- it generates a HCFA form for our

13 purposes.

14 Q. Okay. Now, if you scroll down on this same

15 Exhibit 7, and I'm sorry I'm going to scroll

16 down, there is a new section where the adjusted

17 column starts becoming filled with numbers again.

18 A. Right.

19 Q. And the paid column goes back to zero, and that

20 is at page Ghoubrial00302. And there appears to

21 be 2.219416, so 2.21 million dollars of

22 adjustments here. What is -- what is this

23 referring to?

24 A. What are you -- what are you referring to here?

25 Q. I'm looking at page 302.

1 A. 302, Bates stamped?

2 Q. Yes, Bates Stamped 302.

3 A. Yeah. Again, I can't speak for certain, because

4 I'm not a biller or a coder. I didn't design

5 this software, but that would appear that --

6 that's the amount of money we wrote off. We

7 didn't get paid on it.

8 So, just as an average, I could tell you, we

9 write-off about anywhere between 60 and

10 70 percent of what we bill.

11 Q. So, well, you collected -- it looks like you

12 collected 8 -- approximately 7.9 million.

13 How much was written of that 7.9 million?

14 MR. BARMEN: Objection. Go ahead.

15 A. I have no idea, because I do know when -- when I

16 go through each case by case, the reductions

17 average between 30 and 75 percent. But each and

18 every case, 99.5, 99.6 percent of the cases,

19 there is a reduction. And I'm sure you have

20 those reductions in the charts that we've

21 produced.

22 Q. Well, where are they? How could we ever tell

23 what was --

24 A. Well, the chart -- for instance, the charts in

25 your possession regarding the members of your

1 class, right?

2 Q. Well, we can certainly look at those, and we

3 will. I see. Those charts, not these

4 spreadsheets?

5 A. Right.

6 Q. I thought you were referring -- charts,

7 spreadsheets, I understand, you were referring to

8 medical charts. Thank you.

9 A. Let me be clear, the ones that you have in your

10 possession, where we actually got a check and we

11 said, for instance, we billed 2,200 and we

12 collected 600, you can clearly see what was

13 written off.

14 Q. Yes, sir. Okay. We'll take a look at that.

15 A. Thank you.

16 Q. Let me ask you, though, the third spreadsheet

17 that you have sitting there, could you explain

18 what that is?

19 A. This looks like the age receivables. So, this is

20 the amount of money, for instance, if you look at

21 0 to 30 days, this is what we billed. We billed

22 83,640 at 0 to 33 days old.

23 And then if you go to the 120-day plus

24 column, we billed 1.34855, so a million 300 and

25 some, so roughly of that, you could assume we'll

161

1 collect anywhere between 30 and 40 percent.

2 Q. So these are cases that are still pending?

3 A. Yes, sir.

4 Q. So this is your accounts receivable?

5 A. Yes, sir.

6 Q. And that total is 1.74 million, correct?

7 A. It would appear to be.

8 Q. And that's with KNR cases only, correct?

9 A. Correct.

10 Q. And all of these spreadsheets are KNR cases only,

11 correct?

12 A. I believe that's what you requested, sir.

13 Q. Yes, it is. Okay. If a client of your family

14 pra --internal medicine practice came to you

15 wanting to be treated for injuries suffered in a

16 car accident, would you treat that patient

17 through the family practice or the personal

18 injury practice?

19 MR. BARMEN: Objection to the

20 hypothetical. Go ahead.

21 A. Personal injury.

22 Q. And you would tell that client that you would not

23 accept their health insurance as a result?

24 MR. BARMEN: Objection to

25 hypothetical.

162

1 A. We would tell them, look, we could run it through

2 them, but the at-fault party is here. And

3 typically they've retained an attorney and they

4 tell us what to do. So we do whatever the client

5 directs us.

6 Q. So if a client came to you and said, hey, look, I

7 really -- I don't want to sign a letter of

8 protection, I really would prefer to just be

9 treated through the internal medicine practice

10 and have my insurance pay for it, you would

11 accommodate that client, correct?

12 A. We would still treat them through the -- through

13 the personal injury side. We would just take our

14 chances and submit it to the adjuster and see

15 what happens.

16 Q. Submit it to the health insurance adjuster?

17 A. No, no, we'd submit it to the motor vehicle

18 accident adjuster. If they had an attorney, we

19 would submit it to wherever the patient directs

20 us. Each case is different.

21 Q. So what if the patient was insisting on paying

22 with their own health insurance?

23 MR. BARMEN: Objection to the

24 hypothetical. Go ahead.

25 A. I don't recall if that's come up, to be honest

163

1 with you. I don't know what we would do.

2 Q. If a client comes to your office with back pain,

3 comes into the internal medicine office, with

4 back pain, you will accept payment from their

5 insurance company, correct?

6 A. As I said to you before, my patient population is

7 60, 70, 80, 90 years old. And generally their

8 back pain is not related to a motor vehicle

9 accident. Most of the time it's arthritic,

10 discogenic, degenerative, osteoarthritis, et

11 cetera.

12 Q. Some kind of chronic condition, right?

13 A. Yeah, it's a chronic condition, right.

14 - - - -

15 (Thereupon, Plaintiff's Exhibit 8 was marked

16 for purposes of identification.)

17 - - - -

18 Q. Plaintiff's Exhibit 8. Do you have any reason to

19 doubt that this is a true and accurate copy of

20 the website for Wadsworth Medical Center?

21 A. No.

22 Q. It looks like a true and accurate copy, correct?

23 A. Correct.

24 Q. And here on the first page, it says, welcome.

25 Our office, under the guidance of four private

164

1 practitioners, aims to provide quality medical

2 care to patients in the Wadsworth and surrounding

3 areas.

4 A. Right.

5 Q. While specializing in adult and geriatric

6 medicine, we offer services to patients in early

7 childhood, adolescence, young adulthood and up.

8 We take pride in being a private, independent

9 office, which allows us to provide the best of

10 care for our patients.

11 A. Correct.

12 Q. That's accurate, correct?

13 A. Correct.

14 Q. And it says, our services, trigger point

15 injections --

16 A. Correct.

17 Q. -- is listed there? Same day acute visits,

18 correct?

19 A. Right.

20 Q. Also, joint injections is there, as well. And it

21 says, we accept most major insurance companies,

22 including Aetna, Anthem, BCBS, Cigna, Hometown -

23 The Health Plan, Humana, Medicare, Medical

24 Mutual, Summa, and United Healthcare. Am I

25 reading that correctly?

1 A. Absolutely.

2 Q. And is that true that you accept all of those

3 insurance companies?

4 A. Through Sam Ghoubrial, MD, Inc., yes.

5 Q. Okay.

6 A. But not -- but not through Clearwater.

7 Q. Right. I understand.

8 A. So there's two separate things.

9 Q. I understand. Through the internal medicine

10 practice?

11 A. Right. So there is two separate things. I don't

12 want to get confused here and say, well, you

13 know, this is the same as that, because you are

14 comparing apples and oranges.

15 Q. I understand. And the Wadsworth Medical Center

16 is not for personal injury practice, though,

17 correct?

18 A. Correct. Although, I will say, if patients live

19 in Wadsworth, and they've been in a motor vehicle

20 accident, they may come to us, referred by a

21 chiropractor, with an attorney, and we do see

22 them at that location. So --

23 MR. BEST: Just answer the

24 question.

25 THE WITNESS: Yeah.

1 MR. BEST: I want to get done

2 before midnight.

3 Q. What is Healthgrades?

4 A. I don't know.

5 - - - -

6 (Thereupon, Plaintiff's Exhibit 9 was marked

7 for purposes of identification.)

8 - - - -

9 Q. Here is Exhibit 9. It's the Healthgrades page

10 with your name on it. It says you are an

11 internal medicine specialist in Wadsworth, Ohio,

12 and has been practicing for 23 years.

13 You graduated from Ohio Medical

14 College-Toledo, in 1993 and specializes in

15 internal medicine. Lists your address for the

16 Wadsworth practice and then says, insurance

17 accepted, and lists Aetna, Anthem Blue Cross Blue

18 Shield, Blue Cross Blue Shield, Cigna, Coventry

19 Health Care, First Health, Coventry Health Care,

20 Humana, and MultiPlan.

21 Is this an accurate reflection of health

22 insurance that you have accepted in the internal

23 medicine practice?

24 MR. BARMEN: Objection.

25 A. That's correct. Yes.

1 Q. Do you know how these -- this information

2 appeared on this website?

3 A. I don't know. I didn't generate it.

4 Q. There's nothing false on this website, is there?

5 MR. BARMEN: Objection.

6 A. I don't know anything about MultiPlan, but the

7 others look to be reasonable. We didn't generate

8 it, so I can't speak to the accuracy.

9 - - - -

10 (Thereupon, Plaintiff's Exhibit 10 was marked

11 for purposes of identification.)

12 - - - -

13 Q. Here's exhibit 10. This is a new patient form

14 that we downloaded from the Wadsworth Medical

15 Center website.

16 Does this look like a true and accurate copy

17 of one of the Wadsworth Medical Center's new

18 patient forms?

19 A. Yes.

20 Q. And on the first page, you request the patient to

21 fill out their insurance information, correct?

22 A. Correct.

23 MR. BEST: It lists Dr. Jones at

24 the top, so I doubt it's correct.

25 MR. PATTAKOS: We pulled it a

1 couple weeks ago --

2 MR. BEST: Sure.

3 MR. PATTAKOS: -- so maybe the

4 website -- well, David, why don't you check

5 the website right now.

6 MR. BEST: I'm pretty sure you're

7 not telling the truth.

8 MR. PATTAKOS: I'm sure you could

9 pull it up right now, if we're not. And if

10 it's not on the Wadsworth Medical web page,

11 you should point it out, otherwise you're

12 just barking again, which is pretty

13 obviously the case.

14 Q. Okay. You testified as to your various reasons

15 for not accepting insurance payments in your

16 personal injury clinic earlier today?

17 A. Yes, sir.

18 Q. And your business reasons. What you do instead

19 is ask the patients to execute a letter of

20 protection, that gives you a lien on the client's

21 settlement funds, correct?

22 MR. BARMEN: Objection.

23 A. I don't do any of that. I just see the patient.

24 I don't know what they do.

25 Q. Who is "they"?

169

1 A. Staff.
 2 Q. Who on your staff is authorized to determine
 3 which forms your patients end up signing?
 4 MR. BARMEN: Objection.
 5 A. If they're seen in the motor vehicle accident,
 6 they -- they're seen through Clearwater, so they
 7 get those forms. And so it's pretty cut and dry.
 8 If they are seen in the private practice,
 9 they're seen as private patients. So there is
 10 two separate entities that I told you before.
 11 The -- it would be impossible for us to use
 12 health insurance in the other entity, because the
 13 other entity isn't credentialed.
 14 Q. By insurance companies?
 15 A. Right. For reasons I told you. No. 1, most of
 16 those patients are uninsured. And, No. 2, they
 17 wouldn't pay for it anyway.
 18 Q. And number three, you've never tried to get it
 19 credentialed, correct?
 20 MR. BARMEN: Objection.
 21 A. I said that.
 22 Q. Okay. Well, who else -- does anyone else own the
 23 personal injury clinic, other than you?
 24 A. No.
 25 Q. You have sole control over the personal injury

170

1 clinic, correct?
 2 MR. BARMEN: Objection. Go ahead.
 3 A. Yes.
 4 Q. As well as the internal medicine clinic?
 5 A. Correct.
 6 Q. So you're not testifying that there is someone at
 7 the personal injury clinic who is making
 8 decisions as to what contracts you should be
 9 entering with your patients without your
 10 authority or approval, are you?
 11 MR. BARMEN: Objection.
 12 A. No. The staff knows.
 13 Q. The staff knows what?
 14 A. If we're in a chiropractor's office, as you
 15 pointed out, we utilize the forms that are
 16 indicative of what's necessary for them to get
 17 care through their motor vehicle accident. It's
 18 totally separate than the private practice.
 19 Q. And you get a letter of protection from every one
 20 of those clients, don't you?
 21 MR. BARMEN: Objection.
 22 A. Not necessarily, no.
 23 Q. Under what -- in what context would you not
 24 obtain the letter of protection?
 25 A. I don't even look at that. I treat the patient.

171

1 As you saw here, there are several million
 2 dollars that I treated for free that probably
 3 either didn't have a letter of protection or
 4 didn't have any coverage, so I don't know.
 5 Q. Going back to the charts, Exhibit -- well, in
 6 fact, let's just look at Exhibit 5, which is the
 7 payments received.
 8 MR. BARMEN: It's this one.
 9 A. Right.
 10 Q. So we did an analysis of this spreadsheet, and
 11 again, these numbers may be a little off, but
 12 based on our calculations from the 6,665 total
 13 entries on this sheet that we counted, all but
 14 826 of them were charged more than -- were
 15 charged \$500 or more.
 16 MR. BARMEN: Objection.
 17 Q. And 5,074 of them, that is 76 percent, were
 18 charged \$700 or more.
 19 MR. BARMEN: Objection. Wait.
 20 There is no question. Wait.
 21 Q. Does that sound like -- does that sound right to
 22 you?
 23 MR. BARMEN: Objection.
 24 A. No. You can't deduct that from that.
 25 Q. Well, you can if you count all of the numbers. I

172

1 know you could, it would take you some time to do
 2 it here without a computer.
 3 A. But for instance, looking at the second one from
 4 the top, that's \$447 collected. So there could
 5 have been anywhere from a thousand to two
 6 thousand written off.
 7 Q. I understand that. I'm talking just about the
 8 amount that was charged -- I'm sorry, the amount
 9 that was collected. When I say "charged", I'm
 10 sorry, sir, I maybe could be more specific. I
 11 meant the amount that the client actually paid
 12 out of their settlement, okay?
 13 A. Correct.
 14 Q. So all of these -- and we broke it down into
 15 categories, less than \$500, between \$500 and
 16 \$699, \$799 and \$999, and then in \$500 increments
 17 from a thousand dollars up.
 18 And what we found was in all of these
 19 categories, the mode was by far the category
 20 between 1,000 and 1,499. That 2,035 of these
 21 6,000 plus clients were charged between \$1,000
 22 and \$1,499.
 23 MR. BARMEN: There is no question.
 24 Q. Does that sound like it's off to you?
 25 MR. BARMEN: Objection.

173

1 A. Yes. There is no way of knowing that.
 2 Q. I'm sorry, paid. I'm sorry, paid. When I say,
 3 charged, these clients ended up paying between a
 4 thousand dollars, 2,035 of these clients ended up
 5 paying between a thousand dollars and \$1,499 out
 6 of their settlements.
 7 MR. BARMEN: Objection.
 8 Q. Does that sound like it's wrong to you?
 9 MR. BARMEN: Objection.
 10 A. I would have to look at it more closely.
 11 Q. Okay.
 12 A. I don't know.
 13 Q. But just sitting here --
 14 A. I don't know.
 15 Q. Okay. And another 4,000 -- well, total, if you
 16 go between \$700 and \$1,999, that is 4,077 of the
 17 6,665, based on our count, which is 61 percent.
 18 Does that sound wrong to you?
 19 MR. BARMEN: Objection.
 20 A. I didn't hear your question.
 21 Q. Well, we calculated that the bulk of these 6,000,
 22 that more than 60 percent of these 6,665 files,
 23 ended up paying between \$700 and \$1,999.
 24 MR. BARMEN: Objection.
 25 A. I don't know what the question is.

174

1 Q. The question is, does that sound wrong to you?
 2 MR. BARMEN: Objection.
 3 A. I have no way of knowing.
 4 Q. So you have no reason to deny that that's the
 5 case?
 6 MR. BEST: Objection.
 7 MR. BARMEN: Objection.
 8 MR. BEST: Objection. He just
 9 said he didn't know.
 10 A. I don't know.
 11 Q. You would agree that that's consistent, that that
 12 amount being charged to the clients, is
 13 consistent with your typical course of treatment
 14 of these clients, correct?
 15 MR. BEST: Objection. First of
 16 all, you keep using the word "charged".
 17 What is wrong with you? Do you do this
 18 intentionally or are you that slow?
 19 MR. PATTAKOS: I'm using the term
 20 "charged" to refer to the --
 21 MR. BEST: Well, you keep using
 22 charge, charge, charge, the way you charge,
 23 so either ask an appropriate question and
 24 be consistent or go on to another topic.
 25 MR. PATTAKOS: It's very clear

175

1 what I'm talking about, David. I know you
 2 need to bark about something, but let's
 3 continue.
 4 MR. BEST: I need to bark about an
 5 accurate record. And you are putting words
 6 into the witness's mouth that are not true.
 7 He has never said anything about these
 8 numbers being charged, but you repeated it
 9 at least 30 times.
 10 Q. Dr. Ghoubrial, you agree that you -- that your
 11 practice, the personal injury clinic, has been
 12 paid 7,911,063.16 from out of KNR clients
 13 settlements since -- at least since the personal
 14 injury clinic opened, correct?
 15 MR. BARMEN: Objection.
 16 MR. BEST: Objection.
 17 MR. POPSON: Objection.
 18 A. What are we talking about here?
 19 Q. We're talking about the first number on Exhibit
 20 Number 5, in the top right corner.
 21 A. Are you talking about collected or charged,
 22 because --
 23 Q. I'm talking about the amount you -- the personal
 24 injury clinic has collected.
 25 A. Collected, yes. But these numbers don't reflect

176

1 what was charged.
 2 Q. What was written off. I understand that.
 3 A. Right.
 4 Q. You charged a lot more than \$7,911,633, but this
 5 \$7,911,633 is what the clinic ended up collecting
 6 from these clients settlements, correct?
 7 MR. BARMEN: Objection.
 8 A. Correct.
 9 Q. There is no dispute about that, is there?
 10 MR. BARMEN: Objection.
 11 A. I don't know. I haven't looked at it carefully
 12 enough to know.
 13 Q. Okay. Well, there is no dispute that that is
 14 what this document appears to reflect, correct?
 15 MR. BARMEN: The document says
 16 what it says.
 17 A. The document is what it is. I haven't looked at
 18 it. I didn't generate it, so I don't know.
 19 Q. So you have no reason, sitting here, to believe
 20 it's inaccurate, do you?
 21 MR. BARMEN: Objection.
 22 MR. BEST: Objection.
 23 A. I don't know.
 24 - - -
 25 (Thereupon, Plaintiff's Exhibit 11 was marked

1 for purposes of identification.)
 2 - - - -
 3 Q. Okay. Here is Exhibit 11. What I want to do is
 4 go over files for 13 matters that you handled for
 5 KNR clients for which we have the records.
 6 So I am going to represent to you that these
 7 are documents produced both by your office and
 8 KNR from the file of [REDACTED] who treated
 9 with you in your personal injury clinic and was
 10 also represented by KNR.
 11 MR. BARMEN: Well, just for the
 12 record, it look like she was treated by
 13 Dr. Josh Jones, not Dr. Ghoubrial.
 14 Q. She was treated by Dr. Ghoubrial personal injury
 15 practice, correct?
 16 MR. BEST: Well, that's not what
 17 you said.
 18 MR. BARMEN: That's not what you
 19 said.
 20 MR. BEST: So once again, you
 21 either do this intentionally or you just
 22 don't care about reality.
 23 Q. Dr. Ghoubrial, Josh Jones is your employee,
 24 correct?
 25 A. No.

1 Q. He was, correct?
 2 MR. BARMEN: Objection.
 3 A. At one time.
 4 Q. Yeah. And when he treated [REDACTED] he was
 5 your employee, correct?
 6 MR. BARMEN: Objection.
 7 A. Yes.
 8 Q. He didn't have any say over where the profits
 9 from his treatment of [REDACTED] went, did
 10 he?
 11 MR. BARMEN: Objection.
 12 A. No.
 13 Q. You were the only one who had a say over those
 14 profits, correct?
 15 MR. BARMEN: Objection.
 16 A. I'm not sure I understand the question.
 17 Q. You're the only one who determined what would be
 18 done with the money that was earned?
 19 A. I took --
 20 MR. BEST: He is a corporate
 21 employee. He didn't work for Dr.
 22 Ghoubrial.
 23 MR. PATAKOS: Stop interrupting
 24 the witness, David.
 25 MR. BEST: Well, stop

1 misrepresenting the facts. You know full
 2 well, he didn't work for Dr. Ghoubrial, but
 3 you just say that.
 4 Q. Dr. Ghoubrial, you're the sole owner and control
 5 and -- sole person with control over the personal
 6 injury clinic, correct?
 7 MR. BARMEN: Objection.
 8 A. I am the sole owner, correct.
 9 Q. Nobody else has authority over you in telling you
 10 how to run the personal injury clinic, correct?
 11 MR. BARMEN: Objection.
 12 A. Well, I wish it were as simple as that. But,
 13 unfortunately, I have to answer to 60 some
 14 attorneys, who request a reduction on 99 percent
 15 of the cases.
 16 And, in fact, the case you have here, there
 17 is a significant reduction, if you take a look at
 18 the bills, what was actually billed --
 19 Q. Those attorneys --
 20 A. -- is significantly higher.
 21 Q. Those attorneys --
 22 MR. BEST: Let him answer the
 23 question.
 24 Q. Those attorneys --
 25 MR. BEST: Quit cutting him off.

1 A. Can I answer? You showed me the bill here. You
 2 said, is this one of our bills, I said, yes. But
 3 it doesn't -- this represents, this paid amount,
 4 doesn't reflect the -- the nearly 30 percent
 5 reduction that we took.
 6 Q. There is no dispute over that, Dr. Ghoubrial.
 7 It's very clear. I'm not disputing that.
 8 A. Okay.
 9 Q. You agree that the date of the accident suffered
 10 by Ms. [REDACTED] was April 27, 2016?
 11 A. Yes.
 12 Q. And her --
 13 A. No, it was actually May -- yes, that's correct.
 14 Q. And her first appointment with you was May 5th,
 15 correct?
 16 A. No, I never saw her.
 17 MR. BEST: Objection. He never
 18 saw her.
 19 Q. Your first appointment --
 20 MR. BEST: Quit saying it.
 21 Q. Her first appointment with your office was in
 22 May, on May 5th, correct?
 23 A. No, she saw Dr. Jones.
 24 Q. She saw Dr. Jones in your personal injury
 25 practice, correct?

1 A. That's correct.

2 Q. Okay. And she received a trigger point injection

3 on May 5th, correct?

4 A. That's correct.

5 Q. And the charge for that trigger point injection

6 was \$400, correct?

7 A. I don't know what the code is.

8 Q. Well, you could see --

9 A. I assume, it's a 20552 --

10 MR. BEST: Sam, wait for a

11 question and don't assume anything.

12 Q. Well, we could get out the informations on the

13 codes if there is a question about this. That's

14 fine. We could be very clear.

15 MR. BARMEN: If you have the

16 opportunity to be clear, why wouldn't you

17 want to?

18 MR. BEST: You know why.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 12 was marked

21 for purposes of identification.)

22 - - - -

23 Q. Here, let's take a look at Exhibit 12. Do you

24 recognize this document?

25 A. I have not seen it before, no, but it looks like

1 a --

2 MR. BEST: The question is, have

3 you seen it?

4 THE WITNESS: No.

5 MR. BEST: If you don't listen to

6 his questions we are going to be here for

7 weeks.

8 Q. What does it look like, Dr. Ghoubrial? What does

9 this document look like to you?

10 A. It looks like a coding sheet.

11 Q. Do you understand that your attorneys produced

12 this document in this litigation?

13 A. I don't know what they produced.

14 Q. Do you have any reason to doubt that your

15 attorneys produced this document in this

16 litigation?

17 MR. BEST: Other than the fact

18 that you are saying it and you rarely tell

19 the truth.

20 A. I don't know.

21 MR. PATTAKOS: Could we get a

22 stipulation that the defendants produced

23 this document in this litigation?

24 MR. BARMEN: I produced this

25 document in this litigation. However, this

1 document includes something at the back

2 that is -- yep, it's all Bates stamped.

3 Yep, I produced this document, Bates

4 stamped Ghoubrial20 through 27.

5 Q. You can't describe what this is, Dr. Ghoubrial?

6 MR. BARMEN: He told you, it looks

7 like billing codes.

8 Q. Do you agree these are billing codes that would

9 be commonly used by your office?

10 MR. BARMEN: Objection.

11 A. Yes.

12 Q. By the personal injury practice?

13 A. Yes.

14 Q. What is a billing code?

15 A. Basically, again, I'm not a biller and a coder,

16 so I don't know exactly what it is, but you have

17 to talk to somebody who -- who does the billing

18 and the coding, so --

19 Q. Okay. You have no idea what a billing code is?

20 A. My rudimentary knowledge, something tells me that

21 it's a code tied to a procedure or a visit that

22 we did.

23 Q. Okay. And from this document, it looks like the

24 procedure one or two TPI is coded 20552. Do you

25 agree?

1 A. Yes.

2 Q. And for three plus TPI, that's 20553?

3 A. Correct.

4 Q. And when you treat a patient in your personal

5 injury practice, you record whether you gave a

6 patient trigger point injections, correct?

7 A. Correct.

8 Q. And you record whether you injected one or two

9 muscle areas or three or more, correct?

10 A. Correct.

11 Q. And these codes would correspond with that,

12 correct?

13 A. It would be up to the billers and the coders.

14 Q. And if we look at the health insurance claim form

15 Ms. Perkins' file here, at Exhibit 11, we see for

16 code 20552, that the charge was for \$400. Do you

17 agree?

18 A. Yes.

19 Q. Okay. And that reflects trigger points being

20 injected into one or two muscle groups, correct?

21 A. Correct.

22 Q. And there is a charge here for L0631 for \$1,500.

23 Would you agree that that reflects the back brace

24 that Ms. [REDACTED] received from your office?

25 A. Yes.

1 Q. And a charge of \$1,500, correct?
 2 A. Correct.
 3 Q. And for 99203, we see a charge for \$300. Would
 4 you agree that that is the charge for
 5 Ms. P [REDACTED] initial office visit to your clinic?
 6 A. Correct.
 7 Q. And E0730 would reflect that a TENS Unit was
 8 distributed to Ms. [REDACTED] for which she was
 9 charged \$500, correct?
 10 A. Correct.
 11 Q. And the J1030 is a charge for Kenalog, correct,
 12 one cc?
 13 A. Correct.
 14 Q. And the 99213 shows a charge of \$150 for a
 15 follow-up office visit, correct?
 16 A. Correct.
 17 Q. And that appears to be the sum of the charges;
 18 you agree?
 19 A. I do.
 20 Q. Okay. It looks like Ms. [REDACTED] as referred to
 21 you from Canton Injury Center; do you agree with
 22 that?
 23 MR. BEST: Objection. She was not
 24 referred to him.
 25 Q. The office.

1 A. I don't know. It was Dr. Jones who saw the
 2 patient, so --
 3 Q. Well --
 4 A. -- I would have to speak to -- to Dr. Jones. I
 5 don't know how --
 6 Q. If we look at page 2 of this document summarizing
 7 the medical specials, we see that Canton Injury
 8 Center is listed here?
 9 A. Correct.
 10 Q. Would you agree that that indicates that Canton
 11 Injury sent the patient to your clinic?
 12 MR. BARMEN: Objection.
 13 A. Not necessarily.
 14 Q. Who would have sent this patient to your clinic,
 15 if not Canton Injury?
 16 MR. BARMEN: Objection.
 17 A. The patient may have requested to see the medical
 18 doctor on their own.
 19 Q. And then Canton Injury would have recommended
 20 you, correct?
 21 MR. BARMEN: Objection.
 22 A. We don't know what the circumstances are, so I
 23 would be guessing.
 24 Q. Okay. If we look at the settlement memorandum --
 25 MR. BARMEN: That's this.

1 Q. -- on the 6th to last page here, we see
 2 Clearwater Billing Services charge of \$2,890 that
 3 was written down to \$1,500. Do you agree with
 4 that?
 5 MR. BARMEN: Wait, wait. He's not
 6 there yet.
 7 A. What page are you on?
 8 Q. The 6th to last page, the settlement memorandum.
 9 MR. BARMEN: Before that.
 10 THE WITNESS: Here?
 11 MR. BARMEN: No, it's before that.
 12 Keep going. There.
 13 A. Okay.
 14 Q. You agree that that's an accurate reflection of
 15 the charges?
 16 A. Yes.
 17 Q. And if you take a look at page 4, you could see
 18 that --
 19 MR. BARMEN: Page 4?
 20 MR. PATTAKOS: Page 4 of this
 21 document, the fourth page.
 22 MR. BARMEN: This one.
 23 Q. Dr. Jones writes, I prescribed Flexeril, 10
 24 milligrams, Motrin 800 milligrams. She will
 25 follow-up in two weeks.

1 You agree that reflects that she was
 2 prescribed a muscle relaxer and a nonsteroidal
 3 anti-inflammatory drug, correct?
 4 A. Yes.
 5 Q. And then if you turn the page, you'll see a note
 6 for June -- I'm sorry, that was on May 5th, 2016,
 7 that first prescription, correct?
 8 A. Yes.
 9 Q. And then you see on June 2, 2016, that if you
 10 look under plan, there is a note from Dr. Jones
 11 that says, I did give her refills of Flexeril, 10
 12 milligrams and Motrin 800 milligrams each, number
 13 60?
 14 MR. BARMEN: Well, you're skipping
 15 the first line.
 16 Q. I have advised her to scale back on the
 17 medications and see how she does without them.
 18 Okay. I did give her refills of Flexeril, 10
 19 milligrams, and Motrin 800 milligrams each. And
 20 that was on June 2, 2016, correct?
 21 A. Finish it. Zero refills to have on hand in case
 22 she's going forward. We will plan on releasing
 23 her today, as she is much improved. If anything
 24 changes, she will let us know. So let's read the
 25 whole thing, as opposed to part.

189

1 Q. Okay. I mean, it's not relevant to my
 2 examination. If you want to read it into the
 3 record, that's your right to do that. I won't --
 4 I should say, I won't oppose. I just -- this
 5 will go a lot faster. I'm just trying to confirm
 6 certain details. The documents do speak for
 7 themselves, so --
 8 MR. BEST: Then why do you need to
 9 read it?
 10 MR. PATTAKOS: I want to confirm
 11 that --
 12 MR. BARMEN: While skipping
 13 important lines.
 14 MR. BEST: Like the patient got
 15 better.
 16 MR. BARMEN: Right.
 17 MR. BEST: And the treatment
 18 worked.
 19 MR. BARMEN: And that we advised
 20 her to scale back --
 21 MR. PATTAKOS: I don't know
 22 anything about that. It's Dr. Ghoubrial
 23 who knows about these documents.
 24 MR. BARMEN: Actually, he doesn't
 25 know. He already told you he never treated

190

1 this patient. You know that, but you don't
 2 care, again, so --
 3 MR. PATTAKOS: Okay.
 4 MR. BEST: Scathing
 5 cross-examination.
 6 - - - -
 7 (Thereupon, Plaintiff's Exhibit 13 was marked
 8 for purposes of identification.)
 9 - - - -
 10 Q. Here is Exhibit 13. These are records for a
 11 [REDACTED] also known as [REDACTED]. I
 12 believe [REDACTED] is her current name.
 13 MR. BARMEN: Pete, Peter, for the
 14 record, I just -- when you present these
 15 documents that are clearly, you're putting
 16 documents together that were produced from
 17 two different sources, I would -- if you
 18 could just point that out on the record,
 19 when you are doing that, please, because
 20 clearly part of this came from Dr.
 21 Ghoubrial's production and part of it came
 22 from KNR and obviously you put it
 23 together --
 24 MR. PATTAKOS: If you would have
 25 Bates stamped these documents, that really

191

1 would have cleared this up, wouldn't it?
 2 MR. BARMEN: Well, I did Bates
 3 stamp --
 4 MR. POPSON: He did. I didn't.
 5 MR. BARMEN: -- the documents I
 6 produced.
 7 MR. POPSON: The reason I didn't
 8 was because you told me they were being
 9 produced outside of the litigation, so I
 10 didn't want to Bates stamp it. Otherwise,
 11 I would be happy to Bates stamp it for you.
 12 I did that, because of your -- what you
 13 told me.
 14 MR. BARMEN: All I'm asking is
 15 when you're putting exhibits into the
 16 record in front of the witness, that your
 17 office has compiled, just please point that
 18 out.
 19 MR. PATTAKOS: That's fine. All
 20 of these -- well, I can't say every single
 21 one of them, but we went --
 22 MR. BARMEN: Well, the first one,
 23 Exhibit 11, none of it's Bates stamped, so
 24 none of it came from Dr. Ghoubrial's
 25 production.

