

1 Cohen also AIGDC and National Union.

2 MS. SACKETT: Elizabeth Sackett, Zurich
3 American Insurance Company.

4 MR. VARGA: Good morning, your Honor. Greg
5 Varga for Zurich American Insurance Company.

6 MR. GOLDMAN: Steven Goldman for Zurich
7 American.

8 THE COURT: All right. Anything we need to
9 do before openings?

10 MR. PRITZKER: Just a few very small
11 matters, your Honor.

12 First, may we have permission that the
13 lawyers for Brown Rudnick who don't fit at counsel
14 table can sit in the jury box?

15 THE COURT: Yes, as long as they don't
16 think they're jurors.

17 MR. PRITZKER: Thank you.

18 And, secondly, an issue has arisen
19 concerning the costs which the Rhodeses were charged in
20 the underlying case. As the court may remember, we
21 were trying to put those into an affidavit from one of
22 the Brown Rudnick bookkeepers that these were the costs
23 that were kept in the ordinary course of business, that
24 they were charged to the Rhodeses and the Rhodeses

1 actually paid them.

2 THE COURT: All right. Not the costs that
3 were awarded to the Rhodeses pursuant to the statutory
4 cost of --

5 MR. PRITZKER: That's not what we're
6 talking about.

7 THE COURT: You're referring to the costs
8 incurred by them apart from -- so the actual costs.

9 MR. PRITZKER: The non-statutory costs.

10 THE COURT: Okay.

11 MR. PRITZKER: And an issue has arisen
12 because the defendants have said we will not accept
13 that because we want to be able to cross-examine the
14 bookkeeper as to the reasonableness of the costs. And
15 this particular bookkeeper, whom we could call, has no
16 idea whether those costs are reasonable or not. We
17 don't think it's relevant, because these were costs
18 that were kept in the ordinary course of business by
19 Brown Rudnick, charged to the plaintiffs and ultimately
20 deducted from the fee -- I'm sorry, deducted from the
21 net so that the plaintiffs, in effect, paid them.

22 If reasonableness is an issue, I am the
23 person who is best situated to testify as to the
24 reasonableness because, number one, I incurred a lot of

1 them and, number two, I was reviewing them on a monthly
2 basis before they were being posted. We offered that I
3 would be that person and they said you can't because
4 you represented to Judge Gants that you're not
5 intending to testify.

6 Now, I certainly don't want to do anything
7 that will be at variance with the court's understanding
8 of my representation. I do not think that the
9 reasonableness of the costs are at issue, only the fact
10 that they were posted, they were charged, and they were
11 paid. But I am the person to testify to it and unless
12 the court thinks that that's improper, in which case
13 we'll have to just get someone else who is well
14 situated to do that, but it seems like an incredible
15 waste.

16 THE COURT: Well, let's step back. Let me
17 hear from somebody from AIG or Zurich with regard to
18 the matter -- excuse me one second. I need to be
19 plugged in.

20 Okay. I'm sorry.

21 MR. ZELLE: Your Honor, a couple of
22 concerns were raised by the affidavit.

23 First, we can't discern from the affidavit
24 when the costs were incurred. Obviously, timing of

1 when costs are incurred is an issue in this case, as
2 are the timing of the claims damages generally.

3 THE COURT: Right.

4 MR. ZELLE: But more importantly, with
5 respect to Mr. Pritzker's role or, more generally,
6 establishing the reasonable cost, that's an obligation
7 of the plaintiff in any case on any issue of damages.
8 Certainly plaintiffs were well aware from day one of
9 the costs they were claiming here. They were well
10 aware of their obligation to establish the
11 reasonableness of those costs as a basis for recovering
12 them. And I think that perhaps this was something that
13 was not properly prepared by plaintiffs, but we, the
14 defendants, shouldn't suffer because they didn't
15 properly prepare their case.

16 If they wanted to present testimony on
17 reasonableness, typically you present an expert on
18 damages issues such as this. Mr. Pritzker, I'm sure,
19 could testify that that raises the quandary as to
20 whether any further involvement in this case, as
21 advocates, blurs the distinction between argument and
22 fact.

23 Obviously, your Honor, you've raised that.
24 You to some extent can discern what is argument and

1 what is fact from Mr. Pritzker, but I submit that his
 2 role as witness has to be severed. As you've observed,
 3 he's not going to be permitted to do closing argument.
 4 Inasmuch as he testifies as a -- again, we object to
 5 his testifying as a part of plaintiffs' case in chief,
 6 but if the court is inclined to allow him to do so,
 7 essentially to, at the last minute, make up for what I
 8 believe is plaintiffs' failure to make disclosures and
 9 think through what they have to think through to prove
 10 out their damages case, if you're going to allow that,
 11 then it's our position that Mr. Pritzker should not
 12 then be appearing in this case as an advocate. I
 13 certainly have no problem with his sitting at counsel
 14 table and working with his partners here, but he
 15 shouldn't be the one who's making argument.

16 THE COURT: All right. Let's hear from
 17 Zurich so I have the entirety of the defense's
 18 position.

19 MR. GOLDMAN: Thank you, your Honor. I
 20 think the rules allow Mr. Pritzker, or anyone from his
 21 firm, to testify as to what costs were incurred, but I
 22 don't believe they allow him to testify as to the issue
 23 of reasonableness, which, as Mr. Zelle properly noted,
 24 is an issue of expert opinion. There was no expert

1 opinion disclosed in connection with the disclosure of
 2 experts in this case. So we have two objections. One
 3 is there was no expert opinion disclosed. It's a
 4 subject of expert testimony; and, second, I believe it
 5 goes beyond what the rules allow as far as allowing an
 6 attorney to testify as to fees, because these are not
 7 fees, these are costs that were allegedly incurred by
 8 the Rhodeses, not legal fees. But it is an area of
 9 expert opinion.

10 Mr. Pritzker was deposed on other issues.
 11 There was no disclosure prior to that that would have
 12 caused us the need to examine them in deposition on
 13 those issues.

14 THE COURT: Okay. Mr. Pritzker?
 15 MR. PRITZKER: Several things, your Honor.
 16 First of all, the books in record do
 17 indicate on a monthly basis the layers of costs that
 18 were incurred, that part of the affidavit.

19 THE COURT: Layers of costs?
 20 MR. PRITZKER: In other words, copies were
 21 of the month. If I can just look on a 6/1/02, that's
 22 not a good -- yes, on 6/1/02, copies of \$149 were
 23 posted to the books of Brown Rudnick. Now, every copy,
 24 which goes into a computer, is a backup for that. The

1 reasonableness of it is the reasonableness, perhaps, of
 2 the charge but nothing else. But let me --

3 THE COURT: Just so I have a sense of
 4 ballpark, how much in costs are we talking about?

5 MR. PRITZKER: \$150,000.

6 THE COURT: Okay. Broken down as?

7 MR. PRITZKER: They're broken down for
 8 expert fees, travel, deposition transcripts, appeals
 9 transcripts. I have a whole list of them here, your
 10 Honor, that I haven't --

11 THE COURT: Okay. So some show they were
 12 post-trial, too.

13 MR. PRITZKER: Some of them are post-trial.
 14 But the point that I want to make, your Honor, is the
 15 categories are: expert fees, travel, parking and
 16 tolls, outside copies, telephone, research, outside
 17 research, messenger service, copies --

18 THE COURT: The outside research meaning
 19 LEXIS and the Westlaw, or do you mean that you --

20 MR. PRITZKER: I believe it's all --

21 THE COURT: I assume that you folks didn't
 22 retain an independent research service or something.

23 MR. PRITZKER: We did not. Postage. I
 24 don't know whether I said travel, but it's in here

1 twice. Parking. Those were the categories.

2 THE COURT: Okay.

3 MR. PRITZKER: I just want to state, your
 4 Honor, that this is not a construction case where the
 5 roof went bad, the plaintiffs had to hire another
 6 roofer and so his invoice has to be buttressed with the
 7 reasonableness of the invoice of the second roofer.
 8 This is a case where the lawyers incurred costs and by
 9 contract the plaintiff was required to pay those costs.
 10 They were incurred, they were posted as the books and
 11 records so that they were kept in the ordinary course
 12 prior to this litigation having been started and the
 13 plaintiff paid them. That is the *prima facie* case.

14 This is not a case where the damages
 15 themselves are in issue as to their reasonableness.
 16 The only thing that's in issue is whether or not the
 17 plaintiff paid them, which he did, or they did, and
 18 therefore incurred the damage for the payment of them.
 19 If in fact they were unreasonable, that is then a
 20 burden -- I don't even think it's a burden. There's a
 21 claim over from the defendants to Brown Rudnick but
 22 certainly not to the plaintiff.

23 But in addition to that, your Honor, if I
 24 may --

1 THE COURT: Well, no, I've actually have
 2 heard -- if there is an issue of reasonableness with
 3 regard to the fees, defense should have a fair
 4 opportunity to cross-examine your proponent, who will
 5 testify to reasonableness. I had thought you were
 6 going to be a witness a trial. It is true that I
 7 understood you would not plan to be calling yourself as
 8 part of the plaintiffs' case in chief, but that you
 9 were going to be called by the defense, so I expected
 10 you to be a witness which is why I said you couldn't
 11 close. Frankly, whether they call you as a witness or
 12 whether you call yourself as a witness on this limited
 13 area is of little consequence to me. It's not as if
 14 I'm going to be confusing your role as an advocate
 15 versus your discussion of the costs element of the
 16 legal bill. That's pretty easy to separate for me.

17 So what I will do is this. If you wish to
 18 offer that as part of your damages, you may do so. You
 19 can call your bookkeeper as the keeper of the records
 20 and have that person testify to them, and I expect it
 21 will be admitted as records produced in the ordinary
 22 course, because there's a certain presumption of
 23 regularity to the record keeping done by your firm with
 24 regard to the maintenance of costs. It's true that

1 person may not be able to testify to the reasonableness
 2 because the person doesn't know enough about the
 3 litigation. If you wish to testify to reasonableness,
 4 you may, but I will permit the defense, if they wish,
 5 to depose you sometime during the course of this week
 6 in one of the afternoons --

7 MR. PRITZKER: That's fair, your Honor.

8 THE COURT: -- for a deposition not to
 9 exceed two hours.

10 MR. PRITZKER: And I might disclose, your
 11 Honor, that we did, as part of the production of
 12 documents in this case, produce 250 pages of backup for
 13 these costs, so it's not as if this is coming as a
 14 surprise to the defense. They asked for it; we gave it
 15 to them.

16 THE COURT: I know that there is not the
 17 element of surprise. It is true that the issue of
 18 their reasonableness may not have been adequately
 19 considered, but as errors go, I don't think that rises
 20 terribly high and I will mitigate whatever prejudice
 21 there is to the defense by giving them a chance to
 22 depose you some afternoon this week before you testify
 23 so they may get a preview of what you expect to say
 24 with regard to reasonableness.

1 I mean, I guess the issue may be -- I don't
 2 know what the rate is charged with regard to copying,
 3 but certain rates I -- nor do I know whether Brown
 4 Rudnick took any cut above and beyond the Westlaw --
 5 the West rates or the copy rates. So I'll let them
 6 explore those fascinating facts in terms of whether or
 7 not your costs were a profit center at Brown Rudnick or
 8 whether or not you left all your profit to the attorney
 9 fee rate. So they can explore that fascinating issue,
 10 at least as of the time that this was done. I know
 11 that sometimes changes within a firm. So you can have
 12 a fascinating afternoon together, while I'm hearing
 13 motions, being deposed on this matter and you can work
 14 that out later today or during the break, okay?

15 MR. PRITZKER: Thanks.

16 MR. ZELLE: On that subject, your Honor,
 17 we've already gleaned that you're not going to be
 18 granting directed verdict here. I suggest that let Mr.
 19 Pritzker just testify once. We'll wait till we call
 20 him as part of our case, and we'll deal with the cost
 21 issue. They can direct him at that time and then it's
 22 not until next week, and we can kind of stay focused
 23 and get things moving.

24 THE COURT: What may make most sense is to

1 have your bookkeeper testify as part of your case in
 2 chief and then essentially the issue of reasonableness
 3 will be one that you'll be challenging as part of your
 4 case and that makes good sense.

5 MR. ZELLE: Thank you, your Honor.

6 MR. PRITZKER: Those are my two issues. I
 7 understand the documentation has been produced. It's
 8 en masse. If we could get from plaintiffs --

9 THE COURT: I'm sorry, it's en masse
 10 meaning it's a mess?

11 MR. PRITZKER: No, it's French. En masse.

12 THE COURT: I know it's French, but that
 13 means in large --

14 MR. PRITZKER: My pronunciation. It's
 15 undifferentiated from all of the other documents they
 16 produced.

17 THE COURT: Okay, that's English. Okay.

18 MR. PRITZKER: If we could get them to
 19 segregate whatever support they have and give us a
 20 package, I would appreciate that.

21 MS. PINKHAM: It was already produced; it
 22 was the last of the documents produced.

23 THE COURT: Okay, why don't you just work
 24 out Bates stamps and pass on what the Bates stamps

1 were of the backup documents so that they know what
2 they were and that will save some time.

3 MR. GOLDMAN: And your Honor, if we might
4 also, if the plaintiffs could also provide us with
5 whatever written agreement there was between the
6 plaintiffs and their counsel for reimbursement of
7 those costs.

8 THE COURT: The plaintiffs and counsel --

9 MR. GOLDMAN: In other words, the
10 plaintiffs and Brown Rudnick, according to Mr.
11 Pritzker, had some kind of agreement under which Brown
12 Rudnick would be reimbursed for these expenses that
13 were being paid by Brown Rudnick, so whatever written
14 agreement there is for that, if they could provide us
15 with that.

16 THE COURT: Okay, fair enough. Anything
17 else?

18 MR. ZELLE: There is an issue Mr. Cohen
19 will address, there was a subpoena issued to AIG for
20 the Oliviera file, which we are going to seek to
21 quash.

22 MR. COHEN: Thank you, your Honor. You'll
23 recall we were here at the pre-trial conference a few
24 weeks ago and at that time there was a request made by

1 the plaintiffs that AIGDC produce the claims file in
2 this Oliviera case; you recall that's the Rhode Island
3 case in which there was a large verdict.

4 THE COURT: I recall.

5 MR. COHEN: You denied that request and
6 they hadn't done it during the discovery deadline
7 among other reasons. In any event they have now
8 subpoenaed those same documents from my client by
9 serving its agent for service here in Massachusetts,
10 and we're seeking to quash that for the same reasons
11 that you quashed it previously.

12 THE COURT: All right, let me hear from
13 plaintiffs.

14 MS. PINKHAM: Your Honor, I believe you
15 testified that the plaintiffs --

16 THE COURT: I don't testify. I may opine,
17 I may blabber, but I don't testify.

18 MS. PINKHAM: I believe your ruling was
19 that the plaintiffs could use the Oliviera information
20 for cross-examination purposes and the subpoena seeks
21 three documents: excess claims summaries and any
22 memorandum.

23 THE COURT: I'm sorry?

24 MS. PINKHAM: The subpoena seeks only any

1 excess claims summaries, which is a standard form that
2 AIG has, and any memorandum on the case, and there was
3 one other thing, a reserve increase form. So there is
4 only three documents that have been requested.

5 THE COURT: With regard to those persons
6 you plan to cross-examine will any of them have seen
7 any of these documents?

8 MS. PINKHAM: Well my understanding is that
9 since AIG has put Richard Mastronardo on their witness
10 list, that he was the adjuster in the Oliviera case, I
11 suspect that he would have seen them.

12 THE COURT: This will be in the event to
13 refresh his memory with regard to your cross-
14 examination? I don't plan to have it admitted, you
15 know.

16 MS. PINKHAM: That's fine, so that at
17 least, your Honor, I have something to cross-examine
18 with in case any of the witnesses say they are unaware
19 of it or don't remember it.

20 THE COURT: All right, Mr. Cohen.

21 MR. COHEN: Your Honor, I just want to
22 point out that the subpoena isn't limited to three
23 documents but it calls for all documents that relate
24 to the Oliviera case, including but not limited to,

1 and then they go on to indicate a bunch of documents.
2 So they've asked basically for the entire claim file.
3 This is a file that was resolved, as I understand it,
4 in 2002. As you can imagine AIGDC has a lot files
5 that are probably closed in some warehouse somewhere.
6 We haven't been able to locate it. At this point, we
7 tried to, as soon as the issue came up the first time,
8 and I have no idea whether it can be located at this
9 point and certainly not within the next two weeks;
10 it's unlikely that it can.

11 MS. PINKHAM: Your Honor, I'd be satisfied
12 with the three documents and it's my understanding
13 that AIG has a computerized record system, at least
14 that's what the witnesses in this case have presented.

15 THE COURT: All right, I will quash it
16 except with respect to I will ask that reasonable
17 efforts be made to retrieve those three documents that
18 Ms. Pinkham has identified. Beyond that I will quash
19 it, so to the extent that they're asking for the
20 entire file that is denied; to the extent that they're
21 asking for three identifiable documents reasonable
22 efforts can be made to retrieve them. If they're
23 available by computer that may be even better; if
24 they're and they're in a warehouse then again, I'll

1 request that reasonable efforts be made. But it does
 2 not change my view that I don't plan to have those
 3 admitted, they would be admissible only on cross-
 4 examination. Okay, anything else?

5 MR. ZELLE: Your Honor, there was a
 6 disclosure following the last conference of a
 7 spreadsheet by the plaintiffs which reflected Mr.
 8 Rhodes or the Rhodes family's assets. There was a
 9 one-page summary and then there were a couple of other
 10 pages that more specifically delineated, for example,
 11 the holdings in the investment account.

12 We'd actually like to see the source
 13 documents there, your Honor. Particularly my concern
 14 is with respect to an account that they refer to as a
 15 retirement account, and that's broken down on their
 16 spreadsheet, on this more detailed spreadsheet, there
 17 is an IRA and there is SEP IRA, self-employment plan
 18 IRA, the value of which rose throughout the course of
 19 the underlying litigation but in August of 2004 was
 20 \$350,000.

21 What I'm concerned about is certainly the
 22 specific investments there, but I'm also interested in
 23 the terms of the IRA or the SEP. The accounts were
 24 not touched during the course of the underlying

1 litigation. Certainly they were assets, we will
 2 argue, were available. I suspect that because they
 3 are investment funds there may be some penalty -- I
 4 don't know what those are. I would I'd like to able
 5 to cross-examine Mr. Rhodes as to whether he
 6 considered the cost of using that money and I want to
 7 know what the cost of using that money is.

8 THE COURT: Is there any dispute that it
 9 was the IRA penalty, which is what, 20 percent?

10 MR. PRITZKER: There is no dispute of that,
 11 this was --

12 THE COURT: What is the IRA penalty? Is it
 13 20 percent?

14 MR. PRITZKER: I honestly don't know, but
 15 it's severe.

16 THE COURT: I'm aware of that, but your
 17 understanding is that he would have paid the penalty
 18 if any of us go into our IRAs prematurely.

19 MR. PRITZKER: Yes, let me disclose, your
 20 Honor, that as Mr. Zelle knows because I told him this
 21 morning, we are not pursuing a lost earning claim,
 22 although we are still, as you will hear from Mr.
 23 Rhodes, pursing the fact that his diminution of assets
 24 was a cause of significant emotional concern to him.

1 That's it.

2 Now, here's the case, and I'm getting into
 3 my opening but I will in response to this, where there
 4 is no question that his assets were going down, his
 5 gross assets were growing down. The defendants were
 6 talking to him and he envisioned those assets running
 7 out after a period of time. To say: Okay, we want to
 8 know what the individual investments were in your IRA
 9 account; all the other accounts have been disclosed,
 10 but the IRA account was actually being administered by
 11 a broker, by a brokerage house. So he doesn't even
 12 know what they are but even if he did, how on earth is
 13 that relevant if there were to be any penalty
 14 different from the penalty that would be associated
 15 with any premature withdrawal from an IRA, you'll
 16 disclose it. If it was to be the routine penalty for
 17 an IRA then that's available to all of you to figure
 18 out what it would be. I think it's 20 percent, but
 19 frankly I've never tested the hypothesis so I don't
 20 know. And I don't consider that the particular
 21 investments are of any consequence. I will assume
 22 that those investments are liquid, liquid with
 23 penalty.

24 MR. PRITZKER: We will stipulate to that,

1 Judge.

2 THE COURT: So if there's not evidence with
 3 regard to it, I will assume that they arguably could
 4 be liquidated, but liquidated with the relatively
 5 severe tax penalty associated with early IRA
 6 withdrawals.

7 All right. Before I invite anybody else to
 8 stand, I'll hear your opening.

9

10 OPENING STATEMENT

11 BY MR. PRITZKER:

12 As the court now knows, almost seven years
 13 ago and one month, on January 9, 2002, Marsha Rhodes'
 14 life was irreparably changed. The liability, the
 15 injury, the potential damages were known almost
 16 immediately to the defendants. Notwithstanding that,
 17 the first offer of settlement of any kind in this case
 18 came from Zurich Insurance Company in March 2004, two
 19 years and two months after the accident. That was
 20 accompanied by a tender to AIG, the excess carrier, of
 21 the \$2 million policy and it took AIG another,
 22 depending upon the date, six to eight months to make
 23 its first offer, which added \$750,000 to the \$2
 24 million that has been tendered to it by Zurich.

1 What I have just stated is the overall
 2 basis for the plaintiffs' claim that both Zurich and
 3 AIG violated Chapter 176D and 93A of the Massachusetts
 4 General Laws by failing to promptly effect settlement
 5 once liability was reasonably clear.

6 The details of the accident are as follows.
 7 And as I just mentioned, these details were available
 8 to everybody within three weeks of the accident.
 9 Marsha Rhodes, who lives in Milford, left her home and
 10 within a half a mile was on Route 109 in Milford, took
 11 a left and crossed the line into Medway. When she
 12 crossed that line, the road was straight, it was
 13 slightly down hill. She traveled for approximately
 14 750 to 800 feet. She observed that there was tree
 15 stump-grinding work going on on the side of the road
 16 and the traffic was being directed by a Medway Police
 17 Officer. He was in uniform, he was wearing an orange
 18 vest, he had on white gloves, he was six-foot-four, he
 19 put up his hand and he stopped Ms. Rhodes. When Mrs.
 20 Rhodes stopped, she had her foot on the brake, and her
 21 brake lights worked and were on and illuminated at the
 22 time of the crash.

23 Carlo Zalewski, who was driving an
 24 80,000-pound tanker-truck, left Route 495, followed

1 the same route as Mrs. Rhodes. And when he got to the
 2 top of the hill there was no one between -- I should
 3 say the crest of the hill -- there was no one between
 4 himself and Mrs. Rhodes for that 750 to 800 feet. The
 5 evidence shows that he never put on his brakes. He
 6 crashed into Mrs. Rhodes and that crash catapulted her
 7 car into the woods where it stopped against a tree.

8 The tree company owner testified that he
 9 had put cones out around his truck, orange cones. He
 10 testified to that, not at the trial, but in
 11 depositions. That's later, so I will leave that out
 12 for a moment as to what the insurers knew at the time
 13 of the accident itself.

14 Mrs. Rhodes was immediately rendered a
 15 paraplegic; she had a burst fracture at T-12. Now,
 16 that didn't just mean that she lost the use of her
 17 legs. She lost the use of her legs, to be sure. She
 18 lost all bladder function, she lost all bowel
 19 function, she lost all sexual function, she had a
 20 closed head injury, she had fractured ribs. And that
 21 was the state that she was in within moments after
 22 this accident.

23 Zalewski was cited for driving to endanger,
 24 to which he later pleaded -- admitted to facts

1 sufficient. And again, all of that was immediately
 2 known, except for the plea.

3 Who were the parties? Well, Zalewski was
 4 driving a truck for the common motor carrier, Building
 5 Materials Supply Corporation of America, doing
 6 business as GAF Building Supplies, and we have
 7 throughout this case referred to that entity as GAF
 8 for ease. Zalewski was provided to GAF by a company
 9 called Driver Logistics Services, Inc. And he had
 10 been driving for GAF for many, many months. This was
 11 not just a single trip that he made and was an
 12 independent employer.

13 The Zurich policy -- I'm sorry. The truck
 14 was leased on a long-term lease by Penske Truck
 15 Leasing Company.

16 The insurance was as follows. Zurich had a
 17 \$2 million primary liability insurance policy, which
 18 covered GAF, which covered Penske by an endorsement to
 19 the policy. It covered the driver, which was easily
 20 ascertainable by reading the policy, and it covered
 21 DLS, both by contract and again by reading the policy.

22 Some of the key dates. I should mention
 23 first that GAF also had an excess policy written by
 24 National Union Insurance Company of Pittsburgh for \$50

1 million. That policy was -- the excess policy was
 2 administered by AIG Technical Services, Inc., later
 3 changed to AIG Domestic Claims Services, Inc. and then
 4 to AIG Claims. It's all for the purposes that we will
 5 be testifying to today, AIG, because AIG literally took
 6 over everything from National Union. National Union
 7 was the insurer, but AIG administered everything to do
 8 with that insurance, and so we will refer to those --
 9 all of those entities as AIG.

10 Zurich had a prior agreement with Crawford &
 11 Company, a third-party administrator for insurance
 12 companies, wherein Crawford & Company was the third-
 13 party administrator for certain Zurich Insurance
 14 accounts, including GAF. So once again, this was not
 15 something where -- for the purposes of the Rhodes case,
 16 Crawford & Company was hired. They were already -- the
 17 third-party administrator to administer the claim and
 18 adjust the claim for all insurance matters dealing with
 19 Zurich. But their administration agreement was
 20 somewhat different than AIG's. Because while they were
 21 to investigate, administer, adjust, attempt to settle,
 22 there were limits placed on all of that. They could
 23 not set reserves above very small limits without the
 24 approval of Zurich. They could not tender without the

1 approval of Zurich. They could not settle without the
 2 approval of Zurich. And so while Crawford & Company
 3 was doing its investigation, all it was doing beside
 4 that was recommending to Zurich certain activities to
 5 be done.

6 Some key dates. Crawford & Company issued
 7 its first full formal report on January 30, 2002. As
 8 the court will see when we start to get into the
 9 evidence, that report was incredibly detailed, given
 10 the fact that it was approximately three weeks after
 11 the crash, both as to how the accident happened and
 12 Crawford's then knowledge of Mrs. Rhodes' injuries,
 13 which got only worse after that because of
 14 complications. But the initial injuries that I
 15 disclosed earlier in my opening were known to Crawford
 16 within three weeks of the accident.

17 Suit was filed in July 2002. Zalewski
 18 admitted to facts sufficient to warrant a guilty claim,
 19 a finding of driving to endanger in November of '02.
 20 The defendants responded in detail to discovery in
 21 April of '03, including very, very lengthy summaries of
 22 how the accident happened, of the then injuries and
 23 complications that Mrs. Rhodes suffered, accompanied by
 24 2,000 pages of medical reports and medical bills. The

1 plaintiffs issued a written demand for settlement in
 2 August of '03; a 17-page demand, again detailing in
 3 incredible detail the injuries, how the accident
 4 happened, the theories of liability, disclosing the
 5 experts that the plaintiffs intended to use and her
 6 view of what it was going to cost for life support and
 7 care for Mrs. Rhodes for the rest of her life.

8 Zurich offered the policy limits in March of
 9 '04, two years, two months after the -- almost three
 10 months -- after the accident. AIG made its first offer
 11 in August of '04. There was a trial and verdict in
 12 September of '04 and so the first offer from AIG came
 13 one month prior to the trial.

14 Now let me go into some more detail. As I
 15 indicated, while Crawford could set reserves, determine
 16 coverage, which I hadn't talked about before, and
 17 settle the claims, these all required Zurich's
 18 approval. Crawford received the notice of the accident
 19 literally the same day of the accident, started
 20 investigating and began reporting both to GAF and to
 21 Zurich with copies to AIG almost immediately. As I
 22 indicated, Crawford's first full formal report was
 23 dated January 30, '02 and was remarkably detailed.

24 There were transmittal letters by Crawford

1 that went to Zurich and to AIG, dated April 8, '02,
 2 June 10, '02, September 25, '02, December 13, '02, May
 3 6, '03, June 4, '03, July 22, '03, September 11, '03,
 4 September 24, '03, October 9, '03, November 13, '03.
 5 From the first transmittal letter till the time -- till
 6 March of '03, Crawford was recommending to Zurich to
 7 reserve this case at the full policy value of \$2
 8 million, every single transmittal letter.

9 It was also, from the very first transmittal
 10 letter, attributing liability to the driver. From the
 11 first transmittal letter on, the words "liability"
 12 clearly falls to the DLS driver. By September 25, '02,
 13 Crawford had put a value on the case of \$5 to \$10
 14 million. They later, because of a glitch that you'll
 15 hear about, reduced that value from \$5 to \$7 million,
 16 but it never went -- the low end never went below \$5
 17 million.

18 Inexplicably, Zurich never opened a claims
 19 file on this case until August of '02. There are only
 20 three entries in Zurich's claim notes between August of
 21 '02 and January of '03, and they all deal with the fact
 22 that coverage counsel had been hired and that they're
 23 waiting for coverage counsel to respond.

24 On January 21, '03, one year after the crash,

1 we see the first substantive note from Zurich, quote,
 2 Please note that we will extend coverage to GAF,
 3 Penske, and Driver Logistics. Could you please advise
 4 of the possible exposure. Now the coverage issue has
 5 been resolved.

6 The first note from Zurich, a year after the
 7 accident. The person who wrote that note, David
 8 McIntosh, who was the first claims adjuster from Zurich
 9 on this file, admitted to receiving some but not all of
 10 the proffered transmittal letters prior to writing that
 11 note. You will hear that Crawford is sending and
 12 sometimes resending their reports all along to both
 13 Zurich and AIG.

14 Between January 3 -- January 21 of '03 and
 15 June of '03, the notes reveal that Zurich is doing
 16 virtually nothing but complaining that Crawford's
 17 reporting is inadequate. Keep in mind, your Honor,
 18 that Crawford is the agent of Zurich for adjusting and
 19 administering this claim. In August, the Rhodes file
 20 the transcript from David McIntosh to Kathleen Fuell,
 21 not because McIntosh leaves the company but only
 22 because there's a reassignment of certain claims files.
 23 Ms. Fuell is apparently unaware that the coverage
 24 issues have been resolved. There is no handout,

1 there's no memos to indicate what the open items are as
 2 to this claim when Ms. Fuell picks it up. So as she
 3 testified, and as she will testify today, she was
 4 really starting from ground zero in trying to evaluate
 5 this claim.

6 She begins working on the file in August or
 7 early September of '03. By that time the case -- the
 8 claim had been in suit for over a year. In April of
 9 '03, as I indicated, the plaintiffs had responded to
 10 discovery with incredible detail, but apparently Zurich
 11 was not communicating with defense counsel and didn't
 12 know that all of the backup for the liability and for
 13 the damages had already been produced to the defense
 14 team.

15 By August of '03, the plaintiffs -- I'm
 16 sorry. From the time that Ms. Fuell saw the
 17 plaintiffs' demand, she testified, and will again, I'm
 18 sure, that she had an instinctual feeling that she
 19 should be putting up as reserves in tendering the full
 20 value of the Zurich policy. From there it takes
 21 another four months for her to get the approval to do
 22 that. Four months. She tenders verbally at the end of
 23 January or the beginning of February of '04, now two
 24 years after the accident.

1 What's AIG's response and what have they been
 2 doing during all of this time? We do know that they're
 3 being copied in on all of Crawford's reports. Their
 4 first affirmative action in dealing with Zurich is to
 5 tell Zurich, "We don't take tenders verbally. You've
 6 got to put it in writing."

7 Ms. Fuell puts it in writing. What's their
 8 next response? We reject your tender. Why did they
 9 reject the tender? Ms. Fuell had said, "We're
 10 tendering the policy, we therefore wash our hands of
 11 any defense obligation." Zurich says, "Wait a minute,
 12 that's not what the policy says. You've got to
 13 continue paying defense counsel."

14 THE COURT: I'm sorry. Zurich says this or?

15 MR. PRITZKER: Zurich.

16 THE COURT: This is Zurich. Okay.

17 MR. PRITZKER: AIG said, "You've got to
 18 continue paying defense counsel." And there's dialogue
 19 back and forth with GAF's counsel getting involved to
 20 say stop this infighting and deal with the claim
 21 itself. And the dialogue back and forth is finally
 22 resolved -- well, it's not finally resolved because
 23 there's nothing in the file to indicate that AIG ever
 24 accepted the tender, although they started to negotiate

1 using Zurich's money, so there's a de facto acceptance
 2 of the tender, but they never vary from their rejection
 3 of the tender, which was in writing.

4 We do know, however, also that in December of
 5 '03, Zurich hired its own defense counsel to supplement
 6 the defense team.

7 MR. ZELLE: I think you meant AIG.

8 MR. PRITZKER: I'm sorry. I said Zurich and
 9 I didn't mean that.

10 AIG, having now utilized the efforts of new
 11 defense counsel, decides not to make an offer until
 12 mediation. So from December of '03, or soon
 13 thereafter, they come to the conclusion that their best
 14 position will be furthered if they wait till mediation
 15 to make an offer, and then they say, "We're not going
 16 to mediation until we can buttress up the defense file.
 17 Prior defense counsel has not taken Mrs. Rhodes'
 18 deposition, they haven't taken Rebecca Rhodes'
 19 deposition, and we want an independent medical exam of
 20 Mrs. Rhodes."

21 They want, apparently, to determine once and
 22 for all, two years plus after the accident, that this
 23 poor woman truly was rendered a paraplegic, and so the
 24 mediation doesn't take place until August of '04, after

1 the IME, after the depositions of Rebecca and Marcia
 2 Rhodes. And their first offer -- strike that.

3 Prior to this, as I indicated earlier, the
 4 plaintiffs had made a demand. That was back in August
 5 of '03. And as part of that demand we disclosed that
 6 the special economic damages, the past costs incurred
 7 were -- these are medical costs, not legal costs --
 8 and the future life-care needs of Mrs. Rhodes were
 9 approximately \$3 million. We now know that AIG had --
 10 or at least the defense team -- had retained its own
 11 life-care planner, whose life-care plan was
 12 approximately \$500,000 less than the plaintiffs' life-
 13 care plan and in all other responses was almost
 14 identical -- not identical, but substantially similar,
 15 and that the difference between the plaintiff's life-
 16 care planner and the defendant's life-care planner was
 17 the life span remaining for Mrs. Rhodes now that she
 18 had been rendered a paraplegic.

19 Further, that the numbers would have been
 20 remarkably close at \$3 million. Given the knowledge of
 21 AIG of those facts, their beginning offer, their first
 22 offer in August of '04 was \$2.7 million, less than the
 23 economic specialist of Mrs. Rhodes.

24 By the end of that negotiating session, they

1 had come to \$3.5 million, and this includes Zurich's \$2
 2 million. They came to \$3.5 million, which still didn't
 3 cover Mrs. Rhodes' economic damages, plus the interest
 4 which had accrued from August of -- I'm sorry, from
 5 July of '02 to the date, approximately 25 percent. And
 6 that was where they left it, and that's where it was
 7 left until the day trial started, where they repeated
 8 the same offer.

9 Now, in the interim, the plaintiffs have
 10 settled with the tree company. The plaintiffs had not
 11 sued the tree company. The tree company was brought in
 12 as a third-party defendant by the defendants. They
 13 came to the mediation. And after the mediation, the
 14 plaintiffs and the tree company settled for \$550,000.

15 We now know that at the trial the verdict was
 16 rendered, a jury verdict, on behalf of the plaintiffs
 17 for \$9.412 million, that interest on the judgment which
 18 accrued after the usual motions for new trial for
 19 remittitur, for reconsideration -- I'm sorry, those two
 20 motions. The interest came to approximately two and a
 21 half million dollars, for a total judgment of just
 22 under \$12 million.

23 Did that end this case? It certainly did
 24 not. After the motions were denied, at AIG's

1 insistence, the defense counsel appealed. Prior to the
 2 start of the trial, Zalewski, DLS, Driver Logistics
 3 Service, and GAF had conceded and stipulated to
 4 liability. The only issue at trial was damages and
 5 notwithstanding a defendant's appeal. The appeal took
 6 its course. The plaintiffs filed a claim, not in
 7 court, but they served a demand under 176D and 93A to
 8 both Zurich and AIG. In December of '04, Zurich paid
 9 \$2.3 million to the plaintiffs, without a release, in
 10 response to the 93A demand. And it's articulated that
 11 that payment was for the policy limits plus post-
 12 judgment interest as required under the policy.

13 AIG responded by offering the plaintiffs \$7
 14 million against a \$12 million. And further, that \$7
 15 million was conditioned upon a release not only of the
 16 underlying accident claim but also the 93A allegations
 17 which had now been articulated against them.

18 That position was repeated until September --
 19 I'm sorry, approximately September of '05, '05, when
 20 finally AIG paid \$8.965 million, or at least they
 21 agreed to paid \$8.965 million, in three payments. And
 22 I misspoke. It was in June of '05 that the settlement
 23 occurred, not September. And the payments were made in
 24 three installments: in July, August, and September.

1 What were the Rhodeses doing during all of
 2 this time? Well, we know that they were suffering
 3 incredibly emotionally because of the underlying
 4 accident. But there's an overlay on top of them which
 5 is easily distinguishable. Because accidents do
 6 happen, and at some point, especially for Mr. Rhodes,
 7 he was able to separate the fact that his wife was now
 8 irretrievably injured and would be for the rest of her
 9 life.

10 But why wasn't anybody talking to him? Why,
 11 after Zalewski admitted to facts sufficient to warrant
 12 a finding of guilty on driving to endanger, wasn't
 13 somebody coming to them and saying at least let's help
 14 you financially. And this started to dwell on him and
 15 dwell on him and dwell on him more for the next, almost
 16 two years. That is the kind of emotional distress that
 17 you will hear Mr. Rhodes testify to. With Mrs. Rhodes
 18 it wasn't quite that detailed, but she also became
 19 convinced that at some point their money was going to
 20 run out, that she was not going to be able to stay in
 21 her home, and this was because even though she was sure
 22 that the liability in this case was not a question,
 23 nobody was talking to her and why on earth would they
 24 not be talking to her if, in fact, she was entitled to

1 this money, some money to compensate her for her
 2 injuries.

3 You will hear from Rebecca Rhodes, and all
 4 Rebecca Rhodes could do is observe the anxiety that
 5 this was causing to her parents, and that caused her
 6 distress as well.

7 So that's one issue that the Rhodeses were
 8 dealing with during the course of the unfair conduct of
 9 the defendants.

10 What else was going on? Well, we already
 11 heard that the defendants paid ultimately, when you add
 12 it all up, a total of \$11,837,995. We will go through
 13 the math of this, but the judgment that was rendered by
 14 the verdict, plus pre- and post-judgment interest, only
 15 on remaining balances, because payments, as the court
 16 remembers, were now being made at various times; the
 17 first payment by the tree company, then by Zurich, and
 18 finally in three tranches by AIG. So if you take the
 19 total amount of the verdict and then you take the
 20 interest pre-judgment and you take the post-judgment
 21 interest only on the balances that remain unpaid, it
 22 comes to \$12,621,947. The shortfall that the
 23 plaintiffs accepted in order to put this case behind
 24 them was \$783,952.

1 The plaintiffs have to testify. They had to
 2 testify at deposition. They have to testify at trial.
 3 They have to subject themselves first to strange
 4 lawyers and then to the public to stuff that they never
 5 should have had to have been subjected to, the most
 6 personal and intimate things about what had happened to
 7 Mrs. Rhodes and how Mr. Rhodes had to deal with it.
 8 And you're going to hear from them. And it was
 9 extraordinary and it shouldn't have happened, and it is
 10 an additional burden, emotional burden, that the
 11 plaintiffs had to bear.

12 And then finally you'll hear that the
 13 defendants also suffered the requirement that they pay
 14 the costs, the litigation costs, of this case. And
 15 while obviously some of those litigation costs, number
 16 one, are covered by the statute, and number two, would
 17 have been incurred in any event because we filed suit,
 18 they didn't have to go on and on and on not only
 19 through trial, but then the additional cost of having
 20 to order a trial transcript because of the appeal.

21 With all of that, your Honor, plaintiffs are
 22 convinced that this court will find a violation of 176D
 23 and 93A against both sets of defendants, that it was
 24 willful or knowing, that as a result of that, the

1 plaintiffs should be awarded their compensatory damages
 2 and they should be awarded punitive damages, which
 3 under the statute are either double or triple the
 4 underlying judgment, plus attorneys' fees.

5 Thank you, your Honor.

6 THE COURT: All right. Thank you.

7 Who on the defense side is going to argue
 8 first?

9 MR. VARGA: Your Honor, Greg Varga for Zurich
 10 American Insurance Company.

11 Your Honor, it appears that this entire case
 12 against Zurich is about time and timing. It's not a
 13 case about Zurich appealing a verdict. It's not a case
 14 about Zurich forcing people to go through unnecessary
 15 depositions or forcing them to testify at trial. It is
 16 a question of when Zurich took steps to effectuate
 17 settlement in accordance with Chapter 176D.

18 Zurich first received notice of the Rhodes
 19 claim in August of 2002. August of 2002. Not January,
 20 not June. August 2002. Crawford & Company, which was
 21 the third-party administrator that was retained and
 22 selected by the insurer, GAF Building Materials,
 23 notified Zurich in August of 2002 about this claim.
 24 It's undisputed, as Mr. Pritzker has already pointed

1 out, that Zurich only had \$2 million to contribution to
 2 any settlement or any judgment in this case.
 3 Plaintiffs have stipulated, and we know now that there
 4 was never a point in time from the date of the accident
 5 until the date of the verdict in the underlying case
 6 when the plaintiffs or any of them were willing to
 7 accept \$2 million or less to settle their claims
 8 against any of the personal injury defendants. That is
 9 a fact.

10 Zurich had no power to effectuate settlement
 11 within the meaning of Chapter 176D within its policy
 12 limits. That much is equally clear. The best that
 13 Zurich could do in these circumstances was to take
 14 steps to make its policy limits available to the excess
 15 carrier, National Union, for its use in any settlement
 16 negotiations or dialog with the plaintiffs. We know
 17 plaintiffs would never have accepted Zurich's \$2
 18 million if it was offered the day after the accident,
 19 six months after the accident, a year after the
 20 accident, or even beyond that.

21 So what did Zurich do? Kathleen Fuell will
 22 testify, and she's in the courtroom with us today in
 23 the first bench, and she will testify, your Honor, that
 24 after she received a demand package from the plaintiffs

1 in September of 2003, a demand package that contained
 2 for the first time any information regarding Marcia
 3 Rhodes' future medical care or rehabilitative care
 4 needs, future expenses, forecasts of lost economic
 5 damages, information regarding Mr. Rhodes' and Rebecca
 6 Rhodes' alleged losses of consortium, when she received
 7 that demand package and had an opportunity to evaluate
 8 it and to verify the information contained in it, she
 9 promptly took steps to effectuate settlement of this
 10 case.

11 Now in March 2004, in November of 2003, you
 12 will hear testimony from Ms. Fuell, that during a
 13 conference call, which she convened in November of
 14 2003, on the 19th to be precise, in which she involved
 15 GAF -- I'm sorry, GAF representatives, the insurer;
 16 defense counsel; a representative from AIG named
 17 Nicholas Satriano; and others, that she announced her
 18 intent to go to her superiors and seek authority to
 19 tender Zurich's \$2 million policy limits to the excess
 20 carrier. And by "tender" I mean to make those policy
 21 limits available to AIG, National Union for use in its
 22 settlement negotiations that they might engage in with
 23 the plaintiff.

24 Ms. Fuell will testify that she made that

1 known to everyone on that conference call in November
 2 of 2003, ten months before the trial in the underlying
 3 case, because it appeared to her, based on all the
 4 information that she had received for the very first
 5 time, in September, that it looked likely that the
 6 damages in this case might exceed Zurich's policy
 7 limit. So she put everyone on notice at that time.

8 What she did next, as she'll testify, is she
 9 went and sought and received authority from her
 10 superiors by submitting a report. She received that
 11 authority, and eight months before the trial in the
 12 underlying action she called Nick Satriano of AIG and
 13 she said, "You have our money." Mr. Satriano, as Mr.
 14 Pritzker pointed out, rejected the tender, but Zurich
 15 put the money on the table than it had previously said
 16 it was going to do so.

17 Ultimately, your Honor, AIG, National Union,
 18 and the plaintiffs were unable to reach a settlement of
 19 this case. And it's not for us to comment on the
 20 reasonableness or unreasonableness of anyone's position
 21 here, and we're not going to do so. But the point is,
 22 the case didn't settle because the plaintiffs and AIG
 23 couldn't reach an accord, couldn't reach a number. And
 24 yet we are here today, Zurich is here today, because

1 the plaintiffs say that instead of taking steps to
 2 effectuate settlement ten months before the underlying
 3 trial, we should have done it sooner, and as a
 4 consequence, Zurich should be held responsible and pay
 5 an astonishing \$24 to \$36 million. That's the claim.

6 What this boils down to with respect to
 7 Zurich, your Honor, is really two questions, and I
 8 think these are the questions that ultimately will
 9 frame the court's analysis and review of the evidence
 10 with respect to Zurich.

11 The first question is, were the coverage
 12 issues, not just whether Zurich had a defense
 13 obligation for DLS or Penske or GAP or others, but also
 14 whether Zurich's policy was the only primary policy
 15 available for indemnity on this claim, or was that
 16 issue and were issues of fault and issues of damages
 17 reasonably clear sooner than the point in time when
 18 Kathleen Fuell took steps to effectuate the settlement
 19 in November 2003.

20 The second question is, even if Zurich had
 21 taken steps before November 2003 to effectuate
 22 settlement, would it have made a difference. This is
 23 the causation analysis, your Honor. This is the
 24 elephant in the room that plaintiffs don't want to talk

1 about. But this is the crux of the case in many
 2 respects as to Zurich.

3 We will prove that the answers to those two
 4 questions I just outlined for the court are both no.
 5 An earlier tender of policy limits would have made no
 6 difference in this case, and I'll go through that
 7 evidence in just a moment. In addition, there was not
 8 an earlier point in time from our perspective when
 9 liability, damages, and all of the coverage issues
 10 became reasonably clear prior to the point in time when
 11 Kathleen Fuell took steps to effectuate settlement.