192

1 MR. POPSON: How about this, let
 2 me have a run at the record here, I think
 3 we could clear this up. Any document that
 4 has Bates stamped Ghoubrial for these
 5 clients or patients was produced by Dr. --
 6 by Clearwater, Dr. Ghoubrial's office.
 7 And anything that is not Bates
 8 stamped was produced pursuant to requests
 9 for records by Mr. Pattakos, was produced
 10 by KNR; fair enough?
 11 MR. PATTAKOS: That's fair enough.
 12 Thanks, Jim.
 13 MR. POPSON: Yep.
 14 Q. I'm sorry, I want to go back to -- real quick,
 15 this is a letter of protection on the first page
 16 of Exhibit 11; is it not a medical lien?
 17 MR. BARMEN: This page.
 18 A. Yes.
 19 Q. And this is to direct the attorney that is
 20 handling Ms. [REDACTED] file to pay Clearwater
 21 Billing Service, which is your personal injury
 22 clinic, from the proceeds of any settlement,
 23 claim, judgment, verdict, or award for any and
 24 all services rendered, correct?
 25 MR. BARMEN: Objection. It's not

1 just to the attorney directing him. It's
 2 also from the patient slash client
 3 authorizing it.
 4 Q. Yes, you agree?
 5 A. What I was going to say is this is the patient's
 6 request, signed by the patient, and then signed
 7 off by the attorney. So this is what the patient
 8 wants us to do.
 9 Q. You won't treat a patient unless they sign one of
 10 these --
 11 MR. BARMEN: Objection.
 12 Q. -- in your personal injury clinic?
 13 A. Absolutely not. I will definitely treat each and
 14 every patient that comes in, whether they have a
 15 letter of protection, attorney, or not. And I
 16 have treated many, many, many such patients, so I
 17 will treat them --
 18 Q. Okay.
 19 A. -- no matter what they have.
 20 Q. If we look at Exhibit 13, we see another medical
 21 assignment on the first page, which has the same
 22 effect, correct?
 23 MR. BARMEN: Objection to
 24 "effect".
 25 A. Approved by the client.

1 Q. And this is a form that is provided by your
 2 office, correct?
 3 A. Correct.
 4 Q. And this is on your letterhead, correct?
 5 A. I didn't see the patient.
 6 Q. But this is on your letterhead, this first page,
 7 correct?
 8 A. Correct.
 9 MR. BEST: It's on Dr. Gunning's
 10 letterhead.
 11 MR. PATTAKOS: It says, Sam
 12 Ghoubrial and Richard H. Gunning, okay.
 13 MR. BEST: So, Dr. Gunning saw the
 14 patient and that would be technically his
 15 letterhead.
 16 Q. And Ms. [REDACTED] if you look at page 4 of this
 17 document, which is labeled Ghoubrial557, was
 18 involved in a motor vehicle accident on
 19 April 16th, 2011, correct?
 20 A. Yes.
 21 Q. She had an appointment with Dr. Floras on
 22 April 21st, 2011, correct?
 23 A. I don't know. I don't have his records.
 24 Q. Well, I believe that it's in here.
 25 MR. BEST: Dr. Ghoubrial didn't

1 see this patient, Dr. Gunning did. It's
 2 right on the record you're looking at.
 3 Q. And we see, if you go to -- toward the back, an
 4 invoice from Akron Square that reflects that she
 5 treated on April 21st, correct? Seven pages from
 6 the back.
 7 MR. BEST: I object. Dr.
 8 Ghoubrial didn't see this patient and
 9 you're showing him records that are not
 10 his, and you are asking him whether they're
 11 accurate or not. How in God's green earth
 12 would he know?
 13 Q. Well, Dr. Ghoubrial, you would agree that it
 14 stands to reason that if KNR produced this
 15 document reflecting that Ms. Dyson was treated at
 16 Akron Square, on April 21st, and then treated
 17 with your clinic on April 22nd, that the referral
 18 was probably made by Akron Square, correct?
 19 MR. BARMEN: Objection. You're
 20 now asking him to opine on KNR's records?
 21 MR. BEST: And speculate.
 22 MR. PATTAKOS: I'm asking him
 23 whether he agrees that it's reasonable to
 24 make this inference.
 25 MR. BARMEN: Objection.

1 A. No, because I never saw the patient, No. 1
 2 and No. 2 --
 3 MR. MANNION: I'm going to object.
 4 It's an improper question to ask somebody
 5 if it's reasonable to make an inference.
 6 A. And No. 2, I can't make any inferences based on
 7 something that a law firm did. I have no idea.
 8 I don't look at their procedures. I don't know
 9 what they are.
 10 Q. Okay.
 11 A. And I didn't see this patient.
 12 Q. Okay. But your practice did, correct?
 13 MR. BEST: Dr. Gunning did.
 14 A. She was seen by Dr. Gunning.
 15 Q. Yes, the personal injury practice, that you own,
 16 that Dr. Gunning works for, correct?
 17 MR. BARMEN: Objection. Go ahead.
 18 A. Yes.
 19 Q. Okay. And her motor vehicle accident, as we said
 20 was April 16th. She is in your personal injury
 21 clinic on the 22nd of April. And she received
 22 trigger point injections five times starting on
 23 April 29th, correct?
 24 MR. BEST: Objection. Peter, I
 25 don't know what part you don't get. He

1 didn't -- he could read this or you could
 2 read it. It's what the record says. He
 3 wasn't involved.
 4 If that's not -- if he was
 5 involved, then point out where he was
 6 involved. If we misunderstood, show where
 7 he was involved. Otherwise, I don't see
 8 what's productive about him reading someone
 9 else's record. You could read it. You
 10 said before, it's what the record says is
 11 what it says.
 12 A. I didn't see the patient, that's my answer.
 13 Q. If we look at this form 1500, and we see one, two
 14 three, four of them, with Handchrist, LLC and
 15 Clearwater Billing Services listed. These
 16 charges can be confirmed here, correct?
 17 MR. BARMEN: Objection.
 18 MR. BEST: Objection.
 19 A. What page are you looking at?
 20 MR. BARMEN: This one.
 21 A. Yes.
 22 Q. And these codes are the same codes that we saw on
 23 Ms. [REDACTED] file, correct? 99204 -- well, it
 24 looks like 99204 may be an initial follow-up
 25 code; is that fair?

1 MR. BARMEN: Objection.
 2 Q. Or an initial visit code?
 3 A. Correct.
 4 Q. And 99213 is a follow-up visit?
 5 A. Yes.
 6 Q. And 2055 -- for which she was charged \$150,
 7 correct?
 8 A. Correct.
 9 Q. And she was charged \$350 for the initial visit,
 10 correct?
 11 A. Correct.
 12 Q. And she was charged \$800 for 20553, which is
 13 trigger point injections to more than three --
 14 three or more muscle regions, on April 29th,
 15 correct?
 16 A. Correct.
 17 Q. And then on May 13th, there is another 99213 for
 18 \$150 and another 20553 for \$800, correct?
 19 A. Correct.
 20 Q. And a J1040, which is Kenalog, two cc, for \$80,
 21 correct?
 22 A. Correct.
 23 Q. Do you have any reason to doubt that these 1500
 24 statements accurately reflects the treatment that
 25 was received from your clinic by Ms. [REDACTED]

1 MR. POPSON: Objection.
 2 A. No.
 3 Q. And we don't see any code here, other than for
 4 trigger point injections, the Kenalog, and office
 5 visits, correct?
 6 A. Appears that.
 7 Q. We also see that Ms. [REDACTED] received nine
 8 prescriptions for muscle relaxers and nine
 9 prescriptions for narcotics. And you could see
 10 that from the charts from your office.
 11 A. Again, I didn't treat this patient.
 12 Q. You have no reason to believe that these charts
 13 that you produced are inaccurate, do you, sir?
 14 A. No.
 15 Q. Or that KNR's office produced --
 16 A. No.
 17 Q. -- do you? Okay. She received Percocet on
 18 April 22nd, April 29th, May 13th, May 27th,
 19 June 15th, June 24th, July 8th, July 29th, and
 20 August 19th. And it looks like she received
 21 Flexeril, ten milligrams on every one of these
 22 dates, as well.
 23 MR. BARMEN: Is that a --
 24 A. Correct.
 25 MR. BARMEN: Wait until he asks a

1 question.
 2 Q. And if we see the assessment at page 558, it was
 3 cervical strain, lumbo -- lumbosacral strains,
 4 and injuries are complicated by fibromyalgia.
 5 MR. BARMEN: This page, 558, here.
 6 A. That's correct.
 7 Q. And it says, she will follow-up -- at the bottom,
 8 under plan, she will follow-up in one-and-a-half
 9 weeks with my partner, Dr. Ghoubril?
 10 A. Correct.
 11 Q. That is something that happened in your practice,
 12 correct, that --
 13 A. Sure.
 14 Q. -- that a patient would treat with one of the
 15 doctors in your practice and then follow-up with
 16 another, correct?
 17 A. Yes.
 18 Q. Okay. Let's go back. I want to cover the
 19 diagnosis for Ms. [REDACTED] So let's go back to
 20 Exhibit 11. If we see the assessment, and this
 21 is at the fourth page, we see sprain of ligaments
 22 in the lumbar region and strain of musculature in
 23 the lumbar region.
 24 That's the sum total of the diagnoses here,
 25 correct?

201

1 A. Correct.

2 Q. Okay. And this is where the diagnosis -- any

3 diagnoses would appear on the charts from your

4 office, correct?

5 A. Correct. But, again, you continue to look at

6 these cases just based on a single diagnoses,

7 when I told you time-and-time again, it's a

8 multifactorial approach.

9 Dr. Jones, Dr. Gunning had to take into

10 account, for instance, Dr. Jones, this lady had

11 scoliosis. She has a -- a history of previous

12 low back pain. She had a tonsillectomy. He had

13 to get her surgical history. He had to get her

14 medication history. He had to determine what the

15 best treatment plan was for her in lieu of her

16 age and her symptoms.

17 So just looking at one diagnosis doesn't help

18 you at all. And I think it's completely

19 inaccurate, because it doesn't reflect the

20 totality of the case.

21 Q. It doesn't help me what?

22 A. What I said was, by just simply looking at a

23 diagnosis doesn't reflect the totality of what

24 was done, because each individual case is

25 different.

202

1 In other words, the sprain in the lumbar

2 region, and [REDACTED] a 26 year old, is

3 different than the treatment for somebody who may

4 have been 56 years old, without any medications

5 or with medications or a history of drug use, so

6 it's all individualized. You just can't

7 pigeonhole one diagnosis and say that was the

8 diagnosis and that was what was being done.

9 You have to look at the totality of the

10 chart, because each patient is individualized

11 care. You have to look at everything. The past

12 medical history. The allergies. The review of

13 systems. The fact that she had a previous

14 history of back pain. Her family history. Her

15 history of alcohol or drug use.

16 So you make it seem like there is one

17 diagnosis here and we could move on, where that's

18 not the case.

19 Q. What other diagnoses are there, other than the

20 sprain and the strain listed, sir?

21 A. That's what's listed. But to arrive at that, is

22 a great deal more being done than what you're

23 trying to lead us to believe here.

24 Q. I'm just trying to understand what the diagnosis

25 is, but thank you.

203

1 A. Well, what I'm trying to get you to understand is

2 there is more than just a diagnosis.

3 MR. BARMEN: He doesn't care.

4 Q. You are free to put that in an affidavit, sir.

5 - - - -

6 (Thereupon, Plaintiff's Exhibit 14 was marked

7 for purposes of identification.)

8 - - - -

9 Q. Here is Plaintiff's Exhibit 14.

10 MR. BARMEN: He's also free to

11 answer however he sees fit.

12 MR. PATTAKOS: He sure is.

13 Q. I could represent to you that this was provided

14 by KNR.

15 A. Okay.

16 Q. Because when I submitted the form to your office

17 you -- your attorney informed me that you had

18 disposed of the file for Michael Booker, because

19 it was from 2009?

20 A. Correct.

21 Q. Okay. So at what point do you dispose of

22 records?

23 A. I believe the law requires approximately

24 seven years.

25 Q. Well, I would ask you formally here to preserve

204

1 all of your treatment records for KNR clients in

2 connection with this lawsuit going forward, as

3 they may be subject to production going forward.

4 MR. BARMEN: And I object to that.

5 He has complied with the law in terms of

6 his record retention and that's what he

7 will continue to do.

8 MR. PATTAKOS: We will get our

9 inferences, as we are entitled to them.

10 The -- I know you know the rules on this,

11 I'm not going to argue about it here.

12 Q. So we see another medical assignment form here

13 for [REDACTED] correct, on the first page?

14 A. Correct.

15 Q. We see that he treated with -- on the second page

16 reflects treatment with Dr. Floras on June 8th,

17 and treatment with you on June 10th, correct, for

18 an accident that occurred on June 5th, according

19 to this page 2, correct?

20 A. Hang on a second here. Correct.

21 Q. And it looks like you treated this patient

22 yourself?

23 A. Correct.

24 Q. And on June 10th, five days after his accident,

25 he was provided trigger point injections to three

1 muscle groups and was given muscle relaxers on
2 June 24th. On June 10th he was prescribed
3 Percocet. On June 24th he was prescribed
4 Percocet again. And his diagnosis was a
5 lumbosacral strain.

6 Is that all accurate?

7 A. Yes.

8 Q. And if we look at the 1500 forms, if you turn
9 right past your notes, we could see the codes,
10 99205 for an initial office visit, charge of 350.
11 99214 twice for charges of \$100 apiece for
12 follow-up visits, correct?

13 A. Right.

14 Q. And on the next page, we see a 20553 for trigger
15 points, \$800. And then a J3301, which is -- it
16 looks like a new one, \$160. What is J3301?

17 A. I don't know.

18 MR. POPSON: It's only ten years
19 ago.

20 Q. You think that could be for Kenalog?

21 MR. BARMEN: Objection. Don't
22 guess.

23 A. I don't know.

24 Q. What else could it be for?

25 MR. BARMEN: Objection. He's not

1 going to speculate, Peter. He said he
2 doesn't know.

3 MR. PATTAKOS: I'm asking him if
4 he knows.

5 MR. BARMEN: He said he doesn't,
6 so no matter how many times you ask him,
7 that will continue to be the answer. And
8 you could roll your eyes and do whatever
9 you want, but that's the answer.

10 MR. PATTAKOS: I'm sure we could
11 look it up.

12 MR. BARMEN: Well, then why don't
13 you do that.

14 Q. Okay. We see at the end of this document, a
15 settlement memorandum -- actually, at the very
16 end, the last page, that out of the settlement
17 paid of \$9,000, you were paid \$1,200; is that
18 accurate?

19 MR. BARMEN: Well, the practice,
20 but --

21 Q. The practice, Dr. Sam N. Ghoubril, MD, correct?
22 \$1,200, correct?

23 A. Correct.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 15 was marked

1 for purposes of identification.)

2 - - - -

3 Q. Okay. Moving right along. I know this is
4 tedious. Let's get through it as quickly as we
5 can. Here is Exhibit 15, records for [REDACTED]
6 [REDACTED] relating to an accident that occurred on
7 November 3rd, 2017.

8 And she was treated more than once. So I'm
9 going to go accident by accident, because they're
10 separate -- separate transactions.

11 We see another medical lien here, correct, on
12 the first page?

13 A. Correct.

14 Q. And it looks like you, again, treated this
15 patient yourself, correct?

16 A. Correct.

17 Q. And the accident was, again, on November 3rd, she
18 saw Akron Square, it looks like on November 7th,
19 and you have to turn the page back to the Akron
20 Square ledger to see that. And then treated with
21 your office on November 8th; is that correct, the
22 first treatment with your office was
23 November 8th?

24 A. That's correct.

25 Q. And we can see from the 1500 form, that she was

1 charged \$300 for 99203, initial office visit,
2 \$500 for an E0730 TENS Unit, \$1,000 for 20553
3 trigger point injection, \$50 for J1030, Kenalog,
4 and then 299213s for -- \$150 each, for follow-up
5 visits, correct?

6 A. Correct.

7 Q. Could you surmise anything from these records
8 when you see a \$1,000 charge for the same 20553
9 code, as we sometimes see an \$800 charge for?

10 A. I don't know.

11 MR. BARMEN: Wait. Wait. Could
12 you surmise what? What's the question?

13 MR. PATTAKOS: Anything.

14 Q. I am just asking what the difference is, when we
15 see -- when we see different pricing for the
16 codes, for the same code, does that just reflect
17 pricing changes over time, perhaps, or does that
18 reflect a different intensity of treatment?

19 MR. BARMEN: Objection.

20 A. I think it reflects pricing changes over time.

21 Q. Because the codes are -- have standardized price
22 -- prices generally, correct?

23 A. Correct.

24 Q. Okay. And it looks like she was prescribed
25 muscle relaxers on November 8th and then

1 narcotics in the form of Percocet on November 8th
 2 and November 15th, correct?
 3 A. Correct.
 4 Q. And the specific diagnosis you provided was
 5 cervical, thoracic, and lumbar strain, correct?
 6 A. Correct.
 7 Q. On the next page, there is some progress notes
 8 dated November 15th, 2017. It says, the patient
 9 is here for a follow-up visit. I've reviewed her
 10 OARRS report.
 11 What is an OARRS report?
 12 A. It's the automated prescription prescribing.
 13 Whenever we prescribe a narcotic, we have to make
 14 sure what the prescription narcotics history is,
 15 so we have to review what's called an OARRS
 16 report.
 17 Q. Do you review the OARRS report every time you
 18 prescribe narcotics?
 19 A. Most of the time, yes.
 20 Q. Why not all of the time?
 21 MR. BARMEN: Objection.
 22 A. Well, when we establish the patient, we do it at
 23 least once a month, so if they see -- get seen by
 24 us in a four-week period of time one time or two
 25 times or three times, we rely on that OARRS

1 report. And then we pull it up, again, as
 2 needed. So we do it at least monthly.
 3 Q. You write, she has had back surgery?
 4 A. Correct.
 5 Q. Do you know when she had the back surgery? Is
 6 that in connection with this case or are you
 7 referring to back surgery in the past?
 8 A. No. You're talking about [REDACTED] it
 9 says, disk surgery, lower back in 2017, so --
 10 Q. What page are you seeing that on?
 11 A. That's actually on my initial note dated
 12 November 8th. If you go to the initial note,
 13 disk surgery, 2017. And her back is actually
 14 worse.
 15 Q. From the disk surgery?
 16 A. No, from the car accident.
 17 Q. Does this mean she had the disk surgery before
 18 the accident or after the accident?
 19 A. Before the accident.
 20 Q. Okay. It says -- back to this November 15th
 21 note, it says, the pharmacy called us back
 22 regarding the reason for filling the
 23 prescription.
 24 Apparently, the patient had been exhibiting
 25 some very strange drug seeking behavior. She was

1 very agitated. The pharmacist concluded, along
 2 with me, that it is probably not in her best
 3 interest and that pain management would be more
 4 suited for her.
 5 She only received one prescription in total
 6 from us. Hopefully, the trigger point injections
 7 will be benefitting her.
 8 What does that mean, that pain management
 9 would be more suited for her?
 10 A. Well, any individual who has a history of
 11 multiple prescribers giving them pain medication
 12 or they may need long-term narcotic analgesics,
 13 as in this one who had back, pain management is
 14 more suitable.
 15 And, obviously, she raised a red flag at the
 16 pharmacist. And we didn't feel comfortable
 17 continuing to prescribe.
 18 Q. She didn't raise a red flag with you, though,
 19 right?
 20 A. No.
 21 Q. You gave her a TENS Unit, as well, correct?
 22 A. Correct.
 23 Q. It says, I -- you'll see a form here, TENS Unit
 24 instruction and confirmation. And you have the
 25 patient sign that she was issued an Ultima 3T

1 Unit, on November 8th, 2017, and instructed how
 2 to use this device and given a manual on the
 3 machine.
 4 At the time of instruction, I could confirm
 5 that the TENS units was in -- I was instructed on
 6 and received was in great working order. I could
 7 affirm that this unit was tested in front of me
 8 at my visit and that the unit turned on after the
 9 battery was placed in the unit with the setting
 10 functions properly working during instruction.
 11 In addition, I was directed to use my manual
 12 or contact the medical office, at 330-331-7207,
 13 if you have any question relating to this TENS
 14 Unit.
 15 That's a form that is created by your office,
 16 correct?
 17 A. Correct.
 18 Q. And when did you start having patients sign these
 19 forms, acknowledging the instructions and receipt
 20 of a TENS units in good working order? Do you
 21 remember?
 22 A. No.
 23 Q. You're not aware of any other forms that your
 24 office uses in distributing TENS units, are you?
 25 A. No, sir.

1 Q. When you give a patient a TENS Unit, do you ask
 2 them if they already have one?
 3 A. Absolutely.
 4 Q. You know, Ms. [REDACTED] already had a TENS Unit?
 5 A. No, I did not.
 6 Q. Well, here's another file from an accident where
 7 she treated with -- an accident that occurred on
 8 January 14, 2015. We're going to mark this as
 9 Exhibit 16.
 10 - - - -
 11 (Thereupon, Plaintiff's Exhibit 16 was marked
 12 for purposes of identification.)
 13 - - - -
 14 Q. We see the medical lien with your office,
 15 correct?
 16 A. Correct.
 17 Q. And you treated Ms. [REDACTED] the first time
 18 around, too, correct?
 19 A. Correct.
 20 Q. And you diagnosed her with cervical, thoracic,
 21 and lumbar strain?
 22 A. Correct.
 23 Q. The accident happened on January 11th and she was
 24 in your office on January 14th, correct?
 25 A. Correct.

1 MR. BARMEN: Of 2015.
 2 A. 2015, that's two years earlier.
 3 Q. Yes.
 4 MR. BEST: Three years.
 5 THE WITNESS: Three years.
 6 MR. POPSON: Two-and-a-half.
 7 MR. PATTAKOS: Two-and-a-half,
 8 sure.
 9 MR. BEST: Two years, ten months.
 10 Q. And we see that -- if you turn past the progress
 11 notes from your office, you see the 1500 forms,
 12 and you go two past the 1500 forms, you will see
 13 that she treated at Akron Square, on
 14 January 12th.
 15 Again, was first in your office on
 16 January 14th, for the January 11th accident. And
 17 the 1500 forms reflect a \$350 charge for the
 18 99204 initial visit, on January 14th. A 20553,
 19 \$800 for trigger points, on January 14th. An \$80
 20 charge for the J1040, on January 14th, that's the
 21 Kenalog. And another \$500 for another TENS Unit
 22 -- well, this is the first TENS units, the E0730.
 23 And then we have follow-ups on January 28th,
 24 for \$150, and then another \$800 for the 20553,
 25 trigger points, and another \$80 for J1040

1 Kenalog.
 2 She came back, again, on February 11th. So
 3 we have the \$150 follow-up office visit, 99213.
 4 The \$800 trigger points, again, at 20553, and the
 5 \$80 in Kenalog for the J1040.
 6 And then on the 18th of February there is
 7 another follow-up office visit, \$150, 99213. And
 8 it looks like that's it; is that correct?
 9 A. Yeah.
 10 MR. BEST: Objection.
 11 MR. BARMEN: Objection.
 12 MR. POPSON: Could you repeat the
 13 question, please?
 14 Q. And we have -- she was prescribed narcotics,
 15 Percocet, on November 8th and November 15th,
 16 correct?
 17 MR. BARMEN: Objection. The
 18 documents speak for themselves.
 19 A. I don't dispute the documents. The only thing
 20 with regard to the TENS Unit, she obviously
 21 didn't have a TENS Unit when we saw her the
 22 second time, because I asked her and she took it.
 23 So we don't give TENS units to patients who
 24 already have them. So she must have lost it,
 25 disposed of it, whatever, it wasn't working, so

1 she got another TENS Unit.
 2 Q. How do you know that you asked her?
 3 A. We ask everybody.
 4 Q. Okay. We see the settlement memorandum that the
 5 clients signed. It looks like there is two
 6 copies here. Clearwater Billing Services
 7 collected \$3,000; is that correct?
 8 A. I don't see where you're looking at.
 9 Q. I'm looking at the third to last -- fourth --
 10 MR. BEST: Peter --
 11 Q. -- fourth to last page.
 12 MR. BEST: -- do you understand
 13 that all you're doing is reading documents
 14 that no one is challenging? Is this really
 15 how you want to spend your time? We're
 16 running out of time. If you have real
 17 questions to ask Dr. Ghoubrial, I don't
 18 understand why you're not doing that.
 19 MR. PATTAKOS: Got to make a
 20 record, David.
 21 MR. BEST: There is a record. You
 22 got the documents.
 23 MR. POPSON: The exhibit is in.
 24 MR. BARMEN: Right. And we don't
 25 dispute it.

217

1 MR. BEST: No one's disputed.
 2 This is the most ridiculous
 3 cross-examination I've ever seen in my
 4 44 years.
 5 MR. PATTAKOS: So you're going to
 6 stipulate that these documents speak for
 7 themselves?
 8 MR. BARMEN: I've already said
 9 that. The documents speak for themselves.
 10 MR. PATTAKOS: And you're not
 11 going to come back and contest --
 12 MR. BARMEN: That the documents
 13 say something, other than what they say?
 14 MR. PATTAKOS: Yes.
 15 MR. BARMEN: No, we're not going
 16 to do that.
 17 MR. PATTAKOS: So then let's just
 18 mark them all and we could move on.
 19 MR. BARMEN: That would be swell.
 20 MR. BEST: I just want to bring
 21 this to a conclusion. Dr. Ghoubrial's got
 22 things to do. I got to catch a 7:00 a.m.
 23 flight. Let's get this done.
 24 You want to waste your time and
 25 read every -- all you've done for the last

218

1 hour and 15 minutes is read a record, and
 2 say, right? Right? Right? Right?
 3 MR. PATTAKOS: I'm trying to make
 4 a record here.
 5 MR. BEST: It's -- it's something
 6 that a first-year lawyer knows is
 7 unnecessary, but do whatever you want to
 8 do.
 9 MR. PATTAKOS: We're going to keep
 10 walking through these.
 11 MR. BARMEN: Damn it, David. We
 12 had it and then you just kept pushing.
 13 MR. BEST: He could do whatever he
 14 wanted. We're not going to be here until
 15 midnight.
 16 MR. BARMEN: And we're certainly
 17 not coming back another day with this
 18 witness.
 19 Tom, are you awake?
 20 MR. MANNION: Sorry, I was trying
 21 to get it off mute, Brad.
 22 - - - -
 23 (Thereupon, Plaintiff's Exhibit 17 was marked
 24 for purposes of identification.)
 25 - - - -

219

1 Q. Here we go, 17. So a patient named [REDACTED]
 2 [REDACTED] treated with your office three times in
 3 connection with three separate injuries, three
 4 separate accidents. This is the first.
 5 April 16th, 2011.
 6 We see a medical assignment on the first
 7 page, correct?
 8 A. It's the same thing over and over again, Peter.
 9 Q. Okay.
 10 A. What do you want me to tell you? Yes.
 11 MR. BARMEN: Just answer the
 12 question.
 13 Q. Okay. And the injury was -- the date of injury
 14 was April 16th, 2011, correct?
 15 A. Correct.
 16 Q. And he was seen at Akron Square on April 21st,
 17 correct?
 18 A. Correct.
 19 Q. And then came to your office on April 22, 2011,
 20 correct?
 21 MR. BEST: He went to Dr.
 22 Gunning's office. It says it right there.
 23 MR. PATTAKOS: The office is the
 24 same. Dr. Ghoubrial owns the office that
 25 Dr. Gunning works at, okay?

220

1 A. Let's have a distinction. I didn't see this
 2 patient.
 3 Q. That's fine. We could -- you could put that in
 4 the record.
 5 And according to these records, Mr. [REDACTED]
 6 declined injections, correct?
 7 A. Yeah.
 8 Q. And when a patient declined -- when you refer in
 9 the records -- or you or Dr. Gunning or another
 10 doctor from your practice writes in the records
 11 that the patient declined injections, that means
 12 the patient was offered injections, correct?
 13 A. Yes.
 14 Q. And Mr. [REDACTED] was provided a TENS Unit on May
 15 13th, correct?
 16 A. Correct.
 17 Q. And was charged \$500 for that, correct?
 18 A. Correct.
 19 Q. And he was also provided on May 13th a Cybertech
 20 Premium Plus Brace for which he was charged
 21 \$1,500, correct?
 22 A. Correct.
 23 Q. And that was -- why did you -- why did -- I know
 24 I can't ask you why Dr. Gunning did something.
 25 So I won't.

221

223

1 Do you see anything in this chart that shows
 2 why Mr. [REDACTED] would have been provided --
 3 MR. BARMEN: Wait. Where is the
 4 billing sheets, the 1500 forms for this
 5 particular client, because you are saying
 6 he was charged X, Y and Z, and the
 7 documents reflecting that don't appear to
 8 be here?
 9 MR. PATTAKOS: We're missing
 10 something here?
 11 MR. BARMEN: So don't be so quick
 12 to agree with something. Take the time to
 13 look at the documents.
 14 MR. BEST: And, Sam, there is no
 15 question, so don't prolong this.
 16 MR. POPSON: It's probably time
 17 for a break. I know you don't want to
 18 stop.
 19 MR. BEST: It's 4:30.
 20 MR. POPSON: It's your clients.
 21 MR. BEST: Keep going. Don't be
 22 so quick. This doesn't really beat you up
 23 when someone is reading something and
 24 saying, right, right?
 25 MR. POPSON: You just start saying

1 like December 15th of 2013 from the first page,
 2 correct?
 3 A. Are you asking me?
 4 Q. Yes, sir.
 5 A. Yes.
 6 Q. And this is -- this first page is a medical lien
 7 with your office, correct?
 8 A. Yes.
 9 Q. And three days after the accident, Mr. [REDACTED] was
 10 treating in your office, on December 18th,
 11 correct?
 12 A. Yes.
 13 Q. And it probably goes faster if we go right to the
 14 1500 form, which is past your chart.
 15 We see a 99204 for an initial office visit,
 16 on December 18th, as well as 20553 for \$800 for
 17 trigger points. And a J1040 for the Kenalog on
 18 that same date.
 19 Then we see another appointment on November
 20 -- I'm sorry, on January 17th, 2014, the next
 21 year, but only about a month later. Follow-up
 22 office visit, \$150, 99213. And then another
 23 99213, on January 31st, along with a E0730 on
 24 that date for \$500, for a TENS Unit. And then
 25 two more follow-up visits, 99213s, for \$150, on

222

224

1 "right", even though you didn't look.
 2 MR. BEST: We will catch it,
 3 hopefully.
 4 MR. BARMEN: Why don't we take
 5 five, and give you an opportunity to get
 6 your stuff in order? I could use a
 7 bathroom break.
 8 MR. PATTAKOS: Okay.
 9 THE VIDEOGRAPHER: We're going off
 10 the record, the time is 4:25.
 11 - - - -
 12 (Thereupon, a recess was had.)
 13 - - - -
 14 THE VIDEOGRAPHER: We're back on
 15 the record. This is the beginning of tape
 16 number 4. The time is 4:35.
 17 - - - -
 18 (Thereupon, Plaintiff's Exhibit 18 was marked
 19 for purposes of identification.)
 20 - - - -
 21 Q. Okay. This Exhibit 18 -- we're going to put the
 22 Exhibit 17 on hold while Rachel goes to print a
 23 form 1500.
 24 The Exhibit 18 shows a file for [REDACTED]
 25 [REDACTED] for an accident that happened, it looks

1 February 14th and February 28th, 2014, correct?
 2 MR. POPSON: Objection.
 3 A. February 28th, 2014?
 4 Q. Yes.
 5 MR. BARMEN: Again, Peter,
 6 objection. They say what they say.
 7 MR. PATTAKOS: I just want to make
 8 sure I'm not missing anything.
 9 Q. Here, February --
 10 A. Yes.
 11 Q. And then on the next page, there is a 99213,
 12 \$150, for the January 3rd visit that appears to
 13 be on a separate form 1500, correct?
 14 A. Correct.
 15 Q. Okay. And the TENS Unit that was provided on
 16 January 31st, we see from your note -- I'm sorry
 17 -- is this you? Yes, it is you that treated the
 18 patients. It is a Lux TENS Unit, correct?
 19 A. Correct.
 20 Q. And we see prescriptions for muscle relaxers on
 21 December 18th, January 3rd, January 17th, and
 22 January 21st, as well as prescriptions for
 23 narcotics, including Norco, on December 18th,
 24 Percocet on January 3rd, Percocet on
 25 January 17th, Percocet on January 21st, and

1 Tramadol on February 14th, correct?
 2 MR. BARMEN: Objection.
 3 MR. BEST: Objection.
 4 A. Correct.
 5 Q. And --
 6 MR. BARMEN: Whoa, whoa, whoa, you
 7 just said, Percocet -- or narcotics on
 8 February 14th. The record states he was
 9 changing Percocet to Tramadol. He didn't
 10 prescribe both.
 11 MR. PATTAKOS: Tramadol is not a
 12 narcotic?
 13 MR. BARMEN: You said, Percocet.
 14 MR. PATTAKOS: I said, Tramadol on
 15 February 14th.
 16 MR. BARMEN: It says, Tramadol, as
 17 he declines Narco.
 18 Q. Is Tramadol not a narcotic?
 19 A. Tramadol is in the narcotic-like family. And so,
 20 as the way I heard the question, was Tramadol,
 21 and I looked at it and it said Tramadol.
 22 Q. Okay. Well, Tramadol is not a narcotic?
 23 A. It's a narcotic-like compound, it's sort of
 24 like --
 25 MR. BARMEN: The question is, is

1 it a narcotic, that's the question?
 2 A. The answer is, it's a narcotic-like compound.
 3 Q. What's a narcotic-like compound?
 4 A. In other words, it's not a true opioid, in the
 5 sense of Percocet, Vicodin. It's an opioid
 6 analog.
 7 Q. Is it a controlled substance?
 8 A. Yes.
 9 Q. And the diagnosis reflected on your chart is
 10 cervic -- cervical, thoracic strain and lumbar
 11 strain, correct?
 12 A. Correct.
 13 Q. And if we turn past the 1500 forms, we see a
 14 treatment date reflected for Akron Square
 15 Chiropractic. The first date of treatment there
 16 was December 16th, which was one day after the
 17 December 15th accident, correct?
 18 A. You're talking about December 30th?
 19 Q. It looks like December 16th, sir.
 20 MR. BARMEN: No, that page. And
 21 we'll stipulate that December 16th is after
 22 December 15th.
 23 MR. PATTAKOS: Thank you.
 24 A. Yes.
 25 MR. PATTAKOS: Okay. Could I have

1 that 1500 Form?
 2 Q. So let's go back to Exhibit 17, because this is
 3 paper clipped, how about I just add this to the
 4 document.
 5 Dr. Ghoubrial, you could add this form 1500
 6 to Exhibit 17, and just put it on the -- make it
 7 the first page of the exhibit, if you would
 8 like -- well, actually make it the second page.
 9 MR. PATTAKOS: I'm sorry, Brad,
 10 did I give you a copy?
 11 MR. BARMEN: You did not.
 12 Q. Oh, it's two pages. Uh-oh, Dr. Ghoubrial, I
 13 believe I screwed up. Could I see that back?
 14 Thank you. It's two pages of 1500 forms, there
 15 we go. Please insert those after the first page.
 16 MR. PATTAKOS: And here's for Brad
 17 and me and everyone else.
 18 Q. So we are back to the December 15th, 2013
 19 accident.
 20 MR. BARMEN: Whoa, whoa. Are you
 21 talking about 17 or 18, because 17 is the
 22 2011 accident?
 23 MR. PATTAKOS: I'm sorry.
 24 Q. April 16, 2011 accident. And we see -- we see a
 25 -- if we look at this 1500 form, 99204, initial

1 visit, on April 22nd, \$350. A 99213 follow-up,
 2 on May 13th for \$150. A L0631 back brace for
 3 \$1,500.
 4 And then three follow-up visits, 99213, \$150
 5 each, on June 3rd, June 24th, and July 15th,
 6 2011. As well as another TENS Unit charge on the
 7 next page, on May 13th, 2011, the E0730 --
 8 MR. BARMEN: Objection to
 9 "another", because there was only one given
 10 for the 2011 accident.
 11 MR. PATTAKOS: Okay.
 12 Q. -- \$500, correct?
 13 MR. BARMEN: And it says what it
 14 says.
 15 Q. I'm reading that correctly; am I not, Dr.
 16 Ghoubrial?
 17 A. Yes.
 18 Q. And if you turn to the next page, you see
 19 treatment date at Akron Square Chiropractic of
 20 April 21st, 2011, the day before you first
 21 treated with Clearwater.
 22 MR. BARMEN: Is that a question?
 23 Q. Correct, on the next page?
 24 MR. BEST: Objection.
 25 A. What are you asking, Peter?

1 Q. That the patient -- that this reflects a first
 2 treatment date at Akron Square of April 21st,
 3 2011, correct?
 4 MR. BARMEN: Objection. Go ahead.
 5 A. The paper reflects that.
 6 Q. Okay. And Dr. Gunning treated this patient.
 7 Diagnosed the patient with cervical and
 8 lumbosacral strain, correct?
 9 A. That's correct.
 10 Q. And it says that the patient declined trigger
 11 point injections today, correct?
 12 A. Correct.
 13 Q. And if we look at the complete chart from your
 14 office, we see Flexeril prescriptions given on
 15 April 22nd, May 13th, June 3rd, June 24th, and
 16 July 15th.
 17 A. Well, first of all, let's go back to -- let's go
 18 back to the visit on April 22nd. Percocet was
 19 given, Flexeril was given, and Motrin was given.
 20 On May 13th, all it looks like, there was no
 21 Flexeril, there was Flexeril and Motrin and
 22 Percocet.
 23 Q. On May 13th?
 24 A. Correct.
 25 Q. May 13th, yes. Okay. Okay. Flexeril and

1 Percocet on May 13th and then on June 3rd, we
 2 have Flexeril and Percocet, again, correct?
 3 A. Correct.
 4 Q. As well as the Motrin, correct?
 5 A. Correct.
 6 Q. And then, again, on June 24th we have the
 7 Percocet, the Flexeril, and the Motrin, correct?
 8 A. Yes.
 9 Q. And then on July 15th, we have Percocet,
 10 Flexeril, and a referral to chronic pain
 11 management, correct?
 12 A. Yes.
 13 Q. Okay. And --
 14 MR. PATTAKOS: Is that --
 15 MS. HAZELET: I think you already
 16 marked it.
 17 MR. PATTAKOS: 18?
 18 MS. HAZELET: Did you not
 19 distribute those? We already talked about
 20 18, I'm sorry.
 21 MR. BARMEN: I have 18.
 22 MR. PATTAKOS: Okay.
 23 MR. POPSON: We didn't get it.
 24 MR. PATTAKOS: Here is 18. Thank
 25 you.

1 - - - -
 2 (Thereupon, Plaintiff's Exhibit 19 was marked
 3 for purposes of identification.)
 4 - - - -
 5 Q. Here is Exhibit 19, which is another accident for
 6 which [REDACTED] treated with your office and
 7 was represented by KNR.
 8 I'm sorry, sir. I want to go back to
 9 Exhibit 18 and confirm the settlement memorandum
 10 in here, except it's not.
 11 MR. BARMEN: Yeah, I don't see it.
 12 Q. Well, let's move on.
 13 MR. BARMEN: That would be swell.
 14 Q. We see [REDACTED] had another medical lien
 15 for an injury received on October 6th, 2015,
 16 correct?
 17 A. Correct.
 18 Q. And, actually, sorry, here he was represented by
 19 Slater & Zurz?
 20 A. Correct.
 21 Q. And he, this time, received trigger point
 22 injections. And we could see that from the 1500
 23 form that is closer to the back of this document.
 24 Well, it looks he might have transferred from
 25 Slater & Zurz to KNR, because the settlement --

1 the KNR settlement memorandum reflects Kisling
 2 Legal Group at the end, so we'll have to
 3 straighten that out, but --
 4 MR. BARMEN: Move to strike.
 5 Q. For the October 6th accident, we see on the form
 6 1500 an initial visit on October 14th, 2015, a
 7 99203, for \$300, trigger point injections for
 8 \$800 on that day under 20553, as well as the --
 9 A. Wait a minute, what date are you talking about
 10 here?
 11 Q. I'm talking about October 14th, 2015.
 12 A. Okay. I see that.
 13 Q. Okay. And then the Kenalog for \$80, J1040, and a
 14 TENS units given on that day for \$500. So now
 15 the third TENS Unit that Mr. [REDACTED] has received,
 16 E0730.
 17 And then we see follow-up visits, 99213, for
 18 \$150 on October 21st and 28th. And on the 28th,
 19 we have trigger points, again, for \$800, under
 20 20553, the Kenalog under J1040, and then a final
 21 follow-up visit on November 11, 2015?
 22 A. Where do you get the third TENS Unit?
 23 Q. I'm sorry, did Mr. [REDACTED] ave a TENS Unit --
 24 A. He had another TENS Unit, but then he didn't have
 25 it anymore at the time of the second accident.

233

1 Q. The previous two files also reflect that he was
 2 charged \$500 for a TENS Unit.
 3 A. But what I'm trying to tell you is, he got a TENS
 4 Unit, because he never had retained the first
 5 TENS Unit that he got in the first place.
 6 Q. Okay. And in this settlement memorandum it
 7 reflects that Clearwater was paid \$1,300, it
 8 appears on charges of 2,480, correct? And you
 9 could look at the two. One looks like the final
 10 and then the last page looks like a draft,
 11 correct?
 12 A. Correct.
 13 Q. And if you look back at the chart from your
 14 office, it looks like you treated this gentleman
 15 for this -- this time around and diagnosed him
 16 with a periscapular strain in the thoracic
 17 region, a lumbar strain, a right knee injury, and
 18 a right ankle injury, correct? And that's on
 19 Ghoubrial0661, the third page here.
 20 A. Correct.
 21 Q. And he was given muscle relaxers; Zanaflex on
 22 October 14th and November 11th, as well as
 23 narcotics; Norco, on October 14th and Percocet on
 24 October 28th, correct?
 25 A. Correct.

234

1 - - - -
 2 (Thereupon, Plaintiff's Exhibit 20 was marked
 3 for purposes of identification.)
 4 - - - -
 5 Q. Here is Exhibit 20. Records for [REDACTED]
 6 one of your former patients, and KNR client. We
 7 see a medical lien on the first page here,
 8 correct?
 9 A. Correct.
 10 Q. And the first date of service reflected on this
 11 lien is October 11th, 2017, for an injury that
 12 occurred on September 20th, 2017, correct?
 13 A. Correct.
 14 Q. And if we turn past your chart and the TENS Unit
 15 consent form, we see an initial date of treatment
 16 of September 27th, at Akron Square.
 17 And we turn two pages to the 1500 Form, we
 18 see that on October 11th, she was charged for an
 19 initial visit, \$300, 99203, and then \$500 for a
 20 TENS Unit on that same date, under E0730,
 21 correct?
 22 A. Correct.
 23 Q. And then a follow-up visit on October 18th under
 24 99213 for \$150, and a charge for trigger point
 25 injections, for \$1,000, under 20553, correct?

235

1 A. Yes.
 2 Q. And then there was another visit on October 18,
 3 2017, under J1030, for a \$50 charge, and then an
 4 A4556 for \$160.
 5 Do you what the A4556 is?
 6 A. No.
 7 Q. TENS Unit supply kit; does that make sense?
 8 A. It's possible, yes.
 9 MR. BARMEN: Objection.
 10 Q. That's what's reflected on Exhibit 12, on the
 11 first page of the codes, it says A4556, the TENS
 12 Unit supply kit.
 13 What is a TENS Unit supply kit?
 14 A. I believe those are additional adhesive pads.
 15 Q. Okay. To connect the TENS units to the patient's
 16 body?
 17 A. Sometimes the adhesive pads lose their
 18 stickiness. And if a patient is using the TENS
 19 units a lot, sometimes the adhesive part wears
 20 out, so we furnish them with another one.
 21 Q. And the diagnosis here was cervical strain and
 22 trapezius muscle strain, correct, if you go to
 23 the third page of this document where you signed
 24 the chart?
 25 A. Correct.

236

1 Q. And she received muscle relaxers on October 11th,
 2 Zanaflex, four milligrams, and Mobic, 15
 3 milligrams, correct?
 4 A. Correct.
 5 Q. The Mobic is a muscle relaxer?
 6 A. No, the Mobic is an anti-inflammatory.
 7 Q. Okay. Thank you. And her case resolved, if we
 8 look at the second to last page for -- I'm sorry,
 9 the third to last page, for \$2,314 total. And on
 10 a bill, Clearwater Billing bill of \$2,160,
 11 Clearwater was paid \$500, correct?
 12 A. That's correct.
 13 Q. And the client walked away with \$500, correct?
 14 A. Correct.
 15 Q. Okay.
 16 A. It's a 75 percent reduction there, Peter. It
 17 should make you happy.
 18 MR. BARMEN: Yeah, he doesn't
 19 care.
 20 Q. I'm not here to be happy or not. I'm just trying
 21 to get these facts on the record, sir. Thank
 22 you.
 23 MR. BARMEN: We already told you
 24 multiple times that we would stipulate to
 25 these. Yet, you insist on going through

1 this meaningless exercise.
 2 MR. BEST: For hours.
 3 - - - -
 4 (Thereupon, Plaintiff's Exhibit 21 was marked
 5 for purposes of identification.)
 6 - - - -
 7 Q. This is a medical assignment form. This is a
 8 file for Monique Norris, correct, with the
 9 medical lien on the first page?
 10 A. Right.
 11 Q. Reflecting an accident date of January 20 -- I'm
 12 sorry, July 29th, 2013, and a first treatment
 13 date of August 2nd, 2013, correct?
 14 A. I believe that's what Dr. Gunning's note
 15 reflects, yes.
 16 Q. Okay. And --
 17 MR. BARMEN: When you say "first
 18 treatment date", it's the only treatment
 19 date.
 20 THE WITNESS: Yeah.
 21 Q. The only treatment date. And on that date, if we
 22 turn to the 1500 Form, which is about halfway
 23 through the packet, we see that she was charged
 24 \$350 for initial office visit and \$500 for a TENS
 25 Unit, under the 99204 and E0730 codes

1 respectively, correct?
 2 A. Correct.
 3 Q. And if we back up one page from there, we see
 4 that Akron Square first treated her on July 31st,
 5 correct?
 6 A. Correct.
 7 Q. And you diagnosed her -- or, I'm sorry,
 8 Dr. Gunning diagnosed her with a lumbosacral
 9 strain, cervical strain, and left shoulder
 10 sprain?
 11 A. Correct.
 12 Q. And she declined shots?
 13 A. Correct.
 14 Q. She was, though, prescribed Flexeril and
 15 Ibuprofen, correct?
 16 A. According to Dr. Gunning's note, that's correct.
 17 Q. Okay. Moving right along. We're almost through
 18 these.
 19 - - - -
 20 (Thereupon, Plaintiff's Exhibit 22 was marked
 21 for purposes of identification.)
 22 - - - -
 23 Q. Here's a file for Richard Harbour for the first
 24 of two times he treated with your office, marked
 25 as Exhibit 22.

1 And we see the medical lien here on the first
 2 page reflecting a first date of service date of
 3 April 27th, 2011 for an injury sustained on
 4 April 15th, 2011, correct?
 5 A. Correct.
 6 Q. We see total charges to Sam Ghoubril, MD of
 7 3,101 -- sorry, \$3,110, correct?
 8 A. Hang on a second here.
 9 Q. This is on the very second page.
 10 A. Correct.
 11 Q. And we see Rolling Acres Chiropractic as the
 12 chiropractor for -- with a first treatment date
 13 of April 18th of 2011?
 14 A. Correct.
 15 Q. Was Rolling Acres Chiropractic a clinic that
 16 would refer patients to you?
 17 A. We work with several chiropractors. I can't -- I
 18 don't recall the name. But, if it's says so on
 19 the form, I would imagine.
 20 Q. Okay. And it looks like you treated Mr. Harbour
 21 if we look at the chart. And on May 25th, he
 22 received injections for two trigger points and
 23 then on June 8th he received injections for four
 24 identified trigger points; is that correct?
 25 A. May 25th?

1 Q. May 25th, yes.
 2 A. He received two trigger points.
 3 Q. Yes. And then on June 8th, it was four trigger
 4 points, correct?
 5 A. Correct.
 6 Q. And then on June 22nd, he received a TENS Unit,
 7 correct?
 8 A. Correct.
 9 Q. And on April 27th, he received Flex -- a
 10 prescription for Flexeril, Ibuprofen, and
 11 Vicodin?
 12 A. You're going forward and you're backing up.
 13 Q. I'm sorry. Yes, sir.
 14 A. So what are you looking at now? You're looking
 15 at the initial progress.
 16 Q. I'm looking at the plan.
 17 A. Yeah. If you're looking at the first progress
 18 note --
 19 Q. Yes. We see Flexeril, Ibuprofen, and Vicodin,
 20 correct?
 21 A. Correct.
 22 Q. And your diagnosis was cerebral palsy, which he
 23 had pre-existing, of course, correct?
 24 A. Right.
 25 Q. As well as dystonia, which he had a history of,

241

1 correct?

2 A. Correct.

3 Q. What is dystonia?

4 A. Dystonia is an abnormal distortion of a shoulder,

5 pelvic muscle group as a result of an abnormal

6 contracture. So they become dystonic, dis

7 abnormal tonia, lack of tone or dysfunctional

8 tone. It's common in cerebral palsy patients.

9 Q. So the new diagnoses you provided were cervical

10 strain, acute lumbar strain, and an exacerbation

11 of the dystonia, correct?

12 A. Correct.

13 Q. And he went on to receive more Percocet, Vicodin

14 -- I'm sorry, Ibuprofen, Flexeril, and Percocet,

15 on May 11th?

16 A. Correct.

17 Q. And then Percocet, Flexeril, and Motrin

18 prescriptions on May 25th?

19 A. Correct.

20 Q. And Percocet, Motrin, and Flexeril again

21 prescribed on June 8th, and, again, Percocet,

22 Motrin, and Flexeril on June 22nd, correct?

23 A. Correct.

24 Q. And if we turn the page to the settlement

25 memorandum, Dr. Sam N. Ghoubrial, MD was paid

242

1 \$2,000, correct?

2 A. Correct.

3 Q. And that's the personal injury clinic, correct?

4 A. Correct.

5 Q. And when we see above on the deduct and retain to

6 pay a \$50 fee to Clearwater Billing Services,

7 that is for records?

8 A. Correct.

9 Q. To the personal injury practice?

10 A. Correct.

11 Q. And you charge the clients \$50, a \$50 flat fee to

12 prepare the records?

13 MR. BARMEN: Objection. They are

14 not his clients.

15 Q. The patients?

16 A. We submit it to the attorney, records. We

17 prepare the records and give them to the

18 attorney.

19 Q. And the attorney sends a check to you for \$50?

20 A. Correct.

21 - - - -

22 (Thereupon, Plaintiff's Exhibit 23 was marked

23 for purposes of identification.)

24 - - - -

25 Q. Okay. Two more. Here is Exhibit 23.

243

1 MR. PATTAKOS: It looks like Tom

2 is calling.

3 MR. BARMEN: No, Tom has been on

4 the phone.

5 MR. PATTAKOS: I see.

6 MR. BARMEN: I think I hear him

7 snoring.

8 MR. MANNION: I'm here.

9 Q. This is a second file for Mr. Harbour.

10 A. I don't have the -- the first page of this.

11 Shouldn't there be a medical assignment?

12 Q. Well, let's see if it's later in the document.

13 We may not have one here. Well, it looks like we

14 either don't have the medical assignment or we

15 just neglected to include it in this exhibit.

16 MR. BEST: Or you treated him

17 without one.

18 Q. Or, yeah, perhaps, you did treat him without one.

19 A. We could have.

20 Q. And I certainly don't know. The vehicle

21 accident, this chart reflects, on the first page,

22 happened on May 10th, 2012. And he saw you on

23 May 23rd, correct?

24 A. Correct.

25 Q. I believe we have the 1500 forms here. If we

244

1 turn -- actually, if we turn just past your

2 chart, we see that he treated at Rolling Acres

3 Chiropractic on April -- I'm sorry, May 21st, two

4 days before he first treated with your clinic.

5 And then on the form 1500, the initial visit,

6 \$350 was charged on May 23rd, under 99204, along

7 with a TENS units, E0730, for \$500; is that

8 correct?

9 A. I'm not there yet, Peter.

10 Q. Okay.

11 A. Now I'm there. On May 23rd, the 99204, the 350,

12 and then the E0730, correct.

13 Q. And then there was a follow-up visit on June 6th

14 for \$150?

15 A. Correct.

16 Q. Another follow-up visit, on June 20th, for \$150?

17 A. Yeah.

18 Q. And on June 6th, it looks like there was a \$400

19 charge for trigger point injections, under 20552

20 and \$80 for the Kenalog on that same date, under

21 J1040, correct?

22 A. Correct.

23 Q. And there were trigger points on June 20th, as

24 well, for \$400, and the Kenalog for 80 under

25 those same codes, correct?

1 A. Correct.

2 Q. And the chart reflects that he was prescribed

3 Flexeril on May 23rd and June 6th, as well as

4 narcotics on May 23rd, June 6th, and June 20th,

5 in the form of Percocet, correct?

6 A. Let me get back there. You keep jumping back and

7 forth, it makes it a little tedious.

8 Q. I understand. I'm sorry.

9 A. You're talking about May 23rd, Flexeril and

10 Percocet, along with Ibuprofen, correct.

11 June 6th, he got Percocet, Motrin, and Flexeril.

12 June 20th, just Percocet, that's correct.

13 Q. And the diagnoses in addition to cerebral palsy

14 are cervical strain and a lumbar strain, correct?

15 Sorry, if you go back to the chart.

16 A. Correct.

17 Q. And if we look at the settlement memorandum at

18 the end, we see a fee of \$1,900 paid to

19 Clearwater Billing Service, in addition to the

20 \$50 document fee, correct?

21 A. I don't see the settlement memorandum.

22 Q. If you look at the second to last page.

23 A. Correct.

24 - - - -

25 (Thereupon, Plaintiff's Exhibit 24 was marked

1 for purposes of identification.)

2 - - - -

3 Q. Okay. The last one, Thera Reid. Here is

4 Exhibit 24. Thera came to you with a broken arm,

5 correct? It says on the first page of your

6 chart --

7 A. Correct.

8 Q. Okay. It says, the motorcycle driver slammed on

9 the brakes and Thera went flying off the back of

10 the motorcycle and broke her right humerus.

11 A. Correct.

12 Q. You proceeded to inject Thera Reid with trigger

13 points on that day, on -- I'm sorry, on

14 April 27th, 2016, which was a week after the

15 April 20th accident under -- and if you turn to

16 the form 1500, which was after the chart --

17 MR. POPSON: I have an objection.

18 It wasn't the only injury she reported to

19 him, but --

20 MR. PATTAKOS: Okay. Yeah, I'm

21 just -- sure.

22 MR. POPSON: You're not trying to

23 imply that he was injecting her broken arm,

24 right?

25 MR. PATTAKOS: No, I'm not.

1 MR. POPSON: Okay. Because she

2 also had had shoulder, neck, and back pain.

3 MR. PATTAKOS: Right. And we will

4 get to the diagnosis.

5 Q. But she was charged the -- for the initial visit

6 \$300 under 99203, as well as trigger points on

7 that date, three of them, under 20553, for \$800

8 and the \$80 for the Kenalog, under J1040.

9 Received trigger point injections, again, for

10 \$800 under the same code, on a follow-up visit,

11 99213, \$150 for the follow-up visit, 800 for the

12 trigger point injections, and 40 for one cc of

13 Kenalog, under J1030.

14 She then came back, again, on May 18th, if

15 you turn the page. And, again, on the 25th,

16 under 99213 code, she was charged \$150 each.

17 Received trigger points again for \$800, on May

18 25th, and \$40 for the Kenalog, correct?

19 A. Correct.

20 Q. And there was another visit on June 1st for which

21 there is only the follow-up charge under 99213,

22 correct?

23 A. Correct.

24 Q. If we go back to your first -- the chart for your

25 first encounter, you see that you diagnosed her

1 with a cervical strain, a thoracic sprain, and a

2 lumbar spa -- strain.

3 A. Also, a fractured humerus, if you look in the

4 body of the dictation, it says, upper

5 extremities, the right upper extremity is in a

6 sling and she sustained a fracture.

7 Q. Right.

8 A. So there is no disputing that.

9 Q. Okay. And you identified four trigger points.

10 It looks like you identified four trigger points

11 twice; is that what happened?

12 A. I identified a total of eight trigger points.

13 Q. Okay.

14 A. Four in the lumbar and four in the cervical,

15 thoracic. She was badly injured.

16 Q. And it says, you will refer her to Dr. Chonko.

17 Who is Dr. Chonko?

18 A. Orthopedic surgeon.

19 Q. Because you referred her to an orthopedic

20 surgeon, because she needed surgery, correct?

21 A. I referred her to an orthopedic surgeon, because

22 of the fracture. Whether he decides to operate

23 or immobilize it, is his decision.

24 Q. And on June 1st, 2016, it says, on your note

25 there -- actually, we could even look at May

249

1 25th, it says she is going to have extensive
 2 surgery on her right arm for the fracture to the
 3 shoulder. And on June 1st it says, she is going
 4 to have surgery of her shoulder, correct?
 5 A. Right. And it also says -- let's read the whole
 6 thing. The trigger points were very beneficial
 7 to her neck. And she needed narcotic analgesics,
 8 not only because of the neck, the back, and the
 9 fracture.
 10 Q. And she received four prescriptions for narcotics
 11 from you, correct?
 12 A. Correct.
 13 Q. And that was on April 27th, May 4th, May 10th,
 14 and June 1st, correct?
 15 A. That's correct.
 16 Q. And no muscle relaxers, no TENS Unit, and no back
 17 brace, correct?
 18 A. Correct.
 19 Q. And this was after her first date of treatment at
 20 Akron Square, being April 22nd, 2016. And you
 21 could see that from the first page; is that
 22 correct?
 23 A. Correct.
 24 Q. Okay. Dr. Ghoubrial, of these 13 files that we
 25 just went over, 13 out of 13 were offered trigger

250

1 point injections, 11 out of the 13 received
 2 trigger point injections, 10 out of the 13
 3 received TENS units, 12 out of the 13 received a
 4 prescription for muscle relaxers, at least once,
 5 and 10 out of 13 received a prescription for
 6 narcotics.
 7 Is that unusual to you?
 8 MR. BEST: Objection.
 9 MR. BARMEN: Objection.
 10 MR. POPSON: Objection.
 11 A. It's patient specific. Sometimes they get
 12 narcotics, sometimes they don't. Sometimes they
 13 get muscle relaxers, sometimes they don't. That
 14 pool that you picked out of is a very small group
 15 of 13. More than half of the patients that we
 16 see in our practice receive no narcotics. And --
 17 MR. BARMEN: You answered the
 18 question.
 19 A. -- that's it.
 20 Q. More than half receive no narcotics?
 21 A. Correct.
 22 Q. So you're saying that this -- this distribution
 23 of who was offered trigger point injections, who
 24 received them, who received TENS units, who
 25 received prescriptions for muscle relaxer, and

251

1 who received a script, prescription, for
 2 narcotics is not representative?
 3 MR. BARMEN: Objection. Wait a
 4 minute. You mean, the 13 files you cherry
 5 picked out of thousands?
 6 MR. PATTAKOS: Let me be clear,
 7 these were the only 13 files that I have
 8 had access to. I wasn't able to cherry
 9 pick anything.
 10 MR. BARMEN: That is absolutely
 11 false, because there are files I produced
 12 to you just last week that aren't in here,
 13 because they are not Bates stamped.
 14 MR. PATTAKOS: What are those?
 15 What files are those?
 16 MR. BARMEN: Files that you sent
 17 me releases for, that I produced to you
 18 within the last week.
 19 And, actually, I have a few of
 20 them in my bag. And you know, you received
 21 them. They're Bates stamped, and you
 22 haven't used them here.
 23 MR. PATTAKOS: Who are they for?
 24 Let's --
 25 MR. BARMEN: Wait a minute --

252

1 MR. PATTAKOS: If you have them in
 2 your bag, let's mark them as exhibits.
 3 MR. BARMEN: So for you --
 4 MR. BEST: No.
 5 MR. BARMEN: No, no, no. But for
 6 you to say that every file you have has
 7 been marked is unequivocally false, and you
 8 know it.
 9 MR. PATTAKOS: Who else did you
 10 provide -- you provided me a file for,
 11 what's her name? She's from Columbus.
 12 [REDACTED]
 13 MR. BEST: I forgot. It slipped
 14 my mind.
 15 MR. BARMEN: So wait, so all --
 16 just that one, all of a sudden you --
 17 MR. PATTAKOS: Let's see [REDACTED]
 18 [REDACTED]
 19 MR. BARMEN: -- realize that what
 20 you just said is wrong.
 21 MR. PATTAKOS: Let's see [REDACTED]
 22 [REDACTED] chart.
 23 MR. BARMEN: [REDACTED].
 24 MR. BEST: We're not giving him
 25 new records.

253

1 MR. BARMEN: No, it's not new
 2 records. He has them.
 3 MR. BEST: No, we're not giving
 4 them to him now.
 5 MR. BARMEN: I'm not.
 6 MR. BEST: He could do whatever
 7 the heck he wants, but he blew his
 8 opportunity, because --
 9 MR. PATTAKOS: We don't have any
 10 Ghoubrial documents for [REDACTED].
 11 Right. [REDACTED] did not treat with
 12 Dr. Ghoubrial, apparently, Brad, so you
 13 didn't give me a file for [REDACTED].
 14 You did -- I believe you did give
 15 me a file for [REDACTED] --
 16 MR. BARMEN: [REDACTED]
 17 MR. PATTAKOS: Yeah, we already --
 18 we already went over [REDACTED]
 19 [REDACTED] is the only one. And, you know
 20 what, we'll print out a copy of that at the
 21 break.
 22 MR. BEST: We're not taking any
 23 more breaks. We're finishing this
 24 deposition. It's 5:20.
 25 MR. PATTAKOS: Well, we started an

254

1 hour late, later than we would have,
 2 because you guys insisted on instructing,
 3 obstructing at Dr. Gunning's objection.
 4 MR. BEST: We started late,
 5 because you were late.
 6 MR. PATTAKOS: Uh-huh.
 7 MR. BEST: It was not anything to
 8 do with Dr. Gunning.
 9 MR. PATTAKOS: The -- we finished
 10 late, because you obstructed. The Judge
 11 rejected your arguments and you tied us
 12 up --
 13 MR. BEST: You could keep dancing
 14 around --
 15 MR. PATTAKOS: -- you tied us up
 16 for 40 minutes.
 17 MR. BEST: If you want to finish
 18 the deposition, keep going.
 19 MR. PATTAKOS: We are going to
 20 keep going.
 21 MR. BEST: Good.
 22 MR. PATTAKOS: Let's just print
 23 out [REDACTED], I believe we have it.
 24 MS. HAZELET: Yeah. Okay. I will
 25 be right back.

255

1 MR. PATTAKOS: Thank you. Okay.
 2 MR. BEST: Do you have a question?
 3 MR. BARMEN: His brain walked out
 4 of the door. He has to wait until she
 5 comes back.
 6 MR. BEST: If you have questions,
 7 let's ask them, please.
 8 MR. PATTAKOS: Okay. [REDACTED]
 9 [REDACTED], apparently, was not treated by Dr.
 10 Ghoubrial or his practice. So we have been
 11 over all of the files that we had received
 12 from Dr. Ghoubrial's office.
 13 MR. BARMEN: You mean, all of the
 14 file for which you produced releases,
 15 right?
 16 MR. PATTAKOS: Yeah, we don't --
 17 well, no, because the one you still haven't
 18 produced, I forget his name.
 19 MR. BARMEN: Which one, because
 20 you also --
 21 MR. PATTAKOS: Todd something.
 22 MR. BARMEN: You also e-mailed me
 23 last week and said I had never given you
 24 Harbour, which obviously you had, because
 25 they weren't Bates stamped by me, so check

256

1 your own records.
 2 MR. PATTAKOS: I'm not sure about
 3 that.
 4 MR. BARMEN: You're not sure about
 5 that?
 6 MR. PATTAKOS: Do you have this
 7 document?
 8 MR. BARMEN: I'm sorry, Harbour's
 9 are 24 -- 23 and 24 --
 10 MR. PATTAKOS: Brad --
 11 MR. BARMEN: They are not Bates
 12 stamped by me, Peter --
 13 MR. PATTAKOS: We don't need to
 14 argue about this.
 15 MR. BARMEN: -- which means you
 16 didn't get them from me.
 17 MR. PATTAKOS: We don't need to
 18 argue about this.
 19 MR. BARMEN: There is no argument.
 20 You are wrong, you just can't acknowledge
 21 it.
 22 Q. These -- this reflects a printout from cms.gov.
 23 Do you know what cms.gov is?
 24 A. Yes.
 25 Q. What is it?