12 I'd like to address first, your Honor, take
 13 the two questions that I raised for you in reverse
 14 order. I'd like to talk about causation first.

15 In the summary judgment ruling that your
 16 Honor issued not too long ago, the court acknowledged
 17 that the plaintiffs bear a burden in this case, and
 18 that burden is to establish for purposes of causation
 19 of some damage, some actual damage and actual loss,
 20 they have to prove that if Zurich had taken steps to
 21 effectuate settlement sooner than the time that it
 22 actually did, that it is more likely than not that the
 23 plaintiffs and AIG would have settled the case before
 24 trial. This is the causation test that's an essential

1 element of their case against Zurich.

2 In the absence of a causal connection between
 3 Zurich's alleged delay in making its policy limits
 4 available to AIG and National Union and the alleged
 5 damages that plaintiffs claim, including the burden of
 6 going through a trial, there can be no remedy at all
 7 against Zurich. We made this point at summary
 8 judgment, your Honor, and this obviously factored
 9 prominently into the court's ruling.

10 To answer the question of causation here, the
 11 court will consider two sources of evidence: one,
 12 Harold Rhodes and Marcia Rhodes. How much money were
 13 they willing to accept in settlement between the date
 14 of the accident and the date of trial and at what
 15 times.

16 The second source of evidence that the court
 17 will consider is how much money was the excess insurer
 18 willing to contribute to a global settlement of the
 19 Rhodes claims against the personal injury defendants
 20 and at what times.

21 Now, this evidence was before the court at
 22 summary judgment and at that time your Honor was
 23 constrained by its standard. And that standard said
 24 you have to take the evidence in the light most

1 favorable to the non-moving party, the plaintiffs. But
 2 that standard doesn't control now, and the court is not
 3 so constrained. As your Honor is well aware, you have
 4 the privilege of making credibility judgments in this
 5 case, considering all of the evidence and weighing it.
 6 And I will submit to the court that the credible
 7 evidence in this case on a question of causation is
 8 that the plaintiffs were never willing to accept a
 9 total settlement in the range that AIG and National
 10 Union were willing to offer.

11 The credible evidence is that from January 9,
 12 2002, the date of Mrs. Rhodes' terrible car accident,
 13 all the way through the mediation, which took place in
 14 August of 2004, the plaintiffs were willing to accept
 15 \$8 million. You will see sworn testimony to that
 16 effect, your Honor. At the same time, their demand, of
 17 course, their first demand, in July of '03, which was a
 18 verbal demand over the phone, was \$18.5 million.

19 Now, let's talk about the AIG side. What
 20 we'll see in executive claim summary a document from
 21 AIG's files that demonstrates along with testimony that
 22 you'll hear in this case, that the highest value that
 23 AIG put on this case prior to trial, and after all the
 24 discovery was completed, was 4.75 million dollars. And

1 that value assumed and included a \$2 million
 2 contribution from Zurich and a \$1 million contribution
 3 from the third-party defendant, Professional Tree.
 4 That's what AIG valued the case at; right or wrong,
 5 that was their number. The plaintiffs, remember, were
 6 eight million dollars. The highest offer that AIG made
 7 to the plaintiffs prior to the trial was \$3.5 million,
 8 which, again, included Zurich's \$2 million primary
 9 policy.

10 During the trial, as the evidence was going
 11 in, AIG and the plaintiffs had additional settlement
 12 negotiations. And during that time frame, as the
 13 evidence went in and it appeared to be going in better
 14 for the plaintiffs than AIG anticipated, AIG's
 15 evaluation rose and it went from 4.75 million
 16 ultimately to six million, again, including Zurich's
 17 \$2 million contribution.

18 The highest offer that was made to the
 19 plaintiffs in this case was made at moments before
 20 closing arguments. And I meant the underlying case,
 21 your Honor. The highest offer was a total of \$6
 22 million. That was made just before closing arguments
 23 after all of the evidence was known, after the
 24 witnesses' credibility had been assessed by all who

1 observed it, and after both sides had an opportunity
 2 to fully evaluate how the case went in.

3 So we have a significant gap, your Honor,
 4 at all points in the life of this case. We know
 5 plaintiffs were not going to come down into a range
 6 that AIG was willing to pay. The court will hear
 7 evidence of that. I don't think there'll be any
 8 credible evidence to the contrary.

9 In addition, the court will hear from one
 10 of AIG's experts, former Superior Court Justice, J.
 11 Owen Todd, who, with respect to the issue of timing,
 12 will tell you that in his opinion it would have been
 13 premature and imprudent for AIG to even consider
 14 settling the Rhodes' claims before August of 2003.
 15 And his reasoning, you will hear, is that prior to
 16 that time Mrs. Rhodes' medical treatment and
 17 rehabilitation had not reached a point from which an
 18 accurate evaluation of the extent of the need for
 19 future care and future treatment costs could be
 20 adequately analyzed.

21 Mr. Todd will also tell you that before the
 22 demand package was sent in 2003, the plaintiffs had
 23 not provided medical records from Mrs. Rhodes, future
 24 care information from Mrs. Rhodes, and other related

1 documents that would enable the insurance companies to
 2 forecast future expenses.

3 What all this evidence will show, your
 4 Honor, is that even if Zurich had taken steps to make
 5 its policy limits available before August of 2003,
 6 AIG's own expert will say that it would not have been
 7 in a position to reasonably evaluate the case and
 8 engage in settlement dialogue as of August 2003.

9 In summary on this point, your Honor, the
 10 evidence will show that AIG and the plaintiffs would
 11 not have bridged the gap that separated them. They
 12 would not have settled the case regardless of whether
 13 Zurich took steps in June of 2003 as opposed to
 14 November of 2003 or any point earlier than that. The
 15 timing of Zurich's efforts to effectuate settlement
 16 and tender its policy limits to AIG made no
 17 difference.

18 Now, if I may, your Honor, have a few
 19 moments to discuss the first question that I outlined,
 20 and that question is the liability, coverage and
 21 damages, the three pieces of the puzzle, if you will,
 22 for assessing -- or for a liability carries task in
 23 looking at a claim. Those all become reasonably clear
 24 within the meaning of Chapter 176D, at some point

1 prior to the time when Zurich took steps to effectuate
2 settlement.

3 Plaintiffs' position, as you've heard, is
4 that this was a, quote, no-brainer. Mrs. Rhodes' car
5 was rear-ended, it was stopped. And Crawford &
6 Company was told by Mr. Pritzker that she was
7 paralyzed, over the telephone they were told that.

8 The plaintiffs' expert will say that by
9 April of 2002 it was clear and Zurich should have
10 tendered its policy limits at that point in time.
11 From his standpoint there was no need for Zurich to
12 look at any medical records, there wasn't a need for
13 it to consider any medical bills, it didn't need to
14 look at any documentation regarding what the future
15 might hold for the Rhodes family, whether it be
16 rehabilitation expenses, medical care needs and so
17 forth. A life-care plan, from their prospective, none
18 of that mattered, Zurich had no need to see any of
19 that, it should put it's money on the table before it
20 even got notice of the claim.

21 You will hear from Kathleen Fuell today,
22 your Honor, and later from our expert witness a
23 gentleman named Karl Maser, who has been an executive
24 at two major insurance companies and has 40-some-odd

1 years in the insurance industry, that it's just not
2 that simple. It's not that simple. There were several
3 issues, critical issues, that remained unresolved for
4 a long period of time.

5 What where they? The first question is,
6 was the Zurich policy in fact primary, not vis-a-vis
7 AIG, but was it the only or the primary policy to
8 provide defense and indemnity. In other words,
9 settlement or a judgment payment for GAF, Driver
10 Logistics, Penske and others.

11 That issue, you will learn, was not
12 resolved for a prolonged period of time despite
13 diligent efforts on the part of Zurich's coverage
14 counsel to gather the information and put it together
15 and provide an analysis.

16 On the issue of fault, your Honor, there
17 are four different defendants in the underlying case.
18 Plaintiffs treat it as if it's just one, but there are
19 four parties. There was the driver, the employer,
20 there was GAF, and there was Penske. Now while I
21 would not stand here and say it was terribly difficult
22 to figure out whether the driver was going to be held
23 somewhat responsible for causing the accident, the
24 question of GAF's potential liability was hotly

1 contested for a long period of time in the underlying
2 litigation because it involved the question of
3 vicarious liability: whether GAF exercised
4 sufficient control over the actions of Carlo Zalewski
5 such that it could be held responsible under tort law.

6 And it remained a hotly contested issue
7 until a very important thing happened: the plaintiffs
8 found it necessary to amend their complaint in March
9 of 2004 to assert a different theory of liability as
10 to GAF, your Honor. If liability was so reasonably
11 clear at that point, why was it necessary to amend the
12 complaint?

13 The last element that was not reasonably
14 clear, your Honor, and this is one I'm going to spend
15 some time about, is the damages picture. The damages
16 picture, as I've alluded to before, did not become
17 reasonably clear to Zurich and it would not have
18 become reasonably clear to any insurance company prior
19 to Zurich's receipt of documentation of Mrs. Rhodes'
20 past medical history with respect to things from this
21 accident or without documentation of Mrs. Rhodes'
22 future anticipated medical expenses, rehabilitative
23 care needs and other future expenses; all of which are
24 a significant piece of the puzzle when we're talking

1 about a case involving paralysis.

2 Kathleen Fuell of Zurich and Carl Maser,
3 our expert, will explain that it is the primary
4 insurer's -- primary carrier's duty to investigate the
5 underlying claim fully and thoroughly. And that means
6 it's not just to investigate up to the amount of its
7 policy limit, it has to fully investigate all aspects
8 of the claim, including damages.

9 You will also hear that it is inconsistent,
10 or would have been inconsistent with good claim
11 handling practices and industry standards for Zurich
12 to rely on secondhand information and hearsay about
13 the nature and extent of the injuries sustained by
14 Mrs. Rhodes or hearsay about any other damages that
15 the plaintiffs intended to prove.

16 What a primary carrier has to examine --
17 and this is imperative -- is credible evidence,
18 documentation establishing what the damages are. It
19 cannot rely solely on secondhand information. And one
20 of the reasons for that is illustrated by this very
21 case, your Honor. You will learn that in May of 2003
22 plaintiffs told defense counsel that Mrs. Rhodes'
23 medical expenses had already reached a million
24 dollars.

1 You will also learn when you look at the
 2 demand package in this case, which will be an Exhibit,
 3 from August of 2003, that in fact the medical expenses
 4 were 40 percent of that number, 40 percent, which
 5 illustrates the reason why we need backup and why an
 6 insurance company has to do a thorough investigation
 7 and rely not on hearsay and secondhand information.

8 The evidence in this case will demonstrate,
 9 your Honor, and particularly through the testimony of
 10 John Chaney, which you'll have an opportunity to read,
 11 he was employed by Crawford & Company, GAF's third-
 12 party administrator, he will tell you that within
 13 weeks of the accident he spoke to Mr. Pritzker. And
 14 during that conversation, among other things, he asked
 15 Mr. Pritzker for something. He said: I will need you
 16 to provide me with information regarding Mrs. Rhodes'
 17 condition and on the information and updates on how
 18 she's doing and what the future is going to hold and
 19 what the medicals are. That was a request that was
 20 made in January of 2002, your Honor:

21 For the next 12 months there was complete
 22 radio silence. Mr. Pritzker and his team provided not
 23 a single medical record, not a single medical bill,
 24 not a single update on Mrs. Rhodes's status. No

1 information whatsoever was forthcoming during the time
 2 that Mr. Chaney was handling the claim on behalf of
 3 Crawford.

4 The strategy instead was to race to the
 5 courthouse, get the lawsuit filed so we could so we
 6 could get the interest clock ticking; and that's what
 7 happened. No information was shared during that first
 8 year at all.

9 Now the plaintiffs emphasize already, and
 10 I'm sure they will continue to do so in this case, the
 11 reports that were sent by Crawford & Company to GAF
 12 and some of which were copied to Zurich.
 13 Parenthetically I would note that you will hear
 14 evidence that the first two reports that Mr. Pritzker
 15 referred to, the January report and the April 2002
 16 report, were never received by Zurich. Zurich's first
 17 notice of this claim was August of 2002.

18 What plaintiffs focus on the most is the
 19 notations in some of those Crawford reports as to,
 20 quote, potential case value, instances in which they
 21 make comments about the potential value of the case
 22 being between five to seven million or five to ten
 23 million dollars.

24 The evidence in this case that you will

1 hear from the Crawford adjustors who worked on it and
 2 you'll see in the documents and the reports themselves
 3 that we'll put before you, is that when the Crawford
 4 people made those comments about potential case value
 5 and when they were making comments regarding what the
 6 reserve, the loss reserve should be in this case, they
 7 did not have a single medical record, they didn't have
 8 a single medical bill, they didn't have a single
 9 update on Mrs. Rhodes' condition, they did not have
 10 any documentation of her prognosis, nothing about the
 11 future potential care needs or expenses, nothing about
 12 Mr. Rhodes' loss of consortium claim or Rebecca
 13 Rhodes' loss of consortium claim.

14 They were making these recommendations they
 15 will admit to you, based on guesswork. As I'd
 16 mentioned before and as our witnesses will explain, an
 17 insurance company cannot, and someone in Zurich's
 18 position as a primary, cannot rely on secondhand
 19 information. And Zurich was aware that Crawford did
 20 not have backup and you will hear testimony, or you
 21 will read testimony, from David McIntosh, who is Ms.
 22 Fuell's predecessor in handling this file, as the
 23 oversight person for this Rhodes' claim.

24 You will hear that he repeatedly requested

1 Crawford to provide backup information, information
 2 regarding exposure, he made that request in August of
 3 2002. He made it in January of 2003, again, he made
 4 it in March, 2003, May 2003, June, July, and August,
 5 continually saying: I need something more, you have
 6 to give me documentation so that I can make a reasoned
 7 rational judgment about what this case may be worth
 8 and what the disposition strategy may be.

9 Our expert, Karl Maser, will tell you, your
 10 Honor, that Mr. McIntosh's requests were reasonable
 11 and also consistent with good claim handling
 12 practices, both in terms of their content and in terms
 13 of their timing.

14 The evidence will demonstrate that Crawford
 15 continued to explain to Zurich in these reports that
 16 it was following up for medical information. Even in
 17 July of 2003, Crawford did not have the medical
 18 documentation, it did not have documentation of future
 19 care needs or anything like that, yet they continued
 20 to make these comments in their reports.

21 It wasn't until September of 2003, your
 22 Honor, when the demand package arrived, which I've
 23 already mentioned to the court, 13 months after the
 24 lawsuit was filed, 19 months after the accident, when

1 Zurich for the first time saw any medical bills or any
 2 documentation regarding damages, apart from secondhand
 3 information.

4 Ms. Fuell will testify that she analyzed
 5 that demand package very carefully, it was a
 6 voluminous package and she had to read through it very
 7 carefully and then once she completed that review she
 8 took a number of steps to move this case into a
 9 settlement mode. She took steps to effectuate
 10 settlement within the meaning of Chapter 176D. What
 11 did she do?

12 The first thing she did was she sought and
 13 obtained input from defense counsel, the defense
 14 lawyer that GAF had hired to represent them, Nixon
 15 Peabody. She sought their input because they were
 16 Massachusetts lawyers and obviously would have
 17 something to say about jury verdicts in this
 18 jurisdiction as well as issues of liability, the
 19 merits of the case and damages.

20 In addition to seeking defense input,
 21 Kathleen Fuell obtained a copy of the defense life
 22 care plan and she reviewed that very carefully, again
 23 with an effort to verify the damages that were being
 24 claimed and the information she saw in the demand

1 package.

2 The third thing she did was convene a
 3 teleconference, and I've already explained this to
 4 your Honor, in which she said at the end of that
 5 conference: This is my plan, I am going to seek
 6 authority to tender my policy limits to AIG for use in
 7 settlement. Once that authority was received she
 8 immediately called Nicholas Satriano and again said:
 9 Now, I'm formally telling you, you have my policy
 10 limits. He said: I can't take that, I need it in
 11 writing.

12 So she went back after consulting with
 13 counsel about issues relating to the tender; she then
 14 put it in writing on March 29, 2004, stating that the
 15 tender had already been made but we are in addition
 16 telling you, AIG, that we are relinquishing our
 17 defense obligation in this case.

18 March 29th, 2004, was the first time that
 19 that position was taken by Zurich and after AIG
 20 rejected it and there was some discussion over the
 21 course of three days, Ms. Fuell sent an e-mail, and
 22 you'll see it in this case, that as a business
 23 decision we are not willing to let GAF bear the burden
 24 of its own expenses for legal fees, so we will

1 continue to defend. Zurich stepped up and said:.
 2 We'll keep the defense obligation, so that this moves
 3 forward.

4 Having received a rejection of the tender
 5 by AIG, Ms. Fuell did the only thing that she could
 6 do, judge, she made an offer through defense counsel
 7 of the policy limits to the plaintiff. After the
 8 tender, your Honor, Zurich was never consulted on any
 9 settlement negotiations, nor did it expect to be
 10 because it had exhausted its policy limits.

11 Zurich didn't know about the mediation in
 12 August of 2004. Zurich wasn't consulted before the
 13 trial or during the trial about any settlement offers,
 14 any settlement demands that had been exchanged by the
 15 parties. Zurich was not calling the shots on the
 16 litigation anymore because in December of 2003, just
 17 after Kathleen Fuell had explained that she intended
 18 to seek authority to tender her policy limits, AIG
 19 retained its own counsel to take over the case,
 20 Campbell Campbell & Edwards.

21 After the judgment was entered in this
 22 case, your Honor, Zurich stepped up again; Mr.
 23 Pritzker already mentioned it to you. The evidence
 24 will show that Zurich paid its \$2 million policy

1 limits to the plaintiffs. In addition it paid
 2 \$322,000 and change, in post-judgment interest, not on
 3 its \$2 million policy but on the entire underlying
 4 judgment of \$11.8 million.

5 Zurich didn't ask for release. The
 6 evidence will show Zurich had no contractual
 7 obligation to make the payment because there was an
 8 appeal pending by AIG's designated counsel. Yet
 9 Zurich made that payment and put the money in the
 10 plaintiffs' hands.

11 Now, your Honor, I'm not going to spend
 12 time talking about damages in this case and there is
 13 two reasons: one, I've gone on long enough, but
 14 secondly, the court correctly pointed out and
 15 predicated in the summary judgment papers, that
 16 plaintiffs will have an extraordinary difficult time
 17 proving damages in this case.

18 I'm also not going to stand before you,
 19 your Honor, and tell you that every single aspect of
 20 this case was handled to perfection. No claim is ever
 21 handled to perfection. When we put a magnifying glass
 22 to a claim file, we always find little things that one
 23 could have done differently or save time on. But our
 24 appellate courts have made it abundantly clear that

1 insurers in the position of Zurich are not to be held
2 to standards of omniscience or perfection.

3 As the SJC said, and I'd like to just for a
4 second quote, in the Clegg case, so long as it acts in
5 good faith --

6 MR. PRITZKER: I thought this was an
7 opening. I kept away from closing because I'm
8 prohibited from closing.

9 THE COURT: It is an opening, I'll let him
10 -- I will also say that I read the Clegg case again on
11 Thursday or Friday, so I don't think he's going to
12 tell me anything that I haven't already --

13 MR. VARGA: Your Honor, I will spare the
14 quote, what I will say is that the court said as long
15 as the carrier exercises honest business judgment it's
16 not violating 176D. We will demonstrate in this case
17 that in overseeing Crawford & Company's administration
18 of the Rhodes' claim the activities of Kathleen Fuell
19 and David McIntosh were guided by honest judgment.

20 So ultimately even if this court were to
21 conclude that Zurich could have taken steps before
22 November 2003 to effectuate settlement by tendering
23 it's policy limits, and that that failure to do it
24 sooner somehow caused this case to go to judgment, you

1 will hear no evidence and you will see no evidence
2 this week or next, suggesting that Kathleen Fuell of
3 David McIntosh of Zurich willfully, intentionally,
4 deliberately or even recklessly delayed tendering the
5 policy limits to AIG. They exercised honest business
6 judgment and acted in good faith. Thank you.

7 THE COURT: I'll hear from whoever AIG or
8 National Union wish to offer and then we'll take our
9 break after the final opening.

10 MR. ZELLE: Your Honor, there is
11 substantial evidence of good faith and of AIG's
12 compliance with industry practices that I'd like to
13 outline. But because I don't have the jury here as the
14 finder of fact, your Honor, I'd like you to be patient
15 and I'm going to defer on making my opening statement
16 until we begin to present our evidence. That, however,
17 will be on Thursday when we are bringing Mr. Satriano
18 for plaintiffs' case and to avoid having to bring him
19 back, we will present our direct evidence, our
20 affirmative evidence, at that time. Therefore, I'll
21 wait until then.

22 The only thing I'd like to clarify is that
23 I would like to open before Mr. Satriano takes the
24 stand despite the fact that his initial testimony will

1 be by plaintiffs' counsel, because I think it will be
2 to the benefit of the court to hear evidence
3 consecutively as opposed to evidence interrupted by my
4 opening.

5 THE COURT: As long as you're not
6 commenting on testimony that's already been heard when
7 you do open.

8 MR. ZELLE: I sure won't.

9 THE COURT: Okay. Let's start with the
10 first witness. We'll break a little bit later than we
11 usually do because I was delayed in getting started.

12 MR. PRITZKER: Your Honor, rather than
13 starting with the first witness, we have an awful lot
14 of exhibits that have been agreed to and I think I have
15 to put them in.

16 THE COURT: I think you do.

17 MR. PRITZKER: And I have to put them in
18 because we are then going to start by putting in a
19 deposition transcript and without the exhibits it
20 wouldn't make any sense.

21 We have both premarked the exhibits that
22 have been agreed to. We have a book for the court for
23 its convenience. We have two books. One is
24 highlighted with the information of each exhibit that
25 I'd like to draw to the court's attention on the

1 plaintiffs' exhibits and another one without the
2 highlighting. And I suggest to you that it will be
3 quicker if it's highlighted because then you won't have
4 to be thumbing through hundreds of pages to find what I
5 want the court to focus on. But if you would rather
6 have the blank one, I understand that as well. And
7 then I would just like to put them in and identify for
8 the record what they are.

9 THE COURT: Okay. If I let you highlight
10 your exhibits, then I will let the defense highlight
11 theirs.

12 MR. PRITZKER: Of course.

13 THE COURT: So each of you just make sure
14 you use different highlighter colors so I know. Why
15 don't you admit those, unless there's any objection.

16 MR. GOLDMAN: Your Honor, we haven't been
17 consulted earlier on the highlighting and we do object
18 to that because it's really the form of counsel
19 testifying the exhibits. It's the kind of thing that
20 ought to be either addressed in the testimony or
21 addressed in post-trial briefs, or both. But to take
22 parts of exhibits and say this is the important -- it's
23 just another form of testimony through counsel.

24 THE COURT: But pragmatically, if this were
25 to be a jury trial and be on the board, somebody would

1 be traditionally marking up the document on the board
 2 to highlight it for the jury. So I'll treat it the
 3 same way. The likelihood of it having any particular
 4 consequence saves me some stickies to mark the page.
 5 But what I will do is, if there's any concern about it,
 6 as I said -- what color highlighter have you used?

7 MR. PRITZKER: Yellow, your Honor.

8 MR. ZELLE: Let me understand. You've
 9 highlighted everything in every exhibit that you're
 10 going to emphasize?

11 MR. PRITZKER: No.

12 MR. ZELLE: Again, maybe this morning, your
 13 Honor, we can just go without the highlighting so we
 14 can see the highlighting.

15 THE COURT: Okay. It doesn't matter. All
 16 I'm saying is I don't have a problem with one party
 17 highlighting, but if one party highlights, then all
 18 highlights. What you may want to do is you may want to
 19 have the plain vanilla set of documents if each of you
 20 think it's important. I may or may not look at it, I
 21 don't know, but if each of you wish to highlight
 22 certain parts of it, then do so in different pens so
 23 I'll know which parts you've highlighted. It's hard
 24 for me to know what volume of documents we're talking
 25 about.

1 MR. PRITZKER: You'll see very shortly,
 2 your Honor. We'll go with the blank one.

3 THE COURT: Why don't you do that. I'll
 4 use my 3M stickies in the interim to mark those pages
 5 which have consequence.

6 MR. GOLDMAN: Your Honor, I'd suggest that
 7 if we're going to the highlighting route down the road,
 8 that Mr. Pritzker provide us maybe at the end of the
 9 day with highlighted copies and then we can begin the
 10 process of highlighting essentially in a different
 11 color.

12 MR. PRITZKER: That's fine.

13 Your Honor, I'm going to go mostly in
 14 chronological order and the exhibits are mostly in
 15 chronological order. This is two books, Volume 1 and
 16 2.

17 THE COURT: Okay. And they're marked?

18 MR. PRITZKER: They are not yet marked.
 19 What I would like to do is -- and then there is one
 20 very large book here, your Honor, which is Exhibit 10,
 21 which is the plaintiffs' demand.

22 THE COURT: Okay. That is a separate --

23 MR. PRITZKER: Anything, your Honor, that
 24 has been objected to is a blank tab in there so that
 25 the number has been reserved for it, but there's

1 nothing in there until the court deals with the
 2 objection.

3 THE COURT: Okay. So I gather Pritzker's 4
 4 has been objected to?

5 MR. PRITZKER: Exactly.

6 THE COURT: And has the court reporter been
 7 given at least an equivalent index to keep track of the
 8 exhibits? It's going to be her job to do that.

9 MR. PRITZKER: The index is easy. And what
 10 we did, your Honor, is we put the actual marked
 11 exhibits in folders for the stenographer but not in a
 12 book. We certainly have extra books.

13 THE COURT: She need to make sure that her
 14 list is accurate and therefore she should be using the
 15 same index we're using. So during the break you can
 16 furnish her with a copy of an index so that she could
 17 use that as her starting point as well. Okay?

18 MR. PRITZKER: Yes. Notwithstanding the
 19 fact, your Honor, that these are almost in
 20 chronological order, I would like to start with Exhibit
 21 66.

22 THE COURT: Before we go, all of the
 23 exhibits which have been identified in this book are
 24 agreed upon. Is that correct?

25 MR. PRITZKER: Anything that has not been

1 agreed upon, your Honor, is not in your book.

2 MR. GOLDMAN: Four, seven and eighty-two
 3 are the three exhibits we had objection to. We haven't
 4 seen the actual book.

5 THE COURT: Okay. I see -- let's go
 6 through it. We have basically Exhibits 1 through 72,
 7 but excluding, so far, Exhibits 4, 7, 8, 12, 22, 27,
 8 36.

9 MR. PRITZKER: That's in Volume 1, your
 10 Honor?

11 THE COURT: In Volume 1.

12 MR. BROWN: Your Honor, we just found out
 13 today that the only two items that are still blank on
 14 there that Zurich is still objecting to are items 4 and
 15 7, so the rest will be providing copies.

16 THE COURT: Okay. Fair enough.

17 All right. And just in terms --

18 MR. BROWN: And 82, the financial statement
 19 that I believe they're referring to, is not a part of
 20 the book. It's not a part of the book that we provided
 21 you.

22 MR. VARGA: Does that mean you're not
 23 offering it?

24 MR. BROWN: We will, but it's not part of
 25 the premarked exhibits that we're doing right now.

1 THE COURT: Okay. And when the defense
2 offers their exhibits, how will they be numbered?

3 MR. VARGA: Your Honor, Zurich's exhibits
4 are numbered by -- well, they're lettered. They're
5 alphabetical, from AA through EE. And we have not yet
6 submitted that to the court, but we can do that now if
7 need be.

8 THE COURT: No, don't do that yet because
9 that's actually a problem. Usually exhibits are letter
10 for I.D. only. So what I think you should do -- do you
11 plan on having more than a hundred?

12 MR. PRITZKER: No.

13 THE COURT: Okay. Why don't you begin at
14 101.

15 MR. PRITZKER: Very good.

16 THE COURT: So just begin at 101, and then
17 you'll --

18 MR. ZELLE: At 200.

19 THE COURT: -- begin at 200.

20 MR. ZELLE: With respect to a couple of the
21 exhibits that have been submitted, we have raised
22 objections. They're primarily the letters -- Mr.
23 Maselek is circling the numbers from Mr. Bartell that
24 was the subject of an in limine motion. The court has

1 agreed to allow them in for purposes of notice. What I
2 would like to advise the court is that, while obviously
3 reasserting our objection, we would want that noted on
4 the record we can do it when they come out.

5 THE COURT: When they come in, it makes
6 more sense to do that.

7 MR. ZELLE: I'd also request, your Honor,
8 that to the extent they come in, to the extent that any
9 substance of examination goes forward, some of these
10 letters were responded to by Mr. Satriano or by
11 counsel. These were not copied to a third party, the
12 broker, thus continue to fall within the scope of the
13 privilege. I'd like to advise the court that we're
14 reserving our right to use those documents, if not to
15 offer them as evidence, at least to use them for
16 examining the witnesses.

17 THE COURT: We'll cross that bridge when we
18 come to it, if that appears to be a bridge of some
19 consequence.

20 MR. PRITZKER: I think it is.

21 THE COURT: Okay. Are you all set to call
22 your first witness?

23 MR. PRITZKER: No. I am going to, if I
24 can, your Honor, put in some of these documents one at

1 a time so that the court understands what they are,
2 which will make the deposition transcripts go much
3 faster than doing it through then.

4 THE COURT: The first witness will be a
5 deposition transcript?

6 MR. PRITZKER: No. What I would like to do
7 is put in -- yes. The first two are deposition
8 transcripts, one I'm just putting in at the court's
9 suggestion that the court can read it faster than I
10 can, and the second one is David McIntosh, the first
11 Zurich adjuster whom I would like to read because that
12 follows with the first live witness, Kathleen Fuell,
13 and unless the court had the benefit of that testimony
14 now, it's not going to make much sense.

15 THE COURT: Okay. I'll let you do what you
16 need to do.

17 MR. PRITZKER: If I can first draw the
18 court's attention to Exhibit 66, which will be used by
19 me on all three, the two depositions and then Ms.
20 Fuell.

21 These are the investigative report of
22 Crawford & Company. And as you'll see, number one, I'd
23 like to draw the court's attention to the date, January
24 30, '02, three weeks post-crash. The first note of

1 significance is under "Reserves." These reserves are
2 significantly low in our view --

3 MR. VARGA: Excuse me. I'm sorry. My
4 understanding was that we were just simply introducing
5 exhibits as opposed to highlighting verbally what the
6 notations are that Mr. Pritzker wants the court to
7 hear.

8 THE COURT: If you want to move forward,
9 why don't you just tell me which portions I should read
10 as opposed to arguing their significance.

11 MR. PRITZKER: Fine, your Honor. I think
12 it's -- okay. Under the "Reserves" --

13 THE COURT: I've read that.

14 MR. PRITZKER: Under "Authority and
15 Handling: Due to the nature of claimant's injury, the
16 claim is classified as catastrophic and will be
17 reportable to both GAF and Zurich." Again, this is
18 January 30th, your Honor.

19 The generalized description of the accident
20 I won't both to read into.

21 The tractor operator's account of the
22 accident I will not read in, but look at the length and
23 detail --

24 THE COURT: What do you plan to go over,

1 all 66?

2 MR. PRITZKER: Yes. But a lot of it is
3 repetitive, your Honor.

4 THE COURT: Let's just take our break and
5 I'll just read them during the break. It's a better
6 use of our time and gives our court reporter both less
7 to write and more time to trade off. So tell me what
8 you say I should read during the break and I'll read it
9 during the break.

10 MR. VARGA: Your Honor, from our
11 perspective, and certainly Mr. Pritzker's free to
12 suggest what he likes, but I think in fairness, if he's
13 asking the court to read these letters, then I think he
14 read them in their entirety and without interpretation
15 from parties. If there are witnesses that testify
16 about them, the court can read those transcripts or
17 hear from them.

18 THE COURT: There isn't that much to read.
19 I'll read 66.

20 So what else should I read apart from that
21 during the break?

22 MR. PRITZKER: This is again for notice
23 purposes, your Honor, one, two, three, four -- I'm
24 sorry, five, eleven, nine. You will see, your Honor,

1 that Exhibit 10 is in a separate binder.

2 THE COURT: Okay. But you don't expect me
3 to read 10 during the break.

4 MR. PRITZKER: No, I do not. I will tell
5 you that we will be going into that in quite some
6 detail.

7 I think you can hold off on 11, which is
8 the Life Care Plan of the --

9 THE COURT: Just tell me what I need to
10 read and I'll do it.

11 MR. PRITZKER: Number 14, number 15, number
12 17, number 19, specifically for the valuation of Ms.
13 Fuell. This is on page 4 of Exhibit 19, so you don't
14 have to read the whole thing if you don't want to.
15 Number 23.

16 For the time being, your Honor, I think
17 that will do it.

18 THE COURT: It's 11:20. We shall plan to
19 reconvene, I guess realistically in terms of this, at
20 quarter of twelve. So at 11:45 we shall reconvene.

21 MR. PRITZKER: And if I might, your Honor,
22 although I know that you're going to read all the
23 things, if you will focus on 66, on the dates and the
24 carbon copies that are indicated and the addresses of

1 the carbon copies.

2 THE COURT: Okay.

3 (Exhibit Nos. 1-72, agreed-upon exhibits
4 marked, with the exception of Exhibits 4, 7, 20, 23,
5 28, 32, 40, which were not agreed upon.)

6 (A recess was taken 11:20-11:50 a.m.)

7 THE COURT: All right, let's proceed.
8 Sorry, we don't have a court officer. I've read all
9 but Exhibit 23 which is not in my book.

10 MR. PRITZKER: Your Honor, we can either
11 proceed with the objected-to exhibits so that we have
12 a full set, or we can do that as we're going along.

13 THE COURT: No, let's start. Ms. Fuell has
14 been waiting --

15 MR. PRITZKER: Well, Ms. Fuell is not next.

16 THE COURT: All right, we're all anxious to
17 meet Ms. Fuell, I guess. All right, go ahead.

18 MR. PRITZKER: Next is John Chaney.

19 THE COURT: All right, I'm anxious to meet
20 him as well.

21 MR. GOLDMAN: Well, that's the problem,
22 your Honor. The plaintiffs have designated a fairly
23 voluminous part of Mr. Chaney's deposition transcript.
24 Looking at this I guess it would take half hour or 45

1 minutes --

2 MS. PINKHAM: No, we're not reading it.

3 MR. PRITZKER: We're not reading it, we're
4 putting it in. I'd like to put it in as an exhibit.

5 MR. GOLDMAN: I'm sorry.

6 THE COURT: All right, that is Mr. Chaney.
7 MR. PRITZKER: But I would like to draw the
8 court's attention to --

9 THE COURT: What is it to be marked as
then? If it is an Exhibit it has to have a number.

10 (Exhibit No. 73, marked; Deposition
11 designations of John Chaney.)

12 MR. BROWN: You'll be getting a binder of
13 just that, your Honor.

14 THE COURT: A binder of just --

15 MR. BROWN: Chaney's deposition.

16 THE COURT: Do I need a separate binder for
17 Mr. Chaney's deposition, or can it fit into my own?

18 MR. BROWN: Unfortunately, probably --

19 THE COURT: I guess I need a new binder,
20 all right.

21 MR. PRITZKER: And that, by the way, is in
22 mini-script.

23 THE COURT: Okay. And you are putting into

1 evidence the entirety of it or only those certain
2 portions?

3 MR. PRITZKER: Those are only portions,
4 your Honor, you'll see that there are redactions
5 probably more as you go along in the transcript,
6 rather significant ones by the plaintiff, counter-
7 designations by each defendant and the rest of it has
8 been redacted.

9 THE COURT: Okay. Then they will become
10 exhibits then.

11 MR. PRITZKER: And the exhibits behind it,
12 your Honor.

13 THE COURT: Okay.

14 MR. PRITZKER: You will also see, since the
15 exhibits are different numbers than the trial exhibits
16 that there is a reference sheet as the first page so
17 that the Chaney exhibits are linked to the trial
18 exhibits.

19 THE COURT: Okay.

20 MR. PRITZKER: And there are several
21 things, your Honor, that I would like to draw the
22 court's attention to. The first is that Mr. Chaney
23 as you will see when you look through the Chaney
24 exhibits, they are redacted. Those redactions were

1 ultimately removed by the time that we got to the
2 trial exhibits and that becomes important because Mr.
3 Chaney either doesn't remember or contradicts what he
4 actually said in the unredacted form.

5 MR. VARGA: Your Honor, I have to object.

6 THE COURT: I'm sorry. I'm a little bit
7 lost. I see here exhibits, for the Chaney Exhibit,
8 which were redacted for purposes of his deposition but
9 later the redaction was undone --

10 MR. PRITZKER: That's correct.

11 THE COURT: -- pursuant to a later decision
12 of my own.

13 MR. PRITZKER: Yes.

14 THE COURT: Okay. And Chaney only had
15 before him the redacted portions?

16 MR. PRITZKER: At the time.

17 THE COURT: Okay, so I will read his
18 testimony --

19 MR. PRITZKER: The only reason I'm saying
20 that is because you have to look at the Chaney
21 exhibits rather than the trial exhibits when you are
22 appreciating his testimony.

23 THE COURT: Right and I should be mindful
24 that the trial exhibits that are identical -- or that

1 the trial exhibits may contain information which was
2 not available to Mr. Chaney in his depo exhibit.

3 MR. PRITZKER: Correct.

4 THE COURT: Okay, I'm so mindful. Let's
5 proceed. How should we proceed?

6 MR. PRITZKER: There are only four items
7 that I would like to draw the court's attention to
8 now. They are on pages 130 and 131, and you don't
9 even have to read it now if you don't wish, where Mr.
10 Chaney admits that the only conversation --

11 THE COURT: Okay, as opposed to your
12 characterization of it, which is cleaner, just tell me
13 which portions I can read, I've been reading since I
14 was a small boy, so I've gotten pretty good at it. So
15 which portion should I read? Page 130?

16 MR. VARGA: Your Honor, I'm sorry, I have
17 to interject, I'm trying to stay seated but what
18 troubles me about this is that Mr. Pritzker
19 represented to us that these would not be read into
20 the record and our understanding was that they were
21 going to present the testimony in transcript form to
22 the court along with exhibits to be read by the court
23 not to be characterized or highlighted verbally by
24 counsel during trial at this point in time. I think

1 it will be a completely one-sided affair is that is
2 the way this is going to proceed and I think we will
3 end up in a tennis match back-and-forth saying: No,
4 you should read the third line from the bottom, well,
5 I'll also read the second line from the top.

6 Either they designate the testimony and
7 leave it at that, or frankly, we have argument about
8 it all day. I think it's going to take considerable
9 amount of time if we do the latter.

10 MR. PRITZKER: There is only three items, I
11 think that they because very relevant when it comes to
12 the --

13 THE COURT: Just tell me what they are.

14 MR. PRITZKER: Okay, the first is that Mr.
15 Chaney --

16 THE COURT: Which page?

17 MR. PRITZKER: Page 130 and over to 131.

18 THE COURT: Okay, what else?

19 MR. PRITZKER: Page 165.

20 THE COURT: To?

21 MR. PRITZKER: Just on 165.

22 THE COURT: Okay.

23 MR. PRITZKER: The third is pages 132 and
24 that comment is repeated on 167.

1 THE COURT: All right, that's it?
 2 MR. PRITZKER: And the last is on page 183
 3 to 186, but most of that is redacted in between.
 4 THE COURT: All right. Then what happens,
 5 then you call your next witness?

6 MR. PRITZKER: My next witness is David
 7 McIntosh by deposition and we will be reading it.

8 THE COURT: Okay, why don't you get your
 9 people ready on the stand who are going to be serving
 10 as the readers while I read these few pages.

11 MR. GOLDMAN: Your Honor, just one quick
 12 thing, I just question whether it's necessary to read
 13 all of Mr. McIntosh, because it's going to take, just
 14 looking at it now, it's going to take a half hour or
 15 45 minutes or more to read that. There is a fairly
 16 lengthy section of that.

17 MR. PRITZKER: Your Honor, Mr. McIntosh is
 18 a key witness. He is the first adjustor on this case.

19 THE COURT: I'll give you some leeway. Get
 20 your actors and actresses ready. I will be ready for
 21 them in about one minute.

22 (Pause.)

23 MR. PRITZKER: Your Honor, just for your
 24 edification, what we're reading is both the

1 plaintiffs' designations and both defendants' counter-
 2 designations.

3 THE COURT: Of David McIntosh?

4 MR. PRITZKER: Of David McIntosh.

5 THE COURT: Okay, and where do I find
 6 those?

7 MR. PRITZKER: You don't have the book?

8 THE COURT: I have the Chaney book and now
 9 I have the McIntosh book. All right.

10 DEPOSITION READING OF DAVID McINTOSH:

11 Q Would you state your name please?
 12 A Hugh David McIntosh.

13 MR. PRITZKER: Perhaps, your Honor, I
 14 should introduce Rachel Lipton who is the reader.

15 THE COURT: Ms. Lipton and I are well
 16 acquainted from our last hearing. You may proceed.

17 MR. VARGA: Your Honor, I apologize, not to
 18 further confuse things, but I'd prefer that counsel
 19 not read Zurich's designations, we have our own
 20 witness or actor to do that. We'd like to have him do
 21 that when Mr. Pritzker is finished with what he --

22 THE COURT: That will be fine.

23 MR. VARGA: All right, thank you. So, Mr.
 24 Pritzker you will read --

1 MR. PRITZKER: I did not separate it.
 2 THE COURT: Well, I'll permit Zurich to
 3 read -- if it's a different attorney questioning, I'll
 4 permit that to be done by your person, but if it's Mr.
 5 Pritzker questioning I'm not going to then split it
 6 up.

7 MR. VARGA: For Mr. McIntosh it was all Mr.
 8 Pritzker' questioning so your Honor is saying we
 9 should not have a separate witness?

10 THE COURT: Yes, it's only going to
 11 interfere with my -- I mean it's one thing if these
 12 were questions asked by Zurich's counsel, but if it
 13 was all asked by Mr. Pritzker, it's easier for me to
 14 hear Mr. Pritzker ask the questions.

15 Okay. Let's proceed.

16 (By Mr. Pritzker)

17 Q Would you state your name please?

18 A Hugh David McIntosh.

19 Q Do you go by the name of David McIntosh in business?

20 A Yes, I do.

21 Q Where do you live?

22 A 1812 Wyandotte Trail, Casselberry, Florida.

23 Q How long have you lived there?

24 A Fifteen years with a three-year break in South

1 Florida.

2 Q Whether you say a three-year break in South Florida,
 3 does that mean you left South Florida or --
 4 A No. I moved to South Florida for three years. I kept
 5 my house here, moved to South Florida for three years
 6 and then moved back to the same house.

7 Q Where did you move to in South Florida?

8 A Boynton Beach.

9 Q And when were you there?

10 A I was there -- I moved back here 14 years ago.

11 Q Okay. So --

12 A My son was there so it's an easy reference point.

13 Q So you've lived at your present address for 15 years?

14 A Correct.

15 Q Nonstop?

16 A No. Again, I've owned that house for that period of
 17 time. I had -- well, yeah, since moving back 14
 18 years, that would be correct.

19 Q So during the whole period of the Rhodes claim, you
 20 we're living at your present address?

21 A That would be correct.

22 Q What is your social security number?

23 THE COURT: There is no reason for that to
 24 be read, so just proceed.

1 Q Your date of birth?
 2 A 6/23/53. Today.
 3 Q Did you go to high school?
 4 A Yes sir, I did.
 5 Q Where?
 6 A Lyman High School in Longwood, Florida.
 7 Q Did you graduate?
 8 A Yes, I did.
 9 Q In what year?
 10 A '71.
 11 Q Did you go on to college?
 12 A I sure did.
 13 Q What college?
 14 A University of Central Florida, at the time known as
 15 Florida Technological University.
 16 Q Did you graduate?
 17 A Yes sir, I did.
 18 Q What year?
 19 A '74.
 20 Q With what degree?
 21 A I had a BA in criminal justice.
 22 Q Any high education after University of Central
 23 Florida?
 24 A I was enrolled in a Master's program for a short time

1 at Boston University. Due to a change in jobs within
 2 Zurich, I withdrew, so I did not complete any course
 3 of study beyond the first class that I started.
 4 Q When did you start at BU, right after school?
 5 A No. That I started about a year and a half, two years
 6 ago.
 7 Q So between graduating from Central Florida in '74 and
 8 recently, within the last two years, have you had any
 9 other formal educational training?
 10 A I have my CPCU designation.
 11 Q When did you get that?
 12 A I received that approximately ten years ago.
 13 Q So approximately '96?
 14 A Yeah.
 15 Q Anything else?
 16 A I also have my Associates in Insurance Services.
 17 Q When did you receive the Associates --
 18 A About five years ago.
 19 Q So that would be about '01?
 20 A That sounds r. I'm giving you my best estimates.
 21 Q That's all I ask for.
 22 A I don't have all that memorized.
 23 Q When you graduated college can you track for me your
 24 work experience, other than odd jobs?

1 A Certainly. I was actually employed with Allstate
 2 Insurance my junior year of college and worked for
 3 Allstate for four years. I left Allstate and went to
 4 work for Crum & Foster. I worked for them for
 5 approximately another four years.
 6 Q What did you do for Allstate?
 7 A I was a telephone claims service rep to start with.
 8 When I graduated from college I moved on to become an
 9 outside field adjustor, handling first and third party
 10 auto, auto physical damage.
 11 Q What did you do for Crum & Foster?
 12 A I was a general liability claim adjustor.
 13 Q And you were there for about four years, so we're now
 14 about to, about '78?
 15 A It sounds about right.
 16 Q Then what?
 17 A From Crum & Foster I went to the Florida Foliage
 18 Association. I was with them for roughly two years.
 19 Q Doing what?
 20 A A number of things. I was primarily hired to help set
 21 up their workers' comp self-administered insurance
 22 fund. I also acted as the membership director, and I
 23 also was their trade show coordinator.
 24 Q All at the same time?