1 A. Centers for Medicare Services.
 2 Q. What does this document reflect?
 3 MR. BARMEN: Objection.
 4 A. I don't know.
 5 Q. Well, if I represent to you that today I went in
 6 and put in the year 2019 and entered the codes
 7 for trigger point injections, 20552 and 20553, as
 8 well as for a back brace, under L0631, and TENS
 9 units under E0730, in Ohio, the specific
 10 locality, which you could see in the field, in
 11 the middle here, under number 1520200, this is
 12 the official government record of what Medicare
 13 and Medicaid pay for these codes.
 14 Apparently, they pay nothing for TENS units
 15 and nothing for back braces. And for trigger
 16 point injections, 1 to 2, under the 20552 code,
 17 we see a range of \$38.22 to \$59.08. And then for
 18 the 20553 code, we see a range of \$43.48 to
 19 68.08.
 20 Do you have any reason to doubt this is the
 21 case, Dr. Ghoubrial?
 22 MR. BARMEN: Objection.
 23 A. First of all, I have no idea, because I haven't
 24 see this document. Second of all, as I explained
 25 to you in great detail, we're not credentialed

1 with them for this. And third of all, most of
 2 the patients don't have this insurance, anyway.
 3 So this document is completely irrelevant.
 4 Q. A lot of them do have this insurance, don't they?
 5 MR. BEST: Objection.
 6 A. No, they don't. They don't have it. It's
 7 completely irrelevant.
 8 Q. Okay.
 9 A. This document is the most irrelevant document you
 10 produced.
 11 Q. Okay. Do you understand the difference between a
 12 facility price and a non-facility price?
 13 MR. BARMEN: Objection.
 14 A. No.
 15 Q. You understand that a hospital facility that's
 16 certified by the federal government, as such, is
 17 allowed to charge a bit higher for these codes to
 18 compensate for overhead?
 19 A. Peter --
 20 MR. BARMEN: Objection. He said
 21 he didn't know. He's not going to take
 22 your word for it, Peter. Move on to the
 23 next question.
 24 A. As I told you, I know nothing about this
 25 document.

1 MR. BARMEN: You answered it.
 2 A. And that's it.
 3 Q. Okay. And you're aware of what a limiting charge
 4 is?
 5 A. No.
 6 Q. You don't deal with this in your own practice?
 7 MR. BEST: He just said "no".
 8 Q. You don't deal with this in your internal
 9 medicine practice?
 10 MR. BARMEN: Objection.
 11 A. I don't deal with any of the billing in my
 12 internal medicine practice.
 13 Q. Do you treat Medicaid patients or Medicare
 14 patients in your internal medicine practice?
 15 A. I don't look at what the insurance they have. I
 16 don't pay attention to that. That's not
 17 something I do.
 18 Q. You testified that a lot of your patients were
 19 elderly?
 20 A. Correct.
 21 Q. So it stands to reason that they have Medicare
 22 coverage, if they're elderly, correct?
 23 A. Correct.
 24 MR. BARMEN: Objection.
 25 Q. So you probably do treat a significant portion of

1 patients with Medicare coverage in your office,
 2 correct?
 3 MR. BARMEN: Objection. Don't
 4 guess.
 5 Q. In the internal medicine practice.
 6 A. Peter, I have already testified. We're not
 7 credentialed on the other side. We're here to
 8 talk about the personal injury business. That's
 9 what you've named in your -- in your lawsuit.
 10 As far as my practice goes, I don't do any of
 11 the billing. I don't know what percentage are
 12 Medicare, I don't what percentage are Medicaid.
 13 Q. You don't turn away Medicare patients from your
 14 internal medicine practice, do you, Doctor?
 15 MR. BARMEN: Objection.
 16 A. I don't handle the scheduling, either.
 17 MR. PATTAKOS: How do I make this
 18 go away, this stupid thing?
 19 MR. BARMEN: I often myself wonder
 20 how to make stupid things go away, Peter.
 21 MR. PATTAKOS: Okay. Thank you.
 22 My brain, she did it.
 23 MR. BARMEN: Oh, that's patently
 24 obvious.
 25 Q. So you have no idea what a limiting charge is?

1 MR. BARMEN: Objection. Asked and
 2 answered.
 3 MR. BEST: Objection.
 4 - - - -
 5 (Thereupon, Plaintiff's Exhibit 25 was marked
 6 for purposes of identification.)
 7 - - - -
 8 Q. Let's just look at an exhibit then. Exhibit 25.
 9 You don't have any reason to doubt the accuracy
 10 of this information, do you --
 11 MR. BARMEN: Objection.
 12 Q. -- on this Exhibit 25, Dr. Ghoubrial?
 13 MR. BEST: I object. He said he
 14 has no idea what it is.
 15 A. I have no idea what it is, Peter, none.
 16 Q. Well, I'm asking if you have any reason to doubt
 17 the accuracy of what's reflected there?
 18 MR. BARMEN: Objection.
 19 MR. BEST: Other than the source
 20 from you, and that you frequently
 21 misrepresent and lie. Is that one reason
 22 to maybe doubt it?
 23 MR. PATAKOS: I'm going to ask
 24 you gentleman to please verify this
 25 information, to make sure that this isn't

1 fraudulent.
 2 MR. BEST: Oh, you think I'm going
 3 to do what you suggest. You're dreaming.
 4 MR. PATAKOS: I think if you
 5 don't, you'll be waiving some rights.
 6 MR. BEST: Judge Patakos.
 7 MR. BARMEN: All hail the mighty
 8 Patakos.
 9 - - - -
 10 (Thereupon, Plaintiff's Exhibit 26 was marked
 11 for purposes of identification.)
 12 - - - -
 13 Q. Here is Exhibit 26. I will represent to you that
 14 this is a printout that I made today and accessed
 15 on the Internet today, just as I did the previous
 16 exhibit, actually, on a lunch break, from an
 17 organization called medicareinteractive.org. and
 18 the Medicare Rights Center, describing what a
 19 limiting charge is.
 20 It says, a limiting charge is an upper limit
 21 on how much doctors who do not accept Medicare's
 22 approved amount as payment in full can charge to
 23 people with Medicare. Federal law sets the limit
 24 at 15 percent more than the Medicare-approved
 25 amount. Some states limit it even further.

1 It later says, providers who opt-out of
 2 Medicare are not subject to these limiting
 3 charges and can charge as much as they want, if
 4 the patient signs an agreement with them prior to
 5 receiving care.
 6 Does this refresh your recollection as to
 7 what a limiting charge is, sir?
 8 MR. BARMEN: Objection.
 9 A. No. I have no idea what this is. And I already
 10 told you, we're not even credentialed, so this
 11 document means nothing.
 12 Q. You do treat patients with Medicare coverage in
 13 your personal injury clinic, don't you?
 14 MR. BARMEN: Objection. He says
 15 he doesn't know. How many times --
 16 A. I told you --
 17 MR. BARMEN: -- are you going to
 18 ask him the same question?
 19 A. -- numerous times, most of them don't even have
 20 insurance. And the ones that do, I don't know.
 21 But 90 percent of them don't have any kind of
 22 coverage that I am even aware of.
 23 So, this doesn't apply for two reasons: No.
 24 1, they don't have it. No. 2, we're not
 25 credentialed with it. And I said that three

1 times, so this document means even less than the
 2 first one.
 3 Q. Well, I think what this document reflects, Dr.
 4 Ghoubrial, and you could feel free to correct me
 5 if I'm wrong --
 6 MR. BARMEN: Wait. He's already
 7 told you he doesn't know what it is --
 8 MR. PATAKOS: Well --
 9 MR. BARMEN: -- so your soliloquy
 10 is inappropriate and irrelevant. So move
 11 on to another question.
 12 MR. PATAKOS: I'm asking him a
 13 question.
 14 MR. BARMEN: No, you're not.
 15 You're making a speech.
 16 Q. What this document reflects is a requirement that
 17 if you treat someone who has Medicare coverage
 18 and you are opting out of receiving that Medicare
 19 cover as payment or Medicaid, that you must have
 20 the patient sign an agreement expressly waiving
 21 that coverage.
 22 MR. BARMEN: Objection.
 23 Q. Do you understand that to be a requirement, sir?
 24 MR. BEST: That is completely
 25 false.

265

1 MR. MANNION: Objection.
 2 MR. BEST: That is Peter's
 3 creation. There is no such law, that is
 4 baloney.
 5 MR. BARMEN: Yeah, where in this
 6 document, Exhibit 26, does it say anything
 7 about waiver? You just threw that in,
 8 there, Pete.
 9 MR. BEST: He just makes it up.
 10 Q. Well, it says --
 11 MR. BEST: I don't care what it
 12 says.
 13 Q. -- providers who opt out of Medicare --
 14 MR. BEST: That you printed out --
 15 Q. -- are not subject to these limiting charges and
 16 can charge as much as they want --
 17 MR. BEST: You printed off some BS
 18 website at lunch, so that you could try to
 19 use something that you create out of whole
 20 cloth, it's crap. There is no such law.
 21 Q. I am going to continue. If the patient signs an
 22 agreement with them prior to receiving care.
 23 So what I'm asking you is, do you do anything
 24 to screen in the personal injury practice as to
 25 whether any of the patients have Medicare or

266

1 Medicaid coverage?
 2 MR. BARMEN: Objection. Wait a
 3 minute. You know, the way you represented
 4 this is inconsistent with what you read.
 5 Are you here representing that
 6 where it references signing an agreement
 7 with them prior to receiving care is an
 8 express waiver of some rights, or simply an
 9 agreement to have care with that provider,
 10 because it's certainly not clear from
 11 reading this?
 12 MR. BEST: I think what he's doing
 13 is suggesting that somehow Dr. Ghoubrial is
 14 violating some law.
 15 MR. PATTAKOS: I'm trying -- I'm
 16 trying to understand --
 17 MR. BEST: You don't get to
 18 understand, because he has the right to
 19 have coun --
 20 MR. PATTAKOS: I don't get to
 21 understand?
 22 MR. BEST: That's right. You
 23 don't get to understand. You're suggesting
 24 some criminal violation --
 25 MR. PATTAKOS: Are you --

267

1 MR. BEST: -- he's not answering
 2 anymore.
 3 MR. PATTAKOS: Are you instructing
 4 him to plead the fifth?
 5 MR. BEST: I'm telling him that
 6 you are creating baloney out of this
 7 document. It is complete fiction, so you
 8 are lying to a witness. That's what I'm
 9 suggesting. And if he thinks he wants to
 10 answer it, let him answer it.
 11 MR. PATTAKOS: What does he under
 12 --
 13 Q. What -- Dr. Ghoubrial, what do you understand
 14 about what is suggested in this last sentence of
 15 this document?
 16 MR. BARMEN: Wait. Objection.
 17 He's already told you he doesn't know what
 18 a limiting charge is. He's told you it's
 19 not applicable to the PI practice. Yet,
 20 you continue to go down this road. It's
 21 inappropriate, you're wasting time.
 22 Q. Dr. Ghoubrial, are you aware of any requirement
 23 to have a patient sign an agreement before
 24 receiving treatment from a provider who has opted
 25 out of Medicare?

268

1 MR. BARMEN: Objection. He's
 2 already told you he doesn't know what a
 3 limiting charge is.
 4 A. Two things: No. 1, never seen this document
 5 before, never heard of it. No. 2, we were never
 6 credentialed, so we never opted out. So this --
 7 even if this, on the remotest possibility that
 8 this were true, it doesn't apply. So it pertains
 9 to nothing. This document means absolutely
 10 nothing, zero.
 11 Q. It means something to the folks at the Medicare
 12 Rights Center --
 13 MR. BARMEN: Objection.
 14 Q. -- don't you agree?
 15 MR. BARMEN: Objection.
 16 Q. Do you think this is -- that I did not pull this
 17 from the Medicare Right Centers web page?
 18 MR. BARMEN: Objection.
 19 MR. BEST: Dr. Ghoubrial, you
 20 don't have to speculate on where he --
 21 MR. BARMEN: Yeah.
 22 MR. BEST: -- pulls fictional
 23 stuff.
 24 A. All I'm telling you and will tell you again, we
 25 were never credentialed and we aren't

1 credentialed through that entity for this. Never
 2 seen this before. And I know of no law
 3 pertaining to this at all.
 4 MR. BARMEN: Show me the document
 5 where it talks about the waiver --
 6 MR. PATTAKOS: That's all I was
 7 asking.
 8 MR. BARMEN: -- or supports your
 9 interpretation.
 10 MR. PATTAKOS: We can take a break
 11 here in a moment.
 12 MR. BEST: We're not taking no
 13 breaks.
 14 THE WITNESS: We're going to keep
 15 going.
 16 MR. BEST: You either finish or
 17 not, but we're not taking any breaks.
 18 - - - -
 19 (Thereupon, Plaintiff's Exhibit 27 was marked
 20 for purposes of identification.)
 21 - - - -
 22 Q. Let's look at Exhibit 27. I am going to
 23 represent to you that this is another printout
 24 that I made at cms.gov web page today, filling in
 25 Ohio as the locality, and searching for approved

1 Medicare and Medicaid prices for the other codes
 2 that you are routinely treating KNR clients with.
 3 And that is the initial office visit, the
 4 follow-up office visit, and the, essentially,
 5 steroids. It says, methylprednisolone here,
 6 which is what came up when I entered the same
 7 J1020, 30, and 40 codes --
 8 MR. BEST: Peter is going to be a
 9 witness in this case.
 10 Q. -- that you were using for the --
 11 MR. BARMEN: He already is.
 12 Q. -- I'm sorry, Kenalog. And these are the prices
 13 that came up, a range of -- well, first of all,
 14 Medicare and Medicaid don't appear to cover the
 15 steroid codes.
 16 And for an initial office visit, charges are
 17 approved between \$75 and \$115 for the initial
 18 visit, and \$50 and \$78 for follow-up visits.
 19 Do you have any reason to disagree with this
 20 document or believe that this --
 21 MR. BEST: Objection.
 22 Q. -- does not reflect what the government pays --
 23 A. What's your question?
 24 Q. -- for Medicaid or Medicare patients?
 25 MR. BEST: Objection.

1 MR. POPSON: Objection to form.
 2 A. What's the question?
 3 Q. My question is, do you believe that this is an
 4 accurate reflection of what the government is
 5 paying for these codes for patients who have
 6 Medicaid and Medicare coverage?
 7 MR. BARMEN: Objection.
 8 A. I don't know, No. 1. No. 2, as I've told you
 9 before, we're not credentialed. And number
 10 three, you know very well that in these cases the
 11 at-fault party is the motor vehicle accident, so
 12 this pertains to nothing. This document means
 13 --- each document you give me means less than the
 14 one before.
 15 MR. BARMEN: Just answer his
 16 question.
 17 Q. Dr. Ghoubril, you would agree that if a --
 18 A. I am going to answer this.
 19 Q. You would agree that one of your patients who
 20 came to the personal injury clinic that was
 21 injured in a car accident and had Medicare or
 22 Medicaid coverage would be much better off paying
 23 these prices than paying the prices that you're
 24 charging for the same code, wouldn't you?
 25 MR. BARMEN: Objection. Improper

1 hypothetical.
 2 MR. MANNION: Objection. Improper
 3 hypothetical and incomplete.
 4 A. I told you, they -- we do as the patient
 5 instructs. You just got done providing 12
 6 attorney liens, telling us, where the patient
 7 tells us where to send these. So they go to the
 8 attorney, as the patient directs us.
 9 They have never once, in the ten years I have
 10 been doing this said, Medicare, Medicaid, or any
 11 other insurance.
 12 Q. So you're saying that the patients are asking to
 13 sign the medical liens?
 14 A. The patients not only --
 15 Q. As opposed to -- as opposed to being advised by
 16 the law firm or advised by your office that your
 17 office will not treat them unless they sign those
 18 medical liens; is that what you're saying?
 19 A. No.
 20 MR. BARMEN: Objection to form.
 21 A. I treat the patient irrespective. And I told you
 22 three times already, I treat all patients. And
 23 you saw the millions of dollars in free care that
 24 we just give to these patients.
 25 So, three things, again. We're not

273

1 credentialed, they don't have it, and we do as
 2 they direct. And they direct us, by signing the
 3 paperwork, to send this stuff to whoever
 4 represents them.
 5 And it's the attorney who makes the decision.
 6 So I suggest you talk to one of the 60 or all of
 7 the 60 law firms that we work with. You'll get a
 8 better answer. And you'll get a clearer answer
 9 than what I could give you, because I simply
 10 can't answer it.
 11 Q. Well, you certainly didn't answer my question,
 12 which shouldn't be so hard to answer.
 13 MR. BEST: He did answer.
 14 Q. If you have a patient who has Medicare or
 15 Medicaid coverage, don't you want to make sure
 16 that they're paying these lower rates than paying
 17 the rates that you are charging them under these
 18 codes, reflected in on all these 1500 forms that
 19 we just went over in all those client files?
 20 MR. BARMEN: Objection.
 21 Q. Don't you want to do what is best for your
 22 patient?
 23 MR. BARMEN: Objection.
 24 MR. MANNION: I'm going to object.
 25 He just told you, the client told him.

274

1 A. Exactly. I just told you, the client directs us
 2 exactly what to do. If they don't have the form,
 3 they don't sign the form, we still see them. We
 4 don't care. We may get paid, we may not, we
 5 treat them. But we do as the client directs,
 6 that's it.
 7 Q. So you're saying the client is saying, Dr.
 8 Ghoubrial, I want to pay \$800 for trigger point
 9 injections, instead of -- I want to pay -- I'm
 10 sorry, I want to pay \$800 for trigger point
 11 injections instead of \$62.31 for trigger point
 12 injections?
 13 MR. BARMEN: Objection.
 14 A. That is a total misrepresentation.
 15 MR. MANNION: Objection.
 16 Argumentative.
 17 Q. Well, how does that make sense?
 18 A. It's a total misrepresentation, and you know it.
 19 Q. Do you think the clients know that their
 20 financial interests are being affected in this
 21 way?
 22 MR. BARMEN: Objection.
 23 MR. MANNION: Objection. States
 24 facts not in evidence.
 25 A. It's a total misrepresentation. It's a complete

275

1 misrepresentation, and you know it.
 2 Q. What is a complete misrepresentation?
 3 MR. BARMEN: Everything you just
 4 said.
 5 A. Everything that you've just said. First of all,
 6 you know very well, that the bills are cut, and
 7 you presented bills that were cut by over
 8 70 percent. So, that goes out the window.
 9 Second, these patients direct us where to
 10 send the bills. And third, they don't even have
 11 the insurance to begin with. So you strike out
 12 on all three points.
 13 Q. Well, you know, Dr. Ghoubrial, I'm not playing
 14 baseball here, I'm trying to --
 15 A. It's three strikes.
 16 Q. -- I'm trying to understand --
 17 MR. BARMEN: You're not practicing
 18 law, either.
 19 Q. I'm trying to understand --
 20 MR. MANNION: Objection.
 21 Argumentative.
 22 Q. -- how what you're doing is good for your
 23 patients. And I see --
 24 MR. MANNION: Move to strike.
 25 Q. -- I see that 4,077 of the 6,600 KNR clients that

276

1 you treated, were charged between a thousand
 2 dollars and \$1,499 for treatment that if you use
 3 these Medicare prices couldn't possibly add up to
 4 anything close to that.
 5 MR. BARMEN: That's not a
 6 question.
 7 MR. POPSON: Objection.
 8 MR. BEST: I think --
 9 Q. So I'm trying to understand how it makes sense
 10 for the patients and how the patients -- how --
 11 what you're doing to protect the patients'
 12 financial interests?
 13 MR. BARMEN: Objection. That is
 14 not a question.
 15 MR. BEST: First of all, there is
 16 not obligation in the State of Ohio for a
 17 doctor to protect the financial interests
 18 of a patient. That's a fiction in your
 19 fictional mind.
 20 There is no law, there is no
 21 statute, there is no requirement. So
 22 you're trying to make up some fictional
 23 claim here. Do you think looking at me is
 24 going to intimidate me, is that --
 25 MR. PATTAKOS: What I --

277

1 MR. BEST: Mr. Buffoon, over
 2 there.
 3 MR. PATTAKOS: What --
 4 MR. BEST: Trust me, there is no
 5 law that says what you said --
 6 MR. BARMEN: Wait until he asks
 7 you a question.
 8 MR. BEST: -- none. No statute, no
 9 law, no case. So you're making it up. And
 10 you somehow have this fiction in your brain
 11 of what it should be, but it's not the way
 12 you want it to be.
 13 So he's already explained this to
 14 you. My advice to him, he could do what he
 15 wants, my advice to him is quit talking
 16 about it. He's given you plenty of
 17 explanation.
 18 MR. BARMEN: There is no question.
 19 MR. PATTAKOS: David, that's a
 20 nice answer that you just provided for you
 21 client. If that's the best that you think
 22 you could do, as his attorney --
 23 MR. MANNION: Oh, stop it.
 24 MR. PATTAKOS: -- the record
 25 reflects that.

278

1 MR. MANNION: Peter, stop the
 2 nonsense.
 3 MR. PATTAKOS: It is noted.
 4 Q. Dr. Ghoubrial --
 5 MR. MANNION: Stop the nonsense.
 6 Q. -- you don't think you have an obligation to make
 7 sure that your clients are paying a fair price
 8 for the treatment that they receive?
 9 MR. BARMEN: Objection.
 10 MR. MANNION: Objection.
 11 Argumentative.
 12 Q. Do you really believe that?
 13 MR. BARMEN: Objection.
 14 MR. BEST: Objection.
 15 A. I've already asked it -- you've already asked it
 16 and I've already answered you on at least a dozen
 17 occasions, probably two dozen by now.
 18 My obligation is to render quality care. I
 19 told you we weren't credentialed. I told you we
 20 do as the patient directs us. And you just were
 21 so kind to point out the fact that every one of
 22 these patients was represented by a law firm. So
 23 I did what I was told by the patient, that's it.
 24 Q. What does a law firm have to do with it?
 25 A. The patient directs what's being done with their

279

1 care and what is being done with their chart,
 2 they have to sign a HIPAA Form, where they want
 3 it to go, and how they want it handled. We honor
 4 that. So if you have someone here who said we
 5 didn't honor it, I'd be happy to listen to you.
 6 - - - -
 7 (Thereupon, Plaintiff's Exhibit 28 was marked
 8 for purposes of identification.)
 9 - - - -
 10 Q. Here is Exhibit 28. This is a printout from
 11 Amazon.com for an Aspen Medical Evergreen lumbar
 12 brace, showing a price of \$173, you're charging
 13 \$1,500 for.
 14 MR. BARMEN: Wait. First off, are
 15 you representing that it's the same exact
 16 brace?
 17 MR. PATTAKOS: Same exact price as
 18 what?
 19 MR. POPSON: You mean, the same
 20 exact brace?
 21 Q. Well, Dr. Ghoubrial, I --
 22 MR. BARMEN: Wait. You just put
 23 something in front of us and you made a
 24 statement that you are representing that
 25 this is the same brace that he provides.

280

1 Where are you getting that from? The Aspen
 2 Medical Evergreen, where are you getting
 3 that from?
 4 Q. Do you agree, Dr. Ghoubrial, that you mark up the
 5 lumbar braces by more than a thousand dollars?
 6 A. Not even close.
 7 MR. BARMEN: Objection.
 8 MR. MANNION: Objection.
 9 Q. What do you pay for those -- what do you pay for
 10 those lumbar braces?
 11 A. Not even close. And I want you to pay attention
 12 to this answer. No. 1, you're not taking into
 13 account my 12 years of training, my 20 years of
 14 practice experience, the liability associated
 15 with what I do. The liability associated with
 16 what the staff does.
 17 The overhead with regards to the staff's
 18 salaries as well as my salary. The overhead
 19 associated with the billing, the billing
 20 software, the personnel, the transcriptionist,
 21 and the liability associated with the practice.
 22 So you have missed it completely. There is
 23 no thousand percent or 1,200 percent markup.
 24 That just simply doesn't exist.
 25 Q. Because -- because the overhead is captured in

281

1 that price, that you charge the patients for the
 2 brace; is that what you are saying?
 3 MR. POPSON: Objection.
 4 MR. BARMEN: Objection.
 5 A. I've already answered your question.
 6 Q. Do you mean to say that you are justified in the
 7 markups that you charge, because of the overhead
 8 that you have in your office, your liability
 9 insurance --
 10 MR. BEST: I object.
 11 Q. -- and all of your employees and everything else?
 12 A. I've already answered it.
 13 MR. MANNION: Objection. He did
 14 not say it was a markup.
 15 MR. BEST: There is no requirement
 16 to justify --
 17 Q. What does that -- Dr. Ghoubril, what does the --
 18 what does what you just said have to do with the
 19 markup on the lumbar supports that you provide?
 20 MR. BARMEN: Objection. First of
 21 all --
 22 A. I just told you.
 23 MR. BARMEN: Wait a minute. We've
 24 not established that it's the same brace --
 25 MR. MANNION: Objection. He did

282

1 not say it was a markup. Stop putting
 2 words in his mouth.
 3 MR. BARMEN: This is something you
 4 just pulled off of Amazon.
 5 MR. PATTAKOS: The Judge ordered
 6 you to produce this information and you
 7 have not done it, so I'm doing my best.
 8 MR. BARMEN: No, no, no, no. No,
 9 no, no. That is an absolute blatant lie.
 10 I sent you an invoice for the braces, so
 11 you could look at that and you tell me,
 12 looking at that, if this is the same brace,
 13 because I think you know it's not.
 14 - - - -
 15 (Thereupon, Plaintiff's Exhibit 29 was marked
 16 for purposes of identification.)
 17 - - - -
 18 Q. Let's take a look at Exhibit 29.
 19 MR. BARMEN: Oh, you mean the
 20 thing you just said I didn't produce?
 21 MR. BEST: One lie after another.
 22 MR. PATTAKOS: You got that right,
 23 Mr. Best.
 24 Q. These are documents that were produced by your
 25 attorney. They're not Bates stamped.

283

1 MR. BARMEN: The ones he said I
 2 didn't produce just now.
 3 Q. Okay. So, Cybertech one-size fits all brace,
 4 it's actually less expensive. It's \$100 each, if
 5 we look at the last page; is that correct?
 6 MR. BARMEN: So the point is what
 7 you just gave him in Exhibit 28 and tried
 8 to represent as being the same, you're now
 9 recognizing and admitting that was not the
 10 same.
 11 MR. PATTAKOS: So his markup was
 12 actually higher?
 13 MR. BARMEN: The point is, you're
 14 blatantly misrepresenting two things --
 15 MR. MANNION: Objection to the
 16 word "markup".
 17 MR. BARMEN: -- one, that this was
 18 the same brace in 28, which is false and
 19 you know it. And, two, that I didn't
 20 produce the invoice, which is false, and
 21 you know it. Continue.
 22 MR. PATTAKOS: Are you sure you're
 23 done?
 24 MR. MANNION: Objection --
 25 MR. BARMEN: For now.

284

1 MR. MANNION: -- continued use of
 2 the word "markup". He never said that's
 3 what it was.
 4 MR. BARMEN: It's clear on the
 5 record.
 6 Q. So this last page on this Exhibit 29 is an
 7 invoice from Tri-Tech Medical Supply.
 8 Who is Tri-Tech Medical Supply?
 9 A. They supply us with equipment.
 10 Q. And that is run by Scott Wilson, correct?
 11 A. Correct.
 12 Q. And this reflects an invoice in, dated
 13 January 9th, 2018, for 100 Ultima 3T TENS units
 14 and 30 Cybertech one-size fits all braces,
 15 correct?
 16 A. Which invoice are you referring to?
 17 Q. The last page.
 18 A. That's correct.
 19 Q. So, it's true that you're paying approximately
 20 \$100 for the braces that you are charging your
 21 personal injury patients \$1,500 for, correct?
 22 MR. MANNION: Objection.
 23 MR. BARMEN: Objection.
 24 A. It's not that simple, Peter.
 25 Q. Explain.

285

1 A. I told you, you're not looking at the whole
 2 picture. You are missing 90 percent of it.
 3 Q. Please explain.
 4 A. Allow me to explain. You're not factoring in the
 5 liability. You're not factoring in the -- my
 6 overhead, my training, the staff's training, the
 7 liability coverage associated with the product.
 8 Liability coverage associated with the staff.
 9 The staff training the patient on how to properly
 10 use, whether it be the TENS Unit or the brace.
 11 You're not taking into account, the overhead
 12 with regard to the software, and you're not even
 13 taking the overhead with regards to the rent in
 14 the office, so you're missing it completely. You
 15 missed it completely.
 16 Q. So, have you conducted an analysis of all of
 17 these factors and how they impact the pricing
 18 that you end up charging the personal injury
 19 clients for these supplies?
 20 MR. BARMEN: Objection. Go ahead.
 21 A. We took a look at the marketplace about seven or
 22 eight years ago and looked at what these things
 23 were going for and we felt we were right on par
 24 midline with what they sell for, generally,
 25 that's it.

286

1 Q. So the high volume that you handle, the high
 2 volume of patients that you handle, justifies the
 3 markup that you charge to the patients?
 4 MR. BARMEN: Objection.
 5 MR. BEST: Objection.
 6 MR. MANNION: Objection.
 7 MR. BEST: That's not what he
 8 said.
 9 MR. BARMEN: It's not even close
 10 to what he said.
 11 A. That's not what I said, Peter.
 12 Q. Well, how does -- how is it not what you're
 13 saying? It sure sounds like that's what you're
 14 saying, so please explain to me --
 15 MR. BARMEN: Objection.
 16 MR. MANNION: Objection.
 17 Argumentative.
 18 Q. Please explain to me why you're referring to all
 19 of these overhead expenses in justifying the
 20 markup for these supplies, sir --
 21 MR. BARMEN: Objection.
 22 Q. -- because I don't understand it.
 23 MR. MANNION: Objection.
 24 Argumentative. Move to strike.
 25 A. I have already answered it. He could read back

287

1 my answer for you. It's the same.
 2 Q. Okay. If we look at the third to last page of
 3 this document, we see charges for gloves,
 4 syringes, needles, alcohol, pad preps, I believe
 5 that's it?
 6 A. Yes.
 7 Q. Could you tell me, looking at this document, what
 8 the quantities of each of these supplies is that
 9 is ordered here?
 10 I see an invoice, for example, if we look at
 11 the glove, I see invoice quantity one, for glove
 12 exam, that doesn't mean you're buying one set of
 13 gloves, correct?
 14 A. It's one box or one container.
 15 Q. Do you know how many come -- how many gloves are
 16 in a box?
 17 A. No.
 18 Q. And similarly, you don't know how many syringes
 19 are in one container, that's reflected here in
 20 the quantity of four?
 21 A. I do not.
 22 Q. And you don't know how many needles, you don't
 23 know how many alcohol pads, you don't know how
 24 many needles, and needles again, going down to
 25 these HP -- HCPCS codes?

288

1 A. Correct.
 2 Q. Okay. But someone must know, correct, in your
 3 office?
 4 MR. BARMEN: Objection.
 5 Q. Someone knows?
 6 A. Yeah.
 7 Q. Who would know in your office?
 8 A. Whoever does the ordering.
 9 Q. Okay. And you could determine who that is for
 10 me, correct?
 11 A. Yeah.
 12 Q. Okay.
 13 MR. MANNION: I can't wait until
 14 you depose someone from the Cleveland
 15 clinic, Peter. They'll love these
 16 questions. Maybe you could transform the
 17 whole medical industry.
 18 MR. BARMEN: He is a crusader.
 19 MR. BEST: He and AOC, they'll get
 20 together when they fix the climate. He is
 21 going to be just as smart as she is.
 22 MR. MANNION: This is the most
 23 ignorant line of questioning, I think I've
 24 ever heard in a case like this. It has
 25 zero bearing on this case.

289

1 MR. PATTAKOS: Tom, you're going
 2 to have an expert from the Cleveland clinic
 3 to come justify all this? I would love you
 4 to try to do that.
 5 MR. MANNION: You have no idea
 6 what you're doing or what you're even
 7 saying, you have no idea. Do you know --
 8 MR. PATTAKOS: Tom, Tom --
 9 MR. BEST: Tom, Tom, let him go.
 10 Let him finish. I just want to finish the
 11 deposition.
 12 MR. MANNION: You asked me a
 13 question, Peter. You asked me a question.
 14 MR. PATTAKOS: I'm going to ask
 15 you another question. Name me one doctor
 16 that I should talk to that will help shed
 17 some light on -- on what we're talking
 18 about here today.
 19 MR. BEST: Tom, this is David.
 20 Let's just let this knucklehead finish his
 21 questioning.
 22 MR. MANNION: This is crazy.
 23 A. What other questions, do you have Mr. Pattakos.
 24 Q. I think we're going to take a break.
 25 MR. BEST: Well, we're not taking

290

1 a break.
 2 MR. PATTAKOS: Oh, we sure are.
 3 MR. BEST: We are not taking a
 4 break.
 5 MR. PATTAKOS: I'm going to the
 6 restroom.
 7 MR. BEST: If you get up and walk
 8 out, this deposition is over. Are you
 9 done?
 10 MR. PATTAKOS: I'm not done. I'm
 11 taking a break.
 12 MR. MANNION: Give him five
 13 minutes. Give him five minutes.
 14 THE VIDEOGRAPHER: We're going off
 15 the record. The time is 5:53.
 16 - - - -
 17 (Thereupon, a recess was had.)
 18 - - - -
 19 THE VIDEOGRAPHER: We're back on
 20 the record. This is the beginning of tape
 21 number 5. The time is 6:08.
 22 MR. BEST: I want to put on the
 23 record that Mr. Pattakos took essentially a
 24 20-minute break without anybody agreeing,
 25 just on his own lark. Continue to waste

291

1 time. Shows up 25 to 30 minutes late after
 2 a lunch break, leaves without any
 3 explanation of why, and just refuses to
 4 return in a prompt manner.
 5 MR. PATTAKOS: David, once again,
 6 we're accommodating your busy travel
 7 schedule. Where are you going tomorrow
 8 now, David? You went to Egypt for a week.
 9 Tom and Brad had trials. We tried to take
 10 this deposition a long time ago.
 11 MR. BEST: Do you have a question?
 12 MR. MANNION: What does his travel
 13 schedule have to do with you being late?
 14 MR. BEST: Do you have a question?
 15 MR. PATTAKOS: Do you have a
 16 question, David? Are you done bloviating?
 17 Okay.
 18 MR. BARMEN: What does
 19 "bloviating" mean?
 20 MR. PATTAKOS: Look it up. Okay.
 21 MR. MANNION: He looks up a word a
 22 day.
 23 Q. Okay. Let move on.
 24 A. Thank you.
 25 MR. MANNION: Well, I just want to

292

1 know what his travel schedule has to do
 2 with you being late to start the depo?
 3 Q. Dr. Ghoubrial?
 4 A. Yes, sir.
 5 MR. PATTAKOS: Are we on the
 6 record?
 7 MR. POPSON: Yeah, we're on.
 8 Q. There is no one else at your office besides you
 9 who is responsible for ensuring that your
 10 medical practice complies with existing laws, is
 11 there?
 12 MR. BARMEN: Objection.
 13 MR. BEST: Objection.
 14 A. Correct.
 15 Q. You're the one who's ultimately responsible, and
 16 you don't rely on anyone to do that work for you,
 17 do you?
 18 MR. BARMEN: Objection.
 19 A. Correct.
 20 MR. BEST: He's a doctor, not a
 21 lawyer.
 22 - - - -
 23 (Thereupon, Plaintiff's Exhibit 30 was marked
 24 for purposes of identification.)
 25 - - - -

1 Q. Are you aware of this regulation, Exhibit 30?
 2 This is from the Ohio Administrative Code,
 3 Section 5160-1-13.1, titled Medicaid Consumer
 4 Liability.
 5 Are you familiar with this?
 6 A. Yes.
 7 Q. Do you believe you comply with this?
 8 MR. BARMEN: Objection.
 9 A. If the institution is credentialed, for instance,
 10 if I go work for Dr. so and so, or this
 11 organization, if that institution is credentialed
 12 with it and I'm credentialed with it,
 13 contemporaneously, then this applies.
 14 For instance, there is an organization
 15 called, MDVIP, they charge \$5,000 a year to be a
 16 member no matter what. If a patient has Medicaid
 17 not -- they don't participate in the program.
 18 And as I told you five or six or seven times,
 19 we're not credentialed, that entity. So it's
 20 illegal for us to use it.
 21 Q. So you believe this statute doesn't apply to you,
 22 because you do not accept Medicaid or Medicare?
 23 MR. BARMEN: Objection.
 24 A. We can't. I told you, we're not credentialed
 25 through that entity.

1 Q. So, this statute provides -- says, that providers
 2 are not required to bill the Ohio Department of
 3 Medicaid. And I'm looking at Section C here.
 4 Providers are not required to bill the Ohio
 5 Department of Medicaid for medicaid-covered
 6 services rendered to eligible consumers.
 7 However, providers may not bill consumers in
 8 lieu of ODM unless: No. 1, the consumer is
 9 notified in writing prior to the service being
 10 rendered that the provider will not bill ODM for
 11 the covered service. And two, the consumer
 12 agrees to be liable for payment of the service
 13 and signs a written statement to that effect
 14 prior to the service being rendered.
 15 And, three, the provider explains to the
 16 consumer that the service is a covered Medicaid
 17 service and other Medicaid providers may render
 18 the service at no cost to the consumer.
 19 A. Again --
 20 Q. Am I read that correctly, sir?
 21 A. You're reading.
 22 MR. BARMEN: Objection.
 23 A. Let me finish --
 24 Q. And you believe this does not apply to you?
 25 A. Let me finish. No. 1, the entity isn't even

1 credentialed, so it doesn't apply. No. 2, most
 2 of them don't give their insurance information.
 3 And, number three, and most importantly, the
 4 consumer directs, as item No. 2 that you pointed
 5 out, unfortunate, that you pulled this document
 6 out, it says, the consumer agrees to be liable
 7 for payment of the services, and signs a written
 8 statement. That's what the lien is for.
 9 Q. Have you ever consulted with the government about
 10 this interpretation of this regulation?
 11 MR. BARMEN: Objection.
 12 A. I know what the regulation is, and I have
 13 consulted with proper counsel.
 14 Q. Okay. Have you sought an opinion from the Ohio
 15 Department of Medicaid on your interpretation of
 16 this regulation?
 17 MR. BARMEN: Objection.
 18 MR. BEST: I object. He just
 19 said, he talked to his proper lawyers.
 20 MR. BARMEN: It's ridiculous.
 21 A. I talked to proper counsel. You have to be
 22 credentialed. You can't bill them unless the
 23 entity you work for is credentialed.
 24 In other words, if Peter Pattakos has a
 25 medical practice that takes Medicaid and I'm not

1 credentialed with Medicaid, I can't bill, even
 2 though you are.
 3 MR. BEST: You explained it.
 4 MR. MANNION: Well, I guess you
 5 could bill, but it would be fraudulent.
 6 That's what he wants you to do, apparently.
 7 A. And you know they're not the at-fault party,
 8 anyway.
 9 MR. BARMEN: You answered his
 10 question.
 11 Q. You don't tell the clients they're going to be
 12 charged?
 13 A. I answered that question.
 14 Q. Pardon me, Dr. Ghoubrial. You don't inform the
 15 clients of the price they're going to be charged
 16 for the braces and TENS units when you distribute
 17 them, do you?
 18 MR. BARMEN: Objection.
 19 A. You -- I've answered that question three times
 20 already. Whether it be my private practice, my
 21 hospital setting, my personal injury, I never
 22 discuss prices. I render the care that they need
 23 irrespective of what the cost is. That's the
 24 third time I've answered that.
 25 Q. You make them sign consent forms, showing that

1 they received the TENS units in good working
 2 order, but you do not put anything about the cost
 3 or charge of that TENS Unit on that form, do you,
 4 Doctor?
 5 MR. BARMEN: Objection.
 6 A. Correct.
 7 Q. You don't have the patients sign an informed
 8 consent form to treat prior to them receiving an
 9 injection, a trigger point injection, a TENS
 10 units, or a back brace, do you?
 11 MR. BARMEN: Objection.
 12 A. I obtain consent at the time I give them the
 13 device. I talk to them about it. I put it in
 14 the chart. It's pretty hard to give a patient an
 15 injection or TENS Unit when they don't want it.
 16 Q. Do you inform your clients of the risks,
 17 benefits, and alternatives to the treatment you
 18 provide?
 19 A. Absolutely.
 20 Q. How?
 21 A. I give them the option. I discuss all the
 22 therapeutic modalities with them. I say here's
 23 what your problem is, because of the herniated
 24 disk, we need to get an MRI. My feeling is you
 25 tried the anti-inflammatories, the muscle

1 Q. Most of it will, correct?
 2 MR. BARMEN: Objection.
 3 A. No.
 4 Q. What's your basis for that opinion?
 5 A. The thousands of patients I've seen. I know we
 6 could expedite their care, get them back in
 7 working order, so they could be productive again.
 8 Where as a problem that could take 9, 10,
 9 14 weeks to heal, oftentimes we could do it in
 10 two to four.
 11 Q. Do you not agree that you're putting these
 12 patients at unnecessary risks by performing
 13 trigger point injections, when a more
 14 conservative approach would likely provide just
 15 as much relief at a lesser financial burden to
 16 the patient?
 17 MR. BEST: Objection.
 18 A. Absolutely not.
 19 MR. BEST: I'm sure Peter's wife
 20 talks to all the patients about how much
 21 their medications cost in the ICU.
 22 MR. PATTAKOS: My wife works for
 23 the VA.
 24 MR. BEST: I'm sure she does. She
 25 has to then ask everybody how much they

1 relaxer, and you take these pills and then go see
 2 someone like Comprehensive Pain Management.
 3 Or I feel that it's myofascial trigger point
 4 and I inject them. Or they have a
 5 contraindication in the way of diabetes, so I
 6 have to adjust their medication. Every patient
 7 is individual.
 8 Q. Why don't you try conservative therapy first,
 9 such as rest, ice, compression, physical therapy,
 10 nonsteroidal anti-inflammatory drugs, before you
 11 inject the patient with trigger point injections?
 12 MR. BARMEN: Objection.
 13 MR. BEST: Object. He's already
 14 answered that question.
 15 A. I've answered that question three times. They're
 16 getting chiropractic care, which is relatively
 17 noninvasive. And, then apparently, they feel
 18 like they need more care. I evaluate them. If
 19 they need it, I give it to them. If they don't,
 20 I don't. It's that simple.
 21 Q. Do you agree that most soft tissue injury from
 22 trauma will resolve over time with conservative
 23 measures?
 24 MR. BARMEN: Objection.
 25 A. Some do, some don't.

1 want to pay for their care.
 2 MR. PATTAKOS: They don't pay for
 3 anything at the VA, David. Aren't you a
 4 veteran? Don't you know that? You ever go
 5 to the VA?
 6 MR. BEST: It's shocking what you
 7 don't know about the field of medicine.
 8 It's embarrassing that you're involved in
 9 this case. You should be ashamed of
 10 yourself. You should remove yourself from
 11 this case for your incredible ignorance in
 12 the field of medicine.
 13 - - - -
 14 (Thereupon, Plaintiff's Exhibit 31 was marked
 15 for purposes of identification.)
 16 - - - -
 17 MR. BARMEN: Could I have whatever
 18 you just gave the witness, please?
 19 MR. PATTAKOS: Yes.
 20 Q. Do you recognize these standards, Dr. Ghoubrial?
 21 A. I do.
 22 Q. What are they from?
 23 MR. BEST: You give them to
 24 everybody else, you're just going to keep
 25 --

301

1 A. I simply recognize them. I don't know where they
 2 are from. They're -- they are from the AMA.
 3 Q. The American Medical Association, correct?
 4 A. Right.
 5 Q. And this is the code of medical ethics, I'll
 6 represent to you that I printed this out from the
 7 AMA --
 8 MR. BEST: No, no, why don't you
 9 read the first sentence.
 10 MR. BARMEN: Yeah, exactly.
 11 Q. -- website.
 12 MR. BARMEN: The opinions in this
 13 chapter are offered as ethics guidance for
 14 physicians and are not intended to
 15 establish standards of clinical practice or
 16 rules of law.
 17 Q. This is a link to the American Medical
 18 Association -- this is a printout from the
 19 American Medical Association codes of medical
 20 ethics.
 21 MR. BEST: But you want to
 22 misrepresent, once again.
 23 Q. I want you to look at Chapter 1.1 under the
 24 patient-physician relationships, 1.1.1.
 25 MR. MANNION: I am going to

302

1 object. The Court already ruled, these
 2 issues should not be gotten into.
 3 Q. It says in the second --
 4 MR. BEST: I didn't hear you, Tom.
 5 What did you say? Let Pattakos be quiet.
 6 MR. BARMEN: Say it, again, Tom.
 7 MR. POPSON: There is a Court
 8 order on this not to get into ethics
 9 issues.
 10 MR. PATTAKOS: No, I had that --
 11 that was -- that pertains to legal ethics.
 12 It was filed not by Ghoubrial's counsel,
 13 but by KNR's. There is no order pending on
 14 this.
 15 MR. MANNION: You know the same
 16 logic applies. You're directly -- you're
 17 directly violating the Court's order.
 18 MR. PATTAKOS: No, I'm not. But
 19 you go ahead and file that motion, Tom.
 20 Q. The second sentence of this section says, the
 21 relationship between a patient and a physician is
 22 based on trust, which gives rise to physicians'
 23 ethical responsibility to place patients' welfare
 24 above the physician's own self-interest or
 25 obligations to others, to use sound medical

303

1 judgment on patients' behalf, and to advocate for
 2 their patients' welfare.
 3 Do you agree with that?
 4 MR. BARMEN: Objection.
 5 A. Absolutely.
 6 Q. And you believe you do that?
 7 A. 100 percent of the time.
 8 Q. Okay. If we look at page 1.1.3 -- I'm sorry,
 9 Doctor, you agree that you have a duty to follow
 10 that standard, correct?
 11 MR. BARMEN: Objection. No. 1 --
 12 MR. BEST: You're not going to --
 13 A. I answered.
 14 MR. BEST: Sam, be quiet.
 15 Q. Dr. Ghoubrial, you agree that it's your duty as a
 16 physician to follow that standard?
 17 MR. BARMEN: Objection. Stop.
 18 MR. MANNION: Objection. This is
 19 not a legal -- or medical malpractice case.
 20 MR. BARMEN: Not only that, the
 21 first line of this document says it is not
 22 intended to establish standards of clinical
 23 practice or rules of law. They are ethical
 24 guidance, not even guidelines, to follow,
 25 Peter, so keep misrepresenting.

304

1 MR. PATTAKOS: Keep testifying.
 2 I'm asking this witness questions.
 3 MR. BARMEN: No, no, you're
 4 misrepresenting documents.
 5 Q. Dr. Ghoubrial, do you believe you have a duty to
 6 follow this standard as a physician?
 7 MR. BARMEN: It's not a standard.
 8 MR. BEST: It's not a standard.
 9 Why do you call --
 10 MR. BARMEN: Objection. Don't
 11 answer the question until he properly
 12 phrases it.
 13 MR. MANNION: Are you agreeing
 14 it's a medical malpractice case, Peter?
 15 MR. BARMEN: Don't answer until he
 16 properly phrases it, because he's totally
 17 misrepresenting the document. And he's
 18 intentionally using phrases --
 19 MR. PATTAKOS: You guys could save
 20 your arguments for The Court. I'm trying
 21 to ask this witness questions. I know you
 22 don't like the implication of the
 23 questions, but you've been -- and I know
 24 you've been doing it all day --
 25 MR. BARMEN: I don't like the

305

1 implications, I don't like your
2 misrepresentations and lies. So phrase the
3 questions properly and I have no problem
4 with him answering.

5 MR. PATTAKOS: How am I lying by
6 asking the patient a question?

7 MR. BEST: Because you're saying
8 it is a standard and you use that word and
9 it says right in the first line it is not.

10 Q. Dr. Ghoubrial, do you agree that you have a duty
11 as a physician to place your patients' welfare
12 above your own self-interest or obligations to
13 others, to use sound medical judgment on your
14 patients' behalf, and to advocate for their
15 welfare?

16 MR. BARMEN: Objection.

17 MR. MANNION: Objection. Before
18 you answer, I would like to know, is this a
19 medical malpractice case or not?

20 Q. Please answer the question.

21 MR. MANNION: Is it, Peter, or
22 not?

23 Q. Please answer the question.

24 MR. MANNION: I think the doctor
25 has the right to know if they're alleging

306

1 medical malpractice against him. And I
2 certainly have a right to know that.

3 MR. BARMEN: Are you alleging he
4 violated the standards of care, Peter?

5 Q. Please answer the question, Dr. Ghoubrial.

6 MR. BARMEN: No, no.

7 MR. MANNION: No. Are you? We
8 have a right to know that.

9 MR. PATTAKOS: The allegations in
10 this case speak for themselves.

11 MR. BARMEN: Oh, do they?

12 MR. MANNION: No, they don't.

13 MR. BARMEN: Well, right now
14 you're asking about the standards of care,
15 which actually aren't standards of care, as
16 it states on this document, so let's all be
17 clear before any questions are answered.

18 MR. MANNION: And I want to know,
19 are you alleging medical malpractice or
20 not?

21 Q. Dr. Ghoubrial --

22 MR. MANNION: Otherwise, it has no
23 relevance.

24 MR. PATTAKOS: Are you instructing
25 the witness not to answer the question,

307

1 Tom? Are you instructing someone else's
2 client to not answer the question?

3 MR. BARMEN: No, I have told him
4 to wait until it's clarified.

5 MR. MANNION: When did I say that,
6 Peter? Don't put words in my mouth.

7 MR. PATTAKOS: I just clarified.
8 I asked a question --

9 MR. BARMEN: No, no, no. You --

10 MR. MANNION: I never once gave
11 this witness a single instruction. Don't
12 try to put that on the record. That's
13 another outright misrepresentation. Never
14 once did I instruct Dr. Ghoubrial not to
15 answer.

16 MR. BARMEN: See, I asked for the
17 clarification, and you just asked the same
18 exact question, despite the fact that the
19 document says what it says. Despite the
20 fact that you know, you're misrepresenting
21 it. So I want the record to be clear, I
22 want you to ask the proper question, and
23 he'll answer it.

24 MR. PATTAKOS: Please read the
25 question back to the witness.

308

1 Brad, I'm not here to answer your
2 questions.

3 MR. BARMEN: No, you are just here
4 to misrepresent everything, so you could
5 try and get little sound bites, to salvage
6 your sinking ship. But that's not what
7 he's here for. He is here to answer your
8 questions when they're proper.

9 - - - -
10 (Thereupon, the requested portion of
11 the record was read by the reporter.)

12 - - - -

13 MR. BEST: That's a compound
14 question. I think there are at least three
15 questions in there. Which one do you want
16 him to answer? That's my objection.

17 A. Let's answer the first one. The patient's
18 physician relationship is based on trust,
19 absolutely. The second one is, do I have an
20 ethical responsibility to put the patient's
21 welfare above mine? Yes. And above my own
22 self-interests, yes. And use sound medical
23 judgement, yes. And I have done all those things
24 100 percent of the time in every single patient
25 that I've seen.

309

1 Q. Please take a look at Section 1.1.3 on patient
 2 rights. I will read it into the record. It
 3 says, the health and well-being of patients
 4 depends on a collaborative effort between patient
 5 and physician in a mutually respectful alliance.
 6 Patients contribute to this alliance when they
 7 fulfill responsibilities they have, to seek care
 8 and to be candid with their physicians, for
 9 example, ph -- for example --
 10 MR. BARMEN: Is this document put
 11 together properly?
 12 MR. PATTAKOS: I think so, yeah.
 13 Q. Physicians can best contribute to a mutually
 14 respectful alliance with patients by serving as
 15 their patients' advocates and by respecting
 16 patients' rights. These include the right to
 17 courtesy, respect --
 18 MR. BARMEN: Wait, wait. For
 19 example, there is supposed to be examples
 20 of the patient's contribution. And they
 21 appear to be missing, Peter.
 22 MR. PATTAKOS: No. You know what,
 23 I read that incorrectly. My inflection was
 24 improper.
 25 Q. Patients contribute to this alliance when they

310

1 fulfill responsibilities they have, to seek care
 2 and to be candid with their physicians, for
 3 example. Physicians, can best contribute to a
 4 mutual --
 5 MR. PATTAKOS: Do you agree, Brad,
 6 that my inflection was off and that was
 7 causing your confusion?
 8 MR. BARMEN: No, because I've
 9 never seen this before. And I don't know
 10 if this was properly put together or not.
 11 MR. PATTAKOS: Okay. Well, I'm
 12 going to represent to you that it is. If
 13 Dr. Ghoubrial doesn't want to answer my
 14 questions --
 15 MR. MANNION: Your representation
 16 is meaningless to me, given all your
 17 misrepresentations.
 18 Q. Let's strike all that. I am just going to read
 19 the second part to avoid any confusion.
 20 This says on the third page, physicians can
 21 best contribute to a mutually respectful alliance
 22 with patients by serving as their patients'
 23 advocates and by respecting patients' rights.
 24 These include the right: A, to courtesy,
 25 respect, dignity, and timely, responsive

311

1 attention to his or her needs.
 2 B, to receive information from their
 3 physicians and to have opportunity to discuss the
 4 benefits, risks, and costs of appropriate
 5 treatment alternatives, including the risks,
 6 benefits and costs of foregoing treatment.
 7 Patients should be able to expect that their
 8 physicians will provide guidance about what they
 9 consider the optimal course of action for the
 10 patient based on the physician's objective,
 11 professional judgment.
 12 Do you agree with that, sir?
 13 A. As Mr. Best pointed out, these are simply
 14 guidelines. And as I've already told you, I do
 15 what's best for the patient irrespective of the
 16 cost. If that differs with these
 17 recommendations, then it differs.
 18 Q. So you disagree with these recommendations here?
 19 A. No --
 20 MR. MANNION: Objection.
 21 A. -- I told you what I disagree with.
 22 Q. What do you disagree with about Section B that
 23 the patient has a right to receive information
 24 from their physicians and to have opportunity to
 25 discuss the benefits, risks, and costs of

312

1 appropriate treatment alternatives, including the
 2 risks, benefits and costs of forgoing treatment?
 3 What is it that you disagree --
 4 MR. BARMEN: Wait a minute.
 5 Q. -- with there, if anything?
 6 MR. BARMEN: Don't answer it.
 7 Don't answer it.
 8 MR. BEST: I object. He answered
 9 it, completely answered it, and now you
 10 want him to answer it again. And what
 11 we're not going to keep doing, as far as
 12 I'm concerned, it's Dr. Ghoubrial's
 13 decision, it is now 6:30. We have been
 14 here since 9:00 -- since 8:45, because you
 15 didn't show up. And you are now repeating
 16 questions as you have all day over and over
 17 and again. We have other obligations. So
 18 when you get one question answered go on to
 19 something else.
 20 MR. PATTAKOS: David, I think when
 21 we look --
 22 MR. BEST: If you have anything
 23 else to ask --
 24 MR. PATTAKOS: -- look at how much
 25 you testified today, and it will be very

1 easy for anyone who counts the lines you've
 2 taken up in this deposition to realize how
 3 ridiculous that soliloquy just was.
 4 MR. BARMEN: I have a more
 5 immediate concern of the way you're reading
 6 this and trying to portray that the word
 7 "costs" here, is talking about the price of
 8 treatment. When you read, including the
 9 risks, benefits, and costs of foregoing
 10 treatment, it's not used in that context,
 11 Peter.
 12 MR. PATTAKOS: What context?
 13 MR. BARMEN: The context you're
 14 trying to make the word "costs" here equate
 15 to the price of a particular modality of
 16 treatment.
 17 MR. PATTAKOS: That's what your
 18 testimony is, Brad?
 19 MR. BARMEN: No, that's what I'm
 20 trying to point out to you.
 21 MR. PATTAKOS: To the witness?
 22 MR. BARMEN: Because you're
 23 misrepresenting, the way you're reading it.
 24 MR. BEST: He's answered the
 25 question.

1 Q. Dr. Ghoubrial, do you disagree with anything in
 2 Section B here?
 3 A. As I stated, Peter, if you read in the very first
 4 sentence, the opinions in this chapter are
 5 guidance for physicians, are not intended to be
 6 established standards.
 7 And I told you what my standard was. I
 8 always do what's best for the patient, no matter
 9 what the cost, whether they have insurance,
 10 whether they don't. No matter how the patient
 11 presents. I treat them with the same dignity,
 12 respect, and efficiency, as I would my own family
 13 member, that's it.
 14 Q. You testified earlier that you never discussed
 15 the cost or price of treatment with your
 16 patients?
 17 A. Correct.
 18 Q. Why is it that you never discussed the cost or
 19 price of treatment with your patients?
 20 MR. BARMEN: Objection.
 21 A. Because I simply give them the best treatment
 22 that's available irrespective of whether they are
 23 able to pay, including my treatment.
 24 Q. You testified earlier about how your personal
 25 injury practice started and why you started it.

1 And you said that local chiropractors who started
 2 sending you patients saying things like, Sam,
 3 we're having a great deal of trouble getting
 4 these patients seen. They were primarily
 5 minority patients. They don't have health
 6 insurance. Patients from under served areas,
 7 where they're looking for doctors to take care of
 8 them and they can't find it in a setting, a
 9 personal injury setting.
 10 Do you recall that testimony, sir?
 11 MR. BARMEN: Objection.
 12 A. Yes.
 13 Q. And you've testified that these patients are in a
 14 chiropractor's office, they want to see an MD,
 15 and because they don't have insurance and they
 16 don't have access to a provider, their MDs don't
 17 want to get involved with motor vehicle
 18 accidents, and et cetera, and that is why you
 19 opened the personal injury practice, correct?
 20 MR. BARMEN: Objection.
 21 MR. BEST: Objection.
 22 A. Yes.
 23 MR. BEST: We're repeating
 24 everything that he's already testified to
 25 six hours ago.

1 Q. Okay. It's true Dr. Ghoubl -- Dr. Ghoubrial,
 2 pardon me, that there are a number of places in
 3 Akron Ohio, that a patient could go to be treated
 4 under Medicaid or Medicare coverage or even where
 5 uninsured patients can go and receive treatment
 6 for acute injuries, including back pain?
 7 MR. BARMEN: Objection.
 8 A. Absolutely.
 9 Q. And those places accept Medicaid patients, they
 10 accept Medicare patients, and they even give
 11 charity care, correct?
 12 MR. BARMEN: Objection.
 13 A. The patient comes with their own free will. They
 14 are free to go wherever they want, whenever they
 15 want, and to whoever they want. No one is forced
 16 to see me.
 17 Q. Well, there is a lot of places where these
 18 patients could go to get care at a much lower
 19 cost than they get from you; isn't that true?
 20 MR. BARMEN: Objection.
 21 A. I don't know.
 22 Q. Do you know AxxessPointe?
 23 A. I've heard of it. I don't know anything about
 24 it.
 25 Q. You have heard of AxxessPointe, but --

317

1 MR. MANNION: Do you tell your
 2 clients that some lawyers charge less per
 3 hour?
 4 Q. -- you don't know anything about it?
 5 A. I've heard about it.
 6 Q. You know it's one minute away, they have an
 7 office that is one minute away from Dr. Floras'
 8 office on Arlington Street?
 9 MR. BARMEN: Objection. He said
 10 he doesn't know anything about it, other
 11 than hearing about it. How would he know
 12 where it was?
 13 - - - -
 14 (Thereupon, Plaintiff's Exhibit 32 was marked
 15 for purposes of identification.)
 16 - - - -
 17 Q. Does this refresh your recollection, handing you
 18 Exhibit 32? I am going to read this. First
 19 page, this is from their web page that we printed
 20 off yesterday. AxessPointe Community --
 21 MR. BARMEN: Do you have any
 22 exhibits or questions, that don't just
 23 involve you reading documents?
 24 Q. -- provides affordable, high-quality health care
 25 to families and individuals in Summit and Portage

318

1 counties.
 2 We offer a full range of services including
 3 medical, dental, women's health, behavioral
 4 health and a reduced-rate pharmacy. Our fees are
 5 based on current income and family size.
 6 We accept most insurance plans including
 7 Medicaid and Medicare. To find out more about
 8 our services, fees, insurances plans accepted or
 9 to schedule an appointment, please call.
 10 A. They're right across the street --
 11 MR. BARMEN: Wait. There is no
 12 question.
 13 A. -- patients can go.
 14 MR. BARMEN: Wait for a question,
 15 please.
 16 Q. Dr. Floras doesn't send patients there, though,
 17 does he?
 18 MR. BARMEN: Objection.
 19 A. I can't speak for what Dr. Floras does.
 20 Q. If we move on, it says that, on the about us
 21 page --
 22 A. Peter, what's the question?
 23 MR. BARMEN: Wait for it.
 24 Q. It says, there is five current sites in
 25 Northeast. It says that AxessPointe Community

319

1 Health Centers, originally named Akron Community
 2 Health Resources, Inc., opened its doors in 1995
 3 after receiving funds from the Bureau of Primary
 4 Health Care to establish the first federally
 5 qualified health center in Summit County.
 6 Five current sites in Northeast Ohio,
 7 including three in Akron, one in Kent and one in
 8 Barberton. As an FQHC, we deliver primary
 9 medical and dental care in medically underserved
 10 areas.
 11 AxessPointe also provides -- I won't read
 12 that sentence. Third paragraph, while our focus
 13 is on uninsured, underinsured and
 14 Medicaid/Medicare patients who may not have
 15 access to affordable health care, our services
 16 are welcome to all.
 17 A. What's your question, Peter?
 18 Q. My question, Dr. Ghoubrial, is: It's really not
 19 true that it's hard for patients to find doctors
 20 to treat them for injuries even when they don't
 21 have insurance and even when they are
 22 underserved?
 23 MR. BARMEN: Objection.
 24 A. Yes, it is.
 25 Q. Why can't they go to AxessPointe?

320

1 MR. BARMEN: Objection.
 2 A. They can.
 3 MR. BARMEN: Seriously, Peter, do
 4 you have any questions for this witness
 5 that don't just involve you reading
 6 documents into the record?
 7 Q. They can. Why don't they?
 8 MR. BARMEN: Objection.
 9 A. You have to ask the patient. AxessPointe is
 10 right across the street. They're free to go.
 11 Q. Could it be that a law firm and a chiropractor
 12 are colluding to send them to you?
 13 MR. BARMEN: Objection.
 14 A. Absolutely not.
 15 MR. BARMEN: Objection. Move to
 16 strike. Don't just --
 17 THE WITNESS: He asked a question.
 18 Listen, he asked a question.
 19 MR. BARMEN: No, you listen. Give
 20 me time --
 21 THE WITNESS: Just listen --
 22 MR. BARMEN: -- after the question
 23 is asked --
 24 THE WITNESS: Look, let me --
 25 MR. BARMEN: -- before you --

321

1 THE WITNESS: You're interfering.
 2 Let me just answer the question.
 3 A. Ask a question, Peter, and get to the point.
 4 Q. Dr. Ghoubrial, I just did get to the point. This
 5 is a place that has five locations all across
 6 Northeast Ohio saying, we'll take anybody.
 7 A. What's the question, Peter?
 8 Q. My question is, how could it be true that these
 9 chiropractors that are sending patients to your
 10 clinic, where you don't accept insurance, and
 11 you're charging millions of dollars to thousands
 12 -- to 6,000 patients --
 13 A. What's the question?
 14 Q. How could it be true that these chiropractors are
 15 sending these patients to you, because they don't
 16 have health insurance, and they're underserved
 17 and they can't find care elsewhere?
 18 MR. BARMEN: Objection.
 19 A. The patients are free to go to AxessPointe --
 20 MR. MANNION: Objection.
 21 A. -- they're free to come to me, they're free to go
 22 to wherever they want. I've told you that six
 23 times.
 24 Q. If only that were true, Doctor. It just doesn't
 25 seem to be.

322

1 A. It's true.
 2 MR. BARMEN: Objection. Move to
 3 strike.
 4 MR. MANNION: Move to strike.
 5 - - - -
 6 (Thereupon, Plaintiff's Exhibit 33 was marked
 7 for purposes of identification.)
 8 - - - -
 9 Q. Plaintiff's Exhibit 33, this is an exhibit. Are
 10 you familiar with Faithful Servants Health Care?
 11 A. Never heard of it.
 12 Q. Okay. Free urgent health care services with a
 13 Christ-like compassion --
 14 MR. BEST: Would you please stop
 15 yelling. And please stop reading things
 16 that are typed, that humans can read.
 17 Q. For those without insurance and the economic
 18 means to access traditional medical care. You've
 19 never heard of this place?
 20 A. Never. What's the question, Peter?
 21 Q. Well, I first asked you if you've ever heard of
 22 this place? And the main office for this outlet
 23 is 65 Community Road, in Tallmadge, Ohio.
 24 MR. BARMEN: Is that a question?
 25 A. Peter, what's the question?