1 A Correct.
 2 Q So you had some insurance-related work at the Foliage
 3 Association?
 4 A Yeah, that was the primary reason that they had hired
 5 me.
 6 Q How long were you there?
 7 A Approximately two years.
 8 Q And then what?
 9 A I went to work for Central Insurance Underwriters,
 10 which is MGA.
 11 Q What's MGA?
 12 A Managing general agent.
 13 Q What did you do for Central Insurance?
 14 A I started as a claims adjustor, liability claims
 15 adjustor, I was promoted to their claims manager.
 16 Q How long were you there?
 17 A Between four and five years.
 18 Q Where did you go next?
 19 A I then went to American States.
 20 Q American States Insurance?
 21 A Correct.
 22 Q What did you do there?
 23 A At American States I was -- I started off as a
 24 liability claims representative. I, very shortly

1 after that, became the clients manager for the
 2 American States Office in Palm Beach County. I was
 3 the claims manager down there for several years, and
 4 then I was promoted to regional liability supervisor
 5 back in Orlando.

6 Q I didn't catch the last part, regional clients
 7 supervisor?

8 A Liability claims supervisor.

9 Q What were the dates approximately that you were at
 10 American States?

11 A Well, let's see, I can probably go backwards to that
 12 one.

13 Q If my calculations are correct, you started there
 14 in -- somewhere around '86 or '87?

15 A Well, I've been with Zurich for ten years, and I came
 16 to Zurich from American States.

17 Q That's easy.

18 Q So if that helps us.

19 Q So that means you started with Zurich at about '96??

20 A That would be correct. That one I remember.

21 Q And that means you left American States around '86?

22 A No.

23 Q I'm sorry.

24 A At the same time.

1 Q You started with Zurich in '96?

2 A Right, I would have left --

3 Q And how long were you at American States about?

4 A I want to say it was roughly six years, something like
 5 that.

6 Q So that would be about '90?

7 A Yeah.

8 Q Okay. Can you track your experience at Zurich?

9 A At Zurich I was hired to be the liability team manager
 10 for the State of Florida. From there I went to be
 11 home office management regional supervisor for the
 12 southeast. I became the NCU supervisor for TPA, and
 13 then to my current position as regional MCU claim
 14 manager.

15 Q What's MCU?

16 A Major case unit. Claims at 100,000 or more are
 17 reported to MCU, major case unit, and claims over 250
 18 are to be handled by the major case unit, unless
 19 myself, or another person in authority, waives
 20 handling that.

21 Q Now was this the MCU for the TPA?

22 A The TPA at the time that I first went in to that group
 23 was -- the best description would be, sort of, an
 24 adjunct to the MCU. It wasn't a normal part of MCU

1 because the MCU deals directly with the Zurich handled
 2 claims.

3 Q Can you tell me what you have done, Mr. McIntosh, to
 4 prepare for today's deposition?

5 A Certainly. I spent part of the last two days with my
 6 counsel going over the notes and various documents.

7 Q I take it, it's Mr. Varga that you are referring to as
 8 counsel?

9 A Yes. I'm sorry. I should have been more clear on
 10 that.

11 Q Do you see Fuell Exhibit 21-A?

12 A Yes.

13 Q And is that a document that you saw before you
 14 reviewed it with counsel?

15 A No.

16 MR. PRITZKER: Fuell 21-A is the same as
 17 trial Exhibit 66.

18 THE COURT: Okay.

19 MR. VARGA: 66A to be precise.

20 MR. PRITZKER: Yes.

21 THE COURT: Okay.

22 (By Mr. Pritzker)

23 Q So you never saw 21-A before?

24 A Prior to my discussions this week with my counsel, no.

1 That was the first I'd seen this report.

2 Q Okay. The next report is Fuell 21B, did you review
 3 that report with counsel?

4 A Yes.

5 Q And that's a transmittal letter; is it not?

6 A That -- I would not characterize it that way, no.

7 Q Do you see that it's listed next to the date as
 8 liability transmittal letter?

9 A Uh-huh.

10 Q Yes. Okay. You have to verbalize your answers.

11 A Yes. I'm sorry.

12 Q And had you seen that document prior to your review
 13 with counsel this week?

14 A No.

15 Q Directing your attention to Fuell Exhibit 21-C, is
 16 that a document that you reviewed with counsel this
 17 week?

18 A Yes, it was.

19 Q Had you seen that document prior to your review with
 20 counsel?

21 A Yes, I did.

22 Q At or around the time that it is dated?

23 A No. I believe that I first saw this in August of '02.

24 Q Is there any way, other than your memory, that you can

1 determine when you first saw Fuell Exhibit 21-C?
 2 A Yes.
 3 Q What is that?
 4 A My first entry in the notes, which is dated 8/7/02.
 5 Q And the notes you're referring to are Exhibit 1?
 6 A Correct.

7 MR. PRITZKER: Exhibit 1, your Honor, is
 8 trial Exhibit 62. But it's also attached, if you
 9 wish, to the transcript itself.

10 THE COURT: As --
 11 MR. PRITZKER: As Exhibit 1.
 12 THE COURT: Okay.

13 (By Mr. Pritzker)

14 Q Directing your attention to Fuell Exhibit 21-D, is
 15 that a standard of care that you reviewed with
 16 counsel?
 17 A Yes.
 18 Q Had you seen that document prior to reviewing it with
 19 counsel?
 20 A Yes, I believe so.
 21 Q Is there any way that you can tell when?
 22 A I can't say with certainty, but I would assume that I
 23 would have sentence it at the same time as the other,
 24 June -- so that I'm correct as to which one I'm

1 looking at.
 2 Q You're looking now at 21-D which is dated September
 3 25, '02?
 4 A Yes, sorry, I got one page behind.
 5 Q That's okay.
 6 Q I don't have a separate notation for that, but I do
 7 believe that I saw it.
 8 Q Okay. Is it fair to say that you saw it at or around
 9 the time that it was generated?
 10 A I can't give you -- I don't have a specific memory as
 11 to the date that I saw the document. It would have
 12 been sometime after the date that is shown as being
 13 produced.
 14 Q Okay. Directing your attention to Fuell Exhibit 21-E?
 15 A Yes.
 16 Q Is that a document that you reviewed with counsel this
 17 week?
 18 A Yes.
 19 Q Had you seen that document prior to your review with
 20 counsel?
 21 A To the best of my knowledge, yes.
 22 Q Okay. Directing your attention to Fuell Exhibit 21-
 23 Fuell, did you see that in your review with counsel
 24 this week?

1 A Yes, I did.
 2 Q Had you seen that document prior to your review with
 3 counsel?
 4 A Yes.
 5 Q Can you tell approximately when you saw 21-F?
 6 A I had seen it at least by 6/11/03. Let me correct
 7 that, it would have been 5/16/03.
 8 Q Had you read that at the time you received Fuell 21-G?
 9 A I most certainly did.
 10 Q Did you ever inquire where these requests came from,
 11 or where they went?
 12 A The requests were reflected in the prior reports that
 13 I received.
 14 Q Since 4/8/02?
 15 A I was not on the file. There was no report of this
 16 claim to Zurich claims that far back.
 17 Q Okay. Do you see on 21-G, last page, under medical
 18 status?
 19 A I have that page.
 20 Q Under that section medical status, do you see the
 21 statement, we do not have any current medical
 22 information. This may have been forwarded to GAF
 23 directly from defense. Do you see that?
 24 A Yes, I see that.

1 Q Did you ever inquire of the defense team whether they
 2 had medical information?
 3 A When you say defense team, please clarify.
 4 Q Legal team.
 5 A Specifically, did I call up the defense attorneys and
 6 ask for that?
 7 Q Yes.
 8 A No.
 9 Q Did you do anything with regard to trying to obtain
 10 the information that my have been forwarded to GAF
 11 directly from defense?
 12 A Yes, I most certainly did.
 13 Q What did you do?
 14 A I went to Crawford -- I have been repeatedly asking
 15 Crawford to provide full medical information on this,
 16 and in response to this. I even went to the
 17 supervisor in that unit at Crawford and again made a
 18 rather firm request that they provide me with all of
 19 the information that I was needing on the case.
 20 Q Okay. Directing your attention to Fuell 21-Zurich,
 21 had you reviewed this document this week with counsel?
 22 A Yes, I did.
 23 Q And had you seen this document prior to your review
 24 with counsel?

1 A No, I did not. I did not receive this before I left
2 the handling of the case.
3 Q So when did you leave the handling of the case?
4 A In the August-September time frame, I believe it was.
5 If I can look at the notes I can be more specific. It
6 would either be the end of August or September.
7 Q Why did you leave the claim?
8 A I changed positions. At the time that I left the
9 handling of this claim, I was still with TPA. We had
10 hired another person, that person being Kathleen
11 Fuell. This file was reassigned to Kathleen as part
12 of the reorganization of the unit by account, so it
13 was one of the many that would have been reassigned
14 to Kathleen.
15 Q At the time that you learned that the Rhodes claim
16 file was being reassigned, did you put any
17 documentation into the claims file about significant
18 pending issues?
19 A Did I put a separate note that listed things? No, I
20 did not.
21 Q Okay. Did you talk with Ms. Fuell about any pending
22 issues that you felt were important to look after
23 immediately?
24 A I have no specific recollection of a conversation with

1 Kathleen on this particular file.
2 Q Can you take a look at 21-I? And I take it from your
3 answer that you had not seen this document before?
4 A That's correct.
5 Q What about 21-J?
6 A Same answer.
7 Q Do you see 21-J, that you're still being listed as a
8 carbon copy?
9 A Yes.
10 Q Do you know whether or not you ever communicated to
11 Crawford & Company as of September 24, '03, that you
12 were no longer on this case?
13 A Myself, specifically, about this specific case, no.
14 There was likely communication, and this is to the
15 best of my recollection, that there was likely
16 communication to not just Crawford but to all the TPAs
17 that would have outlined the new change and the new
18 alignment of accounts, which would have included
19 Kathleen, and his account would have been included in
20 the alignment to her.
21 Q Have you ever seen Fuell 21-K before this week?
22 A No. I'm not sure I even looked at this one this week.
23 Q Have you ever seen Fuell 21-L before this week?
24 A No.

1 Q Have you ever seen 21-M before this week?
2 A I have not.
3 Q Have you ever seen 21-N before this week?
4 A I have not.
5 Q 21-O before this week?
6 A I have not.
7 Q Now, if we can, I want to go back to Exhibit 1, were
8 you the first Zurich employee to look after, in any
9 capacity, the Rhodes claim?
10 A That question is broad enough to the point that I
11 don't know that I can answer it. If you're asking and
12 I'm the first person that this claim was assigned to
13 within the claims department, the answer would be yes.
14 Q Let me ask you a couple of questions on that. Had you
15 ever seen the police report that was issued in this
16 case in January of '02?
17 A I don't recall that I did, no.
18 Q When did you first learn that the accident was a rear-
19 ender that rendered the claimant a paraplegic?
20 A In the first report I received from Crawford & Company
21 there was a description of loss and an indication of
22 what the injury was alleged to be.
23 Q Do you know whether or not Zurich received reports
24 from Crawford & Company prior to the first report that

1 you received?
2 A To the best of my knowledge the report that I received
3 was the first report that Zurich had received. I
4 can't speak on behalf of all of Zurich, I can only
5 tell you what my specific knowledge is.
6 Q But to the best --
7 A But to the best of my knowledge the first report that
8 I received was in June, and I know of no one else that
9 got one before that.
10 Q Do you see that the -- on Exhibit 2, that the first
11 formal report issued by Crawford & Company, which is
12 the first document in Exhibit 2, also identified as
13 Fuell 21-A, has a carbon copy to Zurich Insurance
14 Company of 1400 American Lane in Schaumburg, Illinois?
15 A I see that CC notation, yes.
16 Q And is that, in fact, the home office of Zurich
17 Insurance Company of North America? Was it on that
18 date?
19 A To the extent we're clear on the nomenclature, it is
20 referred to the head office. Home office is in
21 Zurich, Switzerland. That keeps me clear.
22 Q Got it. So this was the head office of Zurich
23 Insurance Company in North America?
24 A That would be accurate, yes.

1 Q And having reviewed this, when you did this week,
 2 would you agree with me that it's a rather
 3 comprehensive and important document as it relates to
 4 claims?
 5 A No, I would not agree with that. I don't think it's
 6 as comprehensive as I would like a report to be, but
 7 it is -- it is what it is. It contains certain
 8 information. It doesn't contain everything that you
 9 would want to know about the case, clearly not.
 10 Q Does it indicate who the insured is?
 11 A Yes.
 12 Q Does it indicate the automobile liability policy
 13 number that the insured is insured through Zurich
 14 under?
 15 A Say it again.
 16 Q Does it indicate the insurance policy number?
 17 A Yes.
 18 Q Does it give a generalized description of the
 19 accident?
 20 A I would agree that it is a briefly description of the
 21 accident.
 22 Q in that brief description of the accident, Mr.
 23 McIntosh, it indicates, does it not, on page 0422,
 24 that the driver for the GAF leased truck rear-ended a

1 stopped passenger car owned and operated by Marcia
 2 Rhodes; does it not?
 3 A Yes, I see where it says that.
 4 Q And at the bottom of page ZA0422 is a section that
 5 starts, the Tractor Operator's Account of the
 6 Accident; does it not?
 7 A You're saying on 0422?
 8 Q Yes, where it says --?
 9 A Oh, okay.
 10 Q Three-quarters of the way down.
 11 Q The caption, okay. I'm sorry. I was reading in the
 12 text.
 13 Q And then on page 0423, after a rather lengthy
 14 description of what the tractor-trailer operator's
 15 version of the accident was, is a section entitled,
 16 Police report -- or rather, Commonwealth of
 17 Massachusetts Motor Vehicle Crash Police report?
 18 A Correct.
 19 Q And it describes, does it not, the fact that an
 20 officer had stopped Mrs. Rhodes' car at a work site,
 21 that there was 800 feet of straight clear visibility,
 22 which might have been further because of a hill and
 23 the height of the truck, and that the driver was
 24 distracted; do you remember reading that this week?

1 A Yes.
 2 Q Back to page 1 of this report, the third line of the
 3 text says, please allow this to serve as our first
 4 full formal report on this catastrophic claim file; do
 5 you see that?
 6 A I see that line is contained in the report, yes.
 7 Q Typically, what would happen to a report like this, if
 8 you know, if it was received by the head office for
 9 Zurich North America?
 10 A It would come into the unit that is responsible for
 11 receiving mail. It would likely be sent to the
 12 imaging department to be imaged and then it would be
 13 sent to the appropriate file. If there was no file,
 14 then it would be sent to the appropriate office, or
 15 individual, for assignment.
 16 Q And that didn't happen in this case, did it, to the
 17 best of your knowledge?
 18 A I have no knowledge at all as to what happened with
 19 this report, whether it was received or not received,
 20 whether it was even sent to imaging. I had no
 21 knowledge at all of this document prior to two day
 22 ago.
 23 Q Okay. Do you see under damages, on page 0426 -- by
 24 the way, this report was written approximately two

1 weeks after the accident, was it not?
 2 A Date of loss was January 9, '02. The report is dated
 3 January 30, '02.
 4 Q So almost three weeks after the accident. And do you
 5 see under damages the statement, we are not fully
 6 aware of the extent of the claimant's injuries, except
 7 that we know that she remains in a life threatening
 8 condition at UMass Medical Center, is paralyzed,
 9 suffers currently from pneumonia and pancreatic
 10 infection? Is it fair to say if you had read this
 11 report it would have waived a red flag that this is an
 12 important case that must be looked after?
 13 A As opposed to what? That was a contextual question,
 14 but it wasn't in context to something. It presupposed
 15 this was not a serious case the first time I saw this
 16 Q If you saw this on or about January 30, '02, would
 17 you, as a representative of Zurich, come to the
 18 conclusion that this is an important matter that must
 19 be looked after?
 20 A We consider all claims important and should be looked
 21 after, but that -- yes, this would be a claim that
 22 would follow that parameter.
 23 Q So you have no knowledge, notwithstanding the fact
 24 that this went to the head office for Zurich North

1 America, whether it was received; is that accurate?
 2 A I -- I have no idea what happened to this document if
 3 it was sent, where it was sent, beyond the fact that
 4 there's a CC notation that lists Zurich's head office.
 5 Q Okay. Now, do you see in the next document, Exhibit
 6 2, which is Fuell 21-B, the CC is to current
 7 administrator Zurich U.S. with a post office box?
 8 A Uh-huh, yes, I see that.
 9 Q Well, do you know that there is a claim office for
 10 Zurich in Chicago?
 11 A Yes, there is.
 12 Q Do you know that it has a post office box of 66946, or
 13 at least it had in 2002?
 14 A To my knowledge I do not know post office box numbers
 15 for the claim office or for the head office. I'm not
 16 trying to be evasive. I'm just trying to tell you, I
 17 don't know if it's a good or a bad number. I just
 18 don't know from my personal knowledge because I never
 19 write to a P.O. Box in any correspondence that goes to
 20 Chicago.
 21 Q Do you know how Crawford & Company, having sent its
 22 first full report, which is 21-A, to Schaumberg,
 23 Illinois, the head office, on it's very next report
 24 sends it to the Zurich claims office with a post

1 office box number?
 2 A I have no idea.
 3 Q Do you see that the document, which is under Exhibit
 4 2, 21-F, which I believe you said you did see --
 5 A Yes.
 6 Q -- has the same post office box number in Chicago?
 7 A I agree with you, it's the same.
 8 Q Can you tell me how you received that? Do you
 9 remember how you received it?
 10 A How I received what? Which one?
 11 Q 21-F.
 12 A 21-F, thank you. I would have received this
 13 electronically.
 14 Q From someone at Zurich?
 15 A Yes, with the electronic mail system that we have.
 16 Q So at least something that was addressed to you at
 17 Zurich U.S. Post Office Box 66946, with your name on
 18 it, finally made it into the electronic process?
 19 A As to --what did you say, 21-F?
 20 A 21-F. Now, 21-E, which I believe you said you saw, at
 21 or about the time that it was generated, also has the
 22 same Post Office Box 66946 in Chicago, Illinois; does
 23 it not?
 24 A Yes.

1 Q And that was directed to you and you saw it?
 2 A Correct.
 3 Q And 21-C which you say you saw in August of '02, was
 4 CC'd to the current administrator at that post office
 5 box?
 6 A Correct.
 7 Q And you don't know what happened to that, at least in
 8 June of '02, you don't know what happened to it; is
 9 that correct? The first time you saw it was in
 10 August?
 11 A The first time I saw it was in August, yes.
 12 Q Was there a file set up, to your knowledge, prior to
 13 August of '02 at Zurich on the Rhodes claim?
 14 A No.
 15 Q And is that because no individual set up a file prior
 16 to August of '02?
 17 A That is something I don't know any specific knowledge
 18 of. In TPA there are two ways a file can be
 19 established, one of which is a file such as the one
 20 that I set up for this claim. The other is an
 21 electronic file, which is established to track the
 22 financial reserves from the TPA. The fact that an
 23 electronic file gets established does not mean that
 24 that file is then sent to a claim adjustor.

1 Q Okay.
 2 A And in this case when I received the claim in August,
 3 there was no -- there was -- neither type of file had
 4 been set up, that I could tell.
 5 Q When you set up the file, you had -- strike that. How
 6 did you set up the file physically? What did you do?
 7 A I have administrative help that will establish a file
 8 in the computer, an electronic file. I give them the
 9 specific information and request that they establish
 10 the electronic file. They do that and write back to
 11 me giving me the claim number.
 12 Q And presumably if someone else had picked up any one
 13 of these documents that we've been talking about, and
 14 looked for a file, and found there wasn't one, they
 15 had the ability to set up a file?
 16 A No.
 17 Q Do you have any knowledge of how Crawford & Company
 18 got your name prior to the file having been set up?
 19 A Yes.
 20 Q How?
 21 A My name would have been on the account for GAF as part
 22 of the account instructions that they would have in
 23 terms of contact, if you will, with Zurich.
 24 Q Okay. Let's take it both ways. Are there written

1 procedures as to what's supposed to be interaction
 2 between the third-party administrator and persons such
 3 as yourself?
 4 A Zurich has a set of best practices which are by their
 5 nature written guidelines for Zurich handled files.
 6 It does not specifically entail TPA, but these are
 7 general guidelines as to the operation of how claims
 8 are supposed to function, rather than any specific
 9 guideline or recommendation for any one given file.
 10 TPA is somewhat unique in how it is set up because we
 11 do not handle -- we are not the claims handler for the
 12 file. We provide only the oversight. And those --
 13 and the best practices don't envision that structure,
 14 per se.

15 MR. PRITZKER: Directing to Exhibit 3.

16 Q Do you believe that the best practices that are
 17 articulated in Exhibit 3 answer good claims practices
 18 for effecting the results that Zurich wishes to
 19 obtain?
 20 A I would say that's a fair representation of what best
 21 practices are.
 22 Q If you take a look at page ZA1240 of Exhibit 3, under
 23 Exposure Recognition and Reserving?
 24 A I see that.

1 Q And do you see that it states that, estimated
 2 realistic case exposure is proactively recognized as
 3 soon as practicable but no more than 30 days from our
 4 receipt of information evidencing that exposure?
 5 A Yes, I see that it says that.
 6 Q And one sentence beyond that -- two sentences beyond
 7 that, case reserves reflect our estimated realistic
 8 exposure given the degree of liability, severity of
 9 loss, and measure of damages?
 10 A Yes.
 11 Q Did I read that accurately?
 12 A Yes.
 13 Q And do you agree that those are reasonable standards
 14 for appropriate claims handling in this case? In the
 15 Rhodes case?
 16 A I think they are reasonable standards as to all cases.
 17 Q When you picked up the Rhodes case claim in August of
 18 '02, the accident was already seven months old; was it
 19 not?
 20 A Yes.
 21 Q Well, did you understand that Crawford was acting on
 22 behalf of Zurich?
 23 A Correct.
 24 Q And that, in fact, the third-party administration

1 agreement between Crawford and Zurich specifically
 2 states that, does it not, that Crawford is doing the
 3 claims handling for Zurich?
 4 A That's correct. I agree with that statement.
 5 Q Would you agree therefore that Exhibit 3 is a good
 6 guideline for Crawford, as well as Zurich?
 7 A I'm not sure how Crawford would be held to a standard
 8 if they didn't know what the standard was. That said,
 9 industry standards are not in conflict with what is
 10 here.

11 MR. PRITZKER: Your Honor, Exhibit 3 is
 12 trial Exhibit 64 for the court's information.

13 (By Mr. Pritzker)
 14 Q McIntosh Exhibit 1. Let's see if we can track your
 15 involvement in a little more detail.
 16 A Gladly.
 17 Q What's the first date you opened this case, you opened
 18 the file?
 19 A Well, the first Z note that I have in the file is
 20 August 7, '02.
 21 Q Is it August 7, '02, or is it actually August 21, '02?
 22 A Okay. The note is dated -- it was -- let me see here.
 23 Okay. Yes. August 21 is the date that the note was
 24 entered into the system. August 7 is the date of the

1 work that I actually did, the conversation, et cetera.
 2 As you will recall, I asked that there be a claim file
 3 set up.
 4 Q Yeah.
 5 A And that doesn't preclude me from continuing to work on
 6 the case during that process.
 7 Q Did you independently, outside of coverage, counsel --
 8 MR. GOLDMAN: I think the witness didn't
 9 finish the answer.
 10 MR. PRITZKER: I think that should have been
 11 eradicated.
 12 MR. VARGA: Well, it's designated so we
 13 should complete it.
 14 A And what I think we see.
 15 MR. VARGA: May I ask that the whole answer
 16 be read back, your Honor, so that there's completeness
 17 for the court's benefit?
 18 THE COURT: Why don't you give me a moment to
 19 read it. It will save us some time.
 20 MR. VARGA: All right.
 21 THE COURT: Okay. I gather the rest of the
 22 sentence was redacted.
 23 MR. VARGA: No. I think, actually, your
 24 Honor, we designated too much, and it should have

1 stopped at line 22.

2 THE COURT: Okay. But what I think we see --
3 I assume there's more, but in any event it's of no
4 consequence.

5 (By Mr. Pritzker)

6 Q Did you independently, outside of coverage, counsel,
7 come to the conclusion that Driver Logistics Services,
8 who provided the driver, was a named insured?

9 A A named insured?

10 Q Yes. An additional named insured.

11 A Okay. You're using specific terms that I'm not sure
12 are ones that I can agree to what you're asking to.

13 Q Okay.

14 A Because a named insured is different from an insured,
15 which is different from an additional insured.

16 Q Do you know that Driver Logistics was one of those
17 three? Was either a named insured, an additional
18 insured, or an insured?

19 A Are you talking about at the time that I first received
20 this clause?

21 Q No. I'm talking about at any time, independent of
22 counsel, did you ever come to that conclusion by
23 reading the policy?

24 A I made the coverage decision in this case, so the

1 answer to that would be yes, but not -- I didn't do it
2 independent of anything. I did it in concert with any
3 number of things that I would go through in order to
4 make a coverage decision that was accurate based on the
5 information that we had, or that we obtained.

6 Q Directing your attention to Exhibit 4, Mr. McIntosh, do
7 you see that the insured is Building Materials
8 Corporation of America, who we refer to as GAF?
9 A Correct.

10 Q But if you find BMCA No. 0103, the next page after that
11 appears to be an endorsement for an additional insured,
12 and the additional insured is the lessor of autos, is
13 that not so, or the lessor of vehicles.

14 A The caption on that endorsement says, "Additional
15 insured, hyphen, lessor."

16 Q And does that tell you that a lessor of vehicle is an
17 additional insured?

18 A It says any leased auto designated -- or described in
19 the schedule would be considered a covered auto you own
20 and not a covered auto you hire or borrow, and then it
21 goes on.

22 Q Do you see the next page, which page 105, that the
23 statement says that this endorsement changes who is an
24 insured to include as an insured the lessor named in

1 the schedule; do you see that? That's under A-1.

2 A Who is an insured, yes.

3 Q And that schedule is for the lessors of vehicles as
4 that term is defined in this policy; isn't that so?

5 A I don't quarrel with what you just said.

6 Q And did you learn that all vehicles leased for a term
7 of six months or longer were considered autos under
8 this policy?

9 A And did you learn that all vehicles leased for a term
10 of six months or longer were considered autos under
11 this policy?

12 A Yes.

13 Q And did you learn that the tanker-trailer and tractor
14 that were involved in the Rhodes case were leased by
15 GAF for longer than six months?

16 A Yes.

17 Q Did you also learn that the driver of the vehicle, the
18 leased vehicle, was also an additional insured?

19 A Okay. Is there a point in time that you're referencing
20 in this question?

21 Q I'm going to get to when you learned all this, but at
22 some point did you learn that?

23 A Yes.

24 Q Did you learn that by reviewing the policy?

1 A In concert with a number of other things, including --
2 well, I'll just leave it at that.

3 Q Could you learn that by reading the policy?

4 A In the absence of other information and in the presence
5 of the fact that this was already a rather contentious
6 coverage issue, reading the policy alone would not be
7 the prudent way to determine the coverage because there
8 were a number of issues that had to be addressed.

9 Q Was there any contentious issue whether Driver
10 Logistics and its insured were covered?

11 A Again, I have to ask for time frames because it
12 matters.

13 Q In August.

14 A In August there was no claims. There was no request.
15 No one was alleging that they were covered under the
16 policy.

17 Q Okay. And it's your position that in August no one was
18 claiming of Zurich that the coverage would extend to
19 them through GAF?

20 A At the time that this claim came to me, the only entity
21 that was seeking coverage beyond, obviously, our named
22 insured was Penske. A request for coverage from --
23 what is it? I always get it backwards -- DSL.

24 Q Driver Logistics Services.

1 A Yeah. And their driver did not come in until a
2 subsequent date.

3 Q And is it your position that Driver Logistics Services
4 had to request coverage before Zurich could include
5 them as part of its claim analysis?

6 A What I'm saying -- I'm saying what I'm saying. I'm
7 telling you that at the time I received this claim,
8 there was no one requesting -- there was no information
9 requesting coverage for that entity. The request that
10 was posed to us at the time for Penske.

11 Q Notwithstanding that no one requested coverage for DLS
12 as part of the insurer's obligation to determine
13 coverage, was there any question that DLS and the
14 driver were covered parties?

15 A At the time that I first received this -- when I first
16 received this, I did not have a copy of the policy. I
17 only had a copy of the Penske contract and there was an
18 issue, yes.

19 Q As to Penske?

20 A As to Penske, and there was no request from DLS.

21 Q And once you learned how the accident happened, wasn't
22 it the obligation of Zurich to determine whether or not
23 it would be exposed because of the activities of the
24 driver, even if the driver did not request coverage?

1 A We would -- we would endeavor to determine the
2 coverages involved in the case, yes.

3 Q And could you have done that, aside from Penske, by
4 reading the policy?

5 A Again, I did not have the policy at the time that I
6 received the loss.

7 Q I didn't ask whether you did. Could you have done so
8 had you picked up the policy and read it?

9 A That's a question that requires speculation, and I
10 don't have -- really have a good way to answer that
11 question.

12 Q Then let's go through again the policy and see whether
13 or not we can determine whether the driver is a covered
14 person under the policy, which was Exhibit 4. Would
15 you look at page 0069?

16 A Of?

17 Q Exhibit 4.

18 A Yes.

19 Q Do you see the section that says, Who Is An Insured?

20 A Yes, I do.

21 Q And do you see that underneath it says, the following
22 are insureds?

23 A Yes.

24 Q And B says, anyone else while using with your

1 permission a covered auto you own, hire, borrow, and
2 then there are exceptions?

3 A Yes.

4 Q If you read that, Mr. McIntosh, would you not have
5 concluded that the driver of the vehicle involved in
6 the Rhodes case was an insured?

7 A I don't know that I can tell you that I would have made
8 that assumption in a vacuum with the information that I
9 had at the time because this involved a very complex
10 issue that involved multiple business relationships,
11 multiple policies, and multiple individuals, all of
12 which were already in contention at the time that I
13 received this.

14 Q I thought you said the only one you knew was in
15 contention was Penske?

16 A Correct.

17 Q Well, that's not all, is it?

18 A Well, the business relationships. Again, this is not
19 -- this is not a case in which you could simply look at
20 one particular paragraph in a policy and make a valid
21 coverage conclusion.

22 Q You would have to read the whole policy?

23 A Well, not only t, but you would have to have all the
24 documentation, you would have to know what the other

1 insurance policies involved were, what their
2 involvement with the coverages would be, what the
3 various contracts involved were, and make a
4 determination globally as to what the coverage would
5 be. If you're asking me could I have read this one
6 paragraph and made a coverage decision based on all of
7 this information, most of which I didn't have yet, the
8 answer is no, I could not have made that. It was too
9 big an issue. It was too complex, and it was not -- it
10 would not have been an appropriate thing to do.

11 Q Do you know whether or not it could have been made with
12 proper adjusting earlier than eight months -- seven
13 months after the accident?

14 A That's speculation. And I also don't understand what
15 you mean by proper adjusting.

16 Q Okay. If Crawford had followed the Zurich standards
17 and attempted to determine coverage as quickly as it
18 could, could it have done so earlier than seven months
19 after the accident?

20 A The answer to that is no, because Crawford would not be
21 the one to make coverage decisions.

22 Q Okay. Only Zurich?

23 A Correct.

24 Q And Zurich didn't even, as far as you can tell, know

1 about this claim until August of '02?
 2 A Correct. When you say "Zurich," Zurich in the person
 3 of me, yes.
 4 Q As you can -- as far as you can tell, Zurich in the
 5 person of anybody, since there's no claim number
 6 earlier than August of '02; isn't that so?

7 *MR. GOLDMAN: Objection, your Honor. The --

8 THE COURT: The question Zurich in the person
 9 of anybody is vague and ambiguous and there's no
 10 foundation that this witness knows anything else * any
 11 notice to Zurich or lack thereof.

12 MR. PRITZKER: All right.

13 THE COURT: The objection to the subsequent
 14 questions too. I don't know if you wish to take those
 15 up now since we're looking at the same transcript.

16 MR. PRITZKER: There's an objection to the
 17 question on line 21, your Honor.

18 THE COURT: All right.

19 MR. GOLDMAN: Yes. We'd object up through
 20 line 7 of page 63, your Honor, and the basis -- this
 21 witness has no -- there's been no foundation as to --

22 THE COURT: Let me ask you this. Is there
 23 anybody from Zurich who's going to testify that they
 24 were aware of the claim before August of '02?

1 MR. GOLDMAN: No.
 2 THE COURT: Okay.
 3 MR. GOLDMAN: And the --
 4 THE COURT: So what's the issue then?
 5 MR. GOLDMAN: The basis of the objection is
 6 that the question suggests that Crawford was
 7 representing Zurich in some way in receiving notice of
 8 the claim or handling the claim before Zurich got
 9 notice, and that suggests that within the scope of
 10 Crawford's agency -- TPA agreement, they had -- that
 11 Crawford is authorized to receive notice. The Zurich
 12 policy says the policyholder must give notice to either
 13 Zurich or its authorized representative. There's no
 14 foundation, nor can there be, that Crawford was
 15 authorized to receive notice of claims on behalf of
 16 Zurich. There was a primary \$250,000 self-insured
 17 retention that Crawford handles for GAF with no
 18 involvement whatsoever for Zurich. It was the
 19 insured's obligation to give Zurich the direct notice
 20 in the event there was a claim that was going to
 21 implicate the Zurich policy, that didn't happen, and
 22 then Zurich eventually got notice by finding out about
 23 this from Crawford. But this is --

24 THE COURT: I assume we'll be hearing

1 evidence as to that as part of your case.

2 MR. PRITZKER: Definitely, your Honor. It's
 3 already in the documents, but --

4 THE COURT: The objection here is overruled.
 5 I understand your argument, but it doesn't affect my
 6 accepting the testimony of this witness with regard to
 7 the knowledge of Zurich of the kind, so I'm not
 8 necessarily deciding that Crawford was acting as a
 9 representative. That's an issue which we can discuss
 10 later on.

11 MR. GOLDMAN: I understand your ruling. Just
 12 so the record is clear as to what I was objecting to.
 13 I was objecting from lines -- page 62, line 11 through
 14 page 63, line 7.

15 THE COURT: Okay. Let's proceed.

16 MR. PRITZKER: Thank you.

17 (By Mr. Pritzker)

18 Q I'm going to go back to page --

19 THE COURT: Go to line 17. Page 62, line 17.

20 MR. PRITZKER: Line 17, okay.

21 (By Mr. Pritzker)

22 Q Obviously, we understand, do we not, that Crawford, as
 23 the administrator for Zurich, knew about the claim?

24 A That's the clarification I'm asking for.

1 Q Okay. Zurich knew about the claim, we all know that,
 2 through Crawford.

3 A Correct.

4 Q And aside from Crawford on behalf of Zurich knowing
 5 about the claim, Zurich, for its own independent
 6 responsibilities for determining coverage, there's no
 7 indication that they did anything prior to your
 8 involvement in August of '02; is that so?

9 A I would agree with that statement.

10 Q I think that when I got sidetracked we were talking
 11 about Exhibit 1. If you look at that note on the top
 12 of the page, it says, I have received the first notice.
 13 The TPA is C & Company, which is Crawford & Company --

14 A Uh-huh.

15 Q -- but we now know from your review of Crawford's
 16 reporting that you hadn't seen before that they had
 17 been reporting this since January of '02, true?

18 A I would concede that there were other reports. What
 19 happened to those reports, I have no knowledge.

20 Q I know. But you now know that this wasn't the first
 21 report. It was the first report that you received, but
 22 not the first report that Crawford sent. I guess my
 23 question to you, Mr. McIntosh, is that they are
 24 reporting this now because of a tended dispute with

1 Penske is your interpretation because you thought this
 2 was the first report; is that so?
 3 A It was the first report to Zurich that I have any
 4 knowledge of.

5 MR. PRITZKER: There's another objection,
 6 your Honor. Do you wish to --

7 THE COURT: No.

8 MR. PRITZKER: Okay.

9 (By Mr. Pritzker)

10 Q And so you came to the conclusion that it must be
 11 because of the dispute with Penske.

12 A Well, it was the dispute with Penske that was -- the
 13 reason that we are having -- we were having the
 14 conversation.

15 Q During that -- do you remember the conversation?

16 A To some degree.

17 Q Is it fair to say you tried to be as complete with your
 18 Z note as you could about the conversation?

19 A I guess that's a difficult answer. Is it a transcript
 20 of our conversation? Absolutely not.

21 Q Did you ask him what the case is all about?

22 A Yes.

23 Q Do you remember what he told you?

24 A He briefly described the loss.

1 Q Do you remember anything about his description of the
 2 loss?

3 A In specifics? No.

4 Q Did it seem strange to you that this was his first
 5 report, seven months after what he described as a
 6 catastrophic accident in his reports?

7 A I can't tell you what my frame of mind would have been
 8 at the time. I don't have any specific recollection of
 9 that.

10 Q If you look at the next page of your Z notes on Exhibit
 11 1 -- and we're looking backwards from the last page of
 12 this exhibit because these are in reverse chronological
 13 order -- do you see that the bottom of the page that
 14 there are two notes? One is the start of the note that
 15 we just read and then there's another note on 8/21/02,
 16 as well, talking about the coverage issues; are they
 17 not?

18 A Yes.

19 Q And then there appears to be nothing between that note
 20 and the note on January 10, '03; is that true?

21 A Correct.

22 Q Can you tell me what, if anything, happened on your end
 23 between August 21, '02 and January 10, '03?

24 A I don't have a specific recollection.

1 Q Do you -- you believe, do you not, that you saw Exhibit
 2 21-C, in August of '02; isn't that so?

3 A Yes.

4 Q If we look at 21-C, it states that, under reserves,
 5 that they're low and that Crawford is recommending the
 6 policy limits?

7 A I see that.

8 Q Did you see that at the time?

9 A Yes.

10 Q Did you see that Crawford summarizes the injury as a
 11 catastrophic injury, under summary?

12 A Where specifically are you?

13 Q On page 0431.

14 A Uh-huh.

15 Q Under remarks, do you see remarks right near the top of
 16 the page, in the middle?

17 A Yes.

18 Q Where it says, summary, the contract operator of the
 19 GAF leased vehicle rear-ended the claimant, causing
 20 catastrophic injury?

21 A Yes.

22 Q So you knew that as of August 2, did you not?

23 A I read what it says.

24 Q Then it says, under reserves, the second sentence, we

1 see permanent paralysis likely for the claimant, who is
 2 only in her 40s, with permanent long-term care needed.
 3 Our best belief at this time would be to put up the
 4 policy limits in reserves, as it appears they will be
 5 exposed due to contractual obligations to provide
 6 insurance.

7 Have I read that accurately?

8 A That is what it says.

9 Q And you read that in August of '02?

10 A Yes.

11 Q And under liability it says, we see that this clearly
 12 falls to the DLS driver, due to lack of attention, and
 13 this liability, to the extent of our policy limits, may
 14 be imputed to GAF.

15 You read that at the time?

16 A Yes.

17 Q And under current status it says, the defense has now
 18 been to the scene and concur that the line of sight was
 19 sufficient for the DLS driver to have avoided the
 20 accident.

21 A I agree.

22 Q You read that, as well?

23 A I agree that the report says that, yes.

24 Q And back up again to the top of the page, right under

1 summary, the first sentence of current status says,
2 please refer to our full formal report of 1/30/2.

3 When I read that -- when you read that, did
4 it ring any bells that maybe you should read that?
5 A Again, I don't have a conscious memory of how I reacted
6 to any -- to that particular sentence.

7 Q Okay. 21-D, this is now September 25, '02?

8 A Uh-huh.

9 Q And if you look at 21-E -- I'm sorry. If we go back to
10 21-D for a minute, so the first time I believe, at
11 least within Crawford reporting, Crawford puts a
12 potential case value on the claim, does he not?

13 A Yes.

14 Q And that potential value is between 5 and 10 million?

15 A Yes.

16 Q The potential case value, as stated in Exhibit 21-D of
17 Exhibit 2, states, we see that -- we see this
18 universally to all remaining defendants, as between 5
19 mil and 10 mil.

20 Did I read that accurately?

21 A Yes, you did.

22 Q And did you read that when you received it?

23 A Yes, I did.

24 Q 21-E, if you'd take a look at that, is dated December

1 13, '02. Can you tell me, do you remember
2 approximately when you received that?

3 A When I received it? I can't tell you offhand -- that
4 offhand, no.

5 Q Can you tell me, did you receive it prior to your next
6 claim note of January 10, '03?

7 A To the best of my recollection, yes, I would have seen
8 it by then.

9 Q Do you see your note of January 21, '03 on Exhibit 1,
10 which states, please note that we will extend coverage
11 to GAF, Penske, and Driver Logistics. Could you please
12 advise as to the possible exposure now that the
13 coverage issue is resolved?

14 Now that's a note in the Z notes?

15 A Correct.

16 Q Did you -- does Crawford have access to your Z notes?

17 A No.

18 Q Then I don't understand what -- that appears to be a
19 letter or an e-mail to John.

20 A It was. To the best of my recollection, it would have
21 been an e-mail to the adjustor.

22 Q Okay. And when you sign Dave MC, that's you?

23 A That's correct.

24 Q Did you already have the possible exposure from

1 Exhibits 21-C, -D, and -E by this time?

2 A No. No.

3 Q When it says potential exposure in each, or at least
4 the last two of those exhibits of 5 to 10 million,
5 doesn't that indicate what the possible exposure is?

6 A No.

7 Q Why not?

8 A No, that -- as I understand it, that's the adjustor
9 taking just a guess as to what he thinks this might be
10 based on, just general information. What I did not
11 have was any specific information that would allow me
12 to make a reasoned judgment based on the fact -- on
13 fact as to the exposure.

14 Q You knew she was a paraplegic.

15 A I knew there was an allegation of that, but we had no
16 medical.

17 Q When you say "we had no medical," we read a note
18 earlier, I believe, that defense may have had the
19 medicals, right?

20 Mr. Varga makes an appropriate objection
21 there.

22 Let's take it one step at a time. As of
23 January 21, '03, you knew that the driver had rear-
24 ended Mrs. Rhodes. There didn't appear to be, from

1 Crawford's point of view, to be any question of
2 paraplegia, did there?

3 A This was their indication of what the injury is. They
4 had no specific information as to the nature and the
5 extent of the injury, other than the broad category of
6 paraplegia.

7 Q Okay. When you e-mailed to John the e-mail that
8 appears in the January 21, '03 note, did you hear back
9 from him?

10 A When you say did I hear back from him, are you talking
11 about did he call me?

12 Q Yes, or e-mail you back.

13 A I don't recall either a conversation or an e-mail in
14 direct response to this on that date, no.

15 Q Can you tell me why between August of '02 and January
16 of '03 you weren't interested or at least you did not
17 make inquiry as to the possible exposure of GAF?

18 A I had -- back in my very first conversation with John,
19 I asked him to pursue that, to get me facts to back up
20 information.

21 Q Where does it say that?

22 A It doesn't say that.

23 Q But you remember that?

24 A Yes.

1 Q And do you remember John saying we gave you a first
2 formal report?
3 A John didn't say that. He didn't tell me that.
4 Q What did he say?
5 A He said he would follow up on it.
6 Q You spoke to Jodie on January 23, '02. I think that
7 should be '03. Do you see that in your Z notes?
8 A Yes.
9 Q Page 1162.
10 A Yes.
11 Q Did you talk about exposure?
12 A I don't have a recollection of whether I did not
13 because I have very recently requested that in writing.
14 Q Well, you first requested it when you spoke -- first
15 spoke to John Chaney back in August of '02, right?
16 A Correct.
17 Q You knew that exposure was something to determine on an
18 ongoing basis, as good claims handling practice, did
19 you not?
20 A Yes.
21 Q Did you follow up in September of '02 and seek advice
22 as to the possible exposure? We know there aren't any
23 notes. I'm asking for your recollection.
24 A I don't have a specific recollection of a conversation

1 in September on that, no.
2 Q Did you follow up in October of '02, asking for a
3 possible exposure?
4 A I don't recall a conversation on that.
5 Q Did you follow up in November of '02 seeking advice as
6 to the possible exposure?
7 A Same answer.
8 Q Did you follow up in December of '02 as to the possible
9 exposure?
10 A Same answer.
11 Q And after your e-mail to John Chaney, did you learn, by
12 the way, that he had -- or was leaving when you e-
13 mailed him in January of '03?
14 A I learned that he was gone and that Jodie was the new
15 adjustor in January.
16 Q Okay. But you just testified that you didn't follow up
17 with her as to possible exposure because you had just
18 e-mailed to John, right?
19 A Yes.
20 Q Did you follow up with anybody at Crawford in February
21 as to possible exposure?
22 A I have no recollection of that.
23 Q So the next time that you inquired of Jodie was in
24 March, specifically March 6, '03.

1 A Correct.
2 Q And again, it was -- was this an e-mail?
3 A Yeah. I believe this is an e-mail.
4 Q Did you ever talk with -- Jodie Mills, right?
5 A Correct.
6 Q Did you ever talk with Ms. Mills after this e-mail
7 about this e-mail?
8 A I don't believe I called her in conjunction with that,
9 no.
10 Q Do you recall any follow up on the possible exposure
11 between the e-mail of March 6, '03 and the next Z note
12 of April 8, '03?
13 A In that 30-day period?
14 Q Yes.
15 A No, I don't believe so.
16 Q And then the next note is May 16, '03, is it not?
17 A Yes.
18 Q You this time indicate that Crawford has recommended a
19 reserve of 2 million, but that you have yet to get a
20 captioned report that would support or explain the
21 reserve.
22 Have I read that accurately?
23 A Correct.
24 Q Now, that's just an internal report to you, or is this

1 a discussion of -- is this a note of discussion with
2 somebody at Crawford?
3 A That would be my note because there's a specific
4 reference that I had also called and left a voice mail
5 for the adjustor.
6 Q All right. And did Ms. Mills ever call you back as to
7 that voice mail?
8 A Yes.
9 Q I'm going to jump ahead a little bit -- well, no I
10 won't. You indicate on your note of May 27, '03 that
11 you spoke to the TPA and explained that you need a
12 full-captioned report. What's a full-captioned report?
13 A A full-captioned report would be a report which would
14 have broken out various elements of coverage,
15 liability, damages, investigation, negotiations, et
16 cetera.
17 Q Okay. You spoke to the TPA and explained that you
18 needed that.
19 A Correct.
20 Q Did she tell you we sent you that on January 30, '02?
21 A No. I have -- again, I have no knowledge of the
22 January '02 report.
23 Q That's not what I asked you.
24 A No, they did not, to the best of my recollection.

1 Q There's a note on June 11, '03. This is now a year and
2 five months after the accident, is it not?

3 A Yes.

4 Q And you indicate that the TPA has sent a report that
5 basically confirms they know very little about the
6 case. Which report are you referring to? Take a look
7 at Exhibit 2, if you would, and tell me which of the
8 reports you're referring to that the TPA sent.

9 A I believe that would be referencing the June 4, '03
10 report.

11 Q Well, if you now look at the June 4, '03 report, and I
12 know I asked you this before, the second sentence says,
13 we have also enclosed the initial full formal report in
14 this matter.

15 When you read that, did you inquire, could
16 you see it?

17 A Did I inquire that I got it? I don't understand.

18 Q When you read we have enclosed the initial full formal
19 report in this matter, I believe you testified that
20 earlier that they hadn't enclosed it.

21 A Correct.

22 Q Did you call them up, e-mail them, indicate in any way,
23 you said you enclosed the first formal report, but I
24 haven't seen it?

1 A Okay. I read that to mean this was their first formal
2 -- full formal report.

3 Q Let's back up again and read the words, if we can.
4 First of all, they're supplementing their
5 5/6/03 report, true?

6 A Yes.

7 Q Had you seen that by this time?

8 A I believe I already indicated I have.

9 Q Okay. And serves as the full formal you have
10 requested, so that what Ms. Mills is indicating that
11 that's what she's intending to do with this report,
12 right?

13 A That's not how I read that.

14 Q You don't read that?

15 A No. I read that she's saying that she has previously
16 sent me the 5/6 report, and she is also enclosing the
17 full formal report, which I understood to be this
18 report.

19 Q And then the next sentence says, we have also enclosed
20 the initial full formal report in this matter. That
21 didn't -- you didn't focus on that?

22 A No. Again, if I may, I read that to mean that this is
23 their first full formal report.

24 Q Okay. It says --

1 A Because there is nothing attached.

2 Q It says here, we wish -- this is done under reserves
3 and payments.

4 A Uh-huh.

5 Q We issue -- that should be "wish" -- to increase the BI
6 reserves to policy limits as requested. This has been
7 our request since 4/8/02 report. I believe you
8 testified you had never seen a 4/8/02 report.

9 A That is accurate.

10 Q Did that trigger a request of Jodie Mills, what 4/8/02
11 report are you talking about?

12 A No.

13 Q On page ZA1161.

14 A Uh-huh.

15 Q There's a note on 6/11/02.

16 A Uh-huh.

17 Q Let's read it together. The TPA has sent --

18 THE COURT: I'm sorry. Mr. Pritzker, it says
19 6/11/03. I think you read '02.

20 MR. PRITZKER: I apologize, your Honor. I'll
21 start again.

22 Q There's a note on 6/11/03.

23 A Uh-huh.

24 Q Let's read it together. The TPA has sent a report that

1 basically confirms they know very little about this
2 case.

3 A Yes.

4 Q The next sentence says, they have a \$50,000 reserve
5 shown and they indicate no request to alter that
6 reserve.

7 A I see that.

8 Q Can you tell me, is that an accurate reflection of what
9 Exhibit 21-G says, since that's the report that you're
10 talking about?

11 A That would have been a misstatement by me.

12 Q And, in fact, you had already seen, by this time, 21-C,
13 -D -- C and D; had you not?

14 A Yes.

15 Q And they both indicate raising the reserves, true?

16 A Yes.

17 Q And, in fact, you even make a note the month before, on
18 5/16/03, on the same page as we've just been reading,
19 that they, meaning Crawford & Company, have recommended
20 a reserve of 2 million.

21 A Uh-huh.

22 Q Now on 6/1/03 -- I guess it's 6/11/03, you seem to be
23 writing a note to sir. Do you see that?

24 A Yes.

1 Q To whom were you writing that?
 2 A That would have been the man -- to the manager at
 3 Crawford.
 4 Q Did you know who the manager was?
 5 A Because it's not in the note, and I don't specifically
 6 recall, I can't answer that, no. I probably had a name
 7 because it probably would have been addressed to
 8 someone. It's just not included in the note.
 9 Q Then on the same date you write, could you please get
 10 involved here. Do you see that?
 11 A Yes.
 12 Q And who was that note to?
 13 A That would have been to the manager.
 14 Q The same manager?
 15 A Yes.
 16 Q Did you ever follow up with a telephone call?
 17 A My recollection is yes, that I did.
 18 Q To who?
 19 A It was the manager, and his name escapes me right at
 20 this second, but I did have a specific conversation
 21 requesting that, you know, that we get involved because
 22 of the fact that we needed to get the specific fact
 23 information and not the generalities.
 24 Q And what was his response?

1 A That he would follow up.
 2 Q Was that conversation in or around the same time as
 3 these notes?
 4 A Yes.
 5 Q Well, would you tell me what happened during the next
 6 two and a half months between that and your next note?
 7 A I don't believe there's any communication between those
 8 two dates.
 9 Q I know there's no communication, but my question is, do
 10 you have a recollection of having done anything on this
 11 file during the last two and a half months?
 12 A Once again, I'm not the claims handler on this file. I
 13 am responsible for the oversight of the files, so I was
 14 adjusting the claim -- so was I adjusting the claim
 15 between those two dates? No, I was not. That was the
 16 responsibility of Crawford.
 17 Q On behalf of Zurich?
 18 A Correct.
 19 Q Were you at all concerned that it was Zurich's
 20 responsibility, ultimately, to effect a fair and
 21 reasonable settlement after liability and damages were
 22 established?
 23 A Absolutely. I was very concerned, and I think, if you
 24 look at the notes that I have here, I'm reflecting that

1 concern. But my concern is, is that in order to be
 2 able -- in order to make a judgment in this case, it
 3 has to be based -- it has to be fact based. It cannot
 4 be based on generalities and supposition and incomplete
 5 information. I have to know what the facts, indeed,
 6 are in order to make a reasoned and appropriate
 7 judgment as to exposure and reserves. And that's what
 8 I have been consistently asking for in this case.
 9 Q Consistently asking for every couple of months?

10 MR. VARGA: Objection.

11 THE COURT: No.

12 MR. VARGA: Yes, there is an objection at
 13 this stage

14 MR. GOLDMAN: Yes. There's no answer. I'd
 15 ask the question be stricken.

16 THE COURT: It may be stricken. No
 17 particular answer.

18 (By Mr. Pritzker)

19 Q Did you see any urgency about the fact that this was a
 20 year and a half with a possible paralyzed claimant, and
 21 that nothing had been done either to increase the
 22 reserves or to try and effect a reasonable settlement
 23 or to tender the policy?

24 A Okay. As to the question on reserves, I was absolutely

1 asking for that. Crawford, from their indications,
 2 were trying to obtain that information. As to
 3 settlement, are you asking me should I have settled the
 4 claim in the absence of information that would allow me
 5 to evaluate the case?
 6 Q No. I'm not suggesting anything, sir.
 7 A Thank you. Because as to settlement, we clearly know,
 8 because we don't even have enough information at this
 9 point to make a reasoned judgment as to the exposure.
 10 Q Who's we?
 11 A Myself and -- well, I'll correct that. Me.
 12 Q You knew this case by this time was in litigation, did
 13 you not?
 14 A Correct.
 15 Q Did you ever have any communication with defense
 16 counsel?
 17 A I did not.
 18 Q Did you know whether defense counsel had all of the
 19 details that you required?
 20 A I did not know that, and Crawford was indicating that
 21 they were pursuing that information, requesting it, and
 22 I'm clearly asking for it.
 23 MR. PRITZKER: First, let's have this marked.
 24 This is the supplemental answer to Building Material

1 Corporation of America's first set of interrogatories
 2 for the plaintiff, Marcia Rhodes. It's Exhibit 5,
 3 which I believe, your Honor, is -- it's not in yet.

4 THE COURT: Okay, let's proceed.

5 MR. PRITZKER: I would, but I've lost my
 6 place. Oh, got it.

7 (By Mr. Pritzker)

8 Q Have you ever seen Exhibit 5 before?

9 A I may have looked at it briefly in preparation for
 10 this, but prior to that, no.

11 Q Would you take a look at the answers, starting on the
 12 answer to interrogatory number 13, starting on page 9,
 13 and just over to page 10 and 11. Do you see that's
 14 dated April 3, '03?

15 A On page 11?

16 Q Yes.

17 A Yes.

18 Q Would you agree with me that that's a relatively
 19 comprehensive summary of somebody's injury having been
 20 in a catastrophic automobile accident?

21 A Yes.

22 Q Were you aware of the fact that in addition to defense
 23 counsel having this document, Exhibit 5, they also had
 24 boxes of documents containing copies of medical reports

1 of Mrs. Rhodes?

2 A Say the question again, please?

3 Q May I have it read, please?

4 Were you aware of that?

5 A No, I was not aware of this.

6 Q By 8/25/03 note that you have, indicating that you
 7 heard nothing from the TPA and that you called and left
 8 a message, that is your last note, is it not?

9 A Yes.

10 Q Other than you came back in later on, I believe.

11 A Right.

12 Q On some other issues, but let's make sure we get it
 13 straight.

14 There's no question.

15 Okay. We're at line 6 on page 89.

16 Back again to Exhibit 1, who did you
 17 understand on behalf of Zurich had the responsibility
 18 for interfacing with defense counsel?

19 A Crawford & Company.

20 Q So if defense counsel was recommending something, they
 21 would interface with Crawford & Company in the belief
 22 that they were communicating with Zurich?

23 A That would be correct, yes.

24 Q And then it was up to Crawford & Company to report to

1 Zurich?

2 A Yes, that would be the flow of information.

3 Q When you didn't see any communication from defense
 4 counsel, did you ever inquire what's going on with the
 5 lawsuit?

6 A Well, I -- the -- the reports were reflecting the
 7 information that Crawford was receiving, to the best of
 8 my knowledge.

9 Q Does Ms. Fuell appear to be communicating with Mr.
 10 Deschenes?

11 A Yes.

12 Q Is that standard procedure for Zurich at this stage of
 13 the proceedings, where they're discussing a settlement
 14 offer?

15 A I'm troubled by your phrasing of standard procedure.

16 Q I thought you said earlier that it was Crawford's
 17 responsibility to communicate with defense counsel and
 18 then to transmit the information to Zurich?

19 A And that is accurate.

20 Q And that's not what appears to be happening in this
 21 particular claim note, and there are others. And my
 22 question is, are there times when it's appropriate for
 23 Zurich MCU TPA employees to communicate with defense
 24 counsel?

1 A Certainly.

2 Q And would those be surrounding tender and settlement
 3 issues, among others?

4 A They certainly can, yes.

5 Q Did you ever see the complaint?

6 A No.

7 Q Is the address the address of the head office of
 8 Zurich?

9 A Yes.

10 Q Is the automobile liability policy the correct policy
 11 number?

12 A I know there's a difference in the policy number listed
 13 in the notes and the policy number listed on the
 14 policy.

15 Q What's that difference?

16 A The final digit prior to the hyphen, it says 692; the
 17 policy says 690.

18 Q Do you see on 8/12/02 there's a note, we faxed McIntosh
 19 all the pertinent file material?

20 A Help me out here because I'm not seeing that.

21 Okay. Yes, I see it.

22 Q Is it your testimony that, notwithstanding Mr. Chaney's
 23 notes, the only thing that was faxed was the report of
 24 21-G of Exhibit 2?

1 A Yes -- 21-G?
 2 Q Yes.
 3 A No, no. 21-G is dated June '03. This note is August
 4 '02. Am I confused?
 5 Q No, you are not confused. I withdraw the question.
 6 Can you tell me, once again, what was faxed to you on
 7 August of '02?
 8 A That would have been the June 10, '02 report from
 9 Crawford. I believe it's documented 21-C.
 10 Q And it's your testimony that he did not include with
 11 that fax the earlier transmittal letters or the first
 12 full formal report?
 13 A Correct.
 14 Q Okay. By the way, I'm sure that you didn't do this
 15 intentionally, but if you look at the policy, you
 16 correctly indicated that the policy number on page 1 of
 17 Exhibit 4 is 2165690-05, but if you look two pages
 18 beyond that, which is the declaration page, the policy
 19 number appears to be 2165692-02 and -03, does it not?
 20 A Yes, I see that.
 21 Q And that's exactly what was indicated in the Crawford
 22 notes?
 23 A Yes.
 24 Q Will you take a look at the note on Exhibit 6 dated

1 6/4/03?
 2 A Yes.
 3 Q Do you see it states, have you reviewed file slash full
 4 formal was completed by prior adjuster, shall fax over
 5 to Dave McIntosh? Do you see that?
 6 A Yes.
 7 Q And notwithstanding that, it's your testimony that you
 8 never received the fax of the full formal completed by
 9 the prior adjuster, true?
 10 A That is correct. I never received that report by fax
 11 or by any other means.
 12 Q Would you look at 8/28/03? First look at 8/19/03. Did
 13 you ever see the demand in this case?
 14 A I did not.
 15 Q Did you know that a demand was served on the defendants
 16 on or about August 19, 03?
 17 A I did not.
 18 Q Did you see that on 8/28/03 Jody indicates that she
 19 called and left a message for you advising you of the
 20 demand?
 21 A I see the notation.
 22 Q And that they were copying the file and the video to
 23 send?
 24 A Yes, I see where it says that.
 25 Q Did you ever get a copy of the video --

1 A No.
 2 Q -- that accompanied the demand?
 3 A I did not get the demand nor the video.
 4 Q And then do you see the note, he's still looking for a
 5 full formal; we have sent two already.
 6 A I see that note, yes.
 7 Q But your testimony is that the only formal you ever saw
 8 is the one June of '03, true?
 9 MR. GOLDMAN: Judge, if that could be
 10 stricken; there's no answer to that question.
 11 THE COURT: There's no answer. Fair enough.
 12 (By Mr. Pritzker:
 13
 14 Q One that you claim and designated as insufficient?
 15 MR. PRITZKER: I believe, your Honor,
 16 that's a combined -- there was an objection in between,
 17 but that's a combined question and the witness is
 18 answering both. May I have the answer, your Honor?
 19 THE COURT: You can have the answer.
 20 THE WITNESS: I did not receive the January
 21 30, '02 report, at any time, in the pendency of my
 22 handing of this claim.
 23 Q Directing your attention to Exhibit 8, what is a
 24 BI case report?

1 A Zurich has a claims BI report that we complete on
 2 cases.
 3 Q It's a captioned report?
 4 A It is a captioned report.
 5 Q Did you ever start one?
 6 A I did not.
 7 Q When Kathleen indicates to you, or asks you, did
 8 you ever do a BI case report on this claim involving
 9 the paraplegic, did you understand she was talking
 10 about the Rhodes case?
 11 A I understood she was talking about the Rhodes
 12 case because she specifically captions it.
 13 Q Yes. And you indicate no; my notes reflect I was
 14 trying to get the TPA to get the info to complete one.
 15 Sorry.
 16 Q Why are you saying sorry?
 17 A Just a courtesy.
 18 Q Were you ever given a copy of the -- of the
 19 liability best practices?
 20 A Most certainly, yes.
 21 THE COURT: All right. We're going to
 22 conclude. It's 1:04; we're going to conclude for the
 23 day. I will read on my own the balance of this
 24 deposition. So I think you've gone over your half an

1 hour to 45-minute prediction by about half an hour to
2 45 minutes.

3 MR. PRITZKER: I think you're right, your
4 Honor. And that's fine. We will be starting --

5 THE COURT: Tuesday morning we start at
6 9:00. Your first witness is?

7 MR. PRITZKER: Ms. Fuell.

8 THE COURT: So we do get to meet Ms. Fuell,
9 but not today. All right. So we will start with Ms.
10 Fuell. I will read the balance of this right now.

11 MR. BROWN: Just a slight matter. We have
12 some inserts for your binder that I'll be happy to put
13 in for you.

14 THE COURT: I will leave the binders on my
15 bench and you can make the appropriate inserts.

16 Okay. We're adjourned until nine o'clock
17 on Tuesday. I hope to be better about being here on
18 time at that time.

19 (Hearing ended.)

1
2 C E R T I F I C A T E
3

4 I, Paula Pietrella and Faye LeRoux, Court
5 Reporters, do hereby certify that the foregoing
6 transcript, Pages 1 through 158, is a
7 complete, true and accurate transcription of the
8 above-referenced case.

9 _____
10 Paula Pietrella
11 _____

12 _____
13 Faye LeRoux
14 _____
15 _____
16 _____
17 _____
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20 _____
21 _____
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23 _____
24 _____
25 _____

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. **SUPERIOR COURT DEPARTMENT**
SUCV2005-1360 **OF THE TRIAL COURT**

MARCIA RHODES, HAROLD RHODES, INDIVIDUALLY,
HAROLD RHODES, ON BEHALF OF HIS MINOR CHILD
AND NEXT FRIEND, REBECCA RHODES,

Plaintiffs,
VS.

AIG DOMESTIC CLAIMS, INC. f/k/a AIG TECHNICAL
SERVICES, INC., NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA., and ZURICH
AMERICAN INSURANCE COMPANY,

Defendants,

JURY-WAIVED TRIAL - DAY 2

BEFORE: GANTS, J.
BOSTON, MASSACHUSETTS
FEBRUARY 6, 2007

PAULA PIETRELLA
FAYE LEROUX
Court Reporters

CT CROSS

Deposition Reading
Of David McIntosh 86

E X H I B I T S

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| 77 | Deposition Designations of Ann Peri | 165 |

FOR I.D.

A Supplemental Answer to Building Materials Corporation o America's First Set of Interrogatories To Plaintiff Marcia Rhodes

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3

4

PROCEEDINGS

(In court at 9:08 a.m.)

THE COURT OFFICER: This honorable court is now open, please be seated.

THE COURT: Good morning.

MR. PRITZKER: Your Honor.

MR. VARGA: Good morning, your Honor.

THE COURT: Let's get straight to work.

So I have completed the reading as to the transcript that was being read yesterday. I did that shortly after we left during the lunch break, so Mr. McIntosh's deposition is completed.

MR. PRITZKER: Given the fact, your Honor, that we didn't complete reading it, however, I think that I should have it marked as an exhibit.

THE COURT: Yes. Fine.

(Exhibit Number 74, marked; Deposition designations of David McIntosh.)

MR. VARGA: Your Honor, on that issue, if I may for a moment, on the issue of both Mr. Chaney's deposition and Mr. McIntosh's.

First, with respect to Mr. Chaney's, Mr.

1 Pritzker had the opportunity yesterday to highlight for
 2 the court those provisions or those pages that he
 3 wanted you to focus on, and I know that you've taken
 4 the opportunity to read that, but I wanted to state for
 5 the record that we did want to have the similar
 6 opportunity and just to advise the court of the pages
 7 that we would place some emphasis on, if I may do that
 8 just for the record.

9 THE COURT: I don't remember giving you a
 10 highlighted copy.

11 MR. PRITZKER: I don't think I --

12 MR. VARGA: Not highlighted copies, your
 13 Honor, but Mr. Pritzker yesterday told you the page
 14 numbers that he said should have particular emphasis
 15 among the designations that he gave you. He stated
 16 that at the beginning.

17 THE COURT: On Mr. Chaney's, that's true.

18 MR. VARGA: That's what I meant, and I just
 19 wanted to give the court a few pages for emphasis.

20 THE COURT: Okay. I'm trying to think back.
 21 With regard to certain pages, 130 to 131, 165
 22 to 167, yes, I read those during the break.

23 MR. PRITZKER: And then you read the entire
 24 -- I believe you read the entire transcript thereafter?

1 There were certain pages that I wanted you to focus on
 2 prior to us reading McIntosh. Those were read during
 3 the break.

4 THE COURT: Right. Okay.

5 MR. PRITZKER: Then I believe after we marked
 6 the whole Chaney exhibit, I hope at least that the
 7 court --

8 THE COURT: I think I finished reading
 9 McIntosh. I do not think I have -- I'm trying to think
 10 whether I have Chaney.

11 THE CLERK: Here it is, Judge.

12 THE COURT: No, I think the only portions
 13 that I have read are the portions that you identified
 14 for me, which I read during the break. I did not
 15 realize you wanted me to read the balance of Chaney, so
 16 I have not read the balance of Chaney.

17 MR. PRITZKER: Your Honor, if I may. I hope
 18 you'll take this in the right light, but if we're
 19 trying to expedite timing by putting in deposition
 20 transcripts without reading them, given the fact that
 21 the plaintiffs are trying to build their case with some
 22 kind of sequence for the court's benefit, I would hope
 23 that when we do designate transcripts and don't read
 24 them, for purposes of moving the case along, we can

1 assume that by the next day either you will have read
 2 them or you will tell us you didn't get to it.

3 THE COURT: I don't remember. I mean I'm
 4 trying to think back. I don't remember -- I mean you
 5 gave me 400 exhibits. I do not know that I -- I
 6 remember you wanted me to read certain parts of Chaney
 7 before McIntosh. I don't think I knew that actual
 8 deposition had been admitted into evidence. It was
 9 among those listed. In any event, I will read it
 10 during the break or during this lunch, but we're not
 11 going to delay the testimony.

12 MR. PRITZKER: No, no. I wouldn't suggest
 13 that, your Honor.

14 THE COURT: So if there are portions that you
 15 want me to focus on, having already --

16 MR. VARGA: There were just four pages.

17 THE COURT: -- reviewed it, I'll do that as
 18 well.

19 MR. VARGA: If I could just read you the page
 20 numbers into the record, your Honor?

21 I would emphasize the designations on pages
 22 62 through 64. Again, this is for Chaney.

23 THE COURT: Right.

24 MR. VARGA: Pages 88 through 90, inclusive.

1 THE COURT: Yes.

2 MR. VARGA: Page 184. Pages 196 to 197.
 3 That's all. Not, of course, to the exclusion of
 4 everything else we designated, but I would highlight
 5 those for the court's attention.

6 THE COURT: I think I pushed it during the
 7 lunch break to make sure that I had read those portions
 8 which were thought to be necessary for McIntosh.

9 MR. VARGA: And, your Honor, I would submit
 10 those that I've given you are necessary for the
 11 consideration of the other testimony you will hear live
 12 today from Kathleen Fuell and from Jodie Mills.

13 THE COURT: Okay.

14 MR. VARGA: Thank you.

15 THE COURT: Although I do think I have a
 16 pretty good feel for the background from having
 17 reviewed McIntosh. So in any event, I will get through
 18 Chaney, but when you give me a hundred exhibits, you
 19 shouldn't necessarily assume that I have read all of
 20 them on the first day of testimony, so I do have other
 21 -- I do have other cases. I did have a closing
 22 argument at two o'clock, and -- in any event, I will
 23 get it completed. You will have it done, certainly if
 24 not by the break at 11:15 or 11:30, it will be done by

1 1:15 or 1:30. But let's proceed.

2 MR. PRITZKER: Okay, your Honor. This,
 3 however, brings up a second and third point, the second
 4 being I have attempted to put in the exhibits by
 5 putting them in one at a time, at least as far as
 6 explaining what they were, if not bringing the court's
 7 attention to those portions of those exhibits that we
 8 thought were important. Once again -- and I don't
 9 think this is necessary for today -- but if the court
 10 is not going to read those exhibits until sometime near
 11 the end of the case, I think that the plaintiffs' case
 12 will suffer.

13 THE COURT: I mean, it's a jury trial. You
 14 presented -- you may have it in front of a jury. The
 15 jury does their best to review it. I don't quite know
 16 what you're saying, so I am getting frustrated with the
 17 fact that we've not gotten very far in this case. So
 18 what are you asking me to do?

19 MR. PRITZKER: Right now, nothing, your
 20 Honor.

21 THE COURT: Okay. Then let's proceed and
 22 call the first witness. So if there's a witness, if
 23 you want me during the course of a witness's testimony,
 24 if they make reference to an exhibit, then maybe it may

1 make sense to spend 30 seconds at that time to give me
 2 a chance to read the exhibit -- so that's fine -- as
 3 you would with a jury. But that would be the way to do
 4 it, for me to follow it in terms of the context of the
 5 witness's testimony. So with regard to Ms. Fuell, if
 6 there's something in that she wrote or whatever else,
 7 at that point you may say or I may say, give me a
 8 moment so I can read it. I am trying to keep up and
 9 read exhibits as I best can with regard to the
 10 testimony, but I am also trying to keep notes of the
 11 testimony and so I've got a fair amount of things to
 12 do.

13 MR. PRITZKER: I do understand that, your
 14 Honor. May we mark the McIntosh deposition transcript?

15 THE COURT: If we have not done yet done so,
 16 we should do that. What's the next number?

17 THE COURT REPORTER: For the plaintiff, your
 18 Honor, Exhibit 74.

19 THE COURT: Seventy-four. All right. So let
 20 me give you this right here.

21 MR. PRITZKER: Your Honor, at the defendant's
 22 request, we're going to start with Jodie Mills, who has
 23 some timing requirements, rather than Kathleen Fuell,
 24 who I understand is here for the week.

1 THE COURT: Okay. Well, you see, no doubt
 2 you're building up the excitement until we meet Ms.
 3 Fuell. All right. I will delay that gratification for
 4 a moment and we'll call the next witness.

5 MR. PRITZKER: Your Honor, one minor
 6 preliminary matter and I think this will aid the
 7 witness, as it may, rather than reviewing the initial
 8 or the original transcript, the original stamped
 9 exhibits, they could use collections of binders like we
 10 provided for the court. It's easier for the witness.

11 THE COURT: Sure. As long as they're the
 12 same. That makes more sense than attempting to do
 13 that. I don't even have a problem with the exhibits
 14 themselves being placed in binders at some point.

15 Okay. Who are you calling?

16 MR. PRITZKER: I call Johanna Mills.

17 THE COURT: I'm sorry?

18 MR. PRITZKER: Johanna Mills.

19 JOHANNA MILLS, Sworn

20 DIRECT EXAMINATION BY MR. BROWN:

21 THE COURT: Good morning, ma'am.

22 THE WITNESS: Good morning.

23 THE COURT: If you'd please, in a loud, clear
 24 voice state your name and spell both your first and

1 last name for the court reporter?

2 THE WITNESS: Johanna Mills, J-o-h-a-n-n-a M-
 3 i-l-l-s.

4 THE COURT: Okay. You may proceed, Mr.
 5 Brown. She's your witness.

6 (By Mr. Brown)

7 Q Ms. Mills, thank you for coming today. You're
 8 currently employed with Crawford & Company; is that
 9 correct?

10 A Yes.

11 Q How long have you worked at Crawford & Company?
 12 A Twenty years.

13 Q So since 1986; is that right?

14 A Correct.

15 Q Or '87?

16 A '86.

17 Q And you've worked with Crawford & Company consistently
 18 through that entire period?

19 A I was laid off for approximately five months.

20 Q But other than that five months, you've been with
 21 Crawford & Company the whole time?

22 A Yes.

23 Q And your position there is as an adjustor?

24 A Correct.

1 Q And your responsibilities as an adjustor include
2 evaluating claims; is that right?
3 A Yes.
4 Q And investigating claims?
5 A Yes.
6 Q And you report to clients about those claims; is that
7 right?
8 A Correct.
9 Q And the clients being insurance companies? Insurers?
10 A Risk managers also.
11 Q Risk managers also. Okay. So you would report to
12 both?
13 A Yes.
14 Q When you started at Crawford & Company in 1986, what
15 type of training did you receive?
16 A I went to Atlanta for a month of training. That's
17 where the home office is.
18 Q And did you learn how to investigate claims during that
19 training?
20 A Yes.
21 Q Did you learn how to evaluate claims during that
22 training?
23 A We touched on certain aspects of that, yes, generally.
24 Q And did you learn how to complete reports in that

1 training?
2 A I believe we did.
3 Q There are various levels of adjustors at Crawford &
4 Company; isn't that so?
5 A Correct.
6 Q And they're numbered 1 through 4, I believe; is that
7 right?
8 A Yes.
9 Q And to get from one level to another, what type of
10 training -- how would an adjustor get from one level to
11 another?
12 A There's a certain time period you need to be there and
13 then there are certain courses that you need to take,
14 further education.
15 Q And so is it fair to say that to advance to another
16 level and adjustor would have to gain certain
17 experience and training?
18 A Correct.
19 Q And you have the experience and training of a Level 3
20 adjustor; is that right?
21 A Yes.
22 THE COURT: And four is the highest?
23 THE WITNESS: Four is the highest. I have
24 not gone further because I became a part-time adjustor

1 and, therefore, I have no designation now.
2 (By Mr. Brown)
3 Q But you do have the training to be at least a Level 3
4 adjustor; is that right?
5 A Yes.
6 Q During the time that you worked at Crawford & Company,
7 you have handled about how many automobile accidents,
8 approximately? Would it be in the hundreds?
9 A Hundreds.
10 Q And you have involved -- or have handled motor vehicle
11 accidents that involved a vehicle that was rear-ended;
12 is that right?
13 A Yes.
14 Q Several, in fact; is that right?
15 A Yes.
16 Q And you've also dealt with a number of cases in which
17 the car that was rear-ended was stopped; is that right?
18 A Yes.
19 Q And in this -- in January of 2003, you began handling
20 the Rhodes claim; is that correct?
21 A Correct.
22 Q And in the Rhodes claim, Marcia Rhodes' stopped vehicle
23 was rear-ended; is that right?
24 A That's correct.

1 Q And do you recall the date of the accident?
2 A The Rhodes accident?
3 Q Yes.
4 A I don't remember specifically off the top of my head.
5 Q Would it refresh your recollection if I told you that
6 January 9, 2002 was the date of the accident?
7 A Yes.
8 Q When you began handling the Rhodes claim in January of
9 2003, did you review the file?
10 A I reviewed the claim notes and the transmittal letters
11 that were in the notes.
12 Q What other types of -- excuse me. Would correspondence
13 also be kept in the claims file?
14 A In the claims file? Yes.
15 Q Did you review the correspondence as well?
16 A Not when I first took over.
17 Q But you had access to the entire claims file; is that
18 right?
19 A Yes.
20 Q And at some point you would have reviewed the entire
21 claims file while you were handling the Rhodes claim?
22 A Yes.
23 MR. BROWN: May I approach the witness, your
24 Honor?

1 THE COURT: Sure.

2 (By Mr. Brown)

3 Q Ms. Mills, I'm going to show you a document that --
4 it's numbered Plaintiffs' Exhibit 4. This was an
5 attempt to try and keep things in chronological order.
6 We pre-marked these items, but this one has not been
7 admitted into evidence.

8 THE COURT: Exhibit 4?

9 MR. BROWN: Yes. There will be a -- you do
10 not have it in your binder because it has not been
11 admitted into evidence, but --

12 THE COURT: Okay.

13 MR. BROWN: -- I'm just trying to make the
14 record clear.

15 (By Mr. Brown)

16 Q Ms. Mills, the document that's in front of you, it
17 appears to be a fax; is that right?

18 A Yes.

19 Q If you could turn to the second page, please?

20 This is a letter dated April 1, 2002 to
21 Dennis Duggan. Is that what it appears to be to you?

22 A Yes.

23 Q And if you could turn to the next page.

24 Do you see that there's a CC at the bottom?

1 A I do.

2 Q And that's Mr. John Chaney; is that right?

3 A Correct.

4 Q Was John Chaney the adjustor who handled the Rhodes
5 claim before you took over?

6 A Yes, he was.

7 Q And he left the company before you took over; is that
8 right?

9 A Yes.

10 Q Would this be the type of correspondence that would be
11 kept in the Rhodes claim file?

12 A It may have been. It doesn't look familiar to me.

13 Q It doesn't look familiar?

14 MR. BROWN: May I approach again, your Honor?

15 THE COURT: You may. And you may do so
16 without asking, as may all counsel.

17 (By Mr. Brown)

18 Q I show you another document.

19 MR. BROWN: This has the same issue, your
20 Honor, that it was previously marked in an attempt to
21 keep it in chronological order, so it's identified as
22 number 7, but this also has not been introduced into
23 evidence.

24 (By Mr. Brown)

1 Q Ms. Mills, have you ever seen the document that is
2 marked as number 7?

3 A I don't recall seeing this.

4 Q Would this be the type of correspondence that would
5 usually be kept in a Crawford claims file, if it was
6 received by a Crawford adjustor?

7 A If it was received, yes.

8 Q And the recipients of this -- one of the recipients is
9 Mr. John Chaney of this letter; is that right?

10 A It's addressed to John Chaney.

11 Q Were you aware when you took over the Rhodes claim that
12 Penske was attempting to tender a defense to Zurich
13 with respect to the Rhodes claim?

14 A I became aware of that.

15 Q And you were aware that they were attempting to do so
16 in April of 2002; is that right?

17 A Yes.

18 Q And also --

19 A Oh, excuse me. I thought you meant --

20 THE COURT: Did you say Penske?

21 MR. BROWN: Yes.

22 THE COURT: Okay.

23 (By Mr. Brown)

24 A I'm sorry. I thought you meant 2003. I'm not aware if

1 in 2002 they were trying that.

2 Q Ms. Mills, you said that you reviewed the claims files,
3 correct -- I'm sorry, the claims notes?

4 A Yes.

5 Q In reviewing the claims notes -- pardon me for just one
6 second.

7 If you could turn to Exhibit 67 in the
8 binders that are in front of you, it will be in binder
9 volume number two. Ms. Mills do you recognize Exhibit
10 Number 7?

11 A I do.

12 Q What do you recognize that to be?

13 A That is the claims progress notes.

14 Q And those are the claims progress notes for the Rhodes
15 claim; is that correct?

16 A Yes.

17 Q And are these the same claims progress notes that you
18 would have reviewed when you first took over the client
19 in January of 2003?

20 A Yes.

21 Q Could you turn to the page that is stamped at the
22 bottom ZA-589; and the numbers actually go backwards.

23 A Okay.

24 Q Do you see there is a note there from August 1st of

1 2002, entered by John?

2 A There are two.

3 Q Okay, the first one?

4 A Yes.

5 Q About halfway down it says: On July 18th, 2002 Penske
6 Truck Leasing, another defendant in the Rhodes case was
7 served with the complaint. We are tendering this claim
8 to Zurich on Penske's behalf as Penske is listed as an
9 additional insured.

10 Did I read that correctly?

11 A Yes.

12 Q So if you had reviewed the claims files you would be
13 aware the Penske had attempted to tender its defense in
14 the Rhodes claim prior to your taking over the claim ?

15 A I knew that there were parties looking for coverage
16 under the policy.

17 Q And those parties would be GAF, is that right, who was
18 the policyholder?

19 A GAF was the policyholder.

20 Q And Driver Logistics Services?

21 A DLS, yes.

22 Q And Carlo Zalewski, who was the driver?

23 A Correct.

24 Q And Penske is one of them?

1 A Correct.

2 Q You said that you also reviewed the transmittal letter,
3 would that also include the first full formal report
4 that was completed in this case ?

5 A No.

6 Q Could you turn to Exhibit 66, it's actually 66A.

7 A Okay.

8 Q Do you recognize this document ?

9 A I do.

10 Q And this is the first full formal report issued by John
11 Chaney ?

12 A Yes, it is.

13 Q And this was issued on January 30th of 2002; is that
14 right ?

15 A Correct.

16 Q You said you did not review this when you first took
17 over the claim?

18 A No, I didn't.

19 Q Did you ever review this document ?

20 A Yes, I did.

21 Q So when you reviewed this document you understood that
22 Mr. Chaney had reported to Mr. Robert Manning and GAF
23 Corporation about the Rhodes accident; is that right ?

24 A Yes.

1 Q And also you knew that Zurich Insurance Company had
2 been copied on this?

3 A Yes.

4 Q So the recipients of this letter would have been
5 notified on Mr. Chaney's description of the accident in
6 this case?

7 MS. SACKETT: Objection, your Honor. There
8 is no foundation for the question that the letter was
9 in fact received by the people that it's addressed to.

10 MR. BROWN: Your Honor, I believe there's a
11 presumption of --

12 THE COURT: I'm sorry, basically you're
13 saying if those who received 66A, they would have had a
14 chance to read it, is what you are basically asking?

15 MR. BROWN: Yes, and that they would have
16 been put on notice of specific facts relating to the
17 Rhodes claim, your Honor.

18 MS. SACKETT: Your Honor, the objection is
19 merely the foundation for if they in fact received it.
20 There is no evidence that Zurich in fact received this
21 letter.

22 THE COURT: There is evidence, it says: CC
23 Zurich Company. But you're saying that Zurich contends
24 that it was not -- that even though they were CC'd, it

1 was never received?

2 MS. SACKETT: Yes, your Honor. The evidence
3 will show that it was not received by Zurich in or
4 around January 39th of 2002.

5 MR. BROWN: Your Honor, David McIntosh in his
6 deposition actually confirmed I believe that the
7 address listed on the CC is in fact Zurich's home
8 office and there's a presumption that they would have
9 received anything addressed to that.

10 THE COURT: All right, well I will -- I mean
11 if the question is if somebody got it, would they have
12 read its contents and I don't think she's in no better
13 position than I am to answer, so why don't you just
14 move on. I gather there is a dispute as to whether
15 this document indeed was received by Zurich, but I'm
16 not sure she's in a position to resolve that dispute.

17 (By Mr. Brown)

18 Q Ms. Mills, when you prepare letters at Crawford &
19 Company to go out, you would include an address in that
20 letter; is that right ?

21 A Yes.

22 Q And if you were attempting to copy someone you would
23 also include CC -- or you would include an address for
24 someone else that you are attempting to copy on the

1 letter; is that right?
 2 A Yes.
 3 Q What is the procedure at Crawford & Company for mailing
 4 documents that are addressed?
 5 A They get put in a bin and they get mailed, whether they
 6 be bulk mail, or if there are certain addresses that
 7 there are several things going to, it's bulk mailed,
 8 otherwise it's individually mailed. At that time we
 9 did specifically put things in envelopes and sent them
 10 out.
 11 Q But there is someone who is responsible for putting
 12 things in envelopes and sending them out at Crawford &
 13 Company; is that right?
 14 A Correct.
 15 Q And if someone is -- or if a letter is addressed to
 16 someone it would be sent by that person to the
 17 addressee?
 18 A Yes.
 19 Q And if someone were listed as a CC on a letter they
 20 would also be -- or a copy of the letter would also be
 21 prepared and mailed to that person as well; is that
 22 right?
 23 A Yes.
 24 Q Ms. Mills, when you reviewed --

1 THE COURT: Let me step back. Back in
 2 January of 2002 you were, of course, with Crawford,
 3 correct?
 4 THE WITNESS: Yes.
 5 THE COURT: What was the practice with regard
 6 to mailing correspondence at that time?
 7 THE WITNESS: There were buckets for mail
 8 that you would put out in the hallway and an
 9 administrative person would put it in an envelope or
 10 put it in a master and send it out.
 11 THE COURT: As an adjustor what did you do?
 12 THE WITNESS: I would put the report in the
 13 bin to be sent out.
 14 THE COURT: You'd simply put the report in
 15 the correspondence bin?
 16 THE WITNESS: Yes.
 17 THE COURT: Who would you expect to take it
 18 and mail it?
 19 THE WITNESS: The administrative people in
 20 the office.
 21 THE COURT: So secretaries?
 22 THE WITNESS: Secretaries.
 23 THE COURT: And you assumed that it would be
 24 sent it both to the person to whom it was directed as

1 well as the CCs?
 2 THE WITNESS: Correct.
 3 THE COURT: But was there ever any
 4 confirmation that indeed it had been sent, that it was
 5 put by the secretary in the file?
 6 THE WITNESS: No.
 7 THE COURT: So you basically assumed that it
 8 had gone to the person to whom it was directed?
 9 THE WITNESS: Yes.
 10 THE COURT: All right, so once you finish
 11 with the correspondence you put it into the bin and
 12 then put a copy in your claims file and then figured
 13 that what you thought would happen would happen?
 14 THE WITNESS: Correct.
 15 (By Mr. Brown)
 16 Q When you first reviewed the first full formal report --
 17 strike that.
 18 Did you record the first full formal report
 19 before you issued your own report?
 20 A No, I did not.
 21 Q But you received the claims notes in this case; is that
 22 right?
 23 A Yes, I did.
 24 Q And you received the transmittal letters?

1 A Yes, I did.
 2 Q And wouldn't you have reviewed other items in the
 3 claims file to determine what the facts of the case
 4 are?
 5 A I did not.
 6 Q Did you rely upon John Chaney's determination of what
 7 the facts of this case were?
 8 A Along with the information that I had gathered.
 9 Q But John Chaney conducted an investigation in early of
 10 2002 as to this accident?
 11 A Correct.
 12 Q You did not conduct your own investigation of the
 13 accident?
 14 A No, I did not since it was
 15 Q So you were --
 16 A -- year post --
 17 Q I'm sorry?
 18 A Since it was a year post-accident that I took it over.
 19 Q So you would have relied upon his investigation as to
 20 the facts of the accident?
 21 A Yes.
 22 Q Do you see in the first full formal report that there
 23 is a description of the accident, a generalized
 24 description of the accident on the second page?

1 A Correct.

2 Q Do you see that?

3 A Yes.

4 Q Do you see that a tractor with tank trailer -- and I'm going to skip to the end here -- rear-ended a stopped passenger car owned and operated by Marcia Rhodes at approximately 1 p.m. January 9th, 2002? Was that your understanding of the accident?

5 A Yes.

6 Q Did you also understand that Mr. Zalewski stated that he was not paying attention when he crashed into the back of Mrs. Rhodes' car?

7 A I'd have to read through the entire report. I don't know if it indicates that.

8 Q Did you understand that at any point in time while you were handling the Rhodes claim, that Mr. Zalewski admitted that he was not paying attention at the time of the accident?

9 A I think there was something indicating that a vehicle or something had distracted him; I don't know if that means he wasn't paying attention.

10 Q THE COURT: I'm sorry, have we established when you took over the case?

11 A THE WITNESS: January 2003.

12 THE COURT: January 2003.

13 (By Mr. Brown)

14 Q Would you turn to Exhibit 67 again for me, please?
THE COURT: I'm sorry, before we get there, when you took over the case did you have any discussions with Mr. Chaney as to this file?

15 A THE WITNESS: I did not.

16 Q THE COURT: Did he leave you any memoranda or any information to assist you in your handling of it?

17 A THE WITNESS: No.

18 Q THE COURT: So basically you went cold turkey and took over this claim?

19 A THE WITNESS: Exactly.

20 Q (By Mr. Brown)

21 Q Ms. Mills, when you took over the claim Mr. Chaney was no longer employed; is that correct?

22 A Yes.

23 Q Okay. And so you relied upon the claims notes in forming or coming to an understanding of what the facts of the case were; is that right?

24 A Yes.

25 Q If you could turn to Exhibit 67 and look at page number ZA-0595 and there is a note there dated January 23rd, 2002; do you see that note?

1 A I do.

2 Q About halfway through that note it says: We see at least three aspects of neg against the driver; one, he should have had sufficient view of the scene to have seen the roadwork ahead, but didn't see it; two, he was distracted by the crossing vehicle; three, he failed to know his vehicle was unsafe for operation for weeks or months.

3 A Was that your understanding of Mr. Chaney's determination as to the cause of the accident?

4 Q That was Mr. Chaney's information that he had stated in the file.

5 A And that's the same information that you in fact rely upon in also handling the claim; is that right?

6 Q That was the information that was in the file, yes.

7 Q And you had to rely on what was in the file rather than conduct your own investigation?

8 A Correct.

9 Q Again, you said that you reviewed the liability transmittal letters that were issued in this case when you first took over; is that right?

10 A Yes.

11 Q If you could turn to Exhibit 66B. This is an April 8th 2002 liability transmittal letter issued in the Rhodes

12 claim; is that correct?

13 A Yes.

14 Q And this is one of the transmittal letters that you would have reviewed?

15 A Yes.

16 Q Do you notice near the bottom of the page under Reserves, it says: Comments low recommend policy limits?

17 A Yes, I see that.

18 Q So it was your understanding that as of 2002, the reserves or Mr. Chaney was recommending that the reserves be raised to the policy limits?

19 A That's correct.

20 Q If you turn to the second page as well under the liability section it says: We see that this clearly falls to the DLS driver due to lack of attention and this liability to the extent of policy limits may be imputed to GAF.

21 A Was that your understanding of the claim as well when you took over in January of 2003?

22 A Well, in fact the driver was named here, but there were also other parties that were being looked to at that point.

23 Q But did you understand that liability clearly fell to

1 the DLS driver because he was not paying attention?
 2 A No.
 3 Q Did you understand that the DLS driver would be held
 4 liable due to lack of attention?
 5 A It was brought up in this report and that was a factor
 6 we had to deal with.
 7 Q If you could turn to 66F as well.

8 THE COURT: I'm sorry, 66F you said?
 9 MR. BROWN: Yes.

10 (By Mr. Brown)

11 Q This is a liability transmittal letter dated May 6th,
 12 2003 and this was drafted by you; is that right?
 13 A That's correct.
 14 Q If you could turn to the second page there and under
 15 the liability section it says: We see that this falls
 16 to the DLS driver due to lack of attention.
 17 A I see that.
 18 Q And you issued this transmittal letter?
 19 A I did.
 20 Q So you would have left that in this transmittal letter
 21 when it was sent out?
 22 A I left it in, but then I added updates that I had done
 23 indicating that the arborist and the Town of Medway
 24 were being brought in as third-party defendants.

1 Q Okay. But you still understood that liability is seen
 2 as falling to the DLS driver due to lack of attention?
 3 A I did leave that in; that was an aspect of the claim.
 4 Q Going back to 66B, do you see that this transmittal
 5 letter was also copied to AIG Technical Services?
 6 A Yes.
 7 Q And it was also CC'd to the current administrator of
 8 Zurich U.S?
 9 A Yes.
 10 Q If you could go to the next document, 66C. This is a
 11 June 10, 2002, liability transmittal letter
 12 issued by John Chaney that you would have
 13 reviewed; is that correct?
 14 A Correct.
 15 Q And again, on the first page of this it says
 16 under "Reserves," the comments: Low, recommend
 17 policy limits.
 18 A Yes.
 19 Q And then on the second page, again, it says:
 20 Liability. We see that this clearly falls to
 21 the DLS driver due to lack of attention and the
 22 liability to the extent of policy limits may be
 23 imputed to GAF.
 24 Did I read that correctly?