323

1 Q. Well, this just shows further, Doctor, that it's
 2 not true that --
 3 A. What's the question?
 4 Q. It's not true that underserved patients need you
 5 to treat them outside of their health insurance,
 6 is it?
 7 MR. BARMEN: Objection to form.
 8 A. Peter, you're not paying attention to the answer,
 9 and you're not even asking the question. What do
 10 you want?
 11 Q. Well, you don't deny, Doctor, and for example ---
 12 A. Peter, what do you want?
 13 Q. Look at the patient eligibility page. Where it
 14 says that if you have annual income at or below
 15 200 percent of the federal poverty guidelines,
 16 you are eligible to be a patient at this place.
 17 A. What's your question?
 18 MR. BARMEN: Status must be
 19 verified.
 20 Q. Even without medical insurance or with Medicare
 21 or Medicaid, but lacking a primary care provider
 22 --
 23 MR. BEST: Sam, Sam, wait.
 24 MR. BARMEN: Objection. Why do
 25 you skip the line about, status must be

324

1 verified?
 2 MR. PATTAKOS: You know, I can't
 3 win. You tell me to hurry up. You get mad
 4 when I read something. You get mad when I
 5 don't read something.
 6 MR. BARMEN: Because you
 7 intentionally skip things that fly in the
 8 face of your argument, Peter, and you know
 9 that. And you are about as transparent as
 10 a jellyfish and just as slimy.
 11 MR. PATTAKOS: Oh, boy. Brad,
 12 that's the nicest thing anyone has ever
 13 said to me.
 14 MR. BEST: If you have a question,
 15 why don't you ask it, so we could get done
 16 with this.
 17 Q. We then see that they provide urgent medical care
 18 conditions for minor illnesses and injuries;
 19 cuts, sprains, back pain, possible broken
 20 bones --
 21 MR. BEST: Would you stop yelling?
 22 What is wrong with you, mentally? Stop
 23 yelling. Ask a question like a normal
 24 human.
 25 MR. PATTAKOS: Are you done

1 yelling, David?
 2 MR. BARMEN: Are you?
 3 Q. Okay. So this is -- let's see where their
 4 locations are, if we keep turning the page --
 5 MR. BARMEN: It is 25 to 7 --
 6 MR. MANNION: I want to find every
 7 law firm that charges less than you per
 8 hour and notify all of your clients.
 9 Q. If we see the locations, it says, Tallmadge,
 10 Front Porch, Haven of Rest, and Windham, main
 11 office is in Tallmadge.
 12 MR. BARMEN: Do you have any
 13 questions for this witness --
 14 Q. There is another office --
 15 MR. BARMEN: -- that does not
 16 involve you just reading documents?
 17 Q. -- on Grant Street, 798 Grant Street, in Akron,
 18 Ohio. Another one on Market Street, 175 East
 19 Market, at the Haven of Rest, right downtown.
 20 And then there is one in Portage County, at -- in
 21 Windham, Ohio.
 22 Those are all conveniently located to Akron
 23 Square Chiropractic patients, aren't there --
 24 aren't they, Doctor?
 25 MR. BARMEN: Objection. Peter --

1 A. Yes.
 2 Q. Why couldn't the patients just go there and get
 3 charity care or care that will accept their
 4 Medicare or Medicaid?
 5 MR. BARMEN: Objection. Peter,
 6 get to some questions that doesn't involve
 7 you just reading documents into the record,
 8 or we're leaving.
 9 MR. BEST: Let him answer. He
 10 asked, why don't they go there, Sam?
 11 THE WITNESS: They are free to go
 12 wherever they want.
 13 MR. BEST: I think that's the
 14 fifth time he's told you that.
 15 A. Yeah, they're free to go to wherever they want.
 16 Q. You ever heard of OPEN M?
 17 A. No.
 18 - - - -
 19 (Thereupon, Plaintiff's Exhibit 34 was marked
 20 for purposes of identification.)
 21 - - - -
 22 Q. Here is Plaintiff's Exhibit 34. It says on page
 23 two, free open Clinic. At OPEN M, we are
 24 dedicated to reducing health disparities and
 25 providing patient-centered services to people

1 with limited access to medical care.
 2 Since 1995, the OPEN M clinic has provided
 3 care for uninsured adults throughout Summit
 4 County. We offer comprehensive medical care that
 5 is focused on chronic disease management.
 6 Enrolled patients receive all services, including
 7 medications and diabetic supplies, free of
 8 charge.
 9 Am I reading that correctly, sir?
 10 MR. BARMEN: Objection.
 11 Q. And this is on 941 Princeton Street, in Akron,
 12 Ohio. Also, conveniently located near Akron
 13 Square and KNR's Akron office, correct?
 14 MR. BARMEN: Objection.
 15 A. Correct.
 16 MR. MANNION: And I'm going to
 17 object. That's for people without
 18 insurance. As you know, these are people
 19 with automobile insurance paying for it.
 20 Q. Dr. Ghoubrial, you're aware, as well, that Akron
 21 City Hospital has a large resident clinic that
 22 will perform charity care, both for family
 23 medicine, internal medicine?
 24 A. Absolutely.
 25 Q. And they will treat patients who are underinsured

1 or who are insured on Medicare or Medicaid,
 2 correct?
 3 A. Free to go.
 4 - - - -
 5 (Thereupon, Plaintiff's Exhibit 35 was marked
 6 for purposes of identification.)
 7 - - - -
 8 Q. Here is a 990 Form for Summa, which is a federal
 9 filing that tax exempt organizations are required
 10 to file. Here is Exhibit 35.
 11 Do you ever send your patients to these
 12 clinics, Dr. Ghoubrial?
 13 A. The patients come to me, because they can't get
 14 appointments in these clinics or they don't want
 15 to be seen in these clinics or the doctors there
 16 don't want to deal with them.
 17 Q. Okay. How many times have you heard that that's
 18 happened? How many times could you recall that
 19 that's happened?
 20 A. At least 70 percent of the time.
 21 Q. 70 percent of the patients that you treat have
 22 told you --
 23 A. At least.
 24 Q. -- have told you that they go to one of these
 25 places like either Summa, to Summa resident

329

1 clinic or any of these organizations that were
 2 just covered in the last three exhibits?
 3 MR. BEST: Objection.
 4 MR. BARMEN: Objection.
 5 A. They tell me one of three things. I can't get an
 6 appointment. They don't want to deal with my car
 7 accident. And I don't like the way I'm being
 8 treated. So they come to see me. I say, you're
 9 free to go wherever you want to go. I'm happy to
 10 help you, if I can, that's it.
 11 Q. But you know that Summa is not -- Summa's
 12 resident clinic is not going to turn away a
 13 patient who is suffering from back pain from a
 14 car accident, just because they were in a car
 15 accident, and there is a defendant potentially on
 16 the hook; you know that's true, correct?
 17 MR. BARMEN: Objection.
 18 A. No, I don't.
 19 MR. MANNION: I'm going to
 20 object --
 21 Q. You don't?
 22 MR. MANNION: Facts not in
 23 evidence.
 24 A. No. The patient -- I see these patients, not you.
 25 I see them. They're free to go wherever they

330

1 want. They choose to come to me, for the reasons
 2 that I listed. They can't be seen. They can't
 3 get an appointment. They don't want to deal with
 4 them. They don't like who they're seeing. They
 5 prefer being seen in a location where there is a
 6 chiropractor, that's it.
 7 Q. So your testimony is that a lot of these
 8 patients, that 70 or 80 percent of them, as you
 9 just said, have been to Summa's charity clinic,
 10 or have been to any of these other charity
 11 clinics and they decide, I don't want to be
 12 treated at these places, I want to be treated by
 13 Dr. Ghoubrial; is that your testimony?
 14 MR. MANNION: Objection.
 15 MR. BARMEN: Objection. That's
 16 not his testimony.
 17 A. That's not what I said.
 18 MR. BARMEN: It's another
 19 misrepresentation.
 20 A. What I said is --
 21 MR. BARMEN: I lost count of how
 22 many.
 23 A. What I said is, 70 or 80 percent of the patients
 24 that I've see, can't get care elsewhere. And,
 25 yes, some of them have been to these various

331

1 other organizations. And they don't want to go
 2 back, because they're not treated with dignity,
 3 respect or they can't get appointments, they
 4 can't get seen, or they don't want to deal with
 5 the car accident victims. Or else they would do
 6 exactly as you say. So your argument is
 7 counterintuitive.
 8 Q. Is that reflected in any of your medical records,
 9 Dr. Ghoubrial, where a patient was treating at
 10 one of these places and said they came to you,
 11 because they didn't like the treatment that they
 12 were receiving at any other places?
 13 MR. BARMEN: Objection.
 14 A. By definition, they come to me. They don't know
 15 me from Adam, but they chose to come to me,
 16 because I give them good care, I treat them with
 17 dignity, respect, and they continue to come back,
 18 and I get them better.
 19 Q. Dr. Ghoubrial, this 990 Form lists 33 million in
 20 un-reimbursed Medicaid and charity care for Summa
 21 in 2017 and about 125 million in Medicaid care.
 22 MR. BARMEN: Is that a question?
 23 MR. BEST: Who cares.
 24 Q. Do you -- are you denying --
 25 MR. MANNION: Do you think these

332

1 places would still be in business if they
 2 took all car accident victims, Peter?
 3 Q. Are you denying that Summa is open to any car
 4 accident victim who is underserved and has
 5 Medicare or Medicaid coverage or is even
 6 underinsured to treat injuries from car
 7 accidents? Are you saying Summa turns these
 8 people away? Is that your testimony?
 9 MR. BARMEN: Objection.
 10 A. Patients don't want to go there.
 11 Q. Patients have told you that?
 12 A. Yes.
 13 Q. How many patients have told you?
 14 A. I've already told you.
 15 Q. 70 percent of them?
 16 A. They don't want to be seen anywhere else.
 17 Q. How many patients have told you that, Dr.
 18 Ghoubrial?
 19 A. I already told you.
 20 MR. MANNION: Stop arguing with
 21 the witness.
 22 A. I've already told you.
 23 MR. MANNION: It almost 7:00 at
 24 night.
 25 Q. Do you agree that the sum of published research

333

1 on back braces and TENS units show that they're
 2 not effective in treating strained or sprained
 3 muscles or acute or subacute back pain?
 4 MR. BARMEN: Objection.
 5 MR. POPSON: Objection.
 6 A. No.
 7 Q. But you can't name a study or an author of a
 8 study that is to the contrary, can you?
 9 MR. BARMEN: Objection. We went
 10 over this about five hours ago, Peter.
 11 Asked and answered. Move on.
 12 Q. Do you agree that the sum of published research
 13 on trigger point injections shows that the only
 14 thing -- strike that.
 15 Do you agree that the standard of care for
 16 treating strains and sprains is to do so
 17 conservatively, first with rest, ice,
 18 compression, and elevations?
 19 MR. BEST: Standard of care --
 20 Q. -- nonsteroidal anti-inflammatory medication and
 21 physical therapy?
 22 MR. BARMEN: So, now just to be
 23 clear, we're talking about the standard of
 24 care for a physician?
 25 MR. PATTAKOS: We sure are.

334

1 MR. BEST: Medical malpractice
 2 claim?
 3 MR. BARMEN: Objection.
 4 MR. MANNION: I'm going to move to
 5 strike all questions relating to standard
 6 of care, unless this is a medical
 7 malpractice case.
 8 MR. PATTAKOS: Start drafting that
 9 motion, Tom.
 10 Q. Dr. Ghoubrial, I will ask the question again. Do
 11 you agree that the standard of care for treating
 12 strains and sprains is to do so conservatively --
 13 MR. BARMEN: Objection.
 14 Q. -- first with rest, ice, compression, and
 15 elevations, nonsteroidal anti-inflammatory
 16 medication and physical therapy --
 17 MR. MANNION: Wait a minute. I
 18 have to respond to Peter. He said for me
 19 to start drafting that motion. I'm still
 20 waiting for that motion Josh is preparing
 21 back from July. Do you have a copy of
 22 that?
 23 Q. Do you agree, Dr. Ghoubrial?
 24 MR. BARMEN: Objection.
 25 MR. BEST: Objection.

335

1 MR. POPSON: Objection.
 2 MR. MANNION: Anybody see that
 3 motion?
 4 A. It's patient specific, as I told you. Do not put
 5 all of these patients in one category. If
 6 someone has been acutely injured in a car
 7 accident, you have to look at the individual
 8 patient, and make your decision accordingly.
 9 And, yes, I do treat them conservatively.
 10 Q. You agree that that's an accurate statement of
 11 the standard of care, correct?
 12 MR. BARMEN: Objection.
 13 A. I already answered it. I told you what my view
 14 was.
 15 - - - -
 16 (Thereupon, Plaintiff's Exhibit 36 was marked
 17 for purposes of identification.)
 18 - - - -
 19 Q. Okay. Look at Exhibit 36. This is another study
 20 from PubMed. Muscle strain injury, diagnosis and
 21 treatment.
 22 MR. BARMEN: Wait, this one
 23 paragraph is the entire study?
 24 MR. PATTAKOS: It's an abstract.
 25 MR. BEST: We are going back to

336

1 1999.
 2 MR. MANNION: I'm going to object
 3 to the use of an abstract.
 4 Q. Are you familiar with Wolters Kluwer, Dr.
 5 Ghoubrial?
 6 A. No.
 7 Q. Are you familiar with the journal of American --
 8 the American Academy of Orthopedic Surgeons, Dr.
 9 Ghoubrial?
 10 A. Yes.
 11 Q. Do you believe that's a credible source of
 12 medical research?
 13 MR. BARMEN: Objection.
 14 MR. BEST: Objection.
 15 MR. MANNION: Objection.
 16 A. I'm not an orthopedic surgeon, so I don't read
 17 it.
 18 Q. Do you believe -- do you agree that it's a
 19 credible source?
 20 MR. BARMEN: Objection.
 21 MR. BEST: Objection.
 22 A. I never read it.
 23 Q. Okay.
 24 MR. MANNION: That's not the
 25 standard for getting literature in, Peter.

337

1 Q. Again, this is from --
 2 MR. PATTAKOS: We'll get it in,
 3 don't worry.
 4 MR. MANNION: Well, the evidence
 5 rules are pretty clear on what gets in.
 6 Q. That the -- this is another document that's
 7 stored at the U.S. National Institute of Health's
 8 National Library of Medicine --
 9 MR. BARMEN: Objection.
 10 Q. -- do you understand that to be true, Dr.
 11 Ghoubrial?
 12 MR. BARMEN: Objection. How would
 13 he know that?
 14 MR. PATTAKOS: This is a PubMed
 15 printout.
 16 MR. BARMEN: And, that means
 17 it's -- unbelievable.
 18 MR. PATTAKOS: You know what,
 19 strike that, it doesn't matter.
 20 MR. BARMEN: You know it's
 21 absolute garbage, that you made up.
 22 Q. Do you agree, Dr. Ghoubrial, that this is --
 23 MR. MANNION: Is this a med mal
 24 case now?
 25 Q. -- that this is an abstract summary of existing

338

1 literature on the treatment of muscle sprains and
 2 strains?
 3 MR. BARMEN: Objection.
 4 MR. MANNION: Objection to any
 5 abstract.
 6 Q. Do you agree that that's what this reflects?
 7 MR. BARMEN: Objection.
 8 A. All this is an abstract. I can't comment unless
 9 I review the whole article.
 10 Q. Okay. Well, it says here --
 11 A. I'm not going to make any comment based on an
 12 abstract.
 13 Q. -- Muscle strain usually causes acute pain and
 14 occurs during strenuous activity. In most cases,
 15 the diagnosis can be made on the basis of the
 16 history and physical examination. Later on it
 17 says, initial treatment consists of rest, ice,
 18 compression, and nonsteroidal anti-inflammatory
 19 drug therapy.
 20 As pain and swelling subside, physical
 21 therapy should -- physical therapy should be
 22 initiated to restore flexibility and strength.
 23 The long-term outcome after muscle strain injury
 24 is usually excellent, and complications are few.
 25 Do you disagree with anything there?

339

1 MR. POPSON: Objection.
 2 MR. BARMEN: Objection.
 3 A. I haven't read the whole article, so I can't
 4 comment.
 5 Q. You disagree with anything written there, Dr.
 6 Ghoubrial?
 7 MR. BEST: He just said his
 8 answer.
 9 MR. BARMEN: Objection.
 10 A. I can't comment.
 11 Q. Okay. Do you agree that the standard of care for
 12 treating muscle injuries generally is to do so
 13 conservatively first with rest, ice, compression,
 14 and elevation, nonsteroidal anti-inflammatory --
 15 MR. BEST: Do you --
 16 Q. -- and physical therapy --
 17 MR. BEST: Do you realize that you
 18 asked the same question --
 19 MR. BARMEN: Objection.
 20 MR. BEST: -- over and over and
 21 over and over and over --
 22 MR. PATTAKOS: No, this is
 23 different. I was first asking about --
 24 MR. BEST: -- and over and over and
 25 over and over and over and over again? Do

340

1 you know that?
 2 MR. MANNION: Objection. Not
 3 reasonably calculated to lead to the
 4 discovery of admissible information, unless
 5 this is a med mal.
 6 MR. PATTAKOS: I was first asking
 7 about strains and sprains. Now I'm asking
 8 about muscle injuries, generally.
 9 Q. Do you disagree that that's the standard of care,
 10 Dr. Ghoubrial?
 11 MR. BARMEN: Objection.
 12 MR. POPSON: Objection.
 13 MR. MANNION: Objection. Not --
 14 A. My answer --
 15 MR. MANNION: -- reasonably
 16 calculated --
 17 A. My answer is --
 18 MR. MANNION: -- to lead to the
 19 discovery of admissible -- let me object,
 20 please. Excuse me. Not reasonably
 21 calculated to lead to the discovery of
 22 admissible information, unless this is a
 23 medical malpractice case.
 24 And I want time to object every
 25 time he asks a standard of care question.

341

1 Q. Please answer the question, Dr. Ghoubrial.
 2 A. It varies for every single patient. Muscle
 3 injuries, myofascial pain, muscle strain, it
 4 varies. Every patient is individualized --
 5 Q. Do you know what a standard --
 6 A. You keep trying --
 7 Q. Do you know what a --
 8 MR. BARMEN: Let him finish his
 9 answer.
 10 MR. BEST: Quit talking.
 11 A. You keep trying --
 12 MR. PATTAKOS: This answer is
 13 nonsense, and he knows it.
 14 MR. BARMEN: Your questions are
 15 nonsense.
 16 Q. Strike my question. Do you know -- you know what
 17 a standard of care is, Dr. Ghoubrial. What is a
 18 standard of care?
 19 MR. BARMEN: Objection.
 20 MR. MANNION: Objection. Before
 21 you answer, not reasonably calculated to
 22 lead to the discovery of admissible
 23 information, unless this is a med mal case.
 24 A. There you go.
 25 Q. What is a standard of care, Dr. Ghoubrial?

342

1 A. Standard of care --
 2 MR. MANNION: Objection. Not
 3 reasonably calculated to lead to the
 4 discovery of admissible evidence unless
 5 this is a med mal case.
 6 A. -- is the established treatment protocol based on
 7 what a consortium of physicians may or may not
 8 deem appropriate. But it's no more than a series
 9 of opinions, that's it.
 10 Q. Okay. But you do understand what a standard of
 11 care is?
 12 A. I just told you.
 13 Q. Okay. So it's not really responsive when I ask
 14 you if you know what a standard of care is, or
 15 when I ask you about a standard of care, for you
 16 to say, it depends on the individual patient --
 17 MR. BEST: Objection. It is
 18 appropriate.
 19 Q. -- is it, Dr. Ghoubrial?
 20 MR. MANNION: Objection.
 21 Argumentative. Not reasonably calculated
 22 to lead to the discovery of admissible
 23 information, unless this is a med mal case.
 24 A. Each individual patient, you have to establish
 25 what the standard of care is for that patient,

343

1 and that's it.
 2 - - - -
 3 (Thereupon, Plaintiff's Exhibit 37 was marked
 4 for purposes of identification.)
 5 - - - -
 6 Q. Let's take a look at Exhibit 37.
 7 MR. MANNION: Have you ever looked
 8 at what the standard of care definition is.
 9 It involves the patient, a patient, not a
 10 population of patients, Peter.
 11 Q. This says, treatment of skeletal muscle injury, a
 12 review, it's dates 2012. ISRN Orthopedics, this
 13 was also pulled from PubMed. It has a PubMed ID,
 14 the National Institute of Health's website.
 15 MR. BEST: It's an abstract.
 16 Q. It says here in the abstract, most types of
 17 muscle injuries would follow three stages: The
 18 acute inflammatory and degenerative phase, the
 19 repair phase and the remodeling phase.
 20 Present conservative treatment includes RICE;
 21 rest, ice, compression, elevation, nonsteroidal
 22 anti-inflammatory drugs and physical therapy.
 23 Do you agree with that, Dr. Ghoubrial, or do
 24 you disagree?
 25 MR. BARMEN: Objection.

344

1 MR. BEST: I object. He's
 2 answered this question 25 times.
 3 A. Same answer.
 4 Q. What's the answer?
 5 A. The answer is, you have to individualize it based
 6 on the patient. If a patient is involved in a
 7 motor vehicle accident, they have an acute
 8 injury, that's different. I treat those patients
 9 according to what their needs are.
 10 Q. Okay. Well, I assume you're going to keep having
 11 the same answer, but I'm going to have to ask
 12 these questions, anyway.
 13 You agree, Dr. Ghoubrial that the standard of
 14 care for treating acute, subacute, and chronic
 15 low back pain is also to do so conservatively,
 16 first with rest, ice, compression, and elevation,
 17 nonsteroidal anti-inflammatories --
 18 MR. MANNION: Objection.
 19 Q. -- and physical therapy?
 20 MR. BARMEN: Objection.
 21 A. We're not --
 22 MR. BARMEN: Wait.
 23 MR. MANNION: Objection. Not
 24 reasonably calculated to lead to the
 25 discovery of admissible information unless

345

1 this is a med mal case. And incomplete
 2 hypothetical. Doesn't reference a specific
 3 patient.
 4 MR. BARMEN: Go ahead.
 5 A. First of all, you said "chronic", so it doesn't
 6 pertain to the patient population we're talking
 7 about.
 8 Q. It said, acute, subacute, and chronic is what I
 9 asked you about. The standard of care is the
 10 same; is it not?
 11 A. No, it isn't.
 12 MR. POPSON: Objection.
 13 Q. How is it different?
 14 MR. BEST: Oh, my gosh.
 15 A. Chronic patients --
 16 MR. MANNION: Same objection.
 17 A. Chronic patients are treated in a different way
 18 than acute patients are.
 19 - - - -
 20 (Thereupon, Plaintiff's Exhibit 38 was marked
 21 for purposes of identification.)
 22 - - - -
 23 Q. Here is Exhibit 38. You are familiar with the
 24 Annals of Internal Medicine, aren't you, Dr.
 25 Ghoubrial?

346

1 MR. BARMEN: Could you stop
 2 throwing exhibits at the witness, please?
 3 A. I am.
 4 Q. You believe this is a reliable source of medical
 5 research, don't you?
 6 MR. BEST: Objection.
 7 MR. BARMEN: Objection.
 8 MR. MANNION: Objection.
 9 MR. BEST: He's already said.
 10 This is absurd. You keep asking the same
 11 questions. Until he reads an article, how
 12 would he know? And if you think some
 13 publication gets everything right, then you
 14 really are a fool.
 15 MR. PATTAKOS: It seems like all
 16 these publications are saying the same
 17 thing, which is what's funny, David.
 18 MR. MANNION: Objection --
 19 MR. BEST: You are really --
 20 MR. MANNION: -- move to strike.
 21 MR. BEST: I think you really need
 22 some professional help. You know nothing
 23 about medicine. I mean, nothing.
 24 Q. If we look at the abstract that lists a number of
 25 recommendations --

347

1 A. I don't go by the abstract, and I'm not going to
 2 read 45 pages here today.
 3 Q. This is a clinical practice guideline; is it not,
 4 Dr. Ghoubrial?
 5 MR. BARMEN: Objection. Where
 6 does it say that?
 7 MR. PATTAKOS: In the title.
 8 Q. Noninvasive treatments for acute, subacute, and
 9 chronic low back pain, a clinical practice
 10 guideline from the American College of
 11 Physicians. This is --
 12 MR. BEST: Who cares.
 13 Q. -- this is, in fact, a clinical practice
 14 guideline; is it not, Dr. Ghoubrial?
 15 A. Yes.
 16 MR. MANNION: Objection.
 17 Q. And you believe the American College of
 18 Physicians is a reliable source of medical
 19 research; do you not?
 20 MR. POPSON: Objection.
 21 MR. BARMEN: Objection.
 22 MR. MANNION: Objection as to
 23 which research.
 24 A. On some things.
 25 Q. It says in the description right here on the

348

1 first page, the American College of Physicians
 2 developed this guideline to present the evidence
 3 and provide clinical recommendations on
 4 noninvasive treatment of low back pain.
 5 Am I reading that correctly?
 6 A. Yes.
 7 Q. So the recommendations that they give, if we look
 8 at No. 1, it says, given that most patients with
 9 acute or subacute low back pain improve over time
 10 regardless of treatment, clinicians and patients
 11 should select nonpharmacologic treatment with
 12 superficial heat, massage, acupuncture, or spinal
 13 manipulation.
 14 If pharmacologic treatment is desired,
 15 clinicians and patients should select
 16 nonsteroidal anti-inflammatory drugs or skeletal
 17 muscle relaxants.
 18 Do you agree with this, Doctor?
 19 MR. BARMEN: Objection.
 20 MR. POPSON: Objection.
 21 A. It's one modality.
 22 Q. This is their recommendation. Do you disagree
 23 with this recommendation?
 24 MR. BARMEN: Objection.
 25 MR. BEST: Objection.

349

1 MR. MANNION: Objection.
 2 A. It's one modality.
 3 Q. Are you going to answer the question?
 4 A. Yes. I said, it's one modality that I use.
 5 Q. They don't say anything about trigger points in
 6 that recommendation, do they, Doctor?
 7 MR. BARMEN: Objection.
 8 A. Again, as I told you, we're dealing with car
 9 accident patients here. It doesn't say anything
 10 about them. These are acute injuries where
 11 patients are in severe pain. They have to be
 12 treated in accordance to their individual
 13 presentation.
 14 So you can't throw these all into a basket
 15 and expect to follow one set of guidelines for
 16 all of them. So you're wasting your time with
 17 all this. The answer is the same.
 18 Q. Rec --
 19 A. The answer is the same.
 20 Q. Recommendation No. 2 says, for patients with
 21 chronic low back pain, clinicians and patients
 22 should initially select nonpharmacologic
 23 treatment with exercise, multidisciplinary
 24 rehabilitation, acupuncture, mindfulness-based
 25 stress reduction, tai chi, yoga, motor control

350

1 exercise, progressive relaxation,
 2 electromyography, biofeedback, low-level laser
 3 therapy, operant therapy, cognitive behavioral
 4 therapy, or spinal manipulation.
 5 MR. MANNION: I am going to
 6 object. I don't know where any of your
 7 clients had chronic pain management.
 8 Q. Do you disagree with this, Dr. Ghoubrial?
 9 MR. BEST: Objection.
 10 MR. BARMEN: Objection.
 11 A. As I told you before, Peter, it's patient
 12 specific. It depends on each individual patient.
 13 These are simply guidelines, a group of
 14 recommendations. They are not hard-and-fast
 15 rules.
 16 Q. It's based on evidence, evidence-based studies.
 17 Is this not based on evidence, Dr. Ghoubrial?
 18 MR. BARMEN: Objection.
 19 MR. POPSON: Objection.
 20 MR. MANNION: Objection.
 21 A. I've already answered it.
 22 Q. Well, you'll see if you turn back to the end of
 23 this document, there are 184 footnotes that all
 24 cite to evidence-based medical research; do they
 25 not?

351

1 MR. BARMEN: Objection.
 2 MR. MANNION: Wait a minute. I am
 3 going to object. You're saying all 184
 4 cites to evidence-based. Have you looked at
 5 all 184?
 6 Q. Well, that's typically what's cited in journals
 7 like this, isn't it, Dr. Ghoubrial,
 8 evidence-based research?
 9 MR. BARMEN: Objection.
 10 MR. POPSON: Objection.
 11 Q. Are you denying that, Dr. Ghoubrial?
 12 A. I don't know. I haven't had time to read the
 13 article.
 14 Q. Okay. Well, you could take a look at it when
 15 we're done today.
 16 A. Thank you.
 17 MR. POPSON: He'll get right on
 18 that.
 19 Q. So recommendation number three --
 20 MR. BEST: I think he's trying to
 21 get Yoga patients. He wants to be referred
 22 to Yoga, so he could start making some
 23 money, because he can't make any money
 24 anywhere else. Maybe talk to chiropractors
 25 about getting some referrals for your Yoga

352

1 gym.
 2 Q. Recommendation number three says, In patients
 3 with chronic low back pain who have had an
 4 inadequate response to nonpharmacologic therapy,
 5 clinicians and patients should consider
 6 pharmacologic treatment with nonsteroidal
 7 anti-inflammatory drugs as first-line therapy, or
 8 tramadol or duloxetine as second-line therapy.
 9 Those are muscle relaxers, right, sir?
 10 A. Each patient --
 11 Q. Dr. Ghoubrial, Tramadol and duloxetine --
 12 MR. BEST: Let him answer. Quit
 13 stepping on his answer.
 14 Q. --- those are muscle relaxers?
 15 MR. BEST: You asked him another
 16 question first.
 17 MR. PATTAKOS: Why don't you quit
 18 stepping on my questions, David?
 19 MR. BEST: Let him answer the
 20 question --
 21 MR. BARMEN: Because he gets the
 22 opportunity to answer the question, Peter.
 23 MR. BEST: -- then you get to
 24 follow-up with another question.
 25 MR. PATTAKOS: I didn't ask him a

353

1 question. I'm asking him, are Tramadol and
 2 duloxetine muscle relaxers, sir?
 3 MR. BEST: That was your second
 4 question.
 5 MR. BARMEN: Answer the question
 6 the way you see fit.
 7 A. I already answered it three times. Each patient
 8 is specific. Duloxetine -- what were the two
 9 drugs you mentioned?
 10 Q. Tramadol and duloxetine.
 11 A. Duloxetine -- Tramadol we've used, as you saw
 12 today. Duloxetine, occasionally, I use.
 13 Q. It then goes on to read, clinicians should only
 14 consider opioids as an option in patients who
 15 have failed the aforementioned treatments and
 16 only if the potential benefits outweigh the risks
 17 for individual patients --
 18 A. Peter, I've got to take -- could you excuse me?
 19 I've got to get a hold of a nursing home here,
 20 could we take a two-minute break?
 21 MR. BEST: You could take as long
 22 as you want.
 23 THE VIDEOGRAPHER: We're going off
 24 the record. The time is 7:04.
 25 - - - -

354

1 (Off the record.)
 2 - - - -
 3 MR. BEST: He just got a call. He
 4 told you he had to respond to a patient
 5 call from a nursing home. He is going to
 6 do that whether you like it or not.
 7 If all you are going to do is
 8 continue to read these abstract studies,
 9 and ask him whether he agrees, when he's
 10 already told you at least 20 times his view
 11 of the medicine, then he has the right to
 12 leave.
 13 MR. PATTAKOS: No, he doesn't.
 14 MR. BARMEN: Yes, he does.
 15 MR. BEST: If you have something
 16 else -- if you have something else to ask,
 17 I think his lawyer would probably let him
 18 answer those questions. But what you're
 19 doing is merely harassing an independent
 20 physician, who has patients that need his
 21 help.
 22 And I don't understand why you
 23 would do that to a human being, but
 24 apparently you are just so callous, you
 25 don't care.

355

1 So do you have any -- I would like
 2 to know, do you have anything, other than
 3 reading these silly abstracts that have no
 4 legitimacy in medicine?
 5 If you do, why don't you tell his
 6 lawyer that and we will see if we could get
 7 his patients to wait a few minutes.
 8 MR. PATTAKOS: David, who are you
 9 here representing today?
 10 MR. BEST: Did you hear my
 11 question?
 12 MR. PATTAKOS: I'm not answering.
 13 I don't have to answer your questions. My
 14 question, the relevance of my questions and
 15 the standard of care speak for themselves.
 16 MR. BARMEN: Stay on the record,
 17 you go with him. Peter, we have been
 18 patient for the last two hours, while you
 19 have done nothing but mark exhibits and
 20 read them into the record. If you don't
 21 have anything else, we're done.
 22 MR. PATTAKOS: I have plenty else.
 23 MR. BARMEN: Then are you going to
 24 get to it, because we're not going to do
 25 this anymore?