1 A Yes, you did.
 2 Q And this letter, too, was copied to AIG
 3 Technical Services?
 4 A Yes.
 5 Q And it was also copied to Zurich, the current
 6 administrator, Zurich US?
 7 A Yes.
 8 Q If you could go to the next document, which is
 9 66D. This is a September 25, 2002 liability
 10 transmittal letter written by John Chaney that
 11 you also would have reviewed; is that correct?
 12 A Correct.
 13 Q And on the first page of that document it again
 14 notes that: Reserves are low, recommend policy
 15 limits. Is that right?
 16 A That's right.
 17 Q And if you turn to the second page, again it
 18 says: Liability. We see that this clearly
 19 falls to the DLS driver due to lack of
 20 attention, and this liability to the extent of
 21 the policy limits may be imputed to GAF.
 22 Did I read that correctly?
 23 A Yes.
 24 Q Do you also note under "Potential Case Value" in

1 that document, it says: We see this universally
 2 to all remaining defendants as between 5 million
 3 and 10 million.
 4 A Yes.
 5 Q And again, this was copied to AIG Technical
 6 Services and David McIntosh, Zurich US?
 7 A Yes.
 8 Q Sorry to go back and forth like this, but if you
 9 could go back to 66C?
 10 Do you note under the section that was
 11 "Current Status", the first sentence, it says:
 12 please refer to our full formal report of 1/30
 13 slash 2.
 14 I'm guessing that probably means '02.
 15 Would that be your understanding as well?
 16 A Yes.
 17 Q So this is referencing the first full formal
 18 report that is attached to 66A -- I'm sorry,
 19 that is Exhibit 66A?
 20 A Yes.
 21 Q Did you go back at this time -- seeing that
 22 note, did you go back and refer to the full
 23 formal report?
 24 A No, I did not.

1 Q If you could move on to 66E. And it's a
 2 December 13, 2002 liability transmittal letter
 3 drafted John Chaney that you would have reviewed
 4 when you took over the claim; is that right?

5 A Yes.

6 Q On the first page, again, it says: Reserves.
 7 Comments: Low, recommend policy limits.

8 A Correct.

9 Q And then on the second page, under "Reserves":
 10 We continue to recommend the case as whole be
 11 reserved, and policy limits were two mil
 12 Did I read that correctly?

13 A You did.

14 Q And again under "Liability", this notes that:
 15 We see that this clearly falls to the DLS driver
 16 due to lack of attention, and this liability to
 17 the extent of the policy limits may be imputed
 18 to GAF.

19 Did I read that correctly?

20 A You read that correctly.

21 Q And this would have been the fourth time that
 22 this was included in one of these transmittal
 23 letters?

24 A That was the fourth transmittal letter, yes.

1 Q This transmittal letter was also copied to AIG
 2 Technical Services, Inc.; is that right?

3 A Yes.

4 Q And now there's a specific name under Zurich US,
 5 it says David McIntosh, Zurich US. It was
 6 copied to him as well?

7 A Correct.

8 Q And yet this transmittal letter also notes that
 9 the potential case value is between five mil and
 10 ten mil; is that right?

11 A To, yes, universally to all remaining
 12 defendants.

13 Q Okay. But the potential case value is between
 14 five mil and ten mil?

15 A Correct.

16 Q When you took over the claim in January of
 17 2002 --

18 A 2003?

19 Q I'm sorry, yes, 2003, and you read the claims
 20 progress notes, did you learn that coverage
 21 counsel had been involved in case since August
 22 of 2002?

23 A Yes.

24 Q And in fact you started communicating with

1 coverage counsel when you started; is that
 2 right?

3 A Yes, I did.

4 Q And by January, mid-January of 2003, you learned
 5 that DLS is an additional insured under there
 6 policy because of its operation of the covered
 7 vehicles which GAF's permission; did you not?

8 A I don't specifically know that verbiage, but I
 9 was discussing that with counsel.

10 Q If you could turn to Exhibit 67, page number
 11 ZA-0583. And the first note on that page is
 12 dated January 14, 2003 and it lists as the
 13 author, Jody. Would that be you?

14 A Yes.

15 Q Okay. And in this note it says near the end:
 16 DLS is an additional insured under the policy
 17 because of its operation of the covered vehicles
 18 with GAF's permission.

19 Did I read that accurately?

20 A You did.

21 Q And you would have been the one who drafted that
 22 note; is that right?

23 A That's correct.

24 Q And in fact, as of mid-January of 2003 you know

1 that Zurich had been informed in mid-December
 2 that it would have to cover Driver Logistic
 3 Services?

4 A Well, there was coverage issues. That coverage
 5 was being dealt with coverage counsel and Zurich
 6 directly. I did speak with them to keep
 7 updated, but they were getting their information
 8 directly from Zurich.

9 Q But you understood that Zurich had received the
 10 same information that you had as of mid-
 11 December? Let me rephrase that. In mid-January
 12 of 2003 you learned that Zurich had been
 13 informed in mid-December that it would have to
 14 cover DLS; is that right?

15 A Well, I'm confused about what you're saying,
 16 because I know that reservation of rights
 17 letters went out.

18 Q Okay. Well, let's just look at the next note,
 19 January 16, 2003. This is also drafted by you?

20 A Yes.

21 Q And it says: Defense, Ed Shoulkin. Ed Shoulkin
 22 would be coverage counsel?

23 A Coverage, yes.

24 Q I've discussed the coverage matter. They sent

1 info to Zurich. Looks like they will need to
 2 make coverage. This was mid-December. There
 3 has been no further response from Zurich. We
 4 need to determine if there is coverage and need
 5 an answer ASAP.

6 Did I read that correctly?

7 A You did.

8 Q And again, that's a note that you entered?

9 A Yes.

10 Q And this is based on conversations that you had
 11 with coverage counsel?

12 A Correct.

13 Q Approximately a week later you put a note this
 14 is January 26, 2003 -- I'm sorry. January 23,
 15 2003, that Dave McIntosh said that they will
 16 accept -- we will accept/tender GAF, Penske, and
 17 Driver Logistics. Was that your understanding
 18 as of January 23, 2003?

19 A Yes. It was under a reservation of rights.

20 Q But they accepted the tender of the defense and
 21 defended GAF, Penske, and Driver Logistics?

22 A Correct, under a reservation of rights.

23 Q Did that include the driver as well, Mr.
 24 Zalewski?

1 A I believe so.

2 Q Was there ever a different determination made
 3 with respect to coverage issues?
 4 A Not in my handling. I know throughout the
 5 entire time it was still being handled under a
 6 reservation of rights.

7 Q Okay. But it was never determined that Zurich
 8 did not owe a duty to indemnify and defend
 9 Driver Logistic Services?

10 MS. SACKETT: Objection, your Honor.
 11 There's no foundation for that. She's
 12 repeatedly testified that there was a
 13 reservation of rights.

14 THE COURT: She can testify only what
 15 was communicated to her by Zurich.

16 Was anything communicated to you as to
 17 that?

18 THE WITNESS: No.

19 (By Mr. Brown:)

20 Q Was it ever communicated to you -- excuse me.
 21 Did Zurich ever communicate to you that they did
 22 not have to defend or indemnify Carlo Zalewski?
 23 A Directly to me? No. But there were
 24 conversations going on between coverage counsel

1 and Zurich.

2 Q But you don't know the content of those
 3 conversations, do you?

4 A No.

5 Q Did Zurich ever communicate to you that they did
 6 not have to defend or indemnify Penske?

7 A No.

8 Q And in fact Zurich did defend and indemnify GAF;
 9 is that right?

10 A Yes.

11 Q And they did defend and indemnify Carlo
 12 Zalewski?

13 A I believe so.

14 Q And the same with Driver Logistics?

15 A Yes, I believe so. But -- yes.

16 Q At this time there was also was an outstanding
 17 question as to whether or not Penske was going
 18 to be covered out of respect to maintenance; do
 19 you recall that?

20 A There was a question of something about
 21 maintenance in the contract, and they were also
 22 looking for additional policies that Penske may
 23 have.

24 Q But the maintenance question was resolved as of

1 April of 2003?

2 A That's correct.

3 Q Did you ever learn of any additional policies
 4 that would cover Penske with respect to this
 5 claim?

6 A I think that was still an outstanding issue.

7 Q Did you ever learn of any additional policies?

8 A No, I did not.

9 Q Actually, while we're looking at the notes,
 10 would you mind just flipping really quickly to
 11 ZA-570? There are notes here on January 27,
 12 2004 and then there's another one two down,
 13 January 28, 2004; do you see those notes?

14 A Yes.

15 Q And it says: File access by ZJBUC?

16 A Correct.

17 Q Do you know if that notation means that Zurich
 18 was accessing the file?

19 A I don't believe that was Zurich. I believe that
 20 was our overseeing office in New Jersey.

21 Q Okay. And who is the overseeing office? Who
 22 would ZJBUC be?

23 A I don't know people's codes.

24 Q Ms. Mills, during your handling of this claim

1 you received updates from counsel; is that
 2 right?
 3 A On occasion.

4 Q I'm going to ask you to look at the other
 5 binder, it will be Volume One, and turn to
 6 Exhibit 8.

7 A Did you say 8?

8 Q Eight, yes.

9 A There's nothing in here.

10 MR. BROWN: Could we have just one
 11 moment, your Honor?

12 THE COURT: You may.

13 MR. BROWN: May I hand it to the
 14 witness, your Honor?

15 THE COURT: You may.

16 MR. BROWN: Your Honor, I have a copy
 17 of Exhibit 8 for you as well.

18 THE COURT: I think I've got it, don't
 19 I?

20 MR. BROWN: I'm sorry. I thought you
 21 said yours was empty as well.

22 THE COURT: No. The one I'm missing is
 23, but not 8.

24 MR. BROWN: Okay.

1 (By Mr. Brown:)

2 Q Ms. Mills, when you received updates from
 3 counsel, would you forward those along to
 4 anyone?

5 A Generally they would go with my next report.

6 Q And is that your general practice with respect

7 to all claims?

8 A Correct.

9 Q And in this case if you received updates from
 10 counsel and were to forward them, you would have
 11 forwarded them to all recipients of your
 12 transmittal letters?

13 A Yes.

14 Q And that would include Zurich American Insurance
 15 Company?

16 A Correct.

17 Q And AIG Technical Services?

18 A Yes.

19 Q Exhibit 8 is a letter dated April 25, 2003,
 20 addressed to you; do you recognize this letter?

21 A Not specifically. I may have seen it, but I'm
 22 not remembering it specifically.

23 Q Do you know who Timothy Corrigan was?

24 A Yes, he was counsel for Penske.

1 Q And would you receive periodic updates from Mr.
 2 Corrigan in this case?

3 A No.

4 Q Did you receive any updates from Mr. Corrigan in
 5 this case?

6 A Apparently this one came in.

7 Q If you could turn to the second page, it says
 8 there, in the paragraph that begins, "Fourth"
 9 I enclose for your files a copy of the
 10 plaintiff's answers to GAF's first set of
 11 interrogatories.

12 Did you receive those interrogatories?

13 A I believe that I did.

14 Q Did you review those interrogatories?

15 A Briefly, I did.

16 Q I'm sorry. Those answers to interrogatories.

17 I'm sorry. You did review the answers to
 18 interrogatories?

19 A Yes, I briefly looked at them.

20 Q Is this the type of communication that in your
 21 practice you would have forwarded along to the
 22 recipients of your reports?

23 A Yes, but I don't remember this, so I'm not sure
 24 that that would have gone.

1 Q I show you another document; have you ever seen
 2 the document that I've just handed you?

3 A Yes.

4 Q What do you recognize that document to be?

5 A Answers to Building Material Corps. of America's
 6 First Set of Interrogatories.

7 Q And these are interrogatories that you would
 8 have -- I'm sorry. When you first received
 9 these interrogatories, did you review them?

10 A Yes.

11 MR. BROWN: Your Honor, I would like to
 12 offer these answers to interrogatories as the
 13 next exhibit.

14 THE COURT: They aren't already in?

15 MR. BROWN: No, these are not in.

16 THE COURT: Any objection?

17 MS. SACKETT: No, your Honor.

18 THE COURT: Hearing none, they may come
 19 in as the next exhibit, which I guess is 75.
 20 This is plaintiff's answer to the first set of
 21 GAF interrogatories?

22 MR. BROWN: Yes, your Honor.

23 THE COURT: This is the supplemental
 24 answer.

1 MR. BROWN: Yes, supplemental answer,
 2 with the signature date of April 11, 2003, by
 3 Mrs. Rhodes and Certificate of Service of April
 4 14, 2003. These are from the underlying case,
 5 your Honor.

6 THE COURT: I know that.

7 MS. SACKETT: Your Honor, we do have an
 8 objection to the supplemental answers to
 9 interrogatories, as that's not what's indicated
 10 in the letter and it was never designated.

11 MR. BROWN: Your Honor, Ms. Mills has
 12 testified that she saw these documents. She
 13 also testified that she saw this document and
 14 reviewed it in her deposition, and it was marked
 15 in her deposition.

16 THE COURT: All right. But is there a
 17 plaintiff's answers to GAF first set of
 18 interrogatories?

19 MR. BROWN: There is, your Honor.

20 MS. SACKETT: Yes, there are.

21 THE COURT: All right. So why should I
 22 assume that this was ever sent? I assume that's
 23 why you're seeking to offer it, is because
 24 you're claiming that this was an attachment to

1 this letter, correct?

2 MR. BROWN: Actually, I'm offering it
 3 because she just testified that she in fact
 4 received these and reviewed them.

5 THE WITNESS: I didn't understand that
 6 this was the supplemental answer; I thought this
 7 was the initial one.

8 THE COURT: All right. Do you have the
 9 initial answers?

10 MR. BROWN: Yes, your Honor, I do.

11 THE COURT: If I could see that.

12 All right. So I see they both make reference
 13 to the 1 million and the 190,000, so it's not as if
 14 that's only in the supplementary.

15 Okay. Are you seeking to admit -- which are
 16 you seeking to admit, the supplemental or the --

17 MR. BROWN: Both, your Honor.

18 THE COURT: All right. Let me hear from
 19 defense counsel with regard to both.

20 MS. SACKETT: Your Honor, we have no
 21 objection to the first answers to interrogatories, but
 22 we do have an objection to the supplemental answers to
 23 interrogatories. These were never designated and
 24 defense had no notice this would be an exhibit, and

1 clearly our witness has testified that she saw the
 2 answers and not the supplemental answers.

3 THE COURT: Well, I don't think she
 4 necessarily remembers which one she saw. But in any
 5 event, the only basis to admit is that it was an
 6 attachment. The answer, I see, is dated April 10. The
 7 supplemental is dated April 14. The original answer
 8 does make reference to the 1 million and the 190,000
 9 referenced here, so it's not as if that's found only in
 10 the supplemental. So I think right now the fair
 11 inference is that --

12 MS. SACKETT: I think the supplemental has a
 13 much more in-depth description.

14 MR. PRITZKER: On the contrary, it does not,
 15 your Honor.

16 THE COURT: Not as to Interrogatory Number 5.

17 MR. PRITZKER: There's a one-line difference,
 18 I believe, your Honor. It's inconsequential.

19 MS. SACKETT: My apologies, your Honor.

20 THE COURT: All right. Well, I haven't
 21 compared them. I have looked at Interrogatory Answer
 22 Number 5, which is where the reference is to the amount
 23 of damages, and those appear to be if not the same,
 24 effectively the same. So what I will do is the motion

1 to admit the supplemental answer is denied. I will
 2 permit the answer to come into evidence as Exhibit 75.

3 Do you wish to mark the supplemental answer
 4 for I.D., or not?

5 MR. BROWN: Yes, your Honor.

6 THE COURT: All right. Then the supplemental
 7 answer may be marked for identification only, as I
 8 guess the first I.D., which would be A.

9 (Exhibit Number 75, marked; Answers to
 10 Building Materials Corporation of America's First Set
 11 of Interrogatories to Plaintiff Marcia Rhodes.)

12 (Exhibit A for I.D., marked; Supplemental
 13 Answer to Building Materials Corporation of America's
 14 First Set of Interrogatories to Plaintiff Marcia
 15 Rhodes.)

16 19 (By Mr. Brown)

20 Q Okay, Ms. Mills, you have in front of you the answer to
 21 Building Materials Corporation of America's First Set
 22 of Interrogatories to Plaintiff Marcia Rhodes; is that
 23 right?

24 A Correct.

1 Q And this is the document that would have been included
 2 with the letter, as far as you know?
 3 A I'm not sure. I don't remember seeing this letter from
 4 Corrigan Johnson, so.
 5 Q But you recall seeing these answers to interrogatories?
 6 A Yes, I do.
 7 Q And did review these answers to interrogatories?
 8 A Yes, I did.
 9 Q Ms. Mills, if you could turn to page 11 of this
 10 document. Do you know where it's signed April 8, 2003?
 11 A Yes.
 12 Q You received this document around that time; is that
 13 right?
 14 A I don't recall when I received it. I know it was
 15 sometime in April.
 16 Q But in April of 2003?
 17 A Yes.
 18 Q So as of April of 2003, you were aware of plaintiffs'
 19 claimed damages; were you not.
 20 A I was aware of what they were claiming, yes, but I
 21 didn't have any documentation to back up any of their
 22 claims.
 23 Q Could you turn to page 4, please?
 24 If you look at the third paragraph, these are

1 one-sentence paragraphs, but if you look at the third
 2 paragraph, it says: See documents produced in response
 3 to BMCA's document request to Marcia Rhodes, Request
 4 Number 5.
 5 Did I read that accurately?
 6 A I don't know where you're reading.
 7 Q The third paragraph on page 4. It begins:
 8 Massachusetts State Police representatives.
 9 A Okay.
 10 Q See documents produced in response to BMCA's document
 11 request to Marcia Rhodes.
 12 Did I read that correctly?
 13 A Yes, you did.
 14 Q So by reviewing this, you would have been aware that
 15 plaintiffs produced documents in this case.
 16 A Well, I didn't specifically read all of this line for
 17 line. I went to look at what she was saying her
 18 damages were. I did not go through every one of these
 19 lines.
 20 Q Okay. Ms. Mills, did you understand that medical
 21 records were produced in this case?
 22 A I did not know if they were produced or not. I know
 23 that I did not have them.
 24 Q If you could look at the fifth paragraph on the same

1 page, it begins: Various medical personnel.
 2 A Okay.
 3 Q See documents produced in response to BMCA's document
 4 request to Marcia Rhodes, Request Number 5 and Request
 5 Number 8.*
 6 Did you see that when you reviewed this
 7 document?
 8 A No, I did not.
 9 Q If you would turn to page 5. There's a response to
 10 Interrogatory Number 5. Is this part of -- is this a
 11 portion that you would have reviewed?
 12 A Correct.
 13 Q So you were on notice that plaintiffs believed that
 14 medical costs exceeded \$1 million?
 15 A Yes.
 16 Q You were also aware that \$190,000 had been spent to
 17 date for equipment and supplies, as well as purchasing
 18 a handicap van and making preliminary modifications to
 19 the house?
 20 A That's what it says, yeah.
 21 Q And you were also aware that plaintiffs would have --
 22 were expecting to renovate their house, which would
 23 cost approximately -- I'm sorry -- in excess of
 24 \$250,000?

1 A That's what they're claiming, yes.
 2 Q Now continuing on to the next page, this is still the
 3 same response, under paragraph E. It says: Please
 4 refer to Subparagraph A of this response and to
 5 documents produced in response to BMCA's first request
 6 for production of documents to Marcia Rhodes.
 7 Did I read that correctly?
 8 A Yes, you did.
 9 Q If you could move on to page 8.
 10 Interrogatory number 10, there's an answer
 11 there that lists a number of doctors. Would this be
 12 part of the answers to interrogatories that you would
 13 have reviewed?
 14 A I believe I just briefly looked at the list of names.
 15 Q Did you note that the last sentence says: Please refer
 16 to the documents that were produced in response to
 17 Request Number 8 of BMCA's request for production to
 18 Marcia Rhodes?
 19 A No, I did not.
 20 Q If you could go to Interrogatory Number 13 -- I'm
 21 sorry, the answer to Interrogatory Number 13, so it's
 22 page 9.
 23 Now as of this time, you were aware that
 24 Mrs. Rhodes' spinal cord was fractured at T-12 and that

1 she was paralyzed from the waist down; did you not?
 2 A Yes.
 3 Q And, in fact, you knew that she was paralyzed before
 4 you even received these answers, didn't you?
 5 A Yes.
 6 Q By the time you received these answers, you had learned
 7 that she was hospitalized for one month at UMass
 8 Medical Center?
 9 A I believe so.
 10 Q And that she had to undergo spinal fusion surgery?
 11 A Yes.
 12 Q And that she was released to Fairlawn Rehabilitation
 13 Hospital, where she had to stay for another two months?
 14 A I'm not specifically -- is that in this deposition --
 15 is that in this answer to ints?
 16 Q Yes, it is.
 17 A Okay.
 18 Q It says: Spinal fusion surgery -- where we had just
 19 read -- had two 6-inch titanium rods inserted along my
 20 spine and required the use of a ventilated breathing
 21 machine. Many times my body temperature was very high.
 22 Additionally, I had one blood clot removed and then I
 23 had a blood clot filter inserted into my body.
 24 And that gets us to the next sentence. It

1 says: I was released to Fairlawn Rehabilitation
 2 Hospital, where I stayed for another two months.
 3 A Okay.
 4 Q So after reviewing these interrogatories, you were
 5 aware of all of those things; were you not?
 6 A Yes.
 7 Q And the next sentence discusses Mrs. Rhodes' recovery.
 8 Were you aware that her recovery was impeded due to a
 9 staph infection?
 10 A I don't specifically -- if it says it here. I mean I
 11 don't recall that right now.
 12 Q But having reviewed this, you would have been aware of
 13 that item at the time.
 14 A Yes.
 15 Q Were you also aware that Mrs. Rhodes suffered a
 16 fractured leg when she fell off the toilet?
 17 A Yes.
 18 Q Were you also aware that in May 2002 she had to be
 19 hospitalized again to undergo emergency surgery to
 20 remove a gangrenous gall bladder?
 21 A Yes.
 22 Q Were you also aware that she had to go into Milford
 23 Hospital for another two weeks of rehabilitation?
 24 A Yes.

1 Q Did you also know that beginning in 2002 Mrs. Rhodes
 2 suffered from Level 1, Level 2 and Level 3 pressure
 3 sores?
 4 A Yes.
 5 Q And that she had to remain bedridden for almost three
 6 months?
 7 A Yes.
 8 Q Ms. Mills, is this a document that you would have
 9 forwarded to -- or forwarded along with your reports?
 10 MS. SACKETT: Objection, your Honor.
 11 Speculation.
 12 THE COURT: First you can ask whether she has
 13 a memory of what she did with it.
 14 (By Mr. Brown)
 15 Q Ms. Mills, do you remember what you did with these
 16 answers to interrogatories after you reviewed them?
 17 A Specifically what I did with them? No, I don't know.
 18 I know I put my synopsis in my report and sent it.
 19 Q Do you recall if you would have included them as an
 20 enclosure?
 21 A I do not recall.
 22 MS. SACKETT: Objection, your Honor. Same
 23 objection.
 24 THE COURT: No. She's allowed --

1 MS. SACKETT: He's asking if she would have
 2 versus if she did.
 3 THE COURT: Well, I took the question to mean
 4 whether she has a memory of it, now he can ask whether
 5 she has any pattern or practice with regard to such
 6 things.
 7 (By Mr. Brown)
 8 Q Ms. Mills, when you received discovery responses --
 9 THE COURT: Before you get there. You said
 10 you made reference to it. What are you referring to?
 11 THE WITNESS: I believe in a transmittal
 12 report that I did after this, I made reference to the
 13 injuries.
 14 THE COURT: Based on the answers to
 15 interrogatories?
 16 THE WITNESS: I believe so.
 17 (By Mr. Brown)
 18 Q Ms. Mills, if you could turn to -- excuse me, just one
 19 moment.
 20 THE COURT: You're referring to a transmittal
 21 letter. Go ahead.
 22 (By Mr. Brown)
 23 Q Ms. Mills, what was your general practice when you
 24 received discovery from -- well, let me start over.

1 Did you have a general practice when you
 2 received updates from counsel with respect to what she
 3 would do with those updates?

4 A I would try to document them in the notes.

5 Q And did you have a general practice as to whether or
 6 not you would provide copies to anyone?

7 A I would try to include what I had with my status
 8 report.

9 Q But did you have a general practice when you received
 10 letters from counsel as to whether or not you would
 11 forward them to the recipients of your liability
 12 transmittal letters?

13 A Yeah, that was my general practice, but I wouldn't
 14 specifically do it myself.

15 Q But you would direct someone to forward them, along
 16 with your liability transmittal letters. That was your
 17 general practice?

18 A Correct.

19 Q Ms. Mills, if you could turn to Exhibit 66F.

20 Ms. Mills, this is the May 6, 2003 liability
 21 transmittal letter that you drafted?

22 A Correct.

23 Q And this is the first report that you issued in the
 24 Rhodes claim?

1 A Yes, it is.

2 Q Now, again, you're recommending on the first page that
 3 policy limits -- or that the reserves be raised to the
 4 policy limits?

5 A Yes.

6 Q And that was the fifth time this recommendation had
 7 been made by Crawford?

8 A Correct. But it was still a recommendation; it was not
 9 a request.

10 Q But still it's the fifth time that you were
 11 recommending that the policy -- that the reserves be
 12 raised to the policy limits?

13 MS. SACKETT: Objection, your Honor. Asked
 14 and answered.

15 THE COURT: Sustained. What's the
 16 distinction between a request and a recommendation?

17 THE WITNESS: A recommendation is what we
 18 would recommend as far as possible, potential value of
 19 a claim for the ultimate exposure. A request would
 20 mean that we had documentation, we had medical bills,
 21 we had a demand package, we had future meds, et cetera,
 22 to substantiate a request to increase the reserves,
 23 which is usually what the client wants.

24 THE COURT: And where in your transmittal

1 letter is there a subject which says "Request"?

2 THE WITNESS: I don't know if I -- I don't
 3 know that says "Recommend." It may be in the next one.

4 THE COURT: But you would put a heading which
 5 would say "Request"?

6 THE WITNESS: No, not specifically.

7 THE COURT: So how does somebody know you're
 8 making a recommendation versus making a request?

9 THE WITNESS: Well, when they note that I
 10 have all of the documentation.

11 THE COURT: All right. And going back, how
 12 did you know what the actual reserves were that Zurich
 13 had set?

14 THE WITNESS: The reserves that Zurich set?

15 THE COURT: Yes.

16 THE WITNESS: I'm not sure how Zurich sets
 17 their reserves, if that's through this, our office.

18 THE COURT: Well, at the time that you
 19 recommended that it go up to \$2 million --

20 THE WITNESS: Mm-hum.

21 THE COURT: -- did you know that -- it says
 22 on the first page: Claim reserved \$50,000.

23 Is that information you had on your own
 24 computer?

1 THE WITNESS: Yes.

2 THE COURT: So you had access to their claim
 3 reserves?

4 THE WITNESS: No.

5 THE COURT: Well, how did you know it? How
 6 did you know what Zurich's claim reserve was?

7 THE WITNESS: I don't know what Zurich's
 8 claim reserve was.

9 THE COURT: I'm sorry?

10 THE WITNESS: I don't know what Zurich's
 11 claim reserve was. I know what our reserve was in our
 12 file, which I assume is Zurich's claim reserve.

13 THE COURT: You wrote: Fifty thousand claim
 14 reserve, on page 1. What does that mean?

15 THE WITNESS: That means that was the reserve
 16 at the time that GAF had given us authority for.

17 THE COURT: So this was given to you by GAF?

18 THE WITNESS: Correct.

19 THE COURT: All right. Then you were
 20 recommending to Zurich that they do what?

21 THE WITNESS: Increase the reserve.

22 THE COURT: And what --

23 THE WITNESS: Just for ultimate exposure.

24 THE COURT: Did you understand that it was

1 GAF or Zurich who was to establish the reserve?
 2 THE WITNESS: To give us authority to
 3 increase would have been Zurich, I believe, after
 4 \$250,000.

5 THE COURT: All right. Proceed.

6 (By Mr. Brown)

7 Q Did you ever receive authorization from Zurich to
 8 increase the reserves?

9 A Not during my claims handling.

10 Q If you could go to Exhibit G -- I'm sorry, 66G.

11 Under "Reserves and Payments," there is a
 12 statement there that says: We wish to increase the BI
 13 reserves, the policy limits, as requested. This has
 14 been our request since our 4/8/02 report.

15 Did I read that accurately?

16 A Yes, you did.

17 Q And that's a June 4, 2003 report that you issued to
 18 Zurich American Insurance Company; is that right?

19 A Yes.

20 Q So in -- strike that. If you could go back to 66F,
 21 please.

22 Now, you informed the recipients of this
 23 letter -- or you were intending to inform the
 24 recipients of this letter that coverage counsel had

1 forwarded documentation directly to Zurich indicating
 2 that it appears we will have to indemnify the driver,
 3 DLS, and Penske; is that right?

4 A I'm sorry. Where are you reading?

5 Q I'm reading the first sentence of "Current Status."

6 A Okay. I'm sorry.

7 THE COURT: I'm sorry. Which exhibit?

8 MR. BROWN: 66F.

9 THE COURT: F.

10 MR. PRITZKER: Second page, your Honor.

11 (By Mr. Brown)

12 Q So is it your understanding, as of May 6, 2003, that we
 13 will have to indemnify the driver, DLS, and Penske?

14 A At that point, yes, but it was still under reservation
 15 of rights.

16 Q Did you also understand at that time that defense
 17 counsel was not expecting this case to run the usual
 18 litigation course due to the severity of the injury?

19 A That's what defense had indicated, yes.

20 Q And this was a transmittal letter that you copied to
 21 AIG Technical Services?

22 A Correct.

23 Q And David McIntosh of Zurich?

24 A That's right.

1 Q And again, under liability, it appears that you carried
 2 over much of the language from the previous letters;
 3 does it not?

4 A That's true, adding the information about the arborist
 5 and the Town of Medway. That may have been the last.

6 Q Did you at some time become aware that the -- that
 7 there wouldn't be a viable claim against the Town of
 8 Medway.

9 A Not during my handling that I'm aware of.

10 Q If you could turn to Exhibit 66I, and I'm looking at
 11 the second page.

12 It says: Defense -- under paragraph 2,
 13 midway through, the sentence begins: Due to state
 14 statutes, it appears that the Town will not be able to
 15 be brought into this lawsuit as a viable defendant.

16 A Okay.

17 Q Was that your understanding?

18 A I'm incorrect. I apologize. Yes.

19 Q If you could turn to Exhibit 66G.

20 Now, this is a letter that you sent directly
 21 to David McIntosh of Zurich; is that right?

22 A Yes.

23 Q And you mention here, in the first paragraph: We have
 24 also enclosed the initial full formal report in this

1 matter.

2 Do you see that?

3 A Yes. I'm sorry.

4 Q Do you recall enclosing the first full formal report
 5 with this letter?

6 A Yes, because he had requested it and I thought that he
 7 had it, and he was saying again that he still did not
 8 have it.

9 Q So you did enclose it with this letter?

10 A Yes.

11 Q I'm sorry, did you say yes, Ms. Mills?

12 A Yes.

13 Q Turning to page 2, you're also communicating regarding
 14 insurance in this case, and it says: We have had
 15 coverage counsel review all contracts and policy
 16 information. At this time, it appears that we are to
 17 indemnify and defense -- I'm guessing that probably
 18 means defend; is that right? Would that be "defend"
 19 rather than "defense"?

20 A I'm sorry. Where exactly are you?

21 Q Page 2, under "Insured."

22 A Okay.

23 Q We have had coverage counsel review all contracts and
 24 policy information. At this time, it appears that we

1 are to indemnify and defense Penske, DLS.
 2 A Correct. But as you say, the sentence doesn't flow
 3 correctly, but it says: At this time, a reservation of
 4 rights has been sent. So it's still under a
 5 reservation of rights.

6 Q And again, you're not aware of any change in the status
 7 of the insurance while you were handling the Rhodes
 8 claim?

9 A No.

10 Q If you could turn to the last page -- I'm sorry, not
 11 the last page, the second-to-last page of this
 12 document.

13 This is still 66G?

14 A Yes.

15 Q Under medical status, it says: We do not have any
 16 current medical information.

17 Did you ever request medical information?
 18 A I was waiting for defense to forward it once he got the
 19 medical -- excuse me -- the demand.

20 Q But you did not ask for medical documentation before
 21 there was a demand received?

22 MS. SACKETT: Objection, your Honor. I think
 23 she just testified that she was waiting for defense
 24 counsel to forward it to her.

1 THE COURT: No. Overruled.

2 A I was waiting for defense to forward that to my
 3 attention. I didn't have medical information at this
 4 time.

5 (By Mr. Brown)

6 Q But did you ever ask defense directly for -- I'm sorry.
 7 Did you ever directly ask defense counsel for the
 8 medical information?

9 A Yes, as he would get it, he was going to forward it to
 10 me.

11 Q But you were not aware that defense counsel already had
 12 it by April of 2003.

13 A That's correct.

14 THE COURT: Who did you speak to asking for
 15 it?

16 THE WITNESS: Greg Deschenes, our defense
 17 counsel.

18 THE COURT: When?

19 THE WITNESS: When?

20 THE COURT: Yes.

21 THE WITNESS: I don't know specific dates. I
 22 -- continuously that was what we were looking for.

23 THE COURT: Do you specifically recall a
 24 conversation with Greg Deschenes in which you said I

1 want the medical records and he said they have not been
 2 received?

3 THE WITNESS: No, I don't remember a
 4 conversation like that.

5 THE COURT: So what do you recall?

6 THE WITNESS: I recall that he said he was
 7 going to forward the documentation that he got from
 8 plaintiff when he received it.

9 THE COURT: And at that time did he indicate
 10 that he had not yet received it?

11 THE WITNESS: He said -- he had forwarded me
 12 what he had, as far as I was aware.

13 THE COURT: And do you recall roughly when
 14 this conversation took place?

15 THE WITNESS: I want to say it was -- I want
 16 to say it was in May.

17 THE COURT: Of which year?

18 THE WITNESS: '03.

19 (By Mr. Brown)

20 Q Did you ever follow up to ask for medical records with
 21 Mr. Deschenes after May of 2003?

22 A I don't recall specifically.

23 Q Look at Exhibit 67. It's Bates No. ZA-0581.

24 Under 5/6/03, near the bottom, there's an

1 indication, it says: LI transmittal letter.

2 Do you see that?

3 A Yes.

4 Q Now this just means that the transmittal letters were
 5 also put into the claims notes; is that right?

6 A Correct.

7 Q And so this would mirror what was sent out to GAF,
 8 Zurich, and AIG?

9 A The body of the letter, yes.

10 Q And under that it looks like the second paragraph:
 11 Medicals are being forwarded and will approach the \$1
 12 million mark, but no demand has been made in this
 13 matter.

14 A Yes.

15 Q Did I read that correctly?

16 A That's right.

17 Q Did you ever follow up to ask for those medical
 18 records?

19 A I made a conversation -- I had had a conversation with
 20 defense and he said as he received the documentation,
 21 he would forward it to me.

22 Q When you didn't receive it, did you ask for it again?

23 A I don't see a specific discussion I had with him.

24 Q Do you recall having a discussion with him asking for

1 it after May of 2003?
 2 A I don't specifically remember that, no.
 3 Q If you could turn to the exhibit marked 66H. This is a
 4 transmittal letter, dated July 22, 2003, that you
 5 drafted, correct?
 6 A Yes.
 7 Q Now, if you turn to the second page, under "Reserves,"
 8 it says: We continue to recommend the case as a whole
 9 be reserved at policy.
 10 Did you include that language in this letter?
 11 A Yes, I did.
 12 Q And this was the seventh time that such a
 13 recommendation was made to Zurich?
 14 A If this is the seventh report. I haven't kept track.
 15 Q The same recommendation was made on 4/8/02; is that
 16 right? Exhibit 66B.
 17 A Yeah.
 18 Q Then it was made again on June 10, 2002. 66C.
 19 A Mm-hum.
 20 Q It was made again on September 25 2002.
 21 A Correct.
 22 Q And, I'm sorry, with respect to 66C, the same
 23 recommendation was made?
 24 A 6/10 of '02; is that what you're talking about?

1 Q Yes.
 2 A Yes.
 3 Q And we just went over September 25, 2002, because the
 4 same recommendation was made there, correct?
 5 A That's correct.
 6 Q And December 13, 2002, the same recommendation was
 7 made?
 8 A That's correct.
 9 Q You, yourself, made the same recommendation on May 6,
 10 2003.
 11 A Yes.
 12 Q And again on June 4, 2003.
 13 A Yes.
 14 Q So now, as of July 22, 2003, this is the seventh time
 15 that Crawford had recommended that Zurich raise the
 16 claim reserve.
 17 A That's right.
 18 Q And on a potential case value, you say again that we
 19 see this universally to all remaining defendants as
 20 between 5 million and \$10 million.
 21 Did I read that correctly?
 22 A Yes.
 23 Q And was this the fifth time that that statement had
 24 been made by Crawford & Company?

1 A I believe so.
 2 Q And this was a letter that was also sent to AIG
 3 Technical Services and David McIntosh of Zurich?
 4 A That's correct.
 5 Q Prior to you sending this letter, you had gotten word
 6 that there was a verbal demand; isn't that right?
 7 A That's correct.
 8 Q And the demand was received by Attorney Deschenes?
 9 A Yes, it was.
 10 Q And you communicated the fact that there was a demand
 11 in to the recipients of this letter?
 12 A Yes. A verbal demand.
 13 Q Verbal.
 14 A Right.
 15 Q But shortly thereafter you received a written demand?
 16 A Correct, in August.
 17 Q Did you forward that demand on to anyone?
 18 A I did. I copied the demand and the video and forwarded
 19 it with my September 11th report.
 20 Q And that would have gone directly to David McIntosh of
 21 Zurich?
 22 A Correct.
 23 Q And AIG Technical Services?
 24 A Yes.

1 Q Ms. Mills, it's a separate binder that I believe you
 2 have; it's marked Plaintiff's Trial Exhibit 10. Is it
 3 not up there?
 4 MR. BROWN: Your Honor, if you don't have a
 5 copy, I have an extra one.
 6 THE COURT: I have it right here.
 7 (By Mr. Brown)
 8 Q Ms. Mills, is this the demand package that you
 9 received? And to be fair, the video is not included in
 10 this binder, correct? Other than the video, is this
 11 the demand package that you received?
 12 A Yes, it was.
 13 Q And this is the same demand package that you forwarded?
 14 A Yes, it was.
 15 THE COURT: Did you watch the video?
 16 THE WITNESS: I did watch the video.
 17 MR. BROWN: Actually, your Honor, we have a
 18 copy of the video here that we'd like to display
 19 because it demonstrates what both Zurich and AIG were
 20 informed of once Ms. Mills forwarded it to them.
 21 MR. MESELEK: Your Honor, we would object to
 22 that. We're here to try the claims against Zurich and
 23 AIG Domestic Claims and we're not here to retry the
 24 underlying case. The case has already been tried.

1 THE COURT: I know that, but why is the
 2 visual evidence of her condition not relevant to the
 3 question of whether or not at least Zurich recognize
 4 that the damages would exceed \$2 million?

5 MS. SACKETT: Your Honor, if I may supplement
 6 my colleague's objection. We weren't given notice that
 7 they were going to offer this video in as evidence.

8 MR. BROWN: Your Honor, it's part of the full
 9 settlement demand package. They've been aware of this
 10 from the beginning. We have extra copies that they can
 11 view at their leisure as well, if they would like.

12 THE COURT: Why don't we do this. I will not
 13 see the video today; I'll probably see it tomorrow.
 14 They'll get a chance to review it tonight, and when you
 15 show it to me, then they'll be able to be forewarned.
 16 But the video will come in.

17 MR. MASELIK: Your Honor, I don't even
 18 believe a foundation's been laid that AIG Domestic
 19 Claims Technical Services contemporaneously received
 20 it, never mind --

21 THE COURT: She just said that she sent it to
 22 AIG. So perhaps she's not telling the truth, but --

23 THE WITNESS: I said I sent a copy of the --
 24 I sent a copy of the demand and a CC to AIG. I don't

1 know how many videos were made. I cannot verify how
 2 many videos were made to be sent out. I know that I
 3 sent one to Zurich.

4 MR. BROWN: Which still makes it relevant,
 5 your Honor. And also, there will be evidence that AIG
 6 Technical Services did in fact review the video, which
 7 makes it relevant to that.

8 THE COURT: If it was at least sent to
 9 Zurich, it certainly is relevant as to what Zurich
 10 knew.

11 Do you have a memory of not sending it to
 12 AIG?

13 MR. PRITZKER: Your Honor, there will be
 14 evidence --

15 THE COURT: I'm sorry. Let me --

16 MR. PRITZKER: I'm sorry, your Honor.

17 THE WITNESS: No, I don't have a memory of
 18 not sending it.

19 THE COURT: With respect to the actual demand
 20 report, which is rather substantial, you caused a copy
 21 to be made of that to be sent to both Zurich and AIG?

22 THE WITNESS: I believe that I did, yes.

23 THE COURT: And if you went to that trouble,
 24 why would you not -- I'm sorry. And then you made at

1 least one copy of the video?

2 THE WITNESS: It was sent out to be copied.
 3 THE COURT: All right. And then did you
 4 provide any direction -- well, with regard to at least
 5 this report, do you have a memory of directing that a
 6 copy be sent to both Zurich and AIG?

7 THE WITNESS: Yes.

8 THE COURT: And with regard to the video, do
 9 you have a memory of making a request that it be
 10 copied?

11 THE WITNESS: Yes.

12 THE COURT: And do you have a memory of
 13 indicating that that copy should go to Zurich but not
 14 to AIG?

15 THE WITNESS: No, not specifically, no.

16 THE COURT: Do you have a memory with regard
 17 to any transmittal letter, any attachment to any
 18 transmittal letter, did you ever say it should go to
 19 Zurich but not to AIG?

20 THE WITNESS: No, I did not say that.

21 THE COURT: So why do you think you would
 22 have done so with regard to the video?

23 THE WITNESS: I'm not sure if I did or not.
 24 That's all I'm saying.

1 THE COURT: All right. You may proceed.

2 (By Mr. Brown)
 3 Q Ms. Mills, again, when you received this settlement
 4 demand, you reviewed it; is that right?

5 A I did.

6 Q And so by this point you were aware of the claimed
 7 expenses?

8 A Yes.

9 Q As well as past medical expenses?

10 A Correct.

11 Q All of Mrs. Rhodes' injuries?

12 A Yes.

13 Q You're aware that the medical bills compiled as of that
 14 date, August 13, 2003, totaled \$413,977, listed on page

15 14?

16 A That's correct. I remember that the verbal demand
 17 indicated it was 1.3 million, and when the actual
 18 package came in, it was reduced to 413,000.

19 Q Do you recall before receiving this settlement demand
 20 that you were informed that there was a mistake with
 21 respect to the medical expenses?

22 A I knew that they, yes, that there had been some
 23 duplications. I had heard that.

24 Q So there's a difference between what you thought

1 initially -- I'm sorry -- what was initially
 2 communicated, that the medical expenses were \$1.3
 3 million? Is that what you recall?
 4 A Yes.
 5 Q And then the medical expenses listed here were
 6 \$413,000?
 7 A Correct.
 8 Q A difference of less than a million dollars?
 9 A A difference of over half. It was reduced by over
 10 half.
 11 Q Right. But in the aggregate, it's less than a million
 12 dollars' worth of damages?
 13 A Okay, yes.
 14 Q Yet, as of September 24, 2003, you communicated a case
 15 value of between 5 and \$7 million rather than 5 and \$10
 16 million?
 17 A That's correct.
 18 Q So the high end of your range was reduced by \$3
 19 million?
 20 A Yes, it was.
 21 Q And is that because of less than a million dollars of
 22 medical expenses?
 23 A Correct, because it affects the entire claim; it
 24 affects what we thought treatment that had already

1 occurred; it affected future treatment; and it affected
 2 my value broad of pain and suffering.
 3 Q But it never changed the low end of your value, did it?
 4 A No, it did not.
 5 Q So your entire handling of the claim, you never saw the
 6 value of the claim go in below \$5 million?
 7 A The potential value.
 8 MS. SACKETT: Objection, your Honor.
 9 THE COURT: Overruled.
 10 MS. SACKETT: She's listed this as a
 11 potential case value. It's not what she said the value
 12 of the case was.
 13 THE COURT: You can discuss if there's a
 14 difference on cross-examination.
 15 A The potential value is what I was trying to say when
 16 she objected.
 17 (By Mr. Brown)
 18 Q Never went below \$5 million?
 19 A Exactly. For all defendants, not just ours.
 20 Q But the defendants that Zurich was defending and
 21 indemnifying would be GAF?
 22 A Yeah.
 23 Q Would also be Penske; is that right?
 24 A (Witness nodded.)

1 Q I'm sorry, I need a verbal answer.
 2 MS. SACKETT: Objection, your Honor.
 3 THE COURT: Overruled.
 4 A Under a reservation of rights, these people were all
 5 being defended, but it was still under a reservation of
 6 rights.
 7 (By Mr. Brown)
 8 Q Okay. But that included Penske?
 9 A Hm-hmm.
 10 Q Driver Logistics?
 11 A Yes.
 12 Q The driver, Carlo Zalewski?
 13 A Yes.
 14 Q GAF was the policyholder?
 15 A Correct.
 16 Q And there were no other defendants named by plaintiffs
 17 in the underlying action, were there?
 18 A No, but there were two third-party defendants they were
 19 trying to bring in.
 20 Q But you understood that there wasn't a viable claim
 21 against the Town of Medway; did you not?
 22 A At this point, yes, but there's still a third-party
 23 defendant, the arborist.
 24 Q Okay. But that was not someone who was named by the --

1 I'm sorry, strike that.
 2 Actually, as of September 11, 2003, the tree
 3 service had not been added as a third-party defendant?
 4 A I believe that it had. I might have made a mistake in
 5 my report.
 6 Q If you look at Exhibit 66I, the second to last page.
 7 A Hold on. I'm not even there yet.
 8 Q Okay.
 9 A Okay. What page are we on, I'm sorry?
 10 Q The second to last page of Exhibit 66I.
 11 A Okay.
 12 Q It says: They will add the tree service company this
 13 week as a defendant.
 14 A Okay. Yes.
 15 Q So through all of your previous potential case
 16 valuations of at least \$5 million, the tree service had
 17 never been added?
 18 A Well, whether they had been officially added or not as
 19 a third-party defendant, we were still looking toward
 20 them.
 21 Q And this goes on to say that by adding the defendant --
 22 I'm sorry, adding the tree service company, this should
 23 extend the discovery period after September 30, 2003?
 24 Did I read that correctly?

1 A I'm sorry. I'm not sure where you were again.
 2 Q Same paragraph you were on before. It's just the end
 3 of the paragraph.
 4 It says: They will add the tree service
 5 company this week as a defendant. This should extend
 6 the discovery period after September 30th, '03.
 7 A Okay, yes.
 8 Q Did you understand that the discovery period was ending
 9 as of that date?
 10 A I believe that's what it must have meant.
 11 Q If you could actually look up at the first paragraph of
 12 that as well, the same page, first paragraph, last
 13 sentence. It says: Also enclosed is a copy of the
 14 video, A Day In the Life of Marcia Rhodes, which shows
 15 her daily life.
 16 Does that refresh your recollection as to
 17 whether you sent copies to all of the recipients of
 18 this letter?
 19 A No, it doesn't refresh my memory.
 20 Q If you could go to Exhibit 66J. Now, again, you're
 21 recommending the reserves be raised, the policy limits,
 22 on September 24, 2003?
 23 A Yes.
 24 Q And you're also indicating that medicals and video have

1 been sent to your attention, on the second page under
 2 "Defense"?

3 A Yes.

4 Q Under "Liability," it states: Up here is probable.
 5 Is that with respect to the insureds?

6 A Yes. But it also indicates that the tree company will
 7 contribute.

8 Q Under "Reserves" on this page it says: Must be
 9 increased to reflect exposure.
 10 Did I read that correctly?

11 A Yes, you did.

12 Q This transmittal, again, went to AIG Technical
 13 Services?

14 A Yes.

15 Q It was also sent to David McIntosh at Zurich?

16 A Yes.

17 Q If you could also turn to Exhibit 67, at ZA576.
 18 There's an entry here from September 24, 2003. It
 19 says: Author T.L.

20 A Yes.

21 Q Is that your transmittal letter that was placed into
 22 this?

23 A Yes, it is.

24 Q Under "Defense," the beginning of the second paragraph,

1 which I don't believe is in Exhibit 66J, it says:
 2 Also, consortium verdicts for spouse are approximately
 3 500K.
 4 Was that your understanding at the time?
 5 A I believe I had discussion with counsel about that.
 6 Q Okay. And so you understood the consortium verdicts
 7 for spouses are approximately \$500,000?
 8 A That's correct.
 9 Q And you also knew that there was a claim on behalf of
 10 Rebecca Rhodes?
 11 A Yes.
 12 Q And that claim would have value as well; is that right?
 13 A Yes, it would.
 14 Q And these are in addition to the value of the harm
 15 suffered by Mrs. Rhodes?
 16 A Correct.
 17 Q In addition to the almost \$414,000 in medical expenses
 18 that had been described in the settlement demand?
 19 A Yes.
 20 Q And it would also be in addition to the average future
 21 costs of almost \$2 million that were disclosed in the
 22 August 13, 2003 settlement demand?
 23 A Yes.
 24 Q That would also be in addition to the almost \$84,000 of

1 out-of-pocket expenses that were disclosed in the
 2 August 13, 2003 settlement demand?
 3 A That's correct.
 4 Q If you could turn back to Exhibit 66K. Is this the
 5 October 9, 2003 liability transmittal letter that you
 6 sent?
 7 A Yes.
 8 Q Now, if you turn to the second page, under "Potential
 9 Case Value," you're repeating the 5 to \$7 million
 10 value; is that right?
 11 A So this is the sixth time, at least the sixth time that
 12 Crawford noted that the low end of the range would be
 13 \$5 million?
 14 A That would be our potential ultimate value for all
 15 defendants.
 16 Q Now, under "Reserves," you also say that they must be
 17 increased to reflect exposure.
 18 A Yes.
 19 Q And in fact, you were again recommending that reserves
 20 be set at the policy limits?
 21 A Yes.
 22 Q And this is the tenth time that that recommendation had
 23 been made?
 24 A I believe so.

1 Q Copied on this letter again were AIG Technical Services
2 and David McIntosh of Zurich?
3 A Yes.
4 Q Ms. Mills, if you could go to, it will be Volume 1 of
5 the exhibits, Exhibit 12.
6 A I don't have it.

7 THE COURT: That's probably our signal for
8 our morning break. It's 11:03; we'll convene at 11:20.
9 (A recess was taken.)

10 THE COURT OFFICER: Court is now in session,
11 please be seated.

12 THE COURT: Okay. Please proceed.

13 (By Mr. Brown)

14 Q Ms. Mills, what did you do to prepare for your
15 testimony today?
16 A I reviewed by deposition. I looked over my claims note
17 and my reports that I had done. I met with counsel.
18 Q Okay. Whose counsel?
19 A Defense.
20 Q Which counsel? I'm sorry. Which counsel?
21 A Robinson Cole.
22 Q And for how long did you meet with Robinson & Cole?
23 A I met with them on Wednesday for part of the day, on
24 Thursday for part of the day.

1 Q And for how long on Wednesday?
2 A Approximately four or five hours.
3 Q And how long on Thursday?
4 A Maybe five or six.
5 Q Five or six hours?
6 A Yes.
7 Q And was that the same counsel that you met with prior
8 to your deposition?
9 A No.
10 Q Was it the same firm?
11 A Yes.
12 Q Which attorney did you meet with prior to today?
13 A Elizabeth Sackett.
14 Q And prior to your deposition?
15 A Greg Varga.
16 Q And both of them represent Zurich?
17 A Yes.
18 Q I believe we've inserted it in your binder now, but if
19 you could turn to Exhibit 12.
20 This is an October 9, 2003 letter from Larry
21 Boyle to you. Do you recognize this document?
22 A I haven't seen it recently. I could read through the
23 whole thing. I don't --
24 Q Well, maybe we'll come back to that.

1 A Okay.
2 Q We'll point to certain sections and see if that
3 refreshes your memory.
4 A Okay.
5 Q Did you know in October of 2003 that defense counsel
6 had met with the life-care planner -- with defense's
7 life-care planner and Mrs. Rhodes?
8 A I knew that they were setting up the life-care planner.
9 I don't recall that they also met with Mrs. Rhodes.
10 Q When you received updates from counsel, was it your
11 practice to read those updates?
12 A Yes.
13 Q Why don't we just go ahead and look at the first
14 sentence here: Since our last status report, we have
15 attended the interview of the plaintiff with our life-
16 care planner Jane Mattson.
17 Do you recall learning of that?
18 A I'm sure I read this, but I'm just not recalling it
19 specifically.
20 Q Okay. Did you at any time know that Jane Mattson and
21 defense counsel were able to speak to Mr. & Mrs.
22 Rhodes?
23 A I'm recalling it now that I'm seeing this. I'm
24 realizing that, yes, I may have, but I don't

1 particularly remember it specifically.
2 Q Okay. Were you also aware that Harold Rhodes had been
3 deposed by October 9 of 2003?
4 A I knew that he was being deposed. I don't remember the
5 outcome of that.
6 Q Do you recall any updates as to Mr. Rhodes' deposition?
7 A No, not specifically.
8 Q Okay. Do you recall ever learning that Mr. Rhodes was
9 questioned at length with respect to his current
10 responsibilities and strain on the marriage, which, as
11 you can imagine, were significant?
12 A No, but I don't remember specifics.
13 Q Okay. Maybe if you can turn to page 3 of Exhibit 12.
14 It's the last sentence before the last redacted stamp:
15 Do you recall ever learning that Mr. Rhodes
16 broke down in tears as he described how he had to teach
17 his wife and perform digital stimulation on her anus in
18 order to allow her to go to the bathroom?
19 A No, I don't remember that.
20 Q But, again, it would be your practice to review update
21 letters from counsel when you received them?
22 A Yes.
23 Q Could you also turn to Exhibit -- pardon me, just one
24 moment.

1 Could you turn to Exhibit 22, please?
 2 This is a January 9, 2004 letter, also from
 3 Attorney Boyle, addressed to you. Do you recall
 4 receiving this document?
 5 A No, I do not. I don't believe I was handling the file
 6 at this point.
 7 Q What is your practice if you receive correspondence on
 8 a file that you're no longer handling?
 9 A I would give it to the adjustor who's handling it.
 10 Q And who is the adjustor handling it at this time?
 11 A It would have been my manager, Steve Penick.
 12 Q Okay. And would you have forwarded it -- I'm sorry.
 13 Did you forward this letter to him?
 14 A I don't have recollection of this letter specifically.
 15 I don't know if it was forwarded by myself or if the
 16 mailroom identified which claim it was and forwarded it
 17 directly to him.
 18 Q But if you did receive such correspondence, it would be
 19 your general practice to forward it to the person
 20 handling the claim?
 21 A It if came to my desk, yes, if it wasn't mine.
 22 Q Prior to -- I'm sorry. When did you stop handling the
 23 Rhodes claim?
 24 A I believe it was November of '03.

1 Q Prior to your -- strike that.
 2 At any time did you have discussions with
 3 defense counsel about contacting the AIG adjustor to
 4 confirm coverage for Driver Logistics and Carlo
 5 Zalewski?
 6 A I'm sorry, could you repeat the question? Did I have
 7 contact with whom?
 8 Q Did you ever have conversations with anyone about
 9 contacting AIG regarding their coverage of Driver
 10 Logistics or Carlo Zalewski?
 11 A No, not that I'm aware of.
 12 Q Did you ever have any conversations with any AIG
 13 adjustor?
 14 A No.
 15 Q Did you ever have conversations discussing -- involving
 16 possible settlement offers?
 17 A No. It was too early in the case.
 18 Q By November of 2003, how long had it been since the
 19 accident?
 20 A A year and -- almost two years. But we had only got
 21 the demand at the end of August, with the information
 22 that we needed to start moving forward.
 23 Q But you received those interrogatory responses and
 24 reviewed those in April of 2003; is that right?

1 A That's correct, but there was no documentation that I
 2 had with that. That came with the demand.
 3 Q Okay. But the interrogatories reference documents that
 4 were produced in response to discovery requests.
 5 A I did not have them.
 6 Q But does it in fact reference documents?
 7 A Yes, it does, as you read before, but I didn't see that
 8 specifically.
 9 Q And did you ever request such documents from defense
 10 counsel?
 11 A Defense was following to get the medicals, yes.
 12 Q Did you ever request such documents from defense
 13 counsel?
 14 MS. SACKETT: Objection, your Honor. Asked
 15 and answered.
 16 THE COURT: Overruled.
 17 MS. SACKETT: We've done this several times.
 18 THE COURT: Overruled.
 19 A It was defense's job to get the documentation.
 20 THE COURT: Did you ever make a telephone
 21 call to defense counsel and say send me certain
 22 documents?
 23 THE WITNESS: No, because I wasn't aware of
 24 what he actually had. It was a course of nature of

1 what he would forward next. As he got it, he would
 2 send it to me.
 3 (By Mr. Brown)
 4 Q I'm sorry. So is the answer no, you did not?
 5 A No, I did not.
 6 Q If you'd turn to Exhibit 27, please.
 7 Now this is also a letter from Larry Boyle
 8 addressed to you, dated February 2, 2004?
 9 A Correct.
 10 Q Do you recall receiving this letter?
 11 A I do not.
 12 Q The handwriting there, do you recognize that
 13 handwriting?
 14 A No, I don't.
 15 Q Did you ever have conversations with Attorney Boyle
 16 regarding their -- strike that.
 17 Did you ever discuss with anyone an
 18 obligation to copy Zurich on status reports?
 19 A No, that was my practice.
 20 Q Did you understand that defense counsel was copying
 21 Zurich on their status reports to you?
 22 A I instructed them to.
 23 Q Were you ever aware, or did you ever learn, that Zurich
 24 was returning such -- any status reports to Attorney

1 Boyle?

2 A If Zurich was reporting back to Attorney Boyle?

3 Q No. Returning his status reports.

4 A No.

5 Q Would you look at the second page of Exhibit 27.

6 Do you see that this is a letter from Zurich

7 to Morris & Mahoney, dated January 20, 2004?

8 A Yes.

9 Q It says: The attached correspondence was received in

10 our office in error. It appears it was intended for

11 Crawford & Company.

12 Does that refresh your recollection as to

13 whether or not you ever learned that Zurich was -- or

14 Zurich had returned any reports that they had received

15 from counsel?

16 A No, I -- no. I was not aware of that.

17 Q Ms. Fuell -- I'm sorry, Ms. Mills. When you instructed

18 counsel to forward their updates, to whom did you

19 direct -- sorry, strike that.

20 To whom did you say counsel should direct

21 their updates at Zurich?

22 A A specific person or Zurich? Are you asking --

23 Q I'm asking who, so I don't know if it was just Zurich

24 generally or specifically.

1 A Dave McIntosh. We had that name as the adjustor.

2 Q And, Ms. Mills, did you ever instruct defense counsel

3 to send it to somebody else? I'm sorry, to send

4 updates to anyone else?

5 A Other than myself and Zurich? No, not that I'm aware

6 of.

7 Q Did you ever instruct them to send updates to anyone

8 other than David McIntosh at Zurich?

9 A No.

10 Q Do you recall when Mr. McIntosh stopped handling the

11 claim?

12 A No. I think indirectly I heard that Kathleen Fuell had

13 become involved, but I didn't know if she was his

14 supervisor or if he had stopped handling the claim.

15 Q Ms. Mills, do you recall in November 2003 having any

16 discussions with Bob Manning of GAF?

17 A I believe, yes.

18 Q Do you recall having discussions with him regarding his

19 request for a settlement authority?

20 A Yes.

21 Q And do you recall that he was requesting -- or he was

22 seeking authority up to \$12 million from the insurers?

23 A That was what he had indicated, yes.

24 Q And was it your understanding that he was reaching out

1 to AIG and Zurich to obtain authority up to \$12

2 million?

3 A He --

4 MR. McDONOUGH: Objection.

5 THE COURT: Overruled. I'll allow it.

6 A He wanted to get a conference call with all parties

7 involved to start to move this forward.

8 (By Mr. Brown)

9 Q And that as in November of 2003?

10 A Yes.

11 Q Do you recall that he specifically told you that he

12 wanted -- or that he was seeking authority, or that he

13 would be seeking authority, of up to \$12 million?

14 MS. SACKETT: Objection, your Honor.

15 Hearsay.

16 THE COURT: It's not being offered for the

17 truth, but for what she was told, so I'll take it for

18 that.

19 A I do remember having a conversation with him indicating

20 that that was his -- that the number that stuck in his

21 head, that he wanted to talk to the parties involved

22 and move this forward.

23 (By Mr. Brown)

24 Q And do you recall any conference call -- I'm sorry.

1 Did you take part in any such conference

2 call?

3 A I did not.

4 Q Did you know that a conference call took place on

5 November 19, 2003?

6 A I don't know the specific date. I'd have to look at my

7 claims notes.

8 Q Okay. That's Exhibit 67.

9 A 11/19 of '03, correct.

10 Q Now, Ms. Mills, could you explain to me who Robert

11 Manning was?

12 A He was the risk manager for GAF.

13 Q GAF being the policyholder?

14 A Correct.

15 Q And Robert Manning was the person that you are in

16 contact with the most throughout the handling of this

17 claim?

18 A Yes.

19 Q If you could go to Exhibit 66L.

20 This is a November 13, 2003 liability

21 transmittal letter sent from Crawford; is that right?

22 A Yes.

23 Q On the front page, under "Reserves", it says: Again,

24 recommend the policy limits?

1 A That's correct.
 2 Q As of this time, this was the eleventh such
 3 recommendation from Crawford?
 4 A I'm not sure how many reports had gone out. If this is
 5 the eleventh report, then, yes, that would be correct.
 6 Q Either way, the request had been made from April 8 of
 7 2002?
 8 A The recommendation.
 9 Q Well, you made the -- I'm sorry. You made the request
 10 on June 4 of 2003 and noted that the request had been
 11 made since April 8, 2002, didn't you?
 12 A Could you repeat that question, please?
 13 Q Sure. Why don't you turn to 66G.
 14 A Okay.
 15 Q On page 1, the second paragraph of text says: We wish
 16 to increase the BI reserves, the policy limits as
 17 requested.
 18 That doesn't say "recommended," does it?
 19 A Right. But we had discussed this before and this is --
 20 I indicated that in fact it says "request" but, as far
 21 as I'm concerned it's a recommendation because we still
 22 didn't have the documentation they needed to
 23 substantiate raising those reserves.
 24 Q But then the next sentence says: This has been a

1 request since 4/8/02.
 2 A Correct.
 3 Q If you'd look back at 66L, please.
 4 If you could look under the "Reserves"
 5 section. It says: We note nothing has been done
 6 regarding appropriate reserves on this.
 7 Was that your understanding in November of
 8 2003?
 9 A I just want to make note that this was not my report.
 10 This report was done by John Chaney.
 11 Q Correct. But was that your understanding before you
 12 left this claim, that nothing --
 13 A That we had not increased reserves?
 14 Q Yes.
 15 A That's correct.
 16 Q Now, Mr. Chaney was urging that the reserves be
 17 increased to the Zurich policy limits at once to keep
 18 on the correct side of regulators; was he not?
 19 A Where are you reading?
 20 Q The last sentence of the "Reserve" section.
 21 A Yeah. I don't know what that means. That's John's.
 22 Q Well, either way he's urging that reserves be increased
 23 to the Zurich policy limits; is that right?
 24 A Yes, he is. Yes.

1 Q Ms. Mills, do you have an understanding of why John
 2 Chaney wrote this letter rather than you?
 3 A He had been hired just to help with the overflow. We
 4 had a lot of claims at that point, so he would come in
 5 maybe once or twice a week at night and just take some
 6 diaries and look at reports that needed to be done.
 7 Q And was that on a temporary basis or a permanent basis?
 8 A Temporary.
 9 Q Ms. Mills, if you'd look the second to last sentence
 10 under "Positioning." I'm sorry, actually, the sentence
 11 before that, that begins "Be aware."
 12 It says: Be aware that plaintiffs' counsel
 13 is a successful, big case lawyer and his demand is not
 14 unreasonable or out of hand, given the specials of just
 15 under \$3 million. He is also attempting to set up
 16 defendants for a 93A violation by making an early
 17 demand, asking for a good-faith offer before submitting
 18 to non-binding arbitration.
 19 Did I read that correctly?
 20 A You did.
 21 Q Did you understand in November of 2003 that plaintiffs'
 22 counsel was asking for a good-faith settlement offer?
 23 A I do believe I knew that at this point.
 24 Q Was any settlement offer made to plaintiffs' counsel?

1 A Not that I'm aware of.
 2 Q And again, under "Action Plans," it says: We see full
 3 value of this case between 5 and \$7 million. Doesn't
 4 it?
 5 A That's what it says.
 6 Q And this letter was also copied to AIG Technical
 7 Services and David McIntosh of Zurich?
 8 A Yes.
 9 Q At any point during your handling of the Rhodes claim,
 10 did Zurich provide you with any guidance as to what
 11 proper reserves should be in this case?
 12 A Can you repeat the question, please?
 13 Q At any time during your handling of the Rhodes claim
 14 did Zurich advise you as to what the claim reserves
 15 should be?
 16 A No.
 17 Q At any time did they authorize you to raise the claims
 18 reserve?
 19 A No.
 20 Q And when you left the claim -- I'm sorry. When you
 21 were no longer handling the claim, the claim reserve
 22 was still set at only \$50,000?
 23 A Yes, I believe that's correct.
 24 MR. BROWN: Your Honor, I know that you

1 mentioned this before, but we would like to show the
 2 video today since we've rented equipment for it, and
 3 Ms. Mills has testified that she did see the video and
 4 she did forward the video at least to Zurich. We also
 5 have --

6 THE COURT: She's on the stand now. I hope
 7 we can get her off today. So she sees it, what are
 8 your going to ask her about it?

9 MR. BROWN: The affect that it had on her.

10 THE COURT: You can ask her.

11 THE WITNESS: I can tell you what the affect
 12 was.

13 THE COURT: Okay.

14 A It was hard to watch. I mean, obviously, this is a
 15 woman that had catastrophic injuries and was having a
 16 difficult time.

17 (By Mr. Brown)

18 Q Did you have question after watching that video as
 19 whether or not she was a paraplegic?

20 A No.

21 Q Did Zurich -- I'm sorry. Did Crawford ever order an
 22 independent medical exam in this case?

23 A Not an independent medical exam. I believe we had a
 24 life-care planner that we were working with, but I

1 don't believe there was an IME.

2 Q But she didn't require an IME?

3 A No.

4 MR. BROWN: Thank you. I have no further
 5 questions at this time.

6 THE COURT: All right. Any cross?

7 CROSS-EXAMINATION BY MS. SACKETT:

8 Q Mrs. Mills, could you turn to Exhibit F, please? Oh,
 9 I'm sorry, 66F.

10 A Yes.

11 Q Plaintiffs' counsel asked you a bunch of questions
 12 about this and several other documents. Could you tell
 13 me to whom this is addressed?

14 A It's addressed to GAF Materials. Robert Manning was
 15 the manager.

16 Q And could you take a moment and look at the other
 17 transmittal letters that you reviewed with plaintiff
 18 and identify who those transmittal letters were sent
 19 to?

20 A The transmittal letters, it appears were all sent to
 21 GAF Materials.

22 Q And why were they sent to GAF Materials?

23 A Because initially that's who we were reporting to.

24 Q And why were you initially reporting to GAF?

1 A Because it was within their authority.

2 Q And what was their authority?

3 A I believe it was \$250,000.

4 Q Could you turn to Exhibit 66E, please?

5 Again, plaintiffs' counsel asked you
 6 questions about this document, and I believe
 7 plaintiffs' counsel asked you what the reserve
 8 recommendation was, correct?

9 A Correct.

10 Q And they asked you what the potential case value was,
 11 correct?

12 A That's correct.

13 Q Do you know if at this point, in December of 2003, Mr.
 14 Chaney had -- I'm sorry, December of 2002, Mr. Chaney
 15 had any medical treatment documents from Mrs. Rhodes?

16 A There were none that I was aware of.

17 Q And do you know if at this point, in December of 2002,
 18 Mr. Chaney had any medical invoices from Mrs. Rhodes'
 19 treatment?

20 A Nothing that I could find.

21 Q Do you know if in December of 2002 Mr. Chaney had any
 22 documents concerning Mrs. Rhodes' potential future
 23 medical care needs?

24 A No.

1 Q You testified earlier that the first time you saw any
 2 medical records or bills was with the demand package in
 3 August of 2003, correct?

4 A That's correct.

5 Q Before the demand package then, the Crawford claims
 6 file did not have any treatment records for Mrs.
 7 Rhodes; is that correct?

8 MR. BROWN: Objection.

9 THE COURT: Overruled.

10 A That's correct.

11 (By Ms. Sackett)

12 Q And the Crawford file did not have any medical invoices
 13 or bills for services that Mrs. Rhodes had received?

14 A That's correct.

15 Q And the Crawford file did not have any documents
 16 evidencing Mrs. Rhodes' potential future medical costs?

17 MR. BROWN: Objection, your Honor. She's
 18 leading her own witness.

19 MS. SACKETT: Your Honor, this is actually
 20 not our witness. She's not on our witness list.

21 THE COURT: I will give her some leeway, but
 22 if I don't think that she's leading her into an area
 23 the witness is not certain to go, then I may ask that
 24 she not do so. We're not there yet.

1 MR. BROWN: Thank you.

2 (By Ms. Sackett)

3 Q Mrs. Mills, if you could turn to 66F, please. And
4 that's the May 6, 2003 liability transmittal letter?

5 A Yes.

6 Q And you drafted that?

7 A Yes, I did.

8 Q When you drafted that, did you have any medical
9 treatment documents for Mrs. Rhodes?

10 A No, I did not.

11 Q And when you drafted the May 6, 2003 liability
12 transmittal letter, did you have any medical invoices
13 or bills for Mrs. Rhodes' treatment?

14 A I did not.

15 Q And when you drafted the document -- the May 6
16 liability transmittal letter, did you have any
17 documentation as to Mrs. Rhodes' potential future
18 medical needs?

19 A Documentation? No, I did not.

20 Q Okay. If we turn to 66G. If you could turn to page 3
21 of Exhibit 66G.

22 A Yes.

23 Q And under the title "Medical Status."

24 A Yes.

1 Q You wrote: We do not have any current medical
2 information; is that correct?

3 A That's correct.

4 Q So when you wrote this June 4, 2003 letter, you still
5 did not have any documentary evidence of Mrs. Rhodes'
6 medical needs.

7 A That's correct.

8 Q And did you have, as of this June 4, 2003 letter, any
9 documentation concerning damages for the loss of
10 consortium plaintiffs, Mr. Rhodes and Rebecca Rhodes?

11 A No, I did not.

12 Q Could we turn to Exhibit 66H, please.

13 At the top of page 2 of this document, next
14 to the word "Comments," could you read that sentence?

15 A (Reading): Liability may fall to client due to
16 insurance contract obligations.

17 Q And this clause does not say liability will fall to the
18 client due to the insurance contract obligations, does
19 it?

20 A No, it does not.

21 Q And again, when you wrote this July 22, 2003 liability
22 transmittal letter, you did not have any documents,
23 evidence saying Mrs. Rhodes' medical treatment or
24 future medical needs, correct?

1 A That's correct.

2 Q You testified previously that you advised counsel to
3 report to Zurich?

4 A Yes, I did.

5 Q Do you know when you did that during the course of your
6 handling of the claim?

7 A I want to say it was either in May or June.

8 Q And what year was that?

9 A 2003.

10 Q Do you know for a fact whether defense counsel did send
11 reports to Zurich?

12 A I do not know for a fact.

13 Q You also testified previously that it was your practice
14 to send documents such as answers to interrogatories to
15 the clients, correct?

16 A Yes.

17 Q Do you know for a fact if you sent the answers to
18 interrogatories to Zurich?

19 A No, I don't.

20 Q Is there any documentation in your claims file
21 indicating that you sent the answers to interrogatories
22 to Zurich?

23 A No, there is not.

24 THE COURT: So when you say "client," who do

1 you mean?

2 THE WITNESS: Excuse me?

3 THE COURT: When you say "client," who do you
4 mean?

5 THE WITNESS: Zurich or GAF. They're both
6 our client.

7 THE COURT: So you view both of them as your
8 client?

9 THE WITNESS: Yes.

10 MS. SACKETT: Your Honor, could I just have a
11 moment?

12 THE COURT: Sure.

13 (By Ms. Sackett)

14 Q Mrs. Mills, when you were making reserve
15 recommendations, you weren't making a recommendation
16 for settlement, were you?

17 A Not during the time of my handling, no.

18 MS. SACKETT: No further questions.

19 THE COURT: Any questions of AIG?

20 MR. MASELEK: Yes.

21 CROSS-EXAMINATION BY MR. MASELEK:

22 Q Good morning, Mrs. Mills. My name is Robert Maselek,
23 and I represent AIG Technical Services Domestic Claims
24 and National Union. I have a few follow-up questions

1 for you.

2 During the time that you handled the Rhodes
 3 claim, you sent a few status reports or transmittal
 4 letters, I believe they're called, and you copied them
 5 to AIG Technical Services, correct?

6 A Yes.

7 Q Other than those written reports, did you have any
 8 other communication with any representative of AIG
 9 Technical Services?

10 A No, I did not.

11 Q And your two clients, or Crawford's two clients, are
 12 GAF and Zurich, correct?

13 A Correct.

14 Q In your 20 years of experience handling claims, isn't
 15 it true that the Rhodes matter was your first claim
 16 involving paraplegia?

17 A That I remember, yes.

18 Q I'd ask you to turn to 66F, please.

19 Are you there?

20 A Yes.

21 Q Okay. This is a two-page document; is that correct?

22 A Yes, it is.

23 Q On the second page, near the bottom, there's an
 24 indication of a CC to AIG Technical Services, correct?

1 A Yes.

2 Q And there's no individual's name there?

3 A No, there is not.

4 Q And there's no indication on that line that this
 5 transmittal report had any attachments included with
 6 it?

7 A No, it did not.

8 Q At this point in time, isn't it true that your
 9 knowledge of the claim was based upon what others had
 10 told you?

11 A Yes, it was.

12 Q If you look at the remarks section, the last sentence
 13 before the redacted stamp, does this sentence read:
 14 Medicals are being forwarded and will approach the \$1
 15 million mark, but no demand has been made in this
 16 matter.

17 Did I read that correctly?

18 A Yes, you did.

19 Q So at this point in time you're knowledge is based on
 20 what people have told you, correct?

21 A Yes, that's true.

22 Q And you're aware now, are you not, that the medicals
 23 were nowhere near a million dollars; is that correct?

24 A Yes, that's true.

1 Q So some of this information that people had told you
 2 was unreliable?

3 A Yes.

4 Q And in fact, isn't that why it's good practice to
 5 request backup documentation of things that are told to
 6 you so that you can confirm whether it's reliable or
 7 unreliable, correct?

8 MR. BROWN: Objection.

9 THE COURT: I'll allow it.

10 A Correct. I couldn't go to my client without any
 11 substantial documentation.

12 (By Mr. Maselek)

13 Q And even earlier today you were shown some
 14 interrogatory answers that had been sent by the
 15 plaintiff in a demand package, and even that type of
 16 information, although it may be in written form, it's
 17 still good practice to subject that information to
 18 backup material and some confirmation?

19 A Absolutely.

20 Q If you could flip over to Exhibit 67, please, page 2-
 21 580.

22 A Okay.

23 Q The entry for May 21, 2003, did you create that entry?

24 A Yes, I did.

1 Q And it reads: Zurich called and left message for Dave
 2 McIntosh in this matter. He is asking why the value of
 3 this claim is so high. Advised that this matter has
 4 high damages due to injury. Claimant is a quad and
 5 there is a loss of consortium claim also for husband
 6 and child. Med will probably amount to 1 mil. We do
 7 not have any meds at this time. Advised that our
 8 report has been sent to AIG also.

9 Did I read that correctly?

10 A Yes, you did.

11 Q It's true, is it not, have you since learned that Mrs.
 12 Rhodes was not a quadriplegic?

13 A Yes. That's an error.

14 THE COURT: It says: You called and left
 15 message for Dave McIntosh.

16 What does that mean?

17 THE WITNESS: They had called; I called back
 18 and left message for Dave McIntosh. We played
 19 telephone tag.

20 THE COURT: You say "they" had called.

21 THE WITNESS: Zurich.

22 THE COURT: Who from Zurich did you
 23 understand had called?

24 THE WITNESS: Dave McIntosh.

1 THE COURT: So you understand that Dave
 2 McIntosh called you and then you telephoned him back
 3 and --

4 THE WITNESS: Left him a message.
 5 THE COURT: Basically, you're describing the
 6 message he left for you and the message you gave in
 7 response?

8 THE WITNESS: Exactly.

9 (By Mr. Maselek)

10 Q Just to follow up, Mr. McIntosh presumably received a
 11 report from you, or from Crawford, indicating this was
 12 a serious case?

13 A Yes.

14 Q And that's because Crawford was recommending a policy
 15 limits reserve; is that correct?

16 A Correct.

17 Q And so he called to inquire what it was that you were
 18 basing that recommendation on?

19 A Yes.

20 Q Now, if you skip to the next page, to the June 4, 2003
 21 entry. And you created that entry; is that correct?

22 A Yes, I did.

23 Q And it reads: Have reviewed file. Full formal is
 24 completed by prior adjustor. Shall fax over to Dave

1 McIntosh with indication that no meds have been
 2 provided to us, but that they appear to be
 3 approximately \$1 million. The injury is seven broken
 4 ribs, injury to lungs, and FX to T-12 of her spinal
 5 cord, which has left her a quad. She is not indicating
 6 bipolar dysfunction due to trauma. She is 45 and has a
 7 son.

8 Did I read that correctly?

9 A Right. That was a typo. It should have said "now,"
 10 not "not"

11 Q Okay. So you were under the impression, in June of
 12 2003, based upon what you had been told, that Mrs.
 13 Rhodes was claiming that she was bipolar as a result of
 14 the accident?

15 A I don't know if it was as a result or it was underlying
 16 condition and due to the trauma it exacerbated it.

17 Q It's fair to say that you weren't really sure what Mrs.
 18 Rhodes was claiming was due or not due to the accident
 19 at this time, partially because you had no medical
 20 records, correct?

21 A Correct.

22 Q If you would flip back to 66F, please. Are you there?

23 A Yes.

24 Q In anywhere in this report do you describe the nature

1 or extent of Mrs. Rhodes' injuries?

2 A No.

3 Q If you could skip ahead to 66G, please.

4 A Yes.

5 Q In the first section where it says "Reserve/Paymenets."

6 A Yes.

7 Q Can you tell from that information how much of the
 8 self-insured retention had been eroded by that point?

9 A I guess it would be eroded by the expenses that had
 10 been paid out.

11 Q Which are approximately \$60,000?

12 A Correct.

13 Q This report is dated June 4, 2003; is that correct?

14 A Yes, it is.

15 Q If you would flip to the next page, under the heading
 16 "Defense."

17 A Yes.

18 Q After the redacted stamp, it reads: As the claimant
 19 was in the hospital for three months and is paralyzed
 20 from the neck down with a bipolar disorder -- then
 21 there's a redaction -- we are following for
 22 documentation to confirm this; we shall then be in a
 23 better position in order to fully evaluate this matter.

24 Did I read that correctly?

1 A Yes, you did.

2 Q And if you flip to the next page, under "Medical
 3 Status."

4 A Yes.

5 Q Halfway through the paragraph there's a sentence that
 6 reads: There was mention of the claimant deposition
 7 indicating that on one occasion she fell off of the
 8 toilet and fractured both of her legs but did not know
 9 this right away as she had no feeling in her legs. We
 10 are following for copies of the transcripts of the
 11 depositions.

12 Did I read that correctly?

13 A You did.

14 Q So were you under the impression in June 2004, that
 15 Mrs. Rhodes' deposition had been taken -- I'm sorry,
 16 2003?

17 A I believe that I am. That's not correct.

18 Q It's not correct that you thought that, or you now come
 19 to understand that, in fact, the depositions had not
 20 been taken at that point in time?

21 A Right. It was not the depositions; it was
 22 interrogatories. And the depositions had not been
 23 taken yet. So that was incorrect.

24 Q In this report, when you use the word "depositions,"

1 you're referring to interrogatories; is that correct?
 2 A I must have been.
 3 Q But again, this was the only information that was sent
 4 by Crawford to AIG Technical Services; is that correct?
 5 A That's correct.
 6 Q And do you know for a fact that you sent any
 7 interrogatories to AIG Technical Services?
 8 A I do not know for a fact.
 9 Q Do you know for a fact whether you sent any of the
 10 status reports that we reviewed earlier today from
 11 defense counsel to AIG Technical Services?
 12 A From defense counsel?
 13 Q Correct.
 14 A I do not know for a fact.
 15 Q Now, we reviewed a number of liability transmission
 16 letters today that indicated what you believe the
 17 potential value of the case was, correct?
 18 A Yes, correct.
 19 Q Given the fact that you didn't have any -- strike that.
 20 Before receiving the demand package, isn't it
 21 true that your opinion as to what this potential value
 22 would be was based on a feeling that you had?
 23 A Yes. There was nothing concrete to indicate what the
 24 actual value was.

1 Q And isn't it true that in the Rhodes claim, you,
 2 yourself, never did an analysis or placed an evaluation
 3 on what the pain and suffering component might be?
 4 A That's correct.
 5 Q In fact, isn't it true that you never even placed a
 6 value as to what you believe the settlement value of
 7 the Rhodes claim was?
 8 A I did not at the point of my handling, no.
 9 Q If you could flip to Exhibit 8, the first notebook.
 10 A I don't have it. Oh, sorry.
 11 Q Exhibit 8 is the report from a Timothy Corrigan to you?
 12 A Right.
 13 Q Is this report copied to AIG Technical Services?
 14 A I can't say for sure.
 15 Q Is there any indication on the second page that it is?
 16 A Oh, this -- no, there isn't.
 17 Q And when you say you can't say for sure, you can't say
 18 for sure whether you went on to send it to AIG
 19 Technical Services?
 20 A Correct.
 21 Q You indicated earlier that you had requested defense
 22 counsel -- I presume that to be Greg Deschenes -- to
 23 send reports directly to Zurich; is that correct?
 24 A I did.

1 Q Did you ever make the same request of Mr. Deschenes as
 2 to AIG Technical Services?
 3 A No, I did not.
 4 MR. MASELEK: That's all the questions I
 5 have, your Honor.
 6 THE COURT: Any redirect within the scope of
 7 the cross?
 8 REDIRECT EXAMINATION BY MR. BROWN:
 9 Q Ms. Mills, could you turn to Exhibit 67, please. Turn
 10 to page number 573, to the October 30, 2003 claims
 11 note.
 12 A Yes.
 13 Q Okay. Would you review that for me. Just read that to
 14 yourself.
 15 MR. MASELEK: Objection, your Honor. Beyond
 16 the scope.
 17 THE COURT: It's also not beyond the scope,
 18 but go ahead.
 19 (By Mr. Brown)
 20 Q Ms. Mills, does this refresh your recollection as to
 21 whether you instructed Greg Deschenes to send any
 22 information to AIG in addition to Zurich?
 23 A Yes. Apparently the evaluation from defense was
 24 supposed to go to both parties.

1 Q Ms. Mills, if you could turn to 66G.
 2 I believe you previously testified that all
 3 of the transmittal letters and reports were sent
 4 directly to GAF?
 5 A Well, transmittal letters, I said.
 6 Q Okay.
 7 A This is full formal report. The full formal reports
 8 were directed to Zurich.
 9 Q Okay. And that is 66G, the June 4, 2003 report was
 10 directly to Zurich?
 11 A Yes.
 12 Q And then 66I, the September 11, 2003 report?
 13 A Correct.
 14 Q And all of the transmittal letters, even though they
 15 were initially addressed to GAF, were also copied to
 16 Zurich; is that correct?
 17 A That's correct.
 18 Q Ms. Mills, I believe you also testified that it's good
 19 practice to get backup information for damages?
 20 A Yes.
 21 Q When you don't receive it, is it also good practice to
 22 follow up on your request for it?
 23 A That's what defense was doing.
 24 Q But it would be good practice for you to follow up with

1 defense counsel as to documents that you requested and
 2 did not receive, would it not?
 3 A That's correct.
 4 Q Ms. Mills, it's also good practice to request -- strike
 5 that.
 6 Ms. Mills, you never sought a medical release
 7 from plaintiffs' counsel to obtain medical records
 8 yourself, did you?
 9 A No, I did not.
 10 Q And John Chaney didn't either, did he?
 11 A I'm not aware if he did or not. I did not see one in
 12 the file.
 13 Q And you, yourself, never asked plaintiffs' counsel
 14 directly for medical records?
 15 A When I received the file, this file was in litigation.
 16 It's not my practice to deal with plaintiff counsel.
 17 That's what defense is for.
 18 Q And defense counsel would request such records from
 19 plaintiffs' counsel?
 20 A Correct, as a matter of litigation.
 21 Q No one from Crawford actually ever -- you're not aware
 22 of anyone from Crawford ever asking plaintiffs' counsel
 23 directly for medical records, are you?
 24 A I believe it said in the notes at the beginning that

1 John Chaney had.
 2 Q Would you like to show me in the notes where it says
 3 that?
 4 A Actually, I remember now from my deposition. It wasn't
 5 in the notes. It was in John's deposition.
 6 Q So you only heard that in John Chaney's -- or only
 7 reviewed that in John Chaney's deposition?
 8 A Correct.
 9 Q Just to make sure this is clear, Ms. Mills, the notes
 10 do not reflect any request from anyone at Crawford for
 11 medical records from plaintiffs' counsel.
 12 A The notes do not show that.
 13 Q Ms. Mills, you are aware that the claim wasn't in
 14 litigation for all of 2002, was it?
 15 A No, it wasn't for all of 2002.
 16 Q Right. So from January 2002 through June of 2002, the
 17 claim was not in litigation?
 18 A Correct.
 19 Q And once again, there's no indication in the notes that
 20 Mr. Chaney ever requested documents during that time
 21 frame from plaintiffs' counsel.
 22 A There's nothing in the notes.
 23 MR. BROWN: Thank you.
 24 THE COURT: Any further questions?

1 MS. SACKETT: No, your Honor. Thank you.
 2 MR. MASELEK: I have one quick one.
 3 RECROSS-EXAMINATION BY MR. MASELEK:
 4 Q Ms. Mills, in your 20 years of experience as a claims
 5 handler, do plaintiffs typically provide the backup
 6 documentation to you when they want to settle the case?
 7 A Absolutely.
 8 MR. MASELEK: Thank you.
 9 THE COURT: All right. Any further
 10 questions?
 11 All right, counsel. I've got some.
 12 What did you understand your job to be?
 13 THE WITNESS: My job would be to investigate
 14 the facts and provide an evaluation of the damages to
 15 our client.
 16 THE COURT: And by "client," you mean?
 17 THE WITNESS: GAF and Zurich, in this case.
 18 THE COURT: All right. And what
 19 investigation of the facts did you do?
 20 THE WITNESS: I did not do it. I took it
 21 over when the investigation of the facts had pretty
 22 much been completed by the prior adjustor.
 23 THE COURT: So you did no investigation of
 24 the facts beyond that which was done by --

1 THE WITNESS: Mr. Chaney.
 2 THE COURT: -- Mr. Chaney?
 3 THE WITNESS: Correct.
 4 MR. ZELLE: I'm sorry, your Honor. I just
 5 beg the court's indulgence. Could you keep your voice
 6 up a little?
 7 THE COURT: Sure. I thought the microphone
 8 was doing that for me, but I guess not, so I will do
 9 it.
 10 And with regard to your evaluation of the
 11 damages, what routinely do you need in order for you to
 12 evaluate damages?
 13 THE WITNESS: I would need the medical
 14 damages sustained at that point, future medical --
 15 THE COURT: I'm sorry. "Sustained at that
 16 point." What does that mean?
 17 THE WITNESS: I would need the medical
 18 damages. I would need the medical reports and the
 19 medical bills.
 20 THE COURT: Okay.
 21 THE WITNESS: Incurred to that time.
 22 THE COURT: Okay.
 23 THE WITNESS: I would need any type of future
 24 medicals that they're claiming, documentation for that.

1 I would need --

2 THE COURT: I'm sorry. When you say
3 "documentation of future medicals," what are you
4 talking about?

5 THE WITNESS: Possibly some kind of expert
6 report to indicate what the future meds would be.

7 THE COURT: Okay.

8 THE WITNESS: If there were lost wages, I
9 would need documentation of that.

10 THE COURT: And what form would that take?

11 THE WITNESS: Something from the employer
12 verifying what kind of wages were lost and what the
13 amount would be, whether it be W-2s or documentation
14 from the actual employer.

15 THE COURT: Okay. Go ahead.

16 THE WITNESS: To evaluate the claim as far as
17 damages goes, or as far as liability goes? We're just
18 talking damages.

19 THE COURT: You're the person testifying.
20 You said that you needed to provide evaluation of the
21 damages, and I asked you what you needed in order for
22 you to render your evaluation. So tell me all that you
23 needed in order for you to render your evaluation.

24 THE WITNESS: I need medical documentation.

1 as I indicated.

2 THE COURT: Right.

3 THE WITNESS: Possible future medical
4 documentation. Any lost wages. I would also need
5 indication of, if there were other third-party
6 defendants that were being brought into the claim; if
7 the policy information was resolved.

8 THE COURT: I'm sorry. By that you mean
9 what?

10 THE WITNESS: Well, I know when I was
11 investigating this, there were still issues of other
12 possible policy information that might be brought in
13 for Penske. You know, this matter is being defended
14 under reservation of rights. That was another issue
15 that was still ongoing, even after we got the medical
16 information and the demand package. So I was not able,
17 during my course of handling the claim, to evaluate the
18 matter.

19 THE COURT: All right. Well, let's take it
20 step by step.

21 With respect to the medical reports and
22 bills, which you believed you needed in order to make
23 that part of your evaluation, when did you receive
24 those?

1 THE WITNESS: At the end of August.

2 THE COURT: And that was with the demand
3 letter?

4 THE WITNESS: Correct.

5 THE COURT: Okay. Did you consider the
6 documents and the demand letter to be all that you
7 needed in order for you to evaluate medical reports and
8 bills?

9 THE WITNESS: Well, we were -- we wanted to
10 have someone look at the package ourselves, a life
11 planner, to evaluate it and give their recommendation
12 as to if the future meds were in order as defense -- I
13 mean plaintiff, I'm sorry -- had indicated. So we were
14 having someone look at it ourselves.

15 THE COURT: Okay. But I'm speaking now only
16 about medical reports and bills with regard to bills
17 that had already been incurred.

18 THE WITNESS: As far as I could see, we had
19 what we needed for that.

20 THE COURT: So that was sufficient?

21 THE WITNESS: Correct.

22 THE COURT: Let's move to the next topic:
23 documentation of future medicals. Did you receive
24 that?

1 THE WITNESS: We did.

2 THE COURT: And in what form?

3 THE WITNESS: It was part of the demand
4 package. I don't remember specifically.

5 THE COURT: And was what was contained in the
6 demand package sufficient for you to do your
7 evaluation?

8 THE WITNESS: I'm saying that that was
9 forwarded to our client, and we were advised that a
10 life-care planner was going to evaluate that. So that
11 portion of the claim, no, I couldn't say. I needed an
12 expert to look at that.

13 THE COURT: Okay. And did defense counsel or
14 GAF retain a life-care planner as an expert?

15 THE WITNESS: Yes.

16 THE COURT: And who was that?

17 THE WITNESS: I don't remember, Jane -- I
18 can't remember her name.

19 THE COURT: The person whose name was
20 mentioned in your name?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And that person was
23 retained by whom, do you know?

24 THE WITNESS: I believe retained by Zurich.

1 I mean defense counsel gave the recommendation of the
 2 name and we got the approval through Zurich to hire
 3 here.

4 THE COURT: Do you know who actually did
 5 retain her?

6 THE WITNESS: No, I'm not sure.

7 THE COURT: Okay. And did you learn as
 8 whether that life-care planner had made a
 9 recommendation or evaluation?

10 THE WITNESS: Not during my handling, no.

11 THE COURT: Okay. So that had not yet been
 12 received when you left the case?

13 THE WITNESS: Correct.

14 THE COURT: And how do you know that?

15 THE WITNESS: I reviewed my notes and it
 16 doesn't -- I don't remember that coming in. I don't
 17 remember that being.