356

1 MR. PATTAKOS: Yeah, I am going to
 2 get to it.
 3 MR. BARMEN: When, because we're
 4 not doing this anymore?
 5 MR. MANNION: It's not a med mal
 6 case. When is he going to admit that it
 7 is?
 8 MR. POPSON: Let's go off the
 9 record.
 10 MR. BARMEN: He walked out.
 11 THE VIDEOGRAPHER: We're going off
 12 the record. The time is 7:06.
 13 - - - -
 14 (Thereupon, a recess was had.)
 15 - - - -
 16 THE VIDEOGRAPHER: We're back on
 17 the record. The time is 7:12.
 18 Q. I promise I only have a couple more of these
 19 studies I want to ask you about.
 20 MR. BARMEN: And I'm telling you,
 21 I'll let you mark them. We'll stipulate
 22 that they say what they say. He's not
 23 answering any questions on it.
 24 MR. PATTAKOS: So you don't want
 25 this doctor to be answering about medical

357

1 research? You are telling me that you're
 2 instructing your doctor, your physician
 3 client, not to answer questions about
 4 evidence-based medical research?
 5 MR. BARMEN: Well, again, is this
 6 a medical malpractice case, Peter?
 7 MR. PATTAKOS: That's irrelevant.
 8 MR. BARMEN: We spent the past
 9 three hours --
 10 MR. PATTAKOS: It's a fraud case.
 11 Brad, it's a fraud case.
 12 MR. BARMEN: We spent the last
 13 three hours --
 14 MR. PATTAKOS: And when a
 15 physician --
 16 MR. BARMEN: I'm talking.
 17 MR. PATTAKOS: -- and when a
 18 physician serially breaches the standard of
 19 care, it helps to show fraud.
 20 MR. BARMEN: Oh, so you're stating
 21 he's breached the standard of care --
 22 MR. PATTAKOS: Oh, I sure am.
 23 MR. BARMEN: -- so it is a med mal
 24 case?
 25 MR. PATTAKOS: I'm not saying it,

358

1 it's very. I don't need to say it, he's
 2 been saying it all day.
 3 MR. BARMEN: You wasted three
 4 hours marking exhibits and read them.
 5 MR. MANNION: How many more do you
 6 have?
 7 MR. PATTAKOS: A few and I might
 8 not need to go to all them. Let's just
 9 continue, please.
 10 You should be embarrassed that you
 11 are not allowing your physician client to
 12 answer questions about medicine research
 13 that pertains to his practice.
 14 MR. BARMEN: You should be
 15 embarrassed that you can't practice law and
 16 get yourself out of that damn box you're
 17 in.
 18 MR. PATTAKOS: Uh-huh.
 19 MR. BARMEN: You haven't asked a
 20 rational, substantive question all day.
 21 MR. PATTAKOS: Brad --
 22 MR. BARMEN: You wasted our time.
 23 MR. PATTAKOS: -- think back to
 24 what Gary Petti said and don't -- don't
 25 think for a second that I don't understand

359

1 it, okay? Talk to your friend. You should
 2 talk to your friend.
 3 MR. MANNION: Oh, Gary Petti
 4 doesn't care about the value of his
 5 client's case. That's crazy.
 6 MR. PATTAKOS: Don't think for a
 7 second I don't understand what you are
 8 doing.
 9 MR. BARMEN: You don't understand
 10 what you're doing, let alone what I'm
 11 doing.
 12 A. Okay.
 13 Q. Dr. Ghoubrial, I was asking you about
 14 recommendation number three here. It says, in
 15 patients with chronic low back pain who have had
 16 an inadequate response to nonpharmacologic
 17 therapy, clinicians and patients should consider
 18 pharmacologic treatment with nonsteroidal
 19 anti-inflammatory drugs as first-line therapy, or
 20 tramadol or duloxetine as second-line therapy.
 21 Clinicians should only consider opioids as an
 22 option in patients who have failed the
 23 aforementioned treatments and only if the
 24 potential benefits outweigh the risks for
 25 individual patients and after a discussion of

360

1 known risks and realistic benefits with patients.
 2 MR. BARMEN: Objection. The
 3 document says what it says. Move on.
 4 Q. Do you disagree with any of that, Dr. Ghoubrial?
 5 MR. MANNION: Objection. This
 6 case does not relate to chronicity.
 7 MR. BEST: Objection.
 8 THE WITNESS: Could you guys let
 9 me answer, please, so we could get past
 10 this, Brad?
 11 MR. PATTAKOS: Thank you.
 12 THE WITNESS: Let me answer.
 13 MR. BEST: Go ahead.
 14 MR. BARMEN: Go ahead.
 15 THE WITNESS: You guys keep
 16 talking, I can't answer.
 17 A. It's individual. It's case-by-case specific.
 18 Sometimes they meet the indications for Tramadol,
 19 sometimes they don't. Sometimes they meet the
 20 indications for Norco, sometimes they don't.
 21 It's case-by-case specific.
 22 I don't dispute these guidelines, but they
 23 have to be applied to the proper context and the
 24 proper patient, that's it.
 25 MR. BARMEN: And that guideline

1 relates to chronic low back pain, which
 2 we're not talking about here.
 3 Q. I think there are other doctors that would say
 4 that that's the only thing that you could treat
 5 trigger point injections for is chronic low back
 6 pain.
 7 MR. BEST: Oh, my God, would you
 8 stop with the --
 9 MR. BARMEN: Move to strike.
 10 Q. Dr. Ghoubrial --
 11 MR. POPSON: (Everybody would go
 12 get experts --
 13 Q. -- if you look --
 14 MR. POPSON: -- if that's what you
 15 want.
 16 MR. BEST: It would be over.
 17 Q. At the seventh page here, where it says, systemic
 18 corticosteroids steroids. It says, low-quality
 19 evidence showed no difference --
 20 MR. BARMEN: Wait until he gets
 21 there.
 22 MR. PATTAKOS: Hurry up and wait,
 23 hurry up and wait.
 24 A. What page are you on?
 25 Q. The seventh page where it says, systemic

1 corticosteroids. It says low-quality evidence
 2 showed no difference in pain or function between
 3 a single intramuscular injection --
 4 MR. BARMEN: Again, wait until he
 5 gets there.
 6 Q. -- of methylprednisolone or a five-day course of
 7 prednisolone compared with placebo in patients
 8 with acute low back pain.
 9 A. It doesn't apply, because we use trigger point
 10 injections that are focal to the pain. So we
 11 inject it directly into the site. And we also
 12 just don't use methylprednisolone, we also use
 13 Marcaine, so it doesn't apply.
 14 Q. Well, if we look one, two, three, four more
 15 pages, under systemic corticosteroids, it says?
 16 Moderate-quality evidence showed no differences
 17 in pain between systemic corticosteroids and
 18 placebo and no to small effect on function in
 19 patients with radicular low back pain.
 20 Do you agree with that?
 21 A. Once again --
 22 MR. BARMEN: Radicular.
 23 A. Once again, we're not talking about the same
 24 patient population that I am. So I stick to my
 25 previous argument. Each patient is different and

1 these are not systemic -- you introduce them
 2 intramuscularly. You don't have to take them
 3 systemically. And you use Marcaine with them.
 4 So there not the same thing as what's been
 5 referred to here.
 6 I've read thousands of articles. I agree
 7 with some, I don't agree with others. There are
 8 stuff here I'm going to agree with and there is
 9 stuff here that I won't. To save us both a lot
 10 of time by just stipulating that fact throughout
 11 all of this.
 12 Q. If we see, if we turn the page seven pages, there
 13 is a section that says, TENS?
 14 A. Yeah.
 15 Q. It says, low-quality evidence showed no
 16 difference between TENS and sham TENS for pain
 17 intensity or function at short-term follow-up.
 18 MR. BEST: Do you understand what
 19 "low-quality" means?
 20 Q. Low-quality evidence --
 21 MR. BEST: It means, it's
 22 unreliable data.
 23 MR. PATTAKOS: That's not what it
 24 means.
 25 MR. BEST: Oh, my God.

1 Q. Low-quality evidence showed no difference between
 2 TENS and acupuncture in short or long term pain.
 3 MR. BEST: You don't even
 4 understand --
 5 A. I completely disagree with that statement,
 6 because I've used it. And further more, this is
 7 low-quality evidence, so I completely disagree.
 8 Next question.
 9 Q. Okay. Thank you. We're moving right along,
 10 Doctor. Thank you.
 11 MR. BEST: It's embarrassing,
 12 really embarrassing.
 13 Q. On the next page you see lumbar support. It
 14 says, Evidence was insufficient to compare lumbar
 15 support versus no lumbar support. Low-quality
 16 evidence showed no difference between a lumbar
 17 support plus exercise versus exercise alone for
 18 pain or function at eight weeks or six months.
 19 Low-quality evidence showed no clear
 20 differences between lumbar supports and other
 21 active treatments for pain or function.
 22 A. Again, this is the opinion of one study. And
 23 it's low-quality evidence, as it states. I
 24 disagree with that, as well.
 25 Q. Dr. Ghoubrial, this is 180 -- there are 180 cites

365

1 --

2 A. I already gave you my answer. My answer is not

3 going to change I don't care who you cite.

4 Q. Okay. You are familiar with UpToDate, correct?

5 A. Yes.

6 Q. I just have a few more records from UpToDate to

7 show you, a few more studies from UpToDate.

8 What is UpToDate?

9 A. UpToDate is an online portal that gives

10 internists and other providers information on

11 various topics in medicine. I've used it from

12 time-to-time.

13 Q. You have a subscription to it, don't you, Doctor?

14 A. Not now.

15 Q. Why not now? Because the hospital closed?

16 A. No.

17 MR. BARMEN: Objection.

18 Q. Why don't you have a -- why don't you have a

19 subscription to UpToDate now?

20 A. I just don't use it. I use other journals.

21 Q. Okay. You agree that UpToDate is a reliable

22 source for current medical research?

23 MR. BARMEN: Objection.

24 MR. BEST: Objection. He's

25 already addressed all of that.

366

1 MR. MANNION: Objection.

2 A. Some things I agree with and some things I don't.

3 - - - -

4 (Thereupon, Plaintiff's Exhibit 39 was marked

5 for purposes of identification.)

6 - - - -

7 Q. Here is Exhibit 39. It talks about what UpToDate

8 is. It states here on the first page, about us,

9 more than 6,900 world-renowned physician authors,

10 editors, and reviewers use a rigorous editorial

11 process to synthesize the most recent medical

12 information into trusted, evidence-based

13 recommendations.

14 A. But all 6,900 of those are not working on back

15 pain. They're working on everything from

16 hematology to prostate cancer.

17 Q. But you don't disagree that that is what UpToDate

18 provides, do you, Doctor?

19 A. No, but it's not just on back pain.

20 - - - -

21 (Thereupon, Plaintiff's Exhibit 40 was marked

22 for purposes of identification.)

23 - - - -

24 Q. Here is Exhibit 40. UpToDate's editorial policy,

25 just so we could eliminate any doubts. Well, you

367

1 know, I would -- wouldn't really need to use this

2 if there wasn't so much sniping about how

3 evidence-based research is somehow inappropriate

4 to enter into a deposition. But we might as well

5 cover it. Dr. Ghoubril, this is an UpToDate --

6 MR. MANNION: Objection.

7 Inappropriate comment.

8 Q. This is UpToDate's editorial policy. It says --

9 A. I've seen it.

10 Q. Okay. You agree this is a true and accurate

11 statement?

12 A. Yes.

13 MR. BARMEN: Objection.

14 Q. And it says, UpToDate is updated daily following

15 a continual comprehensive review of peer-reviewed

16 journals, clinical databases and other resources.

17 A. On a multitude of subjects, yes.

18 Q. Okay. It says, under --

19 MR. BEST: The deli person at

20 Giant Eagle could practice medicine, if

21 they read this.

22 Q. It says under peer-reviewed, the deputy editor

23 for a specialty, as well as the editor-in-chief

24 and/or section editors assigned to a topic,

25 review all UpToDate content, including new

368

1 topics, updates and recommendations.

2 In addition, each UpToDate specialty has

3 assembled a group of peer reviewers, often in

4 conjunction with a sponsoring specialty society,

5 who are responsible for reviewing selected topics

6 in each specialty.

7 You don't doubt that, do you?

8 MR. POPSON: Objection.

9 MR. BARMEN: Objection. It says

10 what it says.

11 A. It says what it says. No comment.

12 Q. Okay.

13 A. How many more of these do you have, Peter?

14 Q. Just a few, Doctor.

15 MR. POPSON: You said that the

16 last time.

17 - - - -

18 (Thereupon, Plaintiff's Exhibit 41 was marked

19 for purposes of identification.)

20 - - - -

21 Q. Here is a study from UpToDate on treatment of

22 acute low back pain. Here's Exhibit 41. We just

23 pulled this two days ago.

24 It says on page 4 -- I'm sorry, page 2, under

25 general approach to care, it says, the goal of

369

1 care for patients with acute low back pain is
 2 short-term symptomatic relief, since most will
 3 improve within four weeks.
 4 Do you agree with that?
 5 MR. BARMEN: Objection.
 6 A. Again, it's patient specific. Some do, some
 7 don't. You have to stay away from these
 8 statements, Peter, where you're trying to put
 9 everybody in a catchall basin. I told you this.
 10 You're not a physician. You have to stay away
 11 from these catchall statements, it's going to
 12 hurt you.
 13 Q. Are you saying that physicians should stay away
 14 from reviewing --
 15 A. You --
 16 Q. -- and being familiar with the standard of care?
 17 MR. BARMEN: Let him finish his
 18 answer.
 19 A. You cannot treat every patient based on one set
 20 of guidelines. Each patient is unique. You're
 21 not going to help yourself, Peter. You're
 22 hurting yourself.
 23 Q. Do you believe that standards of care are
 24 completely useless, Doctor?
 25 A. Absolutely not, but they have to be applied --

370

1 MR. MANNION: I am going to
 2 object. Standards of care go to individual
 3 patients. That's a mischaracterization.
 4 A. They --
 5 MR. BARMEN: Wait. I'm also going
 6 to object to the extent where you skipped
 7 the introduction where it talks about the
 8 vast majority of patients seen in primary
 9 care will have specific -- will have
 10 nonspecific low back pain, meaning the
 11 patient has back pain in the absence of a
 12 specific underlying condition. That's not
 13 what we're talking about here.
 14 MR. PATTAKOS: So you like reading
 15 from medical research now. That's good.
 16 MR. BARMEN: No, you like skipping
 17 things that are applicable, so that you
 18 could try to pick and choose things to
 19 misrepresent.
 20 Q. It says under general approach to care on the --
 21 A. Let me explain it to you.
 22 Q. Oh, please.
 23 A. I will give you the same answer.
 24 Q. Okay.
 25 A. Each study you give, you're going to get the same

371

1 answer. So I'm going to give you the answer for
 2 all of the studies that you have in the box
 3 there, so to save you some time.
 4 Each patient is specific, individual. You
 5 have to cater the treatment towards their needs.
 6 There is no one uniform set of guidelines that
 7 applies to each and every single patient you see.
 8 I don't treat an 80-year-old patient, the way I
 9 treat a 20-year-old patient. I don't treat a
 10 compression fracture the same way I treat one
 11 with soft tissue injury. I don't treat one with
 12 diabetes the same way --
 13 Q. Dr. Ghoubrial --
 14 A. -- so you're not -- you have to finish -- let me
 15 finish what I'm telling you here.
 16 Q. I heard you say it and you're not answering the
 17 question.
 18 A. You're -- I'm answering it --
 19 MR. MANNION: Objection. Let him
 20 finish.
 21 A. The answer to your question is, your answer is
 22 going to be the same. It's individualized.
 23 Q. So you don't agree with any of these standards --
 24 A. There is no class.
 25 Q. I'm asking you, Doctor, if you agree with a

372

1 standard of care?
 2 A. As it applies --
 3 Q. If you agree a standard of care is appropriate?
 4 MR. BARMEN: Objection.
 5 Q. I'm not asking if it applies to any --
 6 MR. BEST: Quit yelling.
 7 A. Peter, let me finish, let me finish my response.
 8 That way these guys won't talk and you and I
 9 could talk, okay? So let's you and I just talk.
 10 We'll just have a conversation here, and we'll
 11 get this over with. Are you good with that?
 12 Just you and me.
 13 Q. Let's keep going, Doctor.
 14 A. Okay. My answer is this: I don't disagree with
 15 the standards of care. But I think they have to
 16 be applied on a case-by-case basis.
 17 So the standard of care for, let's say,
 18 treating you might be different than the standard
 19 of care for treating a 78-year-old woman. So the
 20 standards of care are different.
 21 And I individualize my care, based on the
 22 patient. And if you show me another study that
 23 says this or something similar, I am going to
 24 give you the same answer.
 25 So let me finish. The next study you show

373

1 me, showing standard of care, I am going to tell
2 you those standards of care are relevant, they do
3 apply to a certain basket of patients, but not
4 all. You have to individualize the care.

5 So if you have another study, I am going to
6 give you the same answer. If you have a study
7 after that, you're going to get the same answer.
8 You have to individualize your care, because each
9 patient is an individual, not a study group or a
10 series of guidelines. You have to plug in those
11 guidelines according to what the patients' needs
12 are.

13 Q. I understand that, Doctor.

14 A. That's it. Are we done now? Are we done now?

15 Q. You said you don't disagree with the standard of
16 care --

17 A. No, I said it has to be applied properly.

18 Q. Do you disagree with any of the standards of care
19 that I have read today?

20 MR. BARMEN: Objection.

21 A. No. As long as they're applied in the proper
22 context, in the individual setting, each set of
23 standards of care have to be applied
24 individually. So that answers all of your
25 questions. And it saves you a whole lot of time

374

1 and it saves me a whole lot of time.
2 Q. We are still going to go through this. If we
3 look at page 5 where it says, lumbar supports.
4 It says, there is no evidence to suggest that
5 lumbar supports such as corsets or braces have
6 therapeutic value for most patients with acute
7 low back pain.

8 Do you agree with that statement?

9 MR. BARMEN: Objection.

10 A. No, I didn't. Each and every patient is
11 specific. It's said "most". Some patients, it's
12 very appropriate, others it isn't. These are
13 individuals. This is not a class of patients,
14 they are individual patients. And if you don't
15 treat them that way, you are committing
16 malpractice, in my opinion.

17 Q. And if you turn to, pardon me, the top of page 6
18 it says, paraspinal injections. It says a
19 variety of injections -- this is at the top of
20 page 6.

21 A. I see.

22 Q. It says, variety of injections, eg, epidural
23 spinal, trigger point, or facet joint injections
24 have been advocated for patients with back pain.
25 There is little evidence to support any type of

375

1 injection for nonspecific acute low back pain.

2 MR. POPSON: Objection.

3 "Nonspecific".

4 Q. Do you agree with this, Doctor?

5 MR. BARMEN: Objection.

6 A. No, I don't.

7 Q. And what's the basis for your disagreement?

8 A. Because if you read carefully it says, there is
9 little evidence to support any type of injection
10 for nonspecific acute low back pain. My patients
11 are specific, so this is specific low back
12 because as it pertains to focal trigger points.
13 So I agree with that.

14 Q. Just a few more. We don't even need to look at
15 this one.

16 A. Peter, the answer is going to be the same.

17 Q. We have to walk through it.

18 MR. BEST: You think you're
19 dealing with someone rational, Sam. He's
20 not rational.

21 A. How many more? You said you only had a few more
22 and you pulled out 20.

23 Q. No, this is just copies.

24 A. Huh?

25 - - - -

376

1 (Thereupon, Plaintiff's Exhibit 42 was marked
2 for purposes of identification.)

3 - - - -

4 Q. This is just copies. Here is page 42.

5 A. How many more?

6 Q. I mean, Exhibit 42.

7 A. Could you please let me know how many more you
8 have, Peter, so I could know whether I need to
9 call these people back?

10 Q. This one and two more.

11 A. And then are we done?

12 Q. No. We'll be done with these studies and then
13 I'll only have a few more questions to ask, okay?

14 A. Thank you, Peter.

15 Q. Did I hand this to you?

16 A. Uh-huh.

17 Q. This is an UpToDate study -- UpToDate summary, I
18 should say of subacute and chronic low back pain:
19 Nonpharmacologic and pharmacologic treatment.

20 It says at the bottom of the first page, the
21 last sentence, most patients -- more than 85
22 percent who are seen in primary care have
23 nonspecific low back pain, which is low back pain
24 that cannot reliably be attributed to a specific
25 disease or spinal pathology.

1 Rapid improvement in pain and disability and
 2 return to work are the norm in the first month.
 3 You agree with that, Doctor?
 4 A. No.
 5 MR. BARMEN: Objection.
 6 A. It doesn't apply to the patient population we're
 7 working with. And furthermore, each patient is
 8 individual. When you're talking about an office
 9 setting patient versus a PI patient, which you're
 10 talking about, this doesn't apply at all.
 11 Q. Okay. So --
 12 A. Where else would you like to go?
 13 Q. Let's keep going to page five where it says,
 14 lumbar supports. It says, there is no compelling
 15 evidence that lumbar supports are effective in
 16 patients with chronic low back pain.
 17 Do you disagree with that?
 18 MR. BARMEN: Objection.
 19 A. Yes. First of all, we're not dealing with
 20 chronic low back. We're dealing with acute low
 21 back in this type of setting. So I would, yes, I
 22 disagree with it. And on occasion, I've seen
 23 some of my colleagues in the neurosurgical field
 24 use it for chronic low back pain.
 25 Q. If we turn to page 12, it says, transcutaneous

1 electrical nerve stimulation, which is TENS?
 2 A. Yes.
 3 Q. TENS refers to the use of a small
 4 battery-operated device to provide continuous
 5 electrical impulses via surface electrodes, with
 6 the goal of providing symptomatic relief by
 7 modifying pain perception.
 8 A meta-analysis of nine trials comparing TENS
 9 with sham, placebo, or pharmacologic therapy
 10 found no improvement in lower back pain score.
 11 Do you disagree with those findings?
 12 MR. BARMEN: Objection.
 13 A. I do.
 14 MR. POPSON: Subacute patients,
 15 nonacute patients. Objection.
 16 A. We're talking about acute patients. We're only
 17 talking about nine studies. There are thousands
 18 out there.
 19 Q. Okay. We could stipulate that the rest of this
 20 study says what it says, correct?
 21 A. Thank you. Thank you, Peter.
 22 Q. Okay. Dr. Ghoubrial, it's true that the only use
 23 for trigger point injections that is supported by
 24 any evidence-based research at all is for chronic
 25 myofascial pain syndrome?

1 MR. BARMEN: Objection.
 2 Q. And only then after aggravating factors are
 3 illuminated and more conservative treatment is
 4 attempted, such as rest, ice, compression,
 5 elevation, hot and cold pack, or oral or topical
 6 nonsteroidal anti-inflammatory drugs.
 7 MR. BARMEN: Objection. Asked and
 8 answered multiple times six hours ago.
 9 A. No. It works quite well in the acute setting.
 10 It's ideal to alleviate pain. And it allows you
 11 to avoid narcotic analgesics. I testified to
 12 that ten times already.
 13 - - - -
 14 (Thereupon, Plaintiff's Exhibit 43 was marked
 15 for purposes of identification.)
 16 - - - -
 17 Q. Here is Exhibit 43, which is another UpToDate
 18 report.
 19 A. I thought we were finished with these.
 20 Q. This is the last one.
 21 MR. BEST: He lied, as usual.
 22 A. This is the last one, Peter?
 23 Q. This is the last UpToDate report.
 24 A. Okay.
 25 MR. BEST: He will come up with

1 some other crap, don't worry.
 2 A. What would you like to look at?
 3 Q. Yes. Rheumatic disorders. It says, overview of
 4 soft tissue rheumatic disorders. You agree that
 5 myofascial pain syndrome is a rheumatic disorder,
 6 soft tissue rheumatic disorder, correct?
 7 MR. BARMEN: Objection.
 8 A. In this context, no, because they're talking
 9 about fibromyalgia, which is a rheumatic
 10 disorder. I'm talking about acute lumbar,
 11 thoracic, periscapular, cervical strain.
 12 Myofascial pain syndrome is fibromyalgia, in this
 13 setting. Disagree with it completely.
 14 MR. BEST: 11th time, by my count,
 15 that you've explained that.
 16 Q. This study distinguishes between MPS and
 17 fibromyalgia. And you see at the bottom of page
 18 six, it specifically says, myofascial pain is
 19 generally treated similarly to fibromyalgia.
 20 A. Again, myofascial pain, depending on terminology,
 21 depending on the group that you're talking to,
 22 myofascial is sometimes synonymous with
 23 fibromyalgia. I'm talking about acute lumbar
 24 strains as a result of a whiplash injury or a
 25 blunt force trauma injury. It doesn't apply

1 here.

2 Q. Well, it does say that trigger point injections

3 using dry needling saline, or botulinum toxin,

4 have been effective in clinical trials for the

5 treatment of myofascial pain.

6 A. I don't disagree.

7 Q. Okay. You agree with that. Now, if we proceed

8 to the next page or page 7, there is general

9 initial approach. It says, six points of

10 management can often be initiated during the

11 first visit in a patient with a suspected soft

12 tissue rheumatic disorder, even before the

13 results --

14 MR. BEST: Objection. There is no

15 patient that he has described that fits

16 this category. Why are you doing this?

17 Q. -- appropriate laboratory or radiologic tests are

18 available. And these six points are, to exclude

19 systemic disease, eliminate aggravating factors,

20 explain the illness, provide self-help

21 strategies, provide pain relief, and explain the

22 prognosis.

23 You don't disagree with that, do you, Doctor?

24 MR. BARMEN: Objection.

25 A. This is outside the context of the acute lumbar,

1 thoracic, perispinal, periscapular, cervical

2 strain involved in a motor vehicle accident.

3 And I do perform a comprehensive history. I

4 explain their illness. I provide them with

5 referrals to physical therapists, if they need

6 it. And I explain the prognosis. And I provide

7 pain relief, so everything in here I'm being --

8 I'm doing.

9 Q. If you turn the page to page 9 it says, under

10 pain relief, refers to acute injuries from

11 myofascial pain syndromes.

12 You agree that when you're treating trigger

13 points, you are treating myofascial pain, acute

14 myofascial pain, correct?

15 MR. BARMEN: Objection.

16 MR. BEST: Objection. He has

17 answered this repeatedly.

18 Q. You don't deny that, do you, Doctor?

19 MR. POPSON: Objection. Go ahead.

20 Q. Doctor, you don't deny that?

21 A. No, I don't.

22 Q. Okay. And it says, pain -- it says under pain

23 relief, acute injuries should be treated with the

24 RICE regimen: Rest, ice, compression of injured

25 tissue, and elevation.

1 Then it goes on to say, despite the paucity

2 of adequate controlled clinical studies, heat and

3 cold modalities have been used for many years in

4 the treatment of musculoskeletal disorders.

5 A. There is no con --

6 MR. BARMEN: Wait. There is no

7 question now.

8 Q. Then lower on the page, at the bottom, it says,

9 in addition to the RICE regimen, other simple,

10 frequently used measures include use of oral or

11 topical nonsteroidal or antiinflammatory drugs,

12 and other topical applications with agents such

13 as lidocaine or capsaicin.

14 A. Yeah.

15 Q. After that, it says, If simple measures have not

16 sufficed, injecting the affected area with a

17 long-acting glucocorticoid-local anesthetic

18 mixture can be effective in bursitis, tendinitis,

19 carpal tunnel syndrome, or MPS.

20 You agree with that, correct?

21 MR. BARMEN: Objection.

22 MR. BEST: Objection.

23 A. It depends on the case, it depends on the

24 patient. Sometimes it's appropriate in the acute

25 setting, sometimes it's appropriate in a

1 long-term care setting. I've already answered

2 the question.

3 Q. You understand, Dr. Ghoubril, that the use of

4 steroids in trigger point injections is -- strike

5 that.

6 You agree that what this overview that we're

7 looking at here with Exhibit 43, very clearly

8 states that trigger point injections can be

9 effective only if simple measures have not

10 sufficed.

11 You're not denying that that's what this --

12 this research says?

13 MR. BARMEN: Objection.

14 MR. BEST: Objection.

15 MR. POPSON: Objection.

16 MR. MANNION: Objection.

17 Mischaracterization.

18 MR. BEST: He's addressed it.

19 A. Right. I already addressed it. I know what it

20 says.

21 MR. BEST: Ad nauseam.

22 A. I don't necessarily agree with it, because as I

23 stated to, you have to apply it on a case-by-case

24 basis.

25 MR. BARMEN: And you also have to

1 compare apples to apples, which this does
 2 not do.
 3 Q. This is page 10. Okay.
 4 Let's go back to the Alvarez exhibit. I
 5 think it's 2 or 3. It's Exhibit -- I think it's
 6 Exhibit 2.
 7 MR. BEST: I told you he was
 8 lying.
 9 MR. BARMEN: Of course.
 10 Q. You understand, Dr. Ghoubrial, that --
 11 MR. BARMEN: Wait. Wait. You got
 12 to find Exhibit 2.
 13 MR. PATTAKOS: Well, I'm going to
 14 ask him a question before I'm going to ask
 15 him about the exhibit.
 16 Q. Do you understand, Dr. Ghoubrial, that the use of
 17 steroids in trigger point injections is
 18 contraindicated?
 19 MR. BEST: Objection.
 20 MR. BARMEN: Objection.
 21 A. The use of what?
 22 Q. Steroids.
 23 MR. BEST: That's retarded.
 24 A. No, I don't understand that.
 25 MR. PATTAKOS: What did you say,

1 David?
 2 MR. BEST: I said it's retarded.
 3 If you would study the medical literature
 4 in reality, you would know that your
 5 statement is retarded.
 6 Q. Let's take a look at page 7 of this Exhibit 2,
 7 which is, again, the Alvarez study --
 8 A. We've already gone over it.
 9 Q. -- published in -- well, we haven't gone over
 10 this part. And I want to see how retarded this
 11 statement is that David is taking such issue
 12 with, Dr. Best.
 13 MR. BARMEN: Here's mine, so you
 14 don't have to dig it out of that pile.
 15 Q. Okay. If we look at, it's page 658 on the
 16 bottom. I'm sorry, this is -- this prints out
 17 differently than it is on the computer.
 18 A. That's okay, Peter.
 19 Q. One, two, three, four, five. It's the fifth page
 20 of the document and it's --
 21 A. Absolutely, Peter --
 22 Q. -- page 658.
 23 A. -- what could we do to help you?
 24 Q. Where it says, injection solutions, in the second
 25 column there, you see --

1 A. Yes. Very good.
 2 Q. It says, an injectable solution of one percent
 3 lidocaine or one percent procaine is usually
 4 used. Several other substances, including
 5 diclofenac, Voltaren, botulinum toxin type A,
 6 Botox, and corticosteroids have been used in
 7 trigger-point injections.
 8 However, these substances have been
 9 associated with significant myotoxicity.
 10 Procaine has the distinction of being the least
 11 myotoxic of all local injectable anesthetics.
 12 You disagree with that statement, Doctor?
 13 A. Yeah.
 14 MR. BARMEN: Objection.
 15 A. Marcaine, lidocaine are short acting anesthetics.
 16 They're used throughout every single ER to numb
 17 up every single patient who has had any kind of
 18 laceration. And they are used by virtually every
 19 rheumatologist and they're used by me.
 20 I completely disagree with that. We mix them
 21 up and we use them together and we get good
 22 results.
 23 Q. The issue wasn't with the Marcaine, Doctor, it's
 24 with the steroid, isn't it?
 25 MR. BARMEN: Objection.

1 A. Any long-term use of glucocorticoids, by meaning
 2 a year or more, could be detrimental. But when
 3 you're giving someone just a series of trigger
 4 point injections, I have never seen a problem
 5 with that.
 6 Q. Kenalog is a steroid, correct?
 7 A. Correct.
 8 Q. And it has been associated with significant
 9 myotoxicity; has it not?
 10 MR. BARMEN: Objection.
 11 A. In long, long-term administration, not short.
 12 Q. Well, if we look at -- that statement says --
 13 that statement cites footnotes 10 and 19, there
 14 is a study by Travell and Simons and a study --
 15 A. I'm telling you --
 16 Q. -- by Fischer.
 17 A. -- I'm aware of the studies. Only long-term use
 18 of glucocorticoids are detrimental.
 19 Q. Okay.
 20 MR. BEST: That is what Dr. Best
 21 said. That's interesting.
 22 MR. BARMEN: God, I admire you.
 23 MR. BEST: Do what I did for
 24 44 years, you pick up a couple of things.
 25 A. Peter, do you have anything else?

389

1 Q. I do, Doctor.
 2 A. Or could I go? I have other things that I need
 3 to attend to, patient-wise.
 4 Q. Doctor, what is Twin Crown Properties?
 5 MR. BARMEN: Objection.
 6 A. Twin Crown Properties, I have no idea.
 7 Q. Do you have any real estate investments with
 8 Danny Karam?
 9 MR. BARMEN: Objection.
 10 A. None.
 11 Q. Have you ever worked with Danny Karam on any
 12 business adventure?
 13 MR. BARMEN: Objection.
 14 A. Not that I can recall, no.
 15 Q. Have you ever invested in any real estate that
 16 Danny Karam assisted you on the transaction with,
 17 in any way?
 18 MR. BARMEN: Objection.
 19 A. Not to my recollection, no.
 20 Q. Why did Josh Jones leave your practice?
 21 A. He wanted to be closer to Columbus. He felt that
 22 that was more of a metropolis for him.
 23 Q. Any other reason?
 24 A. Not that I know of.
 25 Q. Do you own any other companies besides Clearwater

390

1 and Sam Ghoubrial, MD, Inc.?
 2 A. GLTCP.
 3 Q. What is GLTCP?
 4 A. Geriatric Long-Term Care Providers.
 5 Q. And that is your nursing home practice?
 6 A. It's nurse practitioners, yes.
 7 Q. What is Handchrist, LLC?
 8 A. It was just a DBA that no longer exists.
 9 Q. What was the purpose of that DBA?
 10 A. Initially, it was set up by my attorney, Chad
 11 Brenner. And it was very complicated. And we
 12 just did away with that. So it was something
 13 that was set up that was never really put to much
 14 use.
 15 Q. Doctor, the private plane that we spoke about
 16 earlier, that you owned an ownership -- that you
 17 had an ownership interest in --
 18 A. Yes.
 19 Q. -- you created an LLC, a corporation to hold your
 20 share of the airplane, correct?
 21 MR. BARMEN: Objection.
 22 A. It never matriculated. It was TPI, but we never
 23 used it.
 24 Q. TPI Airways?
 25 A. Yeah.