18 THE COURT: Okay. I guess what I'm saying
 19 is, do you have a memory of asking for it and learning
 20 it had not been received, or do you simply have a
 21 memory that --

22 THE WITNESS: No, it was in the process. It
 23 was in the process of being done.

24 THE COURT: And what did you need from that

1 life-care planner in order for you to complete your
 2 evaluation as to the documentation of future medicals?

3 THE WITNESS: To be honest, I'm not sure. I
 4 mean that's not my expertise. That's why it was sent
 5 out. I needed an evaluation of the case. Also, we
 6 needed an evaluation from defense counsel that Zurich
 7 had sent specifically to be completed. Although I am
 8 the adjustor, defense counsel has much more experience
 9 in this kind of thing, and I look to him to help me
 10 with an evaluation. At this point, Zurich is going to
 11 be looking at defense's evaluation with my input.

12 THE COURT: All right. We'll go there in due
 13 time. With regard to the documentation -- with regard
 14 to the life-care planner report -- well, let me ask,
 15 were you expecting a report from her?

16 THE WITNESS: Yes.

17 THE COURT: Okay. And if you had received
 18 that -- once you received that report, would that be
 19 what you would expect to be sufficient for you to
 20 evaluate the future medicals?

21 THE WITNESS: Yes.

22 THE COURT: So with regard to that, you were
 23 awaiting her report?

24 THE WITNESS: Correct.

1 THE COURT: Now, you mentioned lost wages.
 2 Did you have any indication that lost wages were to be
 3 part of this claim?

4 THE WITNESS: No. Eventually, I believe we
 5 determined that they were not.

6 THE COURT: Now, you mentioned third-party
 7 defendants. What did you believe you needed to know as
 8 to that in order for you to evaluate this claim?

9 THE WITNESS: I believed it was part of the
 10 big picture as far as -- it wouldn't be as much as
 11 valuing the claim as proportioning who would pay what.

12 THE COURT: And what would you need in order
 13 to do that proportioning?

14 THE WITNESS: I guess I would need to
 15 determine if the third-party defendant, what type of
 16 policy they had and what they -- you know, would they
 17 be contributing.

18 THE COURT: And which third-party defendant
 19 or defendants are you referring to?

20 THE WITNESS: The arborists, the tree
 21 company.

22 THE COURT: Anybody else?

23 THE WITNESS: Not at that point. Not at the
 24 end, no. We had initially thought the Town of Medway.

1 THE COURT: But you relatively quickly
 2 realized they were not a viable defendant?

3 THE WITNESS: Correct.

4 THE COURT: With regard to the arborists, did
 5 you make any efforts to determine what their insurance
 6 coverage was?

7 THE WITNESS: Defense was following for that.

8 THE COURT: Do you know what the answer was?

9 THE WITNESS: No, I don't.

10 THE COURT: Did you ask?

11 THE WITNESS: I don't think they had realized
 12 when I was still handling it.

13 THE COURT: Because that's what they told you
 14 or because you didn't hear.

15 THE WITNESS: I did not hear back the amount
 16 of the policy.

17 THE COURT: Now, you mentioned the
 18 reservation of rights that you characterize as "other
 19 policy information." What did you believe you needed
 20 as to this matter in order for you to evaluate the
 21 claim?

22 THE WITNESS: I guess I was waiting to hear
 23 back from coverage counsel that all issues had been
 24 resolved. Coverage counsel was dealing with Zurich

1 directly.

2 THE COURT: And who was coverage counsel for
3 you?

4 THE WITNESS: Ed Shoulkin of Taylor Duane.

5 THE COURT: And were you in touch with him?

6 THE WITNESS: Yes, I was.

7 THE COURT: And at any point in time did he
8 tell you that these matters had been resolved?

9 THE WITNESS: No.

10 THE COURT: Did you understand what matters
11 had not been resolved?

12 THE WITNESS: I wasn't aware of the specific
13 reservations other than I knew there was an issue of
14 possibly additional policies they were looking for. I
15 do not know if they received them or not.

16 THE COURT: Policies as to whom?

17 THE WITNESS: Additional coverage for Penske

18 THE COURT: Now, you also mentioned something
19 to do with defense counsel. Are defense counsel
20 routinely consulted by you before you make your
21 evaluation?

22 THE WITNESS: When a claim goes into
23 litigation and it's a large claim like this, we lean to
24 defense for evaluation and their recommendations.

1 THE COURT: All right. And I don't know
2 whether or not this will move into privileged attorney-
3 client communication, but I'll make a question that I
4 know will now.

5 Yes or no, did you ever request defense
6 counsel to provide you with an evaluation? That's a
7 yes or a no.

8 THE WITNESS: Yes.

9 THE COURT: And when did you make that
10 request?

11 THE WITNESS: Well, I made it through Zurich.

12 THE COURT: When did you do that?

13 THE WITNESS: October. Or November? I don't
14 remember if it was October or November.

15 THE COURT: Of which year?

16 THE WITNESS: Of '03. I only handled it in
17 '03.

18 THE COURT: So you made that request of
19 Zurich.

20 THE WITNESS: Zurich had a specific defense
21 evaluation form that they wanted completed.

22 THE COURT: All right. And how did you learn
23 this.

24 THE WITNESS: Through a conversation that my

1 manager had with Zurich.

2 THE COURT: The manager, meaning Mr. Manning?

3 THE WITNESS: My manager, Steve Peneke of
4 Crawford & Company

5 THE COURT: And then Steve Peneke told you of
6 this?

7 THE WITNESS: Yes.

8 THE COURT: And did you confirm it directly
9 with anybody from Zurich?

10 THE WITNESS: Not directly, no. An e-mail
11 had been sent with a document -- documentation that
12 needed to be completed by defense.

13 THE COURT: And how do you know that
14 happened?

15 THE WITNESS: Because it was forwarded to me.

16 THE COURT: By whom?

17 THE WITNESS: By Steve Penick.

18 THE COURT: The form or the --

19 THE WITNESS: The form.

20 THE COURT: Oh, the completed form.

21 THE WITNESS: No, not the completed form, the
22 form.

23 THE COURT: So basically you know that
24 Crawford had sent an evaluation form to Zurich or to

1 defense counsel?

2 THE WITNESS: To defense counsel.

3 THE COURT: So that was sent to defense
4 counsel by Crawford?

5 THE WITNESS: It was Zurich's form.

6 THE COURT: But it was sent by Crawford?

7 THE WITNESS: Yes, it was.

8 THE COURT: And do you know if that form was
9 received by Crawford?

10 THE WITNESS: Yes, it was. I think I had to
11 ask defense about three times, and I got it about 30
12 days later.

13 THE COURT: And do you know when it was
14 received?

15 THE WITNESS: I'd have to look in my claim
16 notes.

17 THE COURT: The claim notes that are here?

18 THE WITNESS: Mm-hum.

19 THE COURT: All right. Why don't you review
20 it to see whether you can identify its receipt.

21 THE WITNESS: I believe it was in November,
22 mid-November.

23 THE COURT: Of 2003?

24 THE WITNESS: Correct.

1 THE COURT: And is there a note that causes
2 you to believe that?

3 THE WITNESS: I discussed this with Bob
4 Manning of GAF, and we reviewed the defense report.

5 THE COURT: I'm sorry. Are you reading from
6 something?

7 THE WITNESS: Yes, from the claim notes.

8 THE COURT: But where?

9 THE WITNESS: 11-10 of '03.

10 THE COURT: On ZA page --

11 THE WITNESS: 0573.

12 THE COURT: Oh, it says: Discussed this
13 matter with Bob Manning of GAF. Reviewed defense
14 report with him. He is calling broker and AIG-Zurich
15 to determine if we can get authority rolling.

16 And where it says authority requested the \$12
17 million, is that a reference to what you said earlier
18 about Mr. Manning having made that request?

19 THE WITNESS: Correct.

20 THE COURT: Now you write in caps: We must
21 make offer before client attorney will agree to
22 mediation. How did you understand that?

23 THE WITNESS: That was through the
24 conversation with Bob Manning. He wanted to get that

1 point across.

2 THE COURT: And did Mr. Manning indicate to
3 you where he had learned that?

4 THE WITNESS: I believe it's through
5 conversation with defense.

6 THE COURT: All right. So you understood
7 that was a demand being made by the plaintiffs; that
8 the plaintiffs said that they would not begin mediation
9 without an offer.

10 THE WITNESS: Correct. Right.

11 THE COURT: All right. Now, after that --
12 I'm sorry. Do you know whether it was only Mr.
13 Manning, or was it also you who spoke to somebody from
14 Zurich about making an offer?

15 THE WITNESS: I did not speak to Zurich about
16 making an offer.

17 THE COURT: So that was only through Manning?

18 THE WITNESS: Correct.

19 THE COURT: After that conversation between
20 Manning and Zurich, did you have any conversation with
21 anybody from Zurich?

22 THE WITNESS: There was a conference call,
23 but I didn't -- I wasn't involved in that.

24 THE COURT: Okay. In terms of any calls or

1 discussions in which you were involved, do you recall
2 ever speaking to anybody from Zurich again as to this
3 claim?

4 THE WITNESS: No.

5 THE COURT: And how long were you involved in
6 this claim after that, after 11/10/03?

7 THE WITNESS: Just through 11/19 of '03.

8 THE COURT: And what caused you to leave this
9 claim?

10 THE WITNESS: My manager took it over after
11 that conference call.

12 THE COURT: Mr. Penick?

13 THE WITNESS: Yes, Mr. Penick.

14 THE COURT: Now, did you ever speak with Mr.
15 McIntosh directly?

16 THE WITNESS: Yes, I spoke with him once or
17 twice, I believe.

18 THE COURT: Both of them? You said "both of
19 them." Who's "both"?

20 THE WITNESS: Spoke with him.

21 THE COURT: Spoke with him, okay.

22 THE WITNESS: Once or twice.

23 THE COURT: Just once or twice? All right.

24 THE WITNESS: We left a lot of phone messages

1 for each other. I only work three days a week, so
2 sometimes he'd leave a message on a Monday or a Friday,
3 I wasn't there and I would call him back, he wasn't
4 there.

5 THE COURT: Did you ever call him as to why
6 the reserves were stuck at \$50,000 when you had
7 recommended that they be upped to 2 million?

8 THE WITNESS: No, you know, I didn't. I had
9 made the recommendation because as a third-party
10 administrator we like to be cautious and we like to let
11 the client know of any potential what the client wishes
12 to do.

13 I mean, at this point, at the beginning we
14 were asking for the reserves to be increased, but we
15 didn't have any documentation to substantiate that. So
16 I never asked him -- you know, I never made any further
17 requests other than in my reports.

18 THE COURT: Now, after you received the
19 demand letter from defense counsel, you then had those
20 medical reports.

21 THE WITNESS: Correct.

22 THE COURT: Did you speak with him and say
23 we've now got the medical reports and the reserve of
24 fifty grand is silly?

1 THE WITNESS: I did not speak directly with
2 him, no.

3 THE COURT: Okay. Well, tell me --

4 THE WITNESS: I sent a report.

5 THE COURT: -- did you think it was
6 responsible for an insurance company to set a reserve
7 for \$50,000 for that case after you received the
8 medical reports?

9 THE WITNESS: Well, I mean, whether a reserve
10 is set or not, I hadn't requested authority. If it was
11 to the point where we were ready to make an offer to
12 settle, then, yes, the reserve needs to be there.
13 Whether the reserve is there or not, that's up to the
14 insurance company. Some people like to put it up
15 right away; some people don't want to put it up until
16 they know the actual value.

17 THE COURT: All right. Now, at the time that
18 you left this claim did you think there was any
19 reasonable probability that this claim would settle for
20 less than \$2 million?

21 THE WITNESS: It had a potential value, you
22 know, as I had said before. Would it settle for less
23 than two? Probably not.

24 THE COURT: Did you have any reasonable

1 understanding that the authority that Zurich should
2 provide would be less than policy limits?

3 THE WITNESS: No.

4 THE COURT: All right. I've got no further
5 questions. Any questions of counsel? Mr. Brown?

6 MR. BROWN: Yes, your Honor, just a moment,
7 please.

8 EXAMINATION BY MR. BROWN

9 Q Ms. Mills, if you could turn to Exhibit 67.

10 A Yes.

11 Q Page ZA-570. There's a December 5th note from you.

12 A Okay.

13 Q Does that refresh your recollection as to when you were
14 no longer actively involved in the claim?

15 A I'm sorry, can you ask that question again?

16 Q Yes. I believe you testified before that you were no
17 longer involved in the claim as of 11/19/03 but there
18 are two notes in here from December of 2003.

19 A Okay, well it was no longer my file. On occasion Steve
20 asked me to do something if he was busy. So I mean, I
21 did nothing substantial after that. I paid a defense
22 bill and I forwarded -- I don't know that's just a
23 documentation of a letter.

24 Q Right, and that's a letter from attorney Greg

1 Deschenes?

2 A Hm-mm.

3 Q That you sent to AIG?

4 A It was a copy of a letter defense sent to AIG.

5 Q Okay, and you received a copy of it?

6 A Right.

7 Q So Greg Deschenes was communicating directly with AIG?

8 A It appears from this note.

9 Q Ms. Mills, Exhibit 66L, on the second page under,
10 "Summary."

11 A Yes.

12 Q The fifth line down, there is a line, but then five
13 lines down it says: Nowhere is it mentioned that it
14 appears that DLS has no, we repeat, no coverage for
15 this accident due to an agency error.

16 Is that your understanding as of November of
17 2003?

18 A I don't know where he got that information.

19 Q But you were still on the claim?

20 A That's John Chaney's report.

21 Q But you were still on the claim as of November of 2003?

22 A Yes, I was.

23 Q The note goes on to say: This information comes via
24 phone conversation last December?

1 A Correct.

2 Q And you were on the claim after December of 2002?

3 A Correct.

4 Q Ms. Mills, were you aware that a life-care plan was
5 issued by Jane Mattson on October 6th of 2003? It's
6 Exhibit 11 in your book.

7 A I don't remember if I saw this or not.

8 Q At any time were you aware that defense's life care
9 expert was stating that future medical costs would be
10 approximately \$1.487 million?

11 A No.

12 MR. BROWN: I have no further questions,
13 thank you.

14 THE COURT: Any further questions? Ms.
15 Sackett?

16 MS. SACKETT: Just a few.

17 EXAMINATION BY MS. SACKETT

18 Q Ms. Mills, you testified in response to the court's
19 questions that you were aware that coverage counsel was
20 waiting for insurance policies from Penske, correct?

21 A Correct.

22 Q Were you also -- were you aware that coverage counsel
23 was also waiting for looking for policies from DLS?

24 A I knew there were other policies they were looking for

1 and there were other parties, yes, I forgot, DLS.
 2 Q Okay. Before you -- at some point in time did you read
 3 Mr. Chaney's November 13th of 2003 liability
 4 transmittal letter while you were handling the claim?
 5 A Yes.

6 Q Okay, did you know any time prior to reading that claim
 7 that DLS did not have any insurance?

8 MR. BROWN: Objection.

9 THE COURT: Well, did you believe that DLS
 10 was not insured by the policy?

11 MS. SACKETT: That's a different question
 12 than what I'm asking. Maybe I should rephrase.

13 THE COURT: All right. Well, I think you're
 14 assuming things that may not be in evidence. Why don't
 15 you rephrase your question because I'm confused by it.

16 MS. SACKETT: Sure.

17 THE COURT: Let me step back before you ask
 18 your question. Was it ever your understanding that DLS
 19 was not covered by the Zurich policy?

20 THE WITNESS: Well, it was being covered
 21 under a reservation of rights letter.

22 THE COURT: All right. Did you ever
 23 understand that DLS -- that it had been established
 24 that DLS had no coverage?

1 THE WITNESS: No.

2 THE COURT: Okay.

3 (By Ms. Sackett)

4 Q My question perhaps was not artful.

5 In Mr. Chaney's November 13, 2003 liability
 6 transmittal letter he writes: It appears that DLS has
 7 no, we repeat, no coverage for this accident due to an
 8 agency error.

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

11 A No.

12 Q Were you aware of the status of whether or not DLS had
 13 its own insurance policy at any time while you were
 14 handling the claim?

15 A No.

16 MS. SACKETT: Thank you.

17 THE COURT: Mr. Maselek.

18 MR. MASELEK: Mr. Zelle would like to --

19 MR. ZELLE: Just a couple of quick things.

20 EXAMINATION BY MR. ZELLE

21 Q Ms. Mills, can you tell me with respect to any claim
 22 under the arrangement that GAF had with Zurich, who had
 23 control over settlement for the first \$250,000?

24 A GAF.

1 Q And could Zurich do anything, or exercise any control,
 2 over any claim before the \$250,000 controlled by GAF
 3 was --

4 MR. BROWN: Objection.

5 THE COURT: I will overrule it, but I think
 6 you had better rephrase the question. I'm not sure if
 7 I heard it.

8 MR. ZELLE: Let me rephrase that.

9 (By Mr. Zelle)

10 Q In connection with any claim against GAF, did Zurich
 11 exercise, or have the right to exercise control, over
 12 settlement before the full \$250,000 of GAF's money was
 13 put up on --

14 MR. BROWN: Objection.

15 THE COURT: Well, I'm going to sustain it for
 16 lack of foundation. You'll have to declare that she
 17 has an understanding of what the agreement was between
 18 GAF and Crawford and Zurich.

19 (By Mr. Zelle)

20 Q Let me ask you, was the arrangement between GAF and
 21 Zurich, was there a self-insured retention? Was that
 22 the nature of the relationship?

23 A Yes.

24 Q Can you explain that please to the court what that

1 means?

2 A That would mean that the first \$250,000 would be paid
 3 by GAF, and the excess of that would go to Zurich.

4 Q In terms then of extending authority to settle a claim,
 5 if the claim was within the \$250,000 range, where would
 6 the authority come from?

7 A Bob Manning.

8 Q Could Zurich extend settlement authority on any claim
 9 to the extent that Zurich may have perceived the claim
 10 to have a value in excess of \$250,000 before Mr.
 11 Manning extended his \$250,000?

12 A I do not believe so.

13 Q Okay.

14 THE COURT: Any further questions? Mr.
 15 Brown?

16 MR. BROWN: No, your Honor.

17 THE COURT: With regard to that last
 18 question, did that have any effect on your evaluation
 19 of the claim?

20 THE WITNESS: No.

21 THE COURT: All right. Thank you, you may
 22 step down.

23 MR. PRITZKER: The plaintiffs would call
 24 Kathleen Fuell, your Honor, unless you wish to quit

1 early.

2 THE COURT: No, I've been waiting so long to
3 meet Ms. Fuell that I just don't want to wait any
4 longer.

5 KATHLEEN GEORGIO FUELL, Sworn

6

7 THE COURT: Good afternoon, if you could
8 please state your full name and spell your last name
9 for the court reporter?

10 THE WITNESS: It's Kathleen Georgio Fuell,
11 and my last name is F-U-E-L-L.

12 THE COURT: And is Georgio your middle name
13 or a hyphenated last name?

14 THE WITNESS: It is my middle name since I
15 got married.

16 THE COURT: Okay, so it's your maiden name
17 before?

18 THE WITNESS: Correct.

19 THE COURT: All right.

20 MR. PRITZKER: May I, your Honor?

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION BY MR. PRITZKER:

23 Q Good to see you again, Ms. Fuell.

10 mins

24 A Nice to see you.

1 Q I'm going to actually start in the middle. You'll see
2 you have several Exhibit books before you. Would you
3 turn to Exhibit 62, please?

4 A In which book?

5 Q I'm sorry, Volume 2.

6 A Yes.

7 Q Now that, is it not, a third-party administrator
8 agreement between Zurich American Insurance Group and
9 Crawford & Company Inc.; is it not?

10 A Yes, it is.

11 Q Have you reviewed this document before?

12 A Not each line of it, but yes, I have reviewed it.

13 Q At least you understand generally what this document is
14 intended to do?

15 A Correct.

16 Q It's not a document; it's not an agreement between
17 Crawford and Zurich and GAF, is it?

18 A No, it's not.

19 Q It's a document between Crawford and Zurich?

20 A That's correct.

21 Q Now, Zurich has two parts of the MCU unit; does it not?
22 It has a TPA side and a direct adjustment side?

23 A Correct. Do you want me to explain that a little bit?
24 Q No, you just answer my questions, if you would, and

1 we'll get along wonderfully.

2 On the non-TPI side -- TPA side, excuse me -- Zurich is
3 doing its own adjusting, right?

4 A Correct.

5 Q Administering?

6 A Where their claims officers are handling it under a
7 bundled program.

8 Q Okay. And what they're doing is they are adjusting.

9 A Correct.

10 Q Doing everything that term entails.

11 A Hm-mm.

12 Q And they are administering, right? True?

13 A True.

14 Q They're reserving, right?

15 A Yes.

16 Q And they're settling, if they can?

17 A Yes.

18 Q They are also interfacing with defense counsel, if they
19 can.

20 A Yes.

21 Q Now, in this case it was a TPA agreement because
22 Exhibit 62 says that Zurich is retaining Crawford &
23 Company as its agent to do the adjusting and
24 administration services.

1 MR. VARGA: Objection, your Honor.

2 Objection.

3 A I don't know that it says that specifically.

4 THE COURT: Ms. Fuell, you have to wait.
5 I've got to earn my pay. I've got to resolve the
6 objection, but first I need to hear it.

7 MR. VARGA: Your Honor, the basis for it is,
8 I believe that calls for a legal conclusion as to
9 whether there's an agency relationship. I think that's
10 what the question is directed to and I think that
11 should be -- I think it is not an appropriate question.

12 THE COURT: Well, I will overrule it. I'll
13 permit her to give her understanding as to what the
14 arrangement was with regard to the claim over which she
15 had a role. So I'll permit you to answer.

16 THE WITNESS: Would you kindly repeat the
17 question?

18 MR. PRITZKER: I would if I could remember
19 it. Could we have it read, your Honor?

20 THE COURT: It will be three or four minutes,
21 she will have to rewind. Those good old days where
22 they just read it are long gone, Mr. Pritzker.

23 MR. PRITZKER: I figured it was popping up on
24 your computer.

1 THE COURT: No, this is my keeping notes
2 here.

3 (By Mr. Pritzker)

4 Q Ms. Fuell, isn't it so that under the third-party
5 administrator agreement, Exhibit 62, that Crawford &
6 Company was retained to act as Zurich's agent in
7 administering and adjusting the claims of various
8 insureds?

9 MR. VARGA: We just renew our objection, your
10 Honor.

11 A No, I don't believe that's what it's saying. I don't
12 know legally what you're defining "agent" as, but I
13 don't see it anywhere that it says that in this
14 document.

15 (By Mr. Pritzker)

16 Q What is your understanding of what Crawford was
17 supposed to be doing as it's defined under Exhibit 62?

18 A Crawford was retained by GAF to handle their third-
19 party claims as an unbundled third-party claim
20 administrator.

21 This outlines Zurich's agreement with GAF --
22 this isn't an agreement with GAF, but it states we will
23 allow Crawford to handle those claims, but these are
24 some of the parameters of what we have a right to say

1 you can do or not do. It's our contract with Crawford
2 saying this is what you will do as an authorized third-
3 party claim administrator.

4 Q Do you see anything in this agreement, Ms. Fuell, that
5 makes reference to GAF?

6 A No. As I've said, this is not a contract with GAF. I
7 just said GAF selected Crawford.

8 Q Now wait. Wasn't it that Zurich selected Crawford to
9 administer and adjust its claim for certain of its
10 insureds?

11 A No, we never select Crawford. The insured selects the
12 TPA.

13 Q Well, is there more than one TPA that is approved by
14 Zurich?

15 A Yes.

16 Q Okay. So then what happens is that an insured, in this
17 case GAG, is given a list of TPAs -- perhaps not for
18 this claim but in general -- and it has the choice of
19 either choosing a TPA or allowing Zurich to adjust and
20 administer the claim. Is that an accurate statement?

21 A That would be an aspect of the binding of the insurance
22 program that I'm not a party to. I've never done the
23 underwriting and worked with the insured to write the
24 insurance program.

1 Q Well, at least you know, because you were on the TPA
2 side of the MCU unit at Zurich, right?

3 A Correct.

4 Q And MCU again is?

5 A Major Case Unit.

6 Q Okay, so on the Major Case Unit, it's divided up into
7 TPA handled claims and Zurich handled claims, right?

8 A Right, but both functions are from a claim handling
9 oversight perspective.

10 Q That I understand. And you, at least during the period
11 of the Rhodes claim, was on the TPA side?

12 A Correct.

13 Q So you knew that Zurich was administering and adjusting
14 claims for more than just GAF; did you not?

15 A Zurich wasn't --

16 MR. VARGA: Objection.

17 THE COURT: Overruled.

18 A Zurich wasn't administering the claims for GAF.

19 Crawford was.

20 (By Mr. Pritzker)

21 Q I'm sorry. I misspoke and probably the objection was
22 well taken, so I'll start again.

23 Crawford was administering and adjusting
24 claims on behalf of Zurich for more than just GAF;

1 isn't that true?

2 A That is correct.

3 Q All right. And this agreement sets forth the way
4 Crawford is supposed to handle its functions; does it
5 not?

6 A Yes.

7 Q And if we look, for instance, at the third page of
8 Exhibit 62, we'll see that some of the administration
9 services are identified on that page; are they not?

10 A Yes, they are.

11 Q Under paragraph three. And if we look, for instance,
12 at 3C, it requires Crawford as the TPA instead of
13 Zurich to investigate all such reported claims under
14 the policy to the extent reasonable and customary to
15 evaluate the merits of such claims. Have I read that
16 accurately?

17 A That's what it says, yes.

18 Q And did you understand that that was part of what was
19 Crawford was supposed to be doing?

20 A Yes.

21 Q Did you understand when Crawford was doing that, that
22 they were doing that on behalf Zurich?

23 A On behalf of Zurich and on behalf of GAF.

24 Q Well, once again, ma'am, it was only on behalf of an

1 insured; isn't that so? Wasn't GAF -- because this
2 agreement in no way mentions GAF.

3 MR. VARGA: Objection.

4 THE COURT: That's not a question, so I'll
5 wait for the question and then we'll probably call it a
6 day.

7 (By Mr. Pritzker)

8 Q Once again, Ms. Fuell, does this agreement generally
9 provide for the responsibilities of Crawford, or is it
10 only focusing on the responsibilities of Crawford
11 vis-à-vis GAF?

12 A This is a TPA agreement with Crawford for handling any
13 insureds who may have selected Crawford as their third-
14 party claim administrator.

15 Q All right.

16 MR. PRITZKER: I think on that, that's
17 probably a good place to stop, your Honor, but I can go
18 on because there's a lot I'm going to be dealing with
19 on this agreement, if you wish.

20 THE COURT: We'll await it eagerly tomorrow
21 morning. So we will call it a day. Now, remember
22 Thursday we start at 9:30, I believe.

23 MR. GOLDMAN: Tomorrow is Wednesday.

24 THE COURT: Right, but Thursday is 9:30? I

1 think we are supposed to be housing -- are mock trials
2 coming in Thursday afternoon? I think these two
3 floors are being used for mock trials tomorrow and
4 Thursday, so we may need to move some share of those
5 boxes to the side.

6 Are we going to begin with the video
7 tomorrow? Is that how you want to begin?

8 MR. PRITZKER: We probably will, yes, your
9 Honor.

10 THE COURT: Counsel can review that video.
11 How long is the video?

12 MS. PINKHAM: Thirty minutes, your Honor.

13 MR. PRITZKER: Thirty minutes exactly.

14 Thirty-one.

15 THE COURT: All right.

16 MR. ZELLE: I could suggest that we could
17 review it and you could watch it. We don't have to
18 take up court time to play it.

19 MR. PRITZKER: That's not so easy, your
20 Honor, because we have to get this equipment that we've
21 rented back.

22 MR. ZELLE: We don't even need the equipment.
23 We can watch it at our office, the plaintiff can watch
24 it and the court can watch it.

1 MR. PRITZKER: It's a DVD, your Honor.

2 THE COURT: All right, why don't we do this.
3 As soon as I am here, we can come in and I can see the
4 video. I'll see it from here, but it may be a bit
5 before nine, if I can get everybody out of my house in
6 time. So if we're here early, I will watch it and we
7 may be able to start a little bit earlier to save some
8 time.

9 Do you plan to ask Ms. Fuell about it or not?

10 MR. PRITZKER: No. Well, yes, I am, but not
11 in enough detail so she has to see it.

12 THE COURT: Okay, so you're not asking her to
13 be here to see that?

14 MR. PRITZKER: No.

15 THE COURT: Okay.

16 MR. PRITZKER: May I submit, your Honor, two
17 deposition transcripts, have them marked in the hopes
18 that the court will then have them and at least perhaps
19 peruse them?

20 THE COURT: Okay. Are you asking me to read
21 them before tomorrow?

22 MR. PRITZKER: Not necessarily, but at least
23 I want them available if the court has time to do so.

24 THE COURT: Okay.

1 MR. PRITZKER: They are the depositions of
2 Stephen Penick and the deposition of Ann Peri.

3 THE COURT: I'm sorry, Ann?

4 MR. PRITZKER: Ann Peri, P-e-r-i.

5 THE COURT: Is there any objection to those
6 deposition transcripts coming in?

7 MR. PRITZKER: These are only, once again,
8 the parts that the parties have designated and counter-
9 designated.

10 THE COURT: Okay, how do you spell Penick?

11 MS. PINKHAM: P-e-n-i-c-k.

12 THE COURT: One N?

13 MS. PINKHAM: Yes.

14 THE COURT: And "ph" or "v"?

15 MS. PINKHAM: "Ph".

16 THE COURT: Okay so those will come in as 76
17 for Penick and 77 for Peri. If you get them to me,
18 I'll try to have read that and have finished the Chaney
19 deposition by tomorrow.

20
21 (Exhibit No. 76, marked; Deposition
22 Designations of Stephen Penick.)
23
24

1 (Exhibit No. 77, marked; Deposition
2 Designations of Ann Peri.)

4 MR. GOLDMAN: Your Honor, one other
5 relatively minor housekeeping issue. I understand that
6 later in this case the plaintiffs are going to be
7 offering the transcript of Mr. Manning, or parts of it,
8 and we did have a few more designations and objections,
9 four additional short designations and three
10 objections, and I'd like to supplement our response.
11 Counsel indicated earlier that wasn't acceptable
12 because it was beyond the date, but we would ask for
13 the court's indulgence.

14 MR. PRITZKER: Not because it was beyond the
15 date, your Honor; we've already prepared the books, and
16 to go back and recopy the books doesn't make a lot of
17 sense.

18 THE COURT: I'm sorry. Prepared what books?

19 MR. PRITZKER: The designations and counter-
20 designations.

21 THE COURT: The depo books.

22 MR. GOLDMAN: We'd be happy to take
23 responsibility for those few pages.

24 MR. PRITZKER: That's fine, your Honor. We

1 have no problem with that.

2 THE COURT: All right. Are you saying that
3 you need to confer with plaintiffs' counsel about that
4 or are you saying that you need for me to resolve those
5 issues?

6 MR. GOLDMAN: Sounds like we have agreement
7 and we can resolve it based on what Mr. Pritzker just
8 said, your Honor.

9 MR. PRITZKER: Absolutely.

THE COURT: Okay, so if there is to be any change after the books have been prepared, then the burden would fall on the defense to make those revisions and make sure that all the books are appropriately revised. If there is a need for me to rule on any of those issues, then I will. If I don't need to, then I've got enough on my plate. All right, thank you.

(Hearing ended.)

1

C E R T I F I C A T E

I, Paula Pietrella and Faye LeRoux, Court Reporters, do hereby certify that the foregoing transcript, Pages 1 through 158, is a complete, true and accurate transcription of the above-referenced case.

Paula Pietrella

Faye LeRoux

Pages: 168

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT DEPARTMENT
SUCV2005-1360 OF THE TRIAL COURT

* * * * *

MARIA RHODES, HAROLD RHODES, INDIVIDUALLY,
HAROLD RHODES, ON BEHALF OF HIS MINOR CHILD
AND NEXT FRIEND, REBECCA RHODES,

* * * * *

Plaintiffs,

VS.

AIG DOMESTIC CLAIMS, INC. f/k/a AIG TECHNICAL
SERVICES, INC., NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA., and ZURICH
AMERICAN INSURANCE COMPANY,

* * * * *

Defendants,

* * * * *

JURY-WAIVED TRIAL - DAY 3

BEFORE: GANTS, J.
BOSTON, MASSACHUSETTS
FEBRUARY 7, 2007

PAULA PIETRELLA
FAYE LEROUX
Court Reporters

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I N D E X

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|--------------------------|---------------|--------------|-----------------|----------------|
| Kathleen Fuell (Resumed) | | | | |
| (By Mr. Pritzker) 5 | | | | |
| (By Mr. Varga) 129 | | | | |

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>PAGE</u> |
|------------|--------------------|-------------|
| None | | |

FOR I.D.

11:45 Ranger

P R O C E E D I N G S

(In court at 9:08 a.m.)

THE COURT: Good morning.

MR. PRITZKER: Good morning, your Honor.

MR. VARGA: Good morning, your Honor.

THE COURT: I spent the evening last night
with Mr. Penick and Mr. Chaney. Unfortunately, I did
not -- it was too late for Ms. Perry so I look forward
to seeing her this evening.

MR. PRITZKER: As long, your Honor, the dog
didn't eat your homework.

THE COURT: I'm sorry?

MR. PRITZKER: If the dog didn't eat your
homework.

THE COURT: I don't even have a dog.

All right. So we're going to begin with
the "Day in the Life" video?

MR. PRITZKER: We are, your Honor. If the
court wishes, and in order to expedite live witnesses,
we're not supposed to start until 9:30 tomorrow at Mr.
Zelle's request, so that between 9:00 and 9:30 might be
a good time to do it.

THE COURT: That's fine.

MR. PRITZKER: We don't mind extending our
arrangements with the video equipment.

1 THE COURT: Okay. That's fine.
 2 MR. PRITZKER: If that's okay with
 3 everybody.
 4 THE COURT: All right.
 5 MR. PRITZKER: And that would allow us to
 6 start or resume, your Honor, with Ms. Fuell.
 7 THE COURT: Okay. Ms. Fuell, why don't you
 8 return.

9 THE CLERK: Has she been sworn, your Honor?
 10 THE COURT: She has been sworn in.

11 KATHLEEN FUELL, Resumed

12 DIRECT EXAMINATION BY MR. PRITZKER, CONTINUED:

13 MR. PRITZKER: Your Honor, if I may?
 14 THE COURT: Yes. One second. Let me just
 15 get my -- let me get this back to where I need to be.
 16 And good morning, Ms. Fuell. You remain
 17 under oath, and I'm not sure whether it was you or Ms.
 18 Pinkham was examining her, but --
 19 MR. PRITZKER: It was me, but before we
 20 start, your Honor, a housekeeping issue, if I may.
 21 After 9 p.m. last night, we received an e-
 22 mail from counsel from AIG amending the expert
 23 testimony or the expert opinion of Owen Todd, and it is
 24 a significantly different expert opinion now. And as a

1 result of that, notwithstanding the late hour, my
 2 office prepared and emergency motion to strike that
 3 supplemental opinion. I would like to hand it up to
 4 the court. I don't intend to argue it right now, but I
 5 wanted the court to know as soon as I knew.

6 THE COURT: Okay. Give that to me and I'll
 7 add that to my list of things to read.

8 MR. PRITZKER: May I?

9 THE COURT: And you may proceed.

10 (By Mr. Pritzker)

11 Q Ms. Fuell, I think when we left off yesterday we were
 12 talking Exhibit 62 in Volume 2 of the exhibit books
 13 before you.
 14 A The third-party administrator agreement?
 15 Q That's correct. Were we not?
 16 A Yes, I believe so.
 17 Q And I was about to start asking you what, on page 3 --
 18 strike that -- what your understanding was of the
 19 Crawford & Company's obligations to Zurich under -- as
 20 a claims administrator.
 21 A Is that a -- are you asking me a question?
 22 Q Yes. Well, I will ask you a question.
 23 A Okay.
 24 Q If you didn't understand that as a question.

1 What did you understand Crawford's obligations to
 2 Zurich to be as its administrator?
 3 A Their obligation was to investigate and handle claims
 4 and to protect Zurich's interests under the contract,
 5 with the TPA as well as our interests and the insured's
 6 interests.

7 Q Okay. If you look at the page 3 of Exhibit 2,
 8 paragraph 3, do you see where it says, "The clean
 9 claims administrator shall"?

10 A Yes, I do.
 11 Q And then under C, I think you just indicated: They
 12 shall investigate all such reported claims under the
 13 policy to the extent reasonable and customary to
 14 evaluate the merits of such claims.

15 That was their responsibility; was it not?

16 A Yes.
 17 Q Now, I'm going to hold that on reserve for a minute.
 18 The MCU unit that you worked for at Zurich had
 19 two parts to it; did it not?

20 A Yes, it did.
 21 Q One part was the TPA side, correct?
 22 A Correct.
 23 Q And that's the side that you worked in.
 24 A Uh-huh.

1 Q Yes?
 2 A Yes. Sorry.
 3 Q And the other side was regular administration by
 4 Zurich.
 5 A Yes. The other side worked with the Zurich field claim
 6 offices for the bundled insurance program.
 7 Q Okay. So it's fair to say that when a claim came in,
 8 either it was handled by Zurich, or it was handled by a
 9 third-party administrator. Is that a fair statement?
 10 A Yes.
 11 Q Okay. You always worked for the TPA side?
 12 A With Zurich, yes.
 13 Q In your prior experience, you had also worked on the
 14 other side?
 15 A Yes, I had.
 16 Q What do you call the other side?
 17 A The dark side. Actually, it's the part that I would
 18 normally have worked with prior to Zurich. It's the
 19 actual claim offices for the company, their employees
 20 of Zurich or whatever company that it may be, that
 21 handle the claims that are a bundled insurance program.
 22 The insured has purchased not only a contract of
 23 insurance, they've purchased claim handling services
 24 from that insurer, and those field offices would handle

1 any claims that were presented under the contract of
2 insurance.

3 Q Okay. Let me make sure that I understand.

4 When a claim comes in making a claim against a
5 Zurich policy, the obligation ultimately, or the
6 obligations of Zurich, depend upon administration and
7 adjusting, true?

8 MR. VARGA: Objection to form.

9 THE COURT: Overruled.

10 (By Mr. Pritzker)

11 A If I'm understanding your question correctly, do we
12 receive the claim? Do we investigate it? Do we handle
13 the claim accordingly? That would be correct.

14 Q Okay. And either that's done by Zurich personnel or
15 it's done by third-party administrators, true?

16 A Either third-party administrators or someone that we
17 have agreed -- or will be allowed to handle our claims,
18 yes.

19 Q Now, I know you told me yesterday, but what is the MCU
20 unit?

21 A It's the Major Case Unit.

22 Q Okay. And we know that your side was the TPA of the
23 Major Case Unit. What was the other side called?

24 A It's confusing, I know, but it's called the MCU unit.

1 If it doesn't designate it, it handles TPA programs.

2 It means that they are head office employees that work
3 with the branch claim offices on claims with high
4 exposure, claims that exceed branch claim authority.

5 Q Okay. So the MCU, as a whole, dealt with major cases.

6 A Correct.

7 Q How do you define "major cases"?

8 A A major case could be a case that would exceed the
9 branch claim office's authority. It has some type of
10 severity of loss involved in a catastrophic loss, such
11 as a death, a dismemberment. It could involve coverage
12 issues, it could involve a highly political, you know,
13 unusual claim. It's really -- it's up to the MCU
14 person working with the field office to decide if it's
15 something that should be reported or should be directly
16 handled by that.

17 Q Do you know why the Rhodes case was assigned to the MCU
18 unit?

19 MR. VARGA: Objection.

20 THE COURT: Overruled.

21 (By Mr. Pritzker)

22 A The Rhodes case was reported to Zurich by the insured
23 because it -- there were several issues involved in it.
24 It had the damages, there were coverage issues. It was

1 reported to us first because Penske had tendered their
2 defense under our policy and all coverage issues have
3 to be resolved by Zurich, but also because of the
4 nature of the damages and the exposure under our policy
5 and eventually the excess policy.

6 Q Okay. Now, since this was being administered by
7 Crawford & Company, what was your role?

8 A My role was to oversee the investigation of the TPA and
9 to collaborate both with the insured and the TPA on how
10 we were going to handle the claim.

11 Q And why was that important to Zurich? Why was your
12 role important? If Zurich was to investigate and to
13 the extent customary and to evaluate the merits of the
14 claim, why was it necessary for you, in your role, to
15 oversee Crawford?

16 A You said that Zurich was to investigate, but --

17 Q If I did, I misspoke then.

18 If Crawford was to investigate and evaluate
19 the merits, why was it important to Zurich that you
20 oversee Crawford?

21 A In a case of this nature, it's a case that many people
22 were involved in because of all of the -- it was a
23 complex case. It wasn't a routine slip and fall in a
24 grocery type case. So we also have an obligation to --

1 I have an obligation to Zurich, to the excess carrier
2 and to the insured to also become involved in a case of
3 this nature.

4 Q Okay. And what did you understand your
5 responsibilities to be?

6 A Crawford was the direct, frontline claim handler, and I
7 was providing oversight experience working with the
8 insured and doing the coverage analysis and reporting
9 to the -- well, not really. I was working with the
10 excess carrier as well.

11 Q Now, if you look again at Exhibit 62, paragraph 3D:
12 The claims administrator shall propose claim reserve
13 guidelines, consistent with regulatory requirements, to
14 be mutually agreed upon and to establish timely and
15 adequate loss and allocated loss, adjustment expense
16 reserves with respect to all claims in accordance with
17 the approved claim reserve guidelines as set out in the
18 addendum hereto.

19 Did I read that accurately?

20 A Yes, you did.

21 Q Okay. So do I understand correctly that it was the
22 responsibility of Crawford to recommend reserves?

23 True?

24 A Yes.

1 Q It was the right of Zurich to approve those reserves;
 2 was it not?
 3 A Zurich and the insured.
 4 Q Well, the insured, only up to the extent of its
 5 retention; isn't that so?
 6 A With a large insured such as GAF, we work together. We
 7 collaborate and form a consensus.
 8 Q Well, I'm not sure that that answers my question. You
 9 knew that the risk of GAF was up to its retention;
 10 isn't that so?
 11 A Part of the risk was up to its retention; but they also
 12 had a risk for ongoing legal expenses, they had a risk
 13 under their loss history, so there was more than just a
 14 risk of that amount of financial exposure they had
 15 under that retention.
 16 Q Well, let me make sure that I understand, Ms. Fuell.
 17 Did their obligation for legal expenses
 18 extend beyond the retention of \$250,000?
 19 A Once that retention was exhausted, yes, it did.
 20 Q It did?
 21 A Mm-hum.
 22 Q So they were required to pay the defense costs of
 23 defending this case, even if they were greater than
 24 \$250,000?

1 A No. They shared in -- once that retention was
 2 exhausted, that they shared in the legal expense
 3 exposure with Zurich, the TPA would pay it and bill
 4 Zurich for the amount above their retention level; and
 5 then after the claim was resolved, there is a formula
 6 that the our loss sensitive services department --
 7 they're our financial, it's after the fact billing
 8 department -- figures out a pro rata share that the
 9 insured is obligated to pay.
 10 Q Okay. Is there any other exposure to GAF once its
 11 retention of -- other than its retention amount and
 12 possible adjustment of attorneys' fees for defense, is
 13 there any other exposure that you know about for GAF or
 14 for any insured once its retention is exhausted?
 15 A Yes. As I said, they also have a loss history, which
 16 formulates their premiums going -- in the future, so it
 17 affects them not just on a single-case basis, but for
 18 their overall insurance program.
 19 Q Okay. Did you, by the way, ever read John Chaney's
 20 deposition transcript?
 21 A I may have. I believe I did very briefly.
 22 Q I'm going to show you trial Exhibit 73, which is the
 23 Chaney exhibit.
 24 A Is that in the same volume?

1 Q No, it is not, so I am going to have to hand it to you.
 2 Your Honor, do you have the original or
 3 your copy?
 4 THE COURT: I don't know what I've got.
 5 I've got this.
 6 MR. PRITZKER: That's the original.
 7 May I hand the witness a copy?
 8 THE COURT: Does she need it? Sure.
 9 I'm sorry. Before we go there, I want to
 10 ask a little bit about the retention. The retention of
 11 GAF was as to what?
 12 THE WITNESS: They have a financial
 13 exposure under -- for any claim up to a certain dollar
 14 amount. In this case, they had a \$2 million policy,
 15 but included within that \$2 million was a \$250,000
 16 financial obligation to pay themselves.
 17 THE COURT: All right. And did that
 18 obligation apply with respect to any liability, as well
 19 as legal expenses?
 20 THE WITNESS: Well, if you received a claim
 21 that was a \$50,000 claim and we paid -- and there was a
 22 \$10,000 legal payment, \$60,000 would be paid by the
 23 insured. Zurich wouldn't pay anything.
 24 THE COURT: Right. But let's assume that

1 there's a case which involves enormous legal fees and
 2 they spend \$250,000 in legal fees.
 3 THE WITNESS: Yes.
 4 THE COURT: Once those legal fees are
 5 expended, they're borne by GAF, correct?
 6 THE WITNESS: The legal fees eroded the
 7 retention along with loss, so it's loss or legal fees
 8 that could erode the retention and then any amount
 9 above the 250 shared between Zurich and GAF.
 10 THE COURT: Okay. So if the case has not
 11 proceeded to judgment or resolved itself, the legal
 12 fees are \$250,000, that first 250 is borne by GAF; is
 13 that correct?
 14 THE WITNESS: That's correct.
 15 THE COURT: All right. And with regard to
 16 legal fees above and beyond that amount, there is some
 17 allocation between Zurich and GAF.
 18 THE WITNESS: That's right.
 19 THE COURT: And that is done -- Zurich
 20 would pay those fees and then would go back to the
 21 client and work it out after the fact.
 22 THE WITNESS: That's correct.
 23 THE COURT: Okay. And if there were to be
 24 a judgment after the payment of \$250,000, of say a

1 million dollars, then Zurich would pay that \$1 million
2 judgment?

3 THE WITNESS: That's correct.

4 THE COURT: And then would go back after
5 the fact to GAF with regard to some pro rata sharing.

6 THE WITNESS: Exactly. Of the legal fees.

7 THE COURT: It didn't matter -- in terms of
8 this retention, it didn't matter whether the money was
9 spent to pay a settlement or to pay legal fees or to
10 pay a judgment, but once 250 was expended, then the
11 burden shifted to Zurich, at least to advance whatever
12 was left to be made.

13 THE WITNESS: That's correct.

14 THE COURT: Up to \$2 million?

15 THE WITNESS: Two million dollars for the
16 loss. The legal payments didn't erode the \$2 million
17 coverage. So if it were \$2 million for the loss plus
18 another 500,000 for the legal, we wouldn't pay 1.5
19 million. Does that make sense? I know it's
20 convoluted. The legal fees do not erode the policy
21 limits --

22 THE COURT: Okay.

23 THE WITNESS: -- once that retention is
24 paid.

1 THE COURT: All right. But if they had
2 paid -- if there were no legal fees but there was a
3 settlement of \$500,000, the first 250 would be borne by
4 GAF and the last 250 by Zurich.

5 THE WITNESS: Exactly.

6 THE COURT: But if there were \$250,000 in
7 legal fees -- or \$500,000 in legal fees, Zurich would
8 then pay the \$2 million plus the 250 additional legal
9 fees.

10 THE WITNESS: Correct.

11 THE COURT: Okay. Back to you.

12 (By Mr. Pritzker)

13 Q Now, jumping ahead, you know that the defense legal
14 fees paid by Zurich exceeded \$400,000?

15 A Yes.

16 Q I'm going to show you Exhibit 73, or a copy thereof,
17 and direct your attention to page 182. These are
18 questions, as you will see, that Mr. Varga has for Mr.
19 Chaney; do you see that?

20 A It doesn't say Mr. Chaney's name on this page, but yes.
21 Q I'm going to represent to you that this is the
22 deposition transcript --

23 THE COURT: It actually does at the very top
24 if you look.

1 THE WITNESS: Oh, I'm sorry, you're right.

2 MR. PRITZKER: Thank you, your Honor.

3 (By Mr. Pritzker)

4 Q And do you see that Mr. Varga says: I have a few?
5 A Yes.
6 Q And then asks: You were asked some questions earlier
7 by Mr. Pritzker regarding who Crawford & Company
8 reported to during the time that you were involved in
9 the handling of the Rhodes claim; do you remember that?
10 And he answers: That's correct.

11 And then he says: I think it was a question
12 to the effect of who -- who was -- who did you report
13 to or who did you answer to, and I think you said GAF;
14 do you remember that? And Mr. Chaney's answer was:
15 Well, in fact the form required by --- required by the
16 client instructions said that I needed to report this
17 claim to GAF, but in fact this is a dollar-one policy
18 and in fact -- and that the reports are due to insurer.

19 I had ultimate responsibility for the file,
20 the client's specific instructions are written in such
21 a way as that for the average claim which fits within
22 the normal, this deductible, that GAF would have
23 control over those smaller claims.

24 Do you agree with that assessment of Mr.

1 Chaney's?

2 A Well, it covers a lot of areas. I'm not sure who he is
3 referring to for client's specific instructions, if
4 that would be GAF or it would be Zurich. The policy
5 was a deductible policy.

6 Q It was considered a dollar-one policy for the purposes
7 of reporting; was it not?

8 A I can't say what he is stating -- what he considers a
9 dollar-one policy to be, but I can tell you that if,
10 for instance, GAF were in any way unable to meet their
11 financial obligation as to the \$250,000, Zurich would
12 have to pay that.

13 Q Well, I'm not so sure that answers my question. This
14 was considered by Zurich and by Crawford as a dollar-
15 one policy for the purpose of reporting; was it not?

16 MR. VARGA: Objection, your Honor.

17 THE COURT: Well, sustained. She can't speak
18 to what Mr. Chaney's state of mind is.

19 What, by the way, is a dollar-one policy?

20 THE WITNESS: I think from what he's talking
21 about would be the fact that as opposed to an SIR
22 where, if the insured went bankrupt and couldn't pay
23 their \$250,000, Zurich would not have to pay it. On a
24 deductible policy you would have to pay their 250 plus

1 the remainder of our exposure.

2 MR. ZELLE: I've got to move to strike that,
 3 your Honor, because she said: I think the way Mr.
 4 Chaney understands it. I think she might have been
 5 explaining the way she understood it, but the record
 6 reflects she is explaining the way she thinks he
 7 understood it.

8 THE COURT: The question was, what is a
 9 dollar-one policy; I think you were just describing
 10 what a dollar-one policy would be.

11 THE WITNESS: Correct. To me, yes, that's
 12 what it means to me.

13 MR. ZELLE: It was the form of the answer
 14 that I think she attributed it to Mr. Chaney's
 15 thinking.

16 THE COURT: All right, well is your thinking
 17 any different? Is that what a dollar-one policy is?

18 THE WITNESS: To me, yes, that's what my
 19 definition of a dollar-one policy is.

20 THE COURT: Okay, and do you know whether the
 21 policy held by GAF was a dollar-one policy as you
 22 understand that to mean?

23 THE WITNESS: Yes.

24 THE COURT: Okay, so basically if GAF were to

1 go bankrupt, then Zurich would have to bear the first
 2 250 grand.

3 THE WITNESS: Correct.

4 THE COURT: Okay.

5 (By Mr. Pritzker)

6 Q If you take a look at page 183, Ms. Fuell. The
 7 question on line three asked by Mr. Varga says: Did
 8 you during the time period that you were handling this
 9 claim in 2002, did you consider yourself as an employee
 10 of Crawford to be a claim agent for Zurich with respect
 11 to the Rhodes file? What did he answer?

12 A "I did."

13 Q Did you understand at any time that Mr. Chaney or any
 14 employee of Crawford considered themselves as claim
 15 agents for Zurich?

16 MR. VARGA: Objection, your Honor.

17 THE COURT: Sustained. You may ask whether
 18 she considered them to be claims agent.

19 (By Mr. Pritzker)

20 Q Did you, Ms. Fuell, consider the Crawford personnel to
 21 be claims agents of Zurich?

22 A It depends how broadly you define "agent". Were they
 23 acting on our behalf to handle and investigate the
 24 claims as well as for the insured, yes.

1 Q Okay. Now if we go on to Exhibit 62, aside from the
 2 obligations under D, would you read what their
 3 obligations were under paragraph 3E?

4 A On page ZA-0066?

5 Q Correct.

6 A (Reading) C: investigate all such reported claims under
 7 the policy to the extent reasonable and customary to
 8 evaluate the merits of such claims."

9 Q I'm not sure where you're reading but I was looking at
 10 3E.

11 A I'm sorry, I thought you said C. 3E:

12 (Reading): Promptly and thoroughly review,
 13 process, adjust, settle and pay claims under the policy
 14 in full compliance with this agreement, the policy, the
 15 addendum hereto and all applicable legal requirements.

16 Read the whole thing?

17 Q Yes.?

18 A (Reading): Provided however that no offer, settlement
 19 or payment shall exceed the settlement of authority of
 20 the claims administrator without prior written approval
 21 of each such offer, settlement or payment by the
 22 company.

23 Q Now you understood the company there to be Zurich; did
 24 you not?

1 A Yes.

2 Q So that Crawford couldn't actually make an offer of

3 settlement without Zurich's approval; isn't that so?
 4 A There are many times they make an offer without our
 5 approval, there are many claims that are not reported
 6 to Zurich. There is a certain type of claim that they
 7 have to obtain authority from.

8 Q Well, let's talk about claims that were assigned to the
 9 Major Case Unit. Is it your understanding that
 10 Crawford could settle those claims without the approval
 11 of Zurich?

12 MR. VARGA: Objection, your Honor.

13 THE COURT: I'm going to sustain it as to
 14 that. What did you understand to be the settlement
 15 authority of Crawford with respect to the GAF policy?

16 THE WITNESS: One hundred thousand dollars.

17 THE COURT: So they could resolve claims as
 18 long as the amount was less than 100 grand?

19 THE WITNESS: Yes.

20 THE COURT: And beyond that it would require
 21 the written approval of Zurich?

22 THE WITNESS: Or verbal. We would have to
 23 approve it along with the insured.

24 (By Mr. Pritzker)

1 Q Now isn't it also so that Zurich would have to approve
2 reserve adjustments over a certain level?

3 A Yes.

4 Q What was what adjustment level as it related to the
5 Rhodes claim?

6 A One hundred thousand dollars.

7 Q All right. So any recommendation or request for a
8 reserve over \$100,000 had to be approved by Zurich; is
9 that so?

10 A Yes.

11 Q Okay. Lastly, as it relates to Exhibit 62, if you look
12 at the next page under sub-paragraph I, it says: Take
13 such actions as may be necessary to ensure that claims
14 administration and claims adjustment shall comply in
15 all respect with all applicable laws regulations and
16 industry custom.

17 Did I read that properly?

18 A Yes, you did.

19 Q And in fact you knew, did you not, Ms. Fuell, that an
20 insured has an obligation to promptly effect a
21 reasonable settlement once liability is clear; isn't
22 that so?

23 MR. VARGA: Objection.

24 THE COURT: Overruled.

1 A Once liability is clear, but liability has many
2 factors.

3 (By Mr. Pritzker)

4 Q Well, I didn't ask you whether liability had many
5 factors, Ms. Fuell, I asked whether or not you
6 understood, as a general principle of law, that an
7 insurer has an obligation to effect a reasonable
8 settlement -- to effect settlement once liability is
9 reasonably clear.

10 A Yes.

11 Q And you understood and imposed -- or Zurich understood
12 or/and imposed on Crawford by Exhibit 62, the
13 obligations to ensure that the claims administration
14 and adjustment shall comply in all respects with
15 applicable laws; did you not?

16 A Yes.

17 Q Okay. Or did Zurich -- let's go on. Now I'm going to
18 back up. You graduated from college?

19 A Yes, I did.

20 Q What college?

21 A Marquette University in Milwaukee.

22 Q Did you go on to any high education after that?

23 A Not through college education, no.

24 Q Okay. Can you track your work history as it relates to

1 insurance related jobs?

2 A Yes. Bear with me on dates since I'm getting advanced
3 in years. Do you want me to start with my first
4 insurance related job?

5 Q Please.

6 A Okay. When I got out of college, within a year I got a
7 job handling health insurance claims for Time Insurance
8 in Milwaukee. I did that from October, I believe, of
9 1982 through, I don't remember when I stopped with them
10 in 1983. I went for a couple of years to work for a
11 telecommunications company, non-insurance related.
12 Then in April of 1986 I was hired by Safeco Insurance
13 in Los Angeles, California, as a claim representative.
14 And I giving you the information --

15 Q No, this is exactly what I want.

16 A Okay, good. As a claim representative handling auto
17 general liability and products claims, basically third-
18 party claims as opposed to a property claim or a
19 worker's compensation claim. I was employed by Safeco
20 Insurance until January of 1989, when I was hired by
21 Kemper Insurance in San Francisco, California, and I
22 worked for them in various claim capacities either
23 administrative and/or claim handling and supervision
24 and oversight, until of July of 2003. At the end of

1 July, 2003, I was hired by Zurich in my current
2 capacity as TPA oversight in the Major Case Unit.

3 Q And you're official title is?

4 A MCU consultant.

5 Q MCU TPA --

6 A TPA Liability Claim Head Office Unit.

7 Q Okay.

8 A It's a mouthful.

9 Q And where are your offices located?

10 A My office is in Schaumburg, Illinois.

11 Q What is the street address?

12 A 1400 American Lane, Schaumburg, Illinois.

13 Q Okay. Has it always been there?

14 A To my knowledge it has.

15 Q No, I mean your office --

16 A Since I've been employed there, yes.

17 Q That is the head office of Zurich in the United States?

18 A It's the head office of Zurich North America.

19 Q North America, okay. And has that been there from some
20 time prior, to your knowledge, prior to your being
21 there?

22 A Yes.

23 THE COURT: And that's outside of Chicago?

24 THE WITNESS: Yes, it is a suburb of Chicago.

1 (By Mr. Pritzker)

2 Q Now, Mr. Brown spent a lot of time asking Ms. Mills
3 yesterday about the Crawford reporting and the Crawford
4 claims notes; were you in the courtroom when that
5 testimony was happening?

6 A Yes, I was.

7 Q Okay. I would like to ask you some questions first
8 about the activities of Zurich in overseeing the
9 Crawford activities. Zurich had its own claims notes;
10 did it not?

11 A We had our own system of claim notes that we call our Z
12 notes.

13 Q Okay. And those Z notes are on Exhibit 68 in volume two
14 of the trial exhibits; are they not?

15 A Yes.

16 Q And those Z notes are read in reverse order if you want
17 to read them chronologically; isn't that so?

18 A Yes.

19 Q So the first Z note would be the last page of Exhibit
20 68 and it would be ZA-1164?

21 A Yes, that is correct.

22 Q And you see that that Z note is dated August 21, 2002;
23 is it not?

24 A Yes.

1 Q To your knowledge was Zurich doing anything on the
2 Rhodes file between the date of the accident January 2,
3 '02, and August 21, '02?

4 A Zurich wasn't aware of the claim until August of 2002.

5 Q Now you don't know that, do you, Ms. Fuell?

6 A I know from the information contained in the Z notes
7 that Mr. McIntosh had not received notice of the claim
8 until then.

9 Q Well that I understand, that Mr. McIntosh is not
10 Zurich, is he?

11 A No, he's an employee of Zurich.

12 Q And you don't know whether Zurich would have received
13 notice of this claim or not, do you?

14 A I can't point to anything that said they did or did not
15 receive it.

16 Q In fact if you look in the same book at Exhibit 66A,
17 Crawford's first, full formal report, dated January 30,
18 2002, you will see, under the last -- in the last page
19 of that, that that is sent to Zurich Insurance Company
20 at your address, isn't it?

21 A Yes. It states, Zurich Insurance Company, 1400
22 American Lane, Schaumburg, Illinois.

23 Q And that is where you presently work, true?

24 A Correct.

1 Q And where you know that Zurich American Insurance
2 Company was located in January of 2002; isn't that so?
3 A Correct. But Zurich --
4 Q Please, madam, I'd appreciate it you'd just answer my
5 questions, okay?

6 Now, going back again to Exhibit 68, when you
7 picked up this file -- or maybe I should ask you. When
8 did you pick up this file?

9 A Sometime in September of 2003.

10 Q Do you remember telling me that it might have been in
11 late August or it was early September of '03?

12 A Yes.

13 Q Have you now verified that it was September of '03, or
14 are you still unsure whether it was late August or
15 early September?

16 A I believe it was September 2003.

17 Q Okay. Early September?

18 A I can't say the exact date.

19 Q All right. When you picked up the file, Mr. McIntosh
20 was still working on the file; was he not?

21 A He was still assigned to the file, yes.

22 Q And at some --

23 A Or he had -- well, the file had transferred. The
24 account for the insured had transferred to me.

1 Q Mr. McIntosh was still working for the company; was he
2 not?

3 A Yes, he was.

4 Q He was still working for the MC unit; was he not?

5 A MCU unit, yes.

6 Q He was still working on the TPA side of the MCU unit,
7 wasn't he?

8 A Yes, he was.

9 Q All right. So the two of you were working in the same
10 part of the MCU unit in September of 2003, true?

11 A We were both working in the MCU unit, yes.

12 Q And I assume, since you're an experienced claims
13 person, that the first thing you did when you picked up
14 the file is to try and learn as much about the file as
15 you could, right?

16 A Yes, I did. I read all the documents we had available
17 and the Z notes, yes.

18 Q So you read the Z notes.

19 A Yes.

20 Q Did the Z notes tell you anything about what this case
21 was about, between the time that Mr. McIntosh picked it
22 up in August of '02 and when you picked it up in
23 September of '03?

24 A Did the Z notes between August '02 and September '03

1 tell me what the claim was about?

2 Q Yes.

3 A Yes. It's a brief summary of coverage issues, of what
4 efforts Mr. McIntosh was trying to make to obtain more
5 information on the case.

6 Q Well, let's look at them, Ms. Fuell. The first Z note
7 from Mr. McIntosh is on page ZA-1164, is it not?

8 A Yes, it is.

9 Q Okay. And can you read to me -- strike that.

10 Is there anything in that report which
11 indicates what this case is about?

12 A I received a first notice; the TPA is Crawford &
13 Company, John Chaney; they're reporting the case
14 because of a tender dispute with Penske. The Z notes
15 are not the only part of the claim system that talks
16 about what the claim is about.

17 Q Well, I understand that, but let's just focus now on
18 what Mr. McIntosh was reporting in his Z notes.

19 A Yes.

20 Q Okay? Which is supposed to be, is it not, a summary of
21 what he's doing on the case.

22 A It's a summary as much as time permits us to enter the
23 notes of what he's doing, but it's not the whole --
24 there are other parts of the system that tell you about

1 the case.

2 Q Oh, I understand that. We're going to get to those.

3 A Oh, okay.

4 Q Right now I just need you to focus on what Mr. McIntosh
5 was doing between August of '02 and September of '03.

6 Is there anything in the first note that
7 indicates what this case is about?

8 MR. VARGA: Objection. Asked and answered,
9 your Honor.

10 MR. PRITZKER: I don't think she answered.

11 THE COURT: Well, do you want her to focus --
12 I'm not sure. Are you asking her about the entirety of
13 the Z notes or just the first entry?

14 MR. PRITZKER: Well, I'm going to go through
15 them because they're very short, your Honor, as you'll
16 see, between at least August and January of '03.
17 There's not very much to look at.

18 THE COURT: All right. Well, then, why don't
19 we begin going through that process as opposed to
20 asking her to characterize.

21 (By Mr. Pritzker)

22 Q Would you characterize the first Z note, which is dated
23 8/21/03 but appears to list activity on 8/7 -- I'm
24 sorry. I said '03. 8/21/02 but appears to list

1 activity on 8/7/02.

2 A Would I characterize it as what?

3 Q How would you characterize what it was that Mr.
4 McIntosh was disclosing?

5 A He's noting that he first received notice of this
6 claim, that the issue was presented because there's a
7 tender dispute with Penske, another party in the claim.
8 GAF assigned claim counsel. They rejected the tender
9 without Zurich's involvement. Penske was objecting and
10 they're saying that the current attorney is in
11 conflict, so they're saying that Penske will not --
12 Penske's tendering the claim to us and wants their own
13 attorney, and this is why Crawford is notifying Zurich
14 of the claim.

15 Q Is there anything in that that indicates what the claim
16 is about?

17 MR. VARGA: Objection.

18 THE COURT: It speaks for itself.

19 (By Mr. Pritzker)

20 Q Let's look at the next report. It's also a report on
21 8/21; is it not?

22 A Yes.

23 Q And since it's short enough, let's read it together.

24 (Reading): I have spoken to coverage counsel

1 and we will provide a defense for now. Coverage
2 counsel will provide a -- is says "res," but I think we
3 know it's reservation rights letter -- advising that we
4 are advancing the defense pending our formal coverage
5 opinion. Dave Mc.

6 And then there's a further note: The
7 coverage attorney called and the policy did not contain
8 the current renewal. There is no underwriter and
9 special handling, and Mike Delia is on vacation until
10 next week. I will send a note to him and request the
11 renewal. Dave Mc.

12 Is there anything there that I've misread?

13 A No.

14 Q Could you have picked up that Z note and determined
15 what the Rhodes claim was about?

16 A Not from the Z note. I know Dave had spoken to Mr.
17 Chaney in between then.

18 Q Okay. Well, we're going to talk about other things,
19 but if you'd just answer my questions, I would really
20 appreciate it.

21 Is there anything in the Z note that would
22 tell you, Kathleen Fuell, what this case is all about?

23 MR. VARGA: Objection.

24 THE COURT: Sustained. If you want to go

1 through them, we can, but it does not make sense to go
 2 Z note by Z note. At the time she read it, she had all
 3 the Z notes in front of her. So if she had looked at
 4 it on August 21, then perhaps the question would be
 5 applicable, but she didn't look at it until --

6 MR. PRITZKER: I am also laying a foundation
 7 for other questions, your Honor, about the activity of
 8 Mr. McIntosh.

9 THE COURT: I understand that, but I can read
 10 as well as she can and I can understand what it says
 11 and does not say as well as she can, so that's not a
 12 good use of our time.

13 (By Mr. Pritzker)

14 Q On January 10, '03, Ms. Fuell, is the next report, is
 15 it not, from Mr. McIntosh?

16 A In the Z notes?

17 Q Yes.

18 A Yes.

19 Q Do you know what Mr. McIntosh was doing between August
 20 21 of '02 and January 21 of '03?

21 A He was working with counsel to obtain further
 22 information regarding coverage, and he was talking to
 23 Crawford about obtaining further information about the
 24 claim.

1 Q How do you know that he was talking to Crawford about
 2 obtaining further information about the claim?
 3 A Because he testified to that. I believe he did in his
 4 deposition.

5 Q So you read Mr. McIntosh's deposition transcript?

6 A In part, yes.

7 Q And you did that as part of your preparation for
 8 testifying here today?

9 A Yes, I did.

10 Q Other than that, would you have known of anything that
 11 Mr. McIntosh had done by picking up the claim file --
 12 by picking up the Zurich Z notes, excuse me. Would you
 13 have known of anything that Mr. McIntosh had done on
 14 this claim prior to January 21, other than what's
 15 reported?

16 A Just by looking at the Z notes? If I were looking only
 17 at the Z notes? No.

18 Q Did you talk to Mr. McIntosh when you first picked up
 19 the Rhodes file to find out what he had done?

20 A What I did was look at the Z notes and also look at the
 21 complete file. In our imaging system, we have a
 22 complete file of documentation.

23 Q Okay. Did you ever talk to Mr. McIntosh about what he
 24 had done?

1 A I asked him for information and if he had completed a
 2 report on the matter, yes.

3 Q Did you ever talk to him?

4 A Yes, I did.

5 Q How many times?

6 A I don't recall the number.

7 Q Do you remember e-mailing him, asking him whether he
 8 ever did a claim report?

9 A Yes, I did.

10 Q And it's now your testimony that it wasn't the e-mail,
 11 that you talked to him about that?

12 A I know I communicated with him, yes.

13 Q Well, that wasn't my question, Ms. Fuell.

14 Did you ever talk to Mr. McIntosh at the time
 15 that you picked up this file about whether or not he
 16 had done any report, Zurich report on the Rhodes claim?

17 A I don't recall telephoning him, no.

18 THE COURT: By the way, what did he say when
 19 you asked him, whether it be in writing or orally, as
 20 to whether he had prepared a claims report?

21 THE WITNESS: He said no.

22 (By Mr. Pritzker)

23 Q And in fact, there was no report anywhere in the claim
 24 file, was there?

1 A Not prepared by David McIntosh.

2 Q All right. Now if you look at the next series of Z
 3 notes on 1162, there are three of them on 1/23/03; are
 4 there not?

5 A Yes. I'm sorry. I see two on 1/22 and one on 1/23.

6 Q You're correct. I misspoke.

7 Do any of them substantively deal with the
 8 Rhodes claim?

9 MR. VARGA: Objection.

10 THE COURT: Sustained. If you want to, I'll
 11 just read them with her and it would save us some time.

12 MR. PRITZKER: I won't even bother, your

13 Honor.

14 (By Mr. Pritzker)

15 Q Let's go to March 6th.

16 THE COURT: Well, I should read them.

17 MR. PRITZKER: I'm sorry.

18 THE COURT: I'm not opposed to spending a
 19 moment to read it with her. So you may ask her to read
 20 it, I'll read it, and then you can get to the next
 21 question, but characterizing is not that helpful.

22 A Which date did you want me to start at, 1/22? 1/10?

23 (By Mr. Pritzker)

24 Q 1/22 starts at the bottom of the page on 1162 and

1 spills over to 1163.
 2 A Actually, we have to work backwards.
 3 Q I know that. So that's the first one.
 4 A Oh, I see what you're saying. And the 1/22 note says
 5 that he advised as to the Crawford adjustor had
 6 changed. He indicates that the new Crawford adjustor
 7 is Jodie Mills, telephone number. I'll need to follow
 8 with her, counsel will draft an ROR letter that will
 9 cover us for any future discovery that may take place,
 10 direct negligence in the additional insureds, i.e.,
 11 such as maintenance, which was done by Penske, David
 12 Mc.
 13 Q Okay.
 14 Q And the next note is right above that?
 15 A There's another 1/22 note that said he called Jodie,
 16 left message to please call me. Dave Mc.
 17 Q And the next one?
 18 A 1/23. The date entered says 1/23, but then there's a
 19 1/24/3 underneath that says: I spoke to Jodie and
 20 advised of the coverage position. Dave Mc.
 21 Q And then the next note is a month and a half later; is
 22 it not?
 23 A March 6, 2003.
 24 Q And would you read that, please?

1 A (Reading): I've approved the draft ROR from coverage
 2 counsel, with the amended complaint on Penske. We will
 3 likely need to review that ROR as well. I will ask the
 4 TPA to address the defense costs, given that we are now
 5 looking at defending a substantial number of
 6 defendants. They also need to get the exposure
 7 reviewed as well. Dave Mc.

8 And it follows with what appears to be a cut-
 9 and-paste of an e-mail type of transaction, of
 10 correspondence: Jodie, I have approved the ROR letter
 11 from Attorney Shulkin. This is going to have an impact
 12 on both the indemnity exposure as well as the expense.
 13 Please provide me with an updated report with your
 14 current evaluation of our exposure, as well as a legal
 15 budget for all of the defendants we are now responsible
 16 for. I know this will take a little bit of time to
 17 obtain, but please report -- try to get this to me as
 18 soon as practical. Dave Mc.
 19 Q Now, did you read all of those e-notes when you first
 20 picked up the Rhodes file?
 21 A Yes, I did.
 22 Q You knew, did you not, that this was already a year and
 23 a quarter -- as of the date of the last report you
 24 read, it was a year and a quarter post-accident, true?

1 A Yes.
 2 Q Can you tell from these reports or anything else that
 3 you read, anything that Mr. McIntosh did to move the
 4 Rhodes claim along, other than what is contained in the
 5 Z notes?
 6 A Yes. He was actively working with coverage counsel at
 7 the time to obtain further coverage information and
 8 more information about the co-defendants in the -- and
 9 the coverage element of the exposure.
 10 Q How do you know that he was trying to obtain more
 11 information about the claim itself?
 12 A Because it was being -- it was being reported to him by
 13 Crawford throughout that time period.
 14 Q All right.
 15 A And Crawford as the direct claim handler was obtaining
 16 that information.
 17 Q And let's go, if we can, to Exhibits 66A through O.
 18 Now, I know that you said that at some point you
 19 reviewed at least the exhibits A through the date when
 20 you started working, J, at some time when you picked up
 21 this file; isn't that so?
 22 A I reviewed the file information that was in our
 23 electronic claim file.
 24 Q All right. And were exhibits A through I, at least, in

1 your electronic claim file?
 2 A No, not all of them.
 3 Q Can you tell me which ones were not?
 4 A The January 30th, 2002 exhibit, which would be 66A, and
 5 the April 8th, 2002 exhibit, 66B, were not in the claim
 6 file.
 7 Q Okay, but when you picked up the claim file, C through
 8 I were in there?
 9 A At least C through H were in there, I'm not sure when
 10 we received the September 11, 2003, report.
 11 Q "We" meaning when you received it?
 12 A Correct.
 13 Q You did receive it at some time?
 14 A Yes.
 15 Q And you also received 66J at some time?
 16 A Yes.
 17 Q 66K at some time?
 18 A Yes.
 19 Q And 66L at some time?
 20 A Yes.
 21 Q Let's go through -- and you reviewed these, right?
 22 A Yes, I did.
 23 Q And you reviewed these because you were trying to get a
 24 handle on this claim to see what should be done with it

1 from Zurich's point of view; isn't that so?

2 MR. VARGA: Objection, your Honor.

3 THE COURT: Overruled.

4 MR. VARGA: Can I just explain the basis?

5 THE COURT: Sure.

6 MR. VARGA: The question that Mr. Pritzker is
7 asking does not specify a time frame, and Ms. Fuell has
8 made it clear that at the time that she picked up the
9 file, which is using Mr. Pritzker's terminology, there
10 were only certain reports that she had. And now this
11 questioning encompasses also Exhibits J, K and L, which
12 I think she said she was not sure she had at that time
13 she picked up the file. I just ask that there be a
14 clarification of the question so it's not misleading.

15 THE COURT: She said -- okay.

16 MR. PRITZKER: She said what she said.

17 THE COURT: 66C through H were in the Zurich
18 claims file; A and B were not; and the rest you're not
19 sure about, correct?

20 THE WITNESS: The rest -- I picked up the
21 file sometime in September and so I, J, K and L could
22 have come in sometime after I picked up the file.

23 (By Mr. Pritzker)

24 Q All right, but you just testified, did you not, Ms.

1 Fuell, that C through H were in the file when you first
2 picked it up?

3 A Yes.

4 Q And you reviewed those?

5 A Yes, I did.

6 Q And one reason that you reviewed them was to try and
7 get as good a handle as you could on what this claim
8 was about; isn't that so?

9 A Yes.

10 Q Do you see Exhibit 66C on the second page, the second
11 section is: Remarks?

12 A Yes.

13 Q It says: Please refer to our full formal report of 1-
14 30-2, which is '02?

15 A Yes.

16 Q Did you refer to that?

17 A I didn't have it to refer to.

18 Q Did you inquire what happened to it?

19 A No, I reviewed all the files that were in our
20 electronic claim file.

21 Q Well when you see something like that -- you know what
22 a full formal report is; do you not?

23 A Yes.

24 Q You've now seen Crawford's full formal report which is

1 66A; have you not?

2 A Yes, I have.

3 Q Having now seen it, do you think that it might have
4 been something that would have helped you in evaluating
5 the case if you had gone after it?

6 MR. VARGA: Objection.

7 THE COURT: Overruled.

8 A It gave more descriptions about the case. It didn't
9 give the documented damages and it was a lot of
10 secondhand information. It was very new into the claim
11 file.

12 (By Mr. Pritzker)

13 Q It was very new into the claim file?

14 A Well, it was dated January 30th of 2002, so it was only
15 within a couple of weeks of the claim actually
16 happening.

17 Q Well, Crawford was doing what it was required to under
18 its obligations as a third-party administrator; was it
19 not?

20 A Required to whom? To Zurich or to GAF?

21 Q Under Exhibit 68, which is the Crawford/Zurich
22 agreement for TPA administration.

23 A We don't say send us a full formal report. That's
24 something that they have as an agreement with GAF.

1 Q You don't think, Ms. Fuell, that it is important since
2 you have the ultimate approval as to reserves and as
3 to settlement that you see a full formal report from
4 the TPA?

5 A It would be beneficial, but if we don't know the claim
6 exists, we don't know that they should be sending this
7 full formal report.

8 Q Do you know that Mr. McIntosh who never apparently
9 received Exhibit 66A, kept asking Ms. Mills for it?

10 A Yes.

11 Q Do you know that Ms. Mills sent it at least twice as
12 indicated in the Crawford claim notes and in her
13 testimony that you heard yesterday?

14 MR. VARGA: Objection.

15 THE COURT: Sustained.

16 (By Mr. Pritzker)

17 Q Do you know why it is that Mr. McIntosh thought that a
18 full formal report was needed but you do not?

19 MR. VARGA: Objection.

20 THE COURT: You know you can't ask her about
21 what somebody else is thinking, so.

22 (By Mr. Pritzker)

23 Q You didn't think you needed a full formal report, true?

24 A No, I think it would have been beneficial to have, but

1 I did not have it.
 2 Q And you didn't seek it?
 3 A No, I did not.
 4 Q When you first looked at what you looked at in
 5 September of 2003, instinctually you felt that this
 6 claim should be reserved at \$2 million; isn't that so?
 7 A I felt instinctually that our policy limits would
 8 possibly be exhausted but I needed something that would
 9 verify that.
 10 Q Instinctually you thought that the two thousand -- \$2
 11 million reservation limit that Crawford had been
 12 recommending since April of '02, should be approved;
 13 did you not?
 14 A No.
 15 Q No?
 16 A I couldn't approve a \$2 million recommendation without
 17 something to back it up. Our file has to speak for
 18 itself, \$2 million is a lot of money and we had all
 19 secondhand information via the Crawford reports. We
 20 needed something verifiable that would allow us to
 21 measure the damages and the exposure.
 22 Q At some point you received the plaintiffs' demand
 23 package; did you not?
 24 A Yes, I did.

1 Q The demand package was actually served on defense
 2 counsel prior to you joining Zurich; wasn't that so?
 3 I'm sorry, prior to you picking up the Rhodes file for
 4 the first time.
 5 A I'm not sure when defense counsel received it, I think
 6 he received it before I did.
 7 Q But you did receive it sometime in September?
 8 A Yes.
 9 Q And was that the kind of information that you needed as
 10 backup?
 11 A Yes, it was. That in addition to other things I
 12 pursued.
 13 Q So then you had everything that you needed, and what
 14 was your opinion as to whether or not the
 15 recommendation that Crawford had been recommending
 16 since April of '02 should be approved?
 17 MR. VARGA: Objection.
 18 THE COURT: Overruled.
 19 THE WITNESS: It was good information, it
 20 gave me a lot of good detail, but of a case of this
 21 exposure I needed to consult with our defense attorney.
 22 I needed to consult with our own experts and get the
 23 bigger picture, not only for ourselves but for
 24 reporting to AIG and GAF.

1 Q Let me understand, Ms. Fuell, you knew that the limit
 2 of liability under the primary policy was \$2 million,
 3 right?
 4 A Yes.
 5 Q You knew by the time you received -- well, let me back
 6 up. Would you look at Exhibit 10, which is one of the
 7 separate books, and it's is right under the one you are
 8 now --
 9 A Right underneath this one?
 10 Q It's Exhibit 10. It's a separate book.
 11 A Okay, I'm sorry. I'm sorry could you repeat the
 12 question?
 13 Q There is no question. Have you now got Exhibit 10 in
 14 front of you?
 15 A Yes.
 16 Q And is that the claim, the settlement demand that you
 17 received and looked at in September of '02?
 18 MR. VARGA: September of '02?
 19 MR. PRITZKER: I'm sorry, September of '03.
 20 A Yes, it appears to be.
 21 (By Mr. Pritzker)
 22 Q And also included with that was a videotape, "A Day in
 23 the Life of Mrs. Rhodes"; isn't that so?
 24 A Yes.

1 Q Didn't that, by itself, support the recommendation that
 2 Crawford had been making since April of '02 to increase
 3 the reserves to \$2 million?
 4 Q It gave me a very good basis, but when I seek such
 5 reserve authority, I need a lot of documentation and
 6 backup for my management. If I were to say based on
 7 this alone, can I have \$2 million in reserve authority,
 8 they would also say do defense attorney reports say,
 9 what does life care plan say. So I had to continually
 10 seek information.
 11 Q You knew that this claim was now almost two years old;
 12 did you not?
 13 A Yes.
 14 Q As far as when the accident occurred. You knew that
 15 Mrs. Rhodes was rendered a paraplegic; did you not?
 16 A I knew when I received this.
 17 Q You didn't know before you received this, ma'am?
 18 A It was stated to me, but I didn't have any medical
 19 documents that said she was a paraplegic. In
 20 Crawford's report it said she was a quadriplegic, I
 21 believe.
 22 Q It also said she was a paraplegic; did it not?
 23 A It said she was paralyzed, yes.
 24 Q All the time that Mr. Chaney was on the file during

1 2002, she was properly described as a paraplegic; was
 2 she not?
 3 A I don't remember exactly what phrase they used. In
 4 each report they indicated she was paralyzed. They
 5 indicated they didn't have any medical information so
 6 they were being reported that information from some
 7 outside source.

8 Q And notwithstanding that fact that your adjustor, who
 9 was acting as Zurich's agent reported her as a
 10 paraplegic, you felt you needed backup for that?

11 MR. VARGA: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: Yes, I did.

14 (BY Mr. Pritzker)

15 Q Did you ever hear about a medical authorization form?
 16 A Yes.

17 Q What does that mean to you?

18 A It's a form that we ask, or someone may ask the
 19 claimant or their attorney to provide, that allows us
 20 to obtain medical information.

21 Q And that's pretty standard operating procedure, is it
 22 not, when a claim comes into an insurance company, to
 23 ask for a medical authorization form?

24 MR. VARGA: Objection.

1 THE COURT: Overruled.

2 A Not on a claim where the plaintiff is already
 3 represented and we already have defense counsel. The
 4 defense attorney may have asked for a medical
 5 authorization.

6 Q It's pretty easy to ask for that, wasn't it?

7 A Yes, but we had defense counsel on it and it would be
 8 defense counsel's role to ask for such documents.

9 Q Well, did you interface with defense counsel?

10 A No, it wasn't my -- it was Crawford as the frontline
 11 claim handler's obligation to interact with defense
 12 counsel.

13 Q Well, if Crawford as your agent, if it was their
 14 responsibility and if you think that you needed backup
 15 for the fact that Mrs. Rhodes was really paralyzed,
 16 couldn't you have picked up the phone to Crawford and
 17 say: Hey, get a medical authorization form, look at
 18 the hospital records and tell me whether or not she's
 19 really paralyzed?

20 A We were asking Crawford to get any information they
 21 could to verify the damages. Crawford was asking our
 22 defense counsel to obtain such information.

23 Q Do you see that in Exhibit 10 there is a rather
 24 detailed description of Mrs. Rhodes' injuries?

1 A Yes.

2 Q Starting on page 8?

3 A Yes.

4 Q The amount of time that she was at the Milford
 5 Whittinville Regional Hospital, on page 9?

6 A Yes.

7 Q The amount of time that she was at the UMass Medical
 8 Center?

9 A Yes.

10 Q The amount of time that she was at the Fairlawn
 11 Rehabilitation Hospital?

12 A Yes.

13 Q The amount of time that she was at the Milford
 14 Whittinville Regional Hospital when she had to go back
 15 there on an emergency basis?

16 A It states when she treated there. I'm looking to
 17 see -- I don't see exact dates. She was there for one
 18 week.

19 Q On page 10, the attempts at therapy and Marcia's
 20 setbacks, which go on for two and a half pages, parts
 21 of three pages?

22 A Yes.

23 Q And based upon all of that, you still felt that you
 24 needed some backup before you could recommend raising

1 the reserves to \$2 million?

2 A As we'll get to, my report that I need to give to
 3 management of a case in the amount of money I was
 4 asking for, is very detailed. I needed to also have
 5 defense attorney's evaluation, I needed legal budget
 6 information, I needed defense counsel to assist me with
 7 review of this information in assessing the impact of
 8 this information that I had just received. It was an
 9 ongoing process of trying to review this and obtain
 10 additional information.

11 Q Now, one of the exhibits to this report was the police
 12 reports, right?

13 A Yes.

14 Q If you look at the sections that are divided by blue
 15 notes, the first section is a police report?

16 A Medway Police Department incident report; is that what
 17 you are referencing?

18 Q Yes.

19 A Yes.

20 Q The second is a deposition transcript of Carlo

21 Zalewski?

22 A Yes.

23 Q The third is another police report?

24 A Yes.

1 Q The fourth is the deposition of Trooper Edward O'Hara?
 2 A I'm sorry, I see the answer to the plaintiff's second
 3 amended complaint. You're looking for the deposition
 4 of the trooper?
 5 Q I think you've probably --
 6 A Passed it.
 7 Q If you look at -- do you see the Bates numbers on the
 8 bottom?
 9 A Yes.
 10 Q That's not going to help you either.
 11 MR. PRITZKER: May I approach, your Honor?
 12 THE COURT: You may.
 13 A I'm sorry, I found it. Deposition of Trooper M.
 14 O'Hara?
 15 Q Yes.
 16 Q What's the next section?
 17 A Pardon me?
 18 Q The next section after O'Hara?
 19 A More on the Medway Police Department incident report.
 20 Q And the next section?
 21 A Defendant Carlo Zalewski and Driver Logistics Inc.'s
 22 Answer to Plaintiff's Second Amended Complaint.
 23 Q And the next section?
 24 A Building Material Corporation's Answer to Plaintiff

1 Marcia Rhodes' First Set of Interrogatories.
 2 Q And there's a lot of other documents that are attached
 3 to this; is there not?
 4 A Yes.
 5 Q Was there any question as to the responsibility of the
 6 driver after you looked at Exhibit 10?
 7 A It was clear that Mr. Zalewski's actions contributed in
 8 large part to this accident.
 9 Q In the most large part; isn't that so?
 10 A Well, we were considering outside parties, but yes, he
 11 had a large factor in the accident.
 12 Q All right. And if you go back to the text of the
 13 letter itself it discloses, does it not, the life-care
 14 plan that the plaintiffs were presenting as future
 15 damages for Mrs. Rhodes; isn't that so?
 16 A There is a damages section that states what type of --
 17 Q If you look at page 14.
 18 A Okay, future annual costs?
 19 Q Yes.
 20 A As cost projections prepared by Adele Collard, yes.
 21 Q So you knew that as of the time in September that you
 22 reviewed plaintiffs' demand; isn't that so?
 23 A Yes.
 24 Q All right. And you knew that aside from the life-care

1 plan there were also projected episodic costs?
 2 A Yes.
 3 Q And on page 16, the cost of the past medicals, future
 4 life-care needs, future episodic costs, and loss of
 5 household costs, totaled \$2,817,419; did it not?
 6 A You state the special damages, that fourth total, yes.
 7 Q Now, Zurich has access to all kinds of medical
 8 information as part of its own adjusting facilities;
 9 isn't that so?
 10 MR. VARGA: Objection.
 11 THE COURT: Overruled.
 12 A Access to medical facilities or medical --
 13 (By Mr. Pritzker)
 14 Q Yes.
 15 A As a TPA oversight, I don't -- are you talking about
 16 medical management, or what are you specifically
 17 referencing?
 18 Q I'm referencing the fact that if a claim were being
 19 handled within Zurich, it has access to medical staff
 20 who can assess the value of injuries and costs; does it
 21 not?
 22 A We have areas that we can consult with to ask for
 23 assistance in reviewing medical. We have -- it's --
 24 our worker's compensation area deals with that more, so

1 I'm not as familiar. Not being the -- not having
 2 directly handled claims at Zurich, I'm not familiar
 3 with exactly what they are.
 4 Q Well, but generally you know that the field office has
 5 access to certain expertise to evaluate medical
 6 injuries or medical damage; isn't that so?
 7 A Yes.
 8 Q All right. And you also mentioned, I think earlier in
 9 your testimony, that one of the things that you needed
 10 was your own life-care plan.
 11 A Correct.
 12 Q Did that have to await for disclosure of the
 13 plaintiffs' life-care plan?
 14 A We couldn't have a life-care plan evaluation done
 15 without all of the damages that were presented in this
 16 demand package.
 17 Q You couldn't?
 18 A No, not based on the information that Zurich had.
 19 Q Well, aside from --
 20 A I don't know what --
 21 Q -- the information that Zurich had, as a team of
 22 Crawford, defense counsel and Zurich, you certainly
 23 could have retained a life-care planner; could you not?
 24 A I didn't know to what extent we had received damages

1 that would be sufficient for a life-care planner to
 2 review this. The reports from Zurich said that even
 3 defense counsel only had partial medical information.
 4 Q How long did it take you -- strike that.

5 At the time that you received Exhibit 10, you
 6 knew that Mrs. Rhodes had been injured for one year and
 7 nine months; isn't that so?

8 A Approximately. From January 9 through the time I
 9 picked up the file, yes.

10 Q Did you put this in some kind of a fast track to
 11 resolve the approvals that Zurich needed so that this
 12 poor, injured woman could get the benefit of Zurich's
 13 \$2 million policy?

14 A I did everything that I could to try to obtain
 15 additional information that I needed so that I could
 16 present my recommendations to my management and move
 17 the case toward settlement.

18 Q Once again, Ms. Fuell, all you needed to present to
 19 management was that it was more likely than not that
 20 Zurich was exposed for over \$2 million; isn't that so?

21 MR. VARGA: Objection.

22 A No.

23 THE COURT: Overruled.

24 (BY Mr. Pritzker)

1 Q That's not so?

2 A No. I needed to present measurable damages; I needed
 3 to present defense evaluation of the merits of legal
 4 defenses; I needed to have a handle on the coverage
 5 issues; I needed to present it all in a package.

6 Q When did you present this package to management?
 7 A The formal BI claim report was presented in December
 8 2003, my formal report.

9 Q When was it approved?

10 A January 2004.

11 Q And at the time that it was approved -- January what
 12 2004?

13 A I believe January 22 to 23, 2004.

14 Q Over two years after this accident?

15 A Yes.

16 Q And the approval was what?

17 A I had made a recommendation in my report that we tender
 18 our policy -- that we raise our reserves to \$2 million,
 19 that we tender our policy limits to AIG, and we try to
 20 gear the case toward settlement posture, through AIG as
 21 a global settlement.

22 Q If we can, let's look at trial Exhibit 19. That will
 23 be in Volume 1.

24 THE COURT: You referred to this as a BI

1 claim report. What does "BI" stand for?

2 MR. PRITZKER: Bodily injury, I believe.

3 THE COURT: I'm asking her.

4 THE WITNESS: It is bodily injury claim
 5 report, yes.

6 THE COURT: Okay.

7 MR. ZELLE: Mr. Pritzker will testify soon
 8 enough.

9 THE COURT: The record shall reflect Mr.
 10 Zelle was speaking in jest. Okay. Let's proceed.

11 (BY Mr. Pritzker)

12 Q Is this the report that you prepared?

13 A Yes.

14 Q Can you take a look, Ms. Fuell, first at the
 15 information on page 1 of that report and tell me what,
 16 if anything, was not known to Zurich well before you
 17 picked up this claim.

18 A We did not know what our legal expense reserve was. We
 19 did not know -- we knew what our policy provided.

20 Just on page 1?

21 Q Yes.

22 A Just solely isolated on this? It would be our lack of
 23 knowledge about the expense reserve exposure and what
 24 we might want to -- what had been paid to date for

1 that.

2 Q And how long did it take you to obtain that information
 3 from the time that you first picked up this file?

4 A The legal budget?

5 Q Yes.

6 A I asked for it. I had to ask for it several times. I
 7 believe I got it sometime in early 2004. It