391

1 Q. Why did you name the airplane TPI Airways?
 2 A. I don't know.
 3 Q. Does it have anything to do with Trigger point
 4 injections?
 5 A. No.
 6 Q. Dr. Ghoubrial, you're aware that health insurance
 7 companies only pay for trigger point injections
 8 under extremely limited circumstances, aren't
 9 you?
 10 MR. BARMEN: Objection.
 11 A. No.
 12 - - - -
 13 (Thereupon, Plaintiff's Exhibit 44 was marked
 14 for purposes of identification.)
 15 - - - -
 16 Q. Here is Exhibit 44. Anthem is an insurance
 17 company that you do business with, isn't it,
 18 Doctor?
 19 A. Not in the personal injury side, no.
 20 Q. No, in your family -- in your internal medicine
 21 practice, you do accept care from Anthem,
 22 correct?
 23 A. Correct.
 24 Q. You are an approved provider for Anthem, correct?
 25 A. Correct.

392

1 Q. Do you know what a clinical UM guideline is
 2 published by an insurance company?
 3 A. Vaguely.
 4 Q. What do you understand this to be?
 5 A. I think it's an overall practice guideline.
 6 Q. Well, doesn't this describe and limit the
 7 circumstances under which an insurance company is
 8 going to pay for particular treatment?
 9 MR. BARMEN: Objection.
 10 A. Again, it doesn't apply to what we're talking
 11 about.
 12 Q. Doctor, it applies to the circumstances under
 13 which Anthem is going to pay for trigger point
 14 injections, is --
 15 A. We're not --
 16 Q. -- is it not?
 17 MR. BARMEN: Objection.
 18 A. We're not credentialed with Anthem.
 19 Q. You are under the family -- you are under the
 20 internal medicine practice?
 21 A. Did you name the internal medicine practice?
 22 Q. Are you not going to answer questions about this
 23 document, Doctor?
 24 A. All I'm telling you is, it's not relevant. I
 25 don't know anything about this document. And

393

395

1 I've never seen it.

2 **Q.** Well, it's says that for trigger point injection

3 to be considered medically necessary all of these

4 general and specific criteria have to be met.

5 It says, A, there is a regional pain

6 complaint and a neurological, orthopedic, or

7 musculoskeletal system evaluation, which includes

8 the member's description of pain as it relates to

9 location, quality, severity, duration, timing,

10 context, and modifying factors. Followed by a

11 physical examination of associated signs and

12 symptoms.

13 And conservative therapy, for example,

14 physical or chiropractic therapy, oral analgesia,

15 steroids, relaxants or activity modification

16 fails or is not feasible.

17 And when necessary to facilitate mobilization

18 and return to activities of daily living, an

19 aggressive regimen of physical therapy or other

20 therapeutic modalities. And the response to

21 therapy must be documented for medical review

22 prior to additional therapy authorizations.

23 Additionally, the pain complaint or altered

24 sensation in the expected distribution of

25 referred pain from a trigger point and the taut

1 you provide to the clients of your personal

2 injury clinic would not meet these standards;

3 would it, Doctor?

4 **MR. BARMEN:** Objection.

5 **A.** In the private practice setting, we never, to my

6 recollection, give trigger point injections.

7 **Q.** I appreciate that information, but I also want

8 you to confirm that your delivery of trigger

9 point injections in the personal injury practice

10 does not meet these standards, does it?

11 **MR. BARMEN:** Objection.

12 **A.** Not necessarily. Each patient is specific.

13 **Q.** Well, you typically do not wait for conservative

14 therapy to fail before you administer trigger

15 point injections; do you, Doctor?

16 **MR. BARMEN:** Objection.

17 **A.** It depends on the case. It depends on the

18 patient.

19 **Q.** All of the files that we looked at today, you did

20 not wait for conservative therapy to fail, did

21 you, Doctor?

22 **MR. BARMEN:** Objection.

23 **A.** You looked at 13 out of several thousand.

24 **Q.** And none of those files did conservative therapy

25 -- could conservative therapy have been

394

396

1 band palpable in an accessible muscle when the

2 trigger point is myofascial. And exquisite spot

3 tenderness at one point along the length of the

4 taut band when the pain is myofascial.

5 And some degree of restricted range of motion

6 of the involved muscle or joint, when measurable.

7 And the above specific criteria are associated

8 with at least one of the following minor

9 criteria.

10 Reproduction of clinical pain complaint or

11 altered sensation by pressure on the tender spot.

12 Or local response twitch elicited by snapping

13 palpation at the tender spot or by needle

14 insertion into the tender spot. Or pain

15 alleviation by elongating, stretching the muscle,

16 or by injecting the tender spot.

17 Your delivery of trigger point injections

18 does not meet this criteria, does it, Doctor?

19 **MR. BARMEN:** Objection.

20 **MR. BEST:** Objection.

21 **A.** Each patient is specific. I treat them

22 individually. These are just guidelines. You

23 can't put a whole group of patients in one set of

24 guidelines. Each patient is different.

25 **Q.** Doctor, what I'm saying is, the treatment that

1 legitimately determined to fail, could it,

2 Doctor?

3 **MR. BARMEN:** Objection.

4 **A.** They were already in conservative therapy.

5 **Q.** Most of the trigger point injections that your

6 practice delivered to these patients, were

7 delivered within a week or three weeks of the

8 accident.

9 You understand that, don't you, Doctor that

10 conservative therapy has to proceed for more than

11 a week to three weeks before that trigger point

12 injections could be given under these criteria?

13 **MR. BARMEN:** Objection.

14 **A.** Depending on the patient. Just another set of

15 criteria.

16 **MR. BEST:** Peter would send

17 everyone home in excruciating pain. That's

18 a much better treatment.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit 45 was marked

21 for purposes of identification.)

22 - - - -

23 **Q.** Here is Exhibit 45.

24 **MR. BEST:** Who cares if they're

25 hurt.

397

1 MR. POPSON: Insurance won't pay
 2 for it, so too bad.
 3 MR. BEST: Yeah. Sorry, I'm in
 4 pain. Your shit insurance company won't
 5 pay for it.
 6 MR. BARMEN: May I have one,
 7 please?
 8 Q. This is Cigna's medical coverage policy for
 9 minimally invasive intradiscal/annular procedures
 10 and trigger point injections.
 11 A. Peter, you said you wanted an hour. You have got
 12 ten minutes left.
 13 Q. We're almost done, Doctor.
 14 MR. BARMEN: Don't believe him.
 15 MR. BEST: Another lie.
 16 A. Okay. So in ten minutes I could go; is that what
 17 you're saying?
 18 Q. I'm not saying that.
 19 A. 15 minutes? What are you saying exactly? Peter?
 20 Q. Doctor, you agree that under this coverage policy
 21 for Cigna -- first, let me back up, your
 22 practice -- your internal medicine practice,
 23 accepts payment from Cigna, correct?
 24 A. Correct.
 25 Q. And it says here on the first page, trigger point

398

1 injection --
 2 MR. BARMEN: Objection. Do we
 3 have to read the whole thing again --
 4 Q. -- of anesthetic or corticosteroid --
 5 MR. BEST: It's part of the
 6 record, Peter. You really are bizarre --
 7 Q. For diagnosis, stabilization --
 8 MR. BEST: -- it's 8:00 at night.
 9 He's got to go see patients at a nursing
 10 home. I have got other things I've got to
 11 do. I have a 7:00 a.m. flight. You know,
 12 this is retarded.
 13 A. Peter, why don't you get to the questions?
 14 MR. BEST: You don't have to read
 15 the words that are typed on pages. You
 16 have done it for five hours.
 17 THE WITNESS: Six hours. Peter,
 18 come on, let's be reasonable.
 19 Q. -- of subacute or chronic back, or neck pain, or
 20 subacute or chronic myofascial pain syndrome is
 21 considered medically necessary when pain has
 22 persisted despite appropriate conservative
 23 treatment, including pharmacological therapy,
 24 physical therapy, and/or a home-exercise program.
 25 You agree, Dr. Ghoubrial, that the treatment

399

1 that you provide to the patients in the personal
 2 injury practice, does not meet this -- does not
 3 meet this requirement, correct?
 4 MR. BARMEN: Objection.
 5 MR. BEST: Objection. This is not
 6 a requirement. This is ridiculous.
 7 MR. MANNION: Objection.
 8 A. It's not a requirement. It's a guideline. And
 9 on top of that, I've told you 100 times, these
 10 are acutely injured patients, in a different
 11 setting, who don't have this particular type of
 12 insurance or any insurance, for that matter.
 13 And these are only guidelines, that are
 14 recommendation. So, Peter, let's cut to the
 15 chase here. Where are your real questions?
 16 Q. Doctor, my question is that this doesn't refer to
 17 trigger point injections for acute pain at all,
 18 does it?
 19 MR. BARMEN: Objection.
 20 A. It doesn't matter. I told you, each patient is
 21 specific. Sometimes it's appropriate, sometimes
 22 it isn't.
 23 Q. Doctor, this -- what this says is that Cigna will
 24 not pay for trigger point injections delivered to
 25 treat acute pain; does it not say that?

400

1 MR. BARMEN: Objection. Where
 2 does it say that?
 3 MR. PATAKOS: Well, this says
 4 they will only pay for trigger point
 5 injections for diagnosis or stabilization
 6 of subacute or chronic back or neck pain,
 7 or subacute or chronic myofascial pain
 8 syndrome.
 9 MR. POPSON: Now, he knows what
 10 subacute means.
 11 MR. BARMEN: You're reading one
 12 paragraph --
 13 MR. PATAKOS: I'm reading the
 14 last paragraph, the diagnostic,
 15 stabilization phase.
 16 MR. BARMEN: -- of a, how many page
 17 document?
 18 MR. MANNION: Well, ask Richie
 19 Harbour why it helped so much?
 20 Q. There is nothing in here that says they will
 21 compensate for trigger point injections used to
 22 treat acute pain, is there, Doctor?
 23 MR. BARMEN: Objection.
 24 MR. POPSON: Objection.
 25 A. It doesn't matter. It's irrelevant.

401

1 MR. POPSON: Insurance companies
 2 won't pay for it, so why not turn it into
 3 your insurance company?
 4 - - - -
 5 (Thereupon, Plaintiff's Exhibit 46 was marked
 6 for purposes of identification.)
 7 - - - -
 8 Q. Here is Exhibit 46. This is the local coverage
 9 determination for trigger points and local
 10 injection from CMS.
 11 Do you have any reason to doubt that's the
 12 case, Doctor?
 13 A. No.
 14 MR. BARMEN: Objection.
 15 MR. BEST: Who cares? It's 8:00,
 16 Peter --
 17 Q. It says --
 18 MR. BEST: -- could he go see his
 19 patients in the nursing home?
 20 Q. It says on the fourth page, the goal is to
 21 identify and treat the cause of the pain and not
 22 just the symptom of the pain.
 23 After making the diagnosis of myofascial pain
 24 syndrome and identifying the trigger point
 25 responsible for it, the treatment options are:

402

1 Medical management, including the use of
 2 anti-inflammatory agents, tricyclics, et cetera.
 3 No. 2, stretch and use of coolant spray
 4 followed by hot packs and/or aerobic exercises.
 5 Number three, application of low intensity
 6 ultrasound directed at the trigger point. This
 7 approach is used when the trigger point is
 8 otherwise inaccessible.
 9 Then deep muscle massage. Then, number five,
 10 injection of local anesthetic into the muscle
 11 trigger points.
 12 A. It's one approach.
 13 Q. And this is the approach that is defined in
 14 Medicare and Medicaid's guidelines, correct,
 15 Doctor?
 16 MR. BEST: Objection.
 17 MR. POPSON: Objection.
 18 A. It's a guideline. It's not a hard and fast rule.
 19 Q. You think Medicare is going to pay for trigger
 20 point injections that are not administered
 21 according to these guidelines; is that your
 22 testimony?
 23 MR. BARMEN: Objection.
 24 A. What I'm saying is, sometimes I do things that
 25 Medicare pays for, but are -- are covered and

403

1 they will pay for it. Sometimes I do thing that
 2 are necessary for the patient that they don't pay
 3 for. We get denied coverage all the time. It
 4 doesn't matter. I do what's best for the
 5 patient. So that's it.
 6 Could you show me the next study, Peter?
 7 - - - -
 8 (Thereupon, Plaintiff's Exhibit 47 was marked
 9 for purposes of identification.)
 10 - - - -
 11 Q. Here is Exhibit 47. This is Blue Cross and Blue
 12 Shield of Tennessee Medical Policy Manual
 13 relating to trigger point injection therapy.
 14 A. I'm not in Tennessee, so --
 15 Q. No, you're not. Do you think the standards are
 16 different there?
 17 MR. BARMEN: Objection.
 18 A. Oh, yeah. They vary state by state.
 19 Q. Do you think Blue Cross and Blue Shield is going
 20 to pay for trigger point injections under
 21 different circumstances in Ohio than they do in
 22 Tennessee?
 23 MR. BARMEN: Objection.
 24 A. I don't know.
 25 Q. Is there any reason why that would be the case,

404

1 that you could identify right now, Doctor?
 2 A. No --
 3 MR. BARMEN: Objection.
 4 A. -- not that I know of.
 5 MR. MANNION: I'm going to object.
 6 As if there is some duty for any physician
 7 to make his practice specific to insurance
 8 and that they control how medical care is
 9 given.
 10 Medicare doesn't even provide for
 11 most dental care. Does that mean that
 12 people who are on Medicare shouldn't get
 13 dental care? This line of questioning is
 14 ridiculous.
 15 A. Peter, I'll give you the answer. I provide the
 16 care irrespective of whether it's going to be
 17 paid for or not, whether it's in the private
 18 setting or in the personal injury setting.
 19 A lot of the care that I do, the insurance
 20 companies deny. We have to fight them on it.
 21 And sometimes they cover it, sometimes they
 22 don't.
 23 Q. So this is a policy for trigger point injections.
 24 And in the description it says, trigger point
 25 injection therapy is used for the treatment of

1 myofascial pain syndrome. It doesn't identify
 2 anything else here, other than myofascial pain
 3 syndrome, does it, Doctor?
 4 MR. BARMEN: Wait. But it is
 5 talking about myofascial pain syndrome as a
 6 chronic condition, that's what this relates
 7 to.
 8 MR. PATTAKOS: Yes.
 9 MR. BARMEN: Of course, you don't
 10 want to point that out.
 11 MR. PATTAKOS: It relates to
 12 trigger point injections.
 13 THE WITNESS: No.
 14 MR. PATTAKOS: The top of the
 15 documents say --
 16 MR. BARMEN: Trigger point
 17 injections for myofascial pain syndrome, a
 18 chronic condition.
 19 A. We're talking about acute, Peter. So you're not
 20 helping yourself, Peter, you're hurting yourself.
 21 Q. Doctor --
 22 MR. MANNION: Do you have any
 23 understanding of medicine?
 24 Q. -- do you see where, pain that persists, this is
 25 in the third paragraph, pain that persists for

1 Q. Insurance companies don't pay for TENS units, do
 2 they, Doctor?
 3 MR. BARMEN: Objection.
 4 A. I don't know.
 5 Q. Well, Aetna doesn't, do they?
 6 MR. BARMEN: Objection.
 7 A. I don't give them out.
 8 Q. You don't give them out to your -- your internal
 9 medicine practice patients, Doctor; is that what
 10 you were just going to say?
 11 MR. BARMEN: Objection.
 12 A. We don't utilize them in the internal medicine
 13 side of our practice. Typically, if they have
 14 that kind of re-factoring pain, we try NSAIDS, we
 15 use pain management. We use a whole litany of
 16 things.
 17 - - - -
 18 (Thereupon, Plaintiff's Exhibit 48 was marked
 19 for purposes of identification.)
 20 - - - -
 21 Q. This is Exhibit 48. It's Aetna's policy on TENS
 22 units.
 23 A. Plus, for this, you need to have a DME. So you
 24 have to have a durable medical equipment and we
 25 don't have that for insurance companies. You

1 extended periods of time generally greater than
 2 three months, and fails to be alleviated with
 3 conservative approaches, may be treated with
 4 injections of local anesthetics,
 5 anti-inflammatory drugs, and/or corticosteroid in
 6 an attempt to deactivate the trigger point.
 7 MR. BARMEN: Right. When you're
 8 dealing with chronic MPS.
 9 Q. You agree, Doctor, that your delivery of trigger
 10 point injections in your personal injury practice
 11 does not comply with this standard?
 12 MR. BARMEN: Objection.
 13 A. It's a case-by-case --
 14 MR. MANNION: Objection. That
 15 standard doesn't apply.
 16 A. It's a case-by-case basis. I don't treat my
 17 patients depending on what the insurance company
 18 will or will not pay for. So you could save that
 19 next study as well, because you're going to get
 20 the same answer.
 21 MR. PATTAKOS: I don't need this.
 22 THE WITNESS: You don't need any
 23 of them.
 24 Q. Okay.
 25 A. What other questions do you have, Peter?

1 have to be a DME supplier. So we couldn't do it
 2 if we wanted to. That's why we can't.
 3 Q. Doctor, it says here on the second paragraph --
 4 A. Peter, you're not listening. It doesn't matter,
 5 because you have to have a durable medical
 6 equipment license when you give TENS units on the
 7 insurance side.
 8 Q. I appreciate that, Doctor. I want to ask you a
 9 question about this, the second paragraph here.
 10 Aetna considers TENS experimental and
 11 investigational for acute pain, less than three
 12 months duration, other than post-operative pain.
 13 TENS is also considered experimental and
 14 investigational for any of the following, not an
 15 all-inclusive list, because there is inadequate
 16 scientific evidence to support its efficacy for
 17 these specific types of pain.
 18 You see chronic low back pain is listed here
 19 as is fibromyalgia.
 20 A. We're talking about traumatic patients here, so I
 21 don't know what you're talking about.
 22 Q. It says that it is not -- TENS is experimental
 23 and investigational for acute pain of less than
 24 three months duration.
 25 You, agree, Doctor, that your delivery of

409

1 TENS units to your personal injury clients often
 2 violates this policy?
 3 MR. BARMEN: Objection.
 4 MR. BEST: Objection.
 5 MR. BARMEN: A, it's not a policy.
 6 Go ahead.
 7 MR. PATTAKOS: It says "policy".
 8 MR. BARMEN: It's not a policy
 9 that applies to him.
 10 THE WITNESS: The policy doesn't
 11 apply to me.
 12 MR. PATTAKOS: I'm not asking
 13 whether it applies to him or not.
 14 MR. BARMEN: So you're asking if
 15 he is somehow held to this standard?
 16 THE WITNESS: No, I'm not held to
 17 that standard, Peter. I don't use it. I
 18 do what's best for the patient. Do you
 19 have any more questions?
 20 MR. PATTAKOS: I sure do.
 21 MR. MANNION: Doctor, why don't
 22 you let Aetna determine how you practice
 23 medicine? I don't understand.
 24 MR. PATTAKOS: We could go through
 25 these briefly.

410

1 - - - -
 2 (Thereupon, Plaintiff's Exhibits 49, 50, and
 3 51 were marked for purposes of
 4 identification.)
 5 - - - -
 6 THE WITNESS: What is this?
 7 THE VIDEOGRAPHER: I need to
 8 change the tape.
 9 MR. PATTAKOS: Okay.
 10 THE VIDEOGRAPHER: We're going off
 11 the record. This is the end of tape number
 12 5. The time is 8:06.
 13 - - - -
 14 (Off the record.)
 15 - - - -
 16 THE VIDEOGRAPHER: We're back on
 17 the record. This is the beginning of tape
 18 number 6. The time is 8:08.
 19 MR. MANNION: Doctor, where were
 20 you when Norris was treated by Dr. Gunning?
 21 THE WITNESS: I was in Columbus.
 22 MR. MANNION: Thank you.
 23 MR. PATTAKOS: Have I marked these
 24 discovery requests yet?
 25 MR. BARMEN: You gave it to me,

411

1 you haven't given it to him. You gave me
 2 the RPDs as 49.
 3 MR. PATTAKOS: 49 for the
 4 interrogatories, 50 for the request for
 5 admission, and 51 for the request for
 6 production of documents.
 7 Q. Dr. Ghoubrial, have you seen these documents
 8 before?
 9 MR. BARMEN: Wait. Let me make
 10 sure I got them numbered right. You gave
 11 them to me differently, Peter.
 12 MR. PATTAKOS: Do you have the
 13 request for admission?
 14 MR. BARMEN: I don't. You didn't
 15 give me the rogs either.
 16 MR. PATTAKOS: You have them.
 17 MR. BARMEN: No, you gave me the
 18 RPDs and you gave me the RFAs. You didn't
 19 give me the rogs.
 20 MR. POPSON: Probably an extra one
 21 sitting over there somewhere. First set of
 22 interrogatories?
 23 MR. BARMEN: Yeah, thanks. I
 24 think we lost Tom.
 25 MR. MANNION: Hello.

412

1 MR. BARMEN: We lost you. You are
 2 back.
 3 MR. MANNION: Yep.
 4 A. You said 20 minutes.
 5 Q. Have you seen those documents, Doctor?
 6 A. I believe we have, yes.
 7 Q. Have you reviewed all of those responses and
 8 verified that they are true, to the best of your
 9 knowledge?
 10 A. Yes.
 11 Q. And they are, in fact, true to the best of your
 12 knowledge, those responses, correct?
 13 A. Yes.
 14 Q. And you reviewed them carefully and made sure of
 15 that?
 16 A. To the best of my knowledge, yeah.
 17 Q. Okay. Dr. Ghoubrial, Dr. Gunning testified to
 18 your use of the term nigger point injections and
 19 afro-puncture in casually referring to your
 20 practice.
 21 MR. BEST: That is not what he
 22 said.
 23 MR. BARMEN: Objection. That is
 24 not what he said, and you know it.
 25 MR. BEST: That's a damn lie.

413

1 A. You know, that's extremely offensive to me since
 2 I'm probably the only one in this room that is
 3 African-American. And I take that as a personal
 4 insult from you.
 5 Q. So you claim that the term n-i-g-g-e-r is a slur
 6 that offends Egyptian-Americans?
 7 A. All people who are of African-American descent it
 8 offends, including myself.
 9 Q. Are you claiming that you are not Caucasian,
 10 Doctor?
 11 MR. BARMEN: Objection.
 12 A. I'm from the Middle East.
 13 Q. Do you understand the differences between the
 14 Caucasian Race, the Negroid Race, and the
 15 Mongoloid Race, Doctor?
 16 MR. BARMEN: Objection.
 17 A. All I could tell you is I'm from the Middle East
 18 and I don't have white skin. So if you're some
 19 kind of a racist, trying to take a jab at me, I
 20 don't appreciate it.
 21 Q. But you did use those terms, didn't you, Doctor?
 22 MR. BARMEN: Objection.
 23 A. Not to my recollection. And I never used them
 24 towards any of my patients. I've nothing but the
 25 upmost respect. And I've served the minority

414

1 community for over 25 years, and continue to do
 2 so.
 3 Q. So is Dr. Gunning lying when he says he has heard
 4 you use those terms several times?
 5 MR. BARMEN: Objection.
 6 MR. BEST: Kidding with his white
 7 friends --
 8 MR. MANNION: I'm going to object.
 9 He never said to a patient.
 10 MR. BEST: -- you lying dog.
 11 A. It may have been taken out of context. And it
 12 was never directed at anybody, but a Caucasian.
 13 Q. So you have used those terms?
 14 A. Again, I may have in jest, I don't recall.
 15 Q. How would the term afro-puncture relate to a
 16 Caucasian?
 17 MR. BARMEN: Objection.
 18 A. I don't even know that I used that term.
 19 Q. Dr. Gunning says that you did. He said it this
 20 morning.
 21 A. Well --
 22 MR. BARMEN: Objection.
 23 A. -- I can't speak to what Dr. Gunning said or what
 24 he didn't say.
 25 Q. Why would you use the term n-i-g-g-e-r point

415

1 injections to refer to Caucasian people?
 2 A. I never have.
 3 Q. Now, you're saying you never have used those
 4 terms?
 5 MR. BEST: Objection.
 6 A. I said I may have made some racial slurs towards
 7 Dr. Gunning, but it may have been in locker room
 8 jest decades or more ago. But I have always --
 9 never treated my patients with any kind of
 10 disrespect. And I've never used them towards an
 11 African-American.
 12 I've used them towards Dr. Gunning. I called
 13 him that. And I think you could ask him that, if
 14 you'd like.
 15 MR. BARMEN: He did.
 16 Q. Dr. Gunning testified that you took an aggressive
 17 approach to patients who were needle-phobic. Do
 18 you agree with that?
 19 MR. BARMEN: Objection.
 20 A. No.
 21 Q. Well, I am going to read you some of his
 22 testimony.
 23 MR. BEST: How would he know?
 24 He's never been in the room. This is
 25 retarded. Good lord, you have no shame, I

416

1 mean, none. You have reached the category
 2 of the amoral human being.
 3 Q. Here we go. Okay. I asked Dr. Gunning, when we
 4 spoke on the phone on October 2nd, you told me
 5 that Dr. Ghoubrial instructed you when treating
 6 these patients to sneak the needles into the
 7 client's back when they weren't looking.
 8 Dr. Gunning said, what I said was, he has,
 9 referring to you, his own way of dealing with
 10 these clients, especially people who might be
 11 needle-phobic.
 12 He would say, don't necessarily say the word
 13 "needle" to them. Don't necessarily say "shot."
 14 Tell them that you want to put the medication
 15 right where the pain is. And that was his
 16 approach to informed consent.
 17 I tended to be more likely to show the
 18 patient the needle. And, of course, as a
 19 result -- let me stop there. Is what he's
 20 describing, true?
 21 MR. BARMEN: Objection. Wait a
 22 minute. So once again you misrepresented
 23 something to the witness. When you said,
 24 the testimony was he took an aggressive
 25 approach. Go ahead.

417

1 A. We have two different approaches to practice. My
2 use of trigger point injections, when I can, is
3 to try and avoid patients utilizing narcotic
4 analgesics.

5 Dr. Gunning is his own man and he's free to
6 treat the patients the way he likes.

7 Q. Is this true, Dr. Ghoubrial, what Dr. Gunning is
8 describing about the way you administer
9 injections to people who might be needle-phobic?

10 MR. BARMEN: Objection.

11 A. I think it's a complete misunderstanding.

12 Q. How is it a misunderstanding?

13 A. I discuss each and every patient that receives a
14 trigger point injection, what the risks, what the
15 benefits are. I have to clean and prep the area
16 with alcohol. I have to localize the area. So
17 it's impossible to sneak up on them.

18 You have to get them to take off their shirt,
19 then you have to clean the area, you have to find
20 the trigger point, then you have to administer
21 it. So how could you possibly sneak up on them?

22 Q. So, you're saying that Dr. Gunning's testimony
23 here is not accurate?

24 MR. BARMEN: Objection.

25 A. All I'm saying is it is some kind of

418

1 misunderstanding on his part.

2 Q. Okay.

3 MR. MANNION: Or
4 mischaracterization by Mr. Pattakos.

5 MR. BARMEN: That's more likely.

6 Q. Dr. Gunning, Amanda Lance, former KNR attorney --

7 MR. BARMEN: Dr. Ghoubrial.

8 MR. PATTAKOS: I'm sorry, Dr.
9 Ghoubrial. Thank you.

10 Q. Amanda Lance, a former KNR attorney from the
11 Columbus office, testified last week and the week
12 before about a client of KNR who treated with you
13 from -- at Town & Country, who advised you that
14 she was taking medications.

15 She -- Amanda described her as a white lady
16 in her 50s with short, curly white hair. Who
17 advised you that she was on certain medications
18 and that she was concerned with mixing other
19 medications with them.

20 And that you injected her with trigger point
21 injections. And that she went into a coma for
22 the next three days.

23 Do you recall anything about this instance?

24 MR. BARMEN: Objection.

25 A. Absolutely not. Never happened.

419

1 Q. It didn't happen?

2 A. Because they would have called me. My name would
3 have been on the medication that she got and the
4 ER physician would have contacted me. She didn't
5 contact me. The ER physician didn't contact me.
6 And no attorney ever contacted me, so it didn't
7 happen.

8 MR. MANNION: Just so you know,
9 Doctor, Amanda Lance also testified that
10 she BSeD the client, so take that for what
11 it's worth.

12 Q. Let's take a look back at Exhibit 24. It's Thera
13 Reid's file. Doctor, you recall that your notes
14 for Thera Reid, your chart for Thera Reid,
15 reflects that she had a broken shoulder bone --

16 MR. BARMEN: Hang on. You got it?

17 THE WITNESS: Yeah, I have it.

18 Q. And that you recommended her to see Dr. Chonko?

19 A. Correct.

20 Q. Why did you send her to Dr. Chonko --

21 MR. BEST: Asked and answered.

22 MR. BARMEN: Asked and answered.

23 Objection.

24 Q. -- as opposed to any other doctor?

25 A. Dr. Chonko is an orthopedic surgeon that I have a

420

1 great deal of confidence in.

2 Q. You send a lot of patients to him?

3 A. Some to him, some to Dr. Thorpe, some to the
4 Crystal clinic.

5 Q. Do you know whether Dr. Chonko accepts health
6 insurance payment from personal injury victims?

7 MR. BARMEN: Objection.

8 A. I don't know.

9 Q. Would it surprise you to learn that Dr. Chonko
10 told Thera Reid that he would not accept her
11 health insurance?

12 MR. POPSON: Objection.

13 MR. BEST: Objection.

14 A. I have no idea what he told Thera Reid and I
15 don't know how Dr. Chonko runs his business. I
16 know he is a good orthopedic surgeon and that's
17 why I use him.

18 Q. Did you ever follow-up with Thera Reid to
19 determine whether she got her surgery?

20 A. No. After we referred her to Dr. Chonko, it's my
21 understanding at that point he took over her
22 care.

23 Q. Do you know that Thera Reid never had that
24 surgery?

25 A. Again, as I told you earlier, it was up to Dr.

421

1 Chonko to determine whether or not she needed
2 surgery or whether she could do just fine in a
3 sling or a brace or cast. That's why I sent her
4 to him.

5 Q. Do you know that after Dr. Chonko told Thera Reid
6 that he would not operate on her unless he was
7 paid out her settlement proceeds, she shortly
8 became homeless, she was evicted from her home,
9 and was required to settle her case quickly to
10 get her children back in a home? So she never
11 received treatment from Dr. Chonko for that
12 reason.

13 MR. BARMEN: Objection.

14 Q. Did you know that that was the case?

15 MR. MANNION: I object.

16 A. Why don't --

17 MR. MANNION: Complete
18 mischaracterization.

19 A. Why don't you talk to Dr. Chonko. Let me finish,
20 Tom. Talk to Dr. Chonko about it. Simple.
21 Right?

22 Q. I think that's a good idea.

23 A. Yeah.

24 MR. PATTAKOS: You know what, give
25 me one minute here. I think we could be

422

1 done in two minutes. Setting your timer?

2 MR. BARMEN: No, because I know
3 you are full of garbage.

4 MR. MANNION: By the way, Dr.
5 Ghoubrial, Thera Reid also said she was
6 satisfied with her medical care.

7 MR. BARMEN: It doesn't matter.
8 He doesn't care.

9 THE WITNESS: I know. She came
10 back five times, so I assumed she was
11 satisfied. Yeah, we saw her on one, two,
12 three, four, five occasions, so --

13 MR. BARMEN: Sam, wait.

14 Q. Have you changed any of your business practices
15 in response to this lawsuit, Doctor?

16 MR. BARMEN: Objection.

17 A. No.

18 MR. BARMEN: Subsequent remedial
19 measures.

20 Q. Any of your medical practices?

21 MR. BARMEN: Objection.

22 A. No.

23 MR. PATTAKOS: Okay. Thanks,
24 Doctor.

25 THE VIDEOGRAPHER: This now

423

1 concludes the deposition. We're now going
2 off the record.

3 MR. BARMEN: He'll read it.

4 THE VIDEOGRAPHER: The time is
5 8:23.

424

1 SIGNATURE OF DEPONENT

2 I, the undersigned, SAM N. GHOUBRIAL, do
3 hereby certify that I have read the foregoing
4 deposition and find it to be a true and
5 accurate transcription of my testimony, with
6 the following corrections, if any:

7 PAGE LINE CHANGE REASON
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

23 _____
24 Sam N. Ghoubrial
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Chana Margareten, Brian Kuebler, Notary Publics within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed by computer-aided technology under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____, A.D. 20 ____.

Chana Margareten, Brian Kuebler Notary Publics,
State of Ohio
55 Public Square, Suite 1332
Cleveland, Ohio 44113
C. Margareten commission expires March 10, 2021
B. Kuebler commission expires June 12, 2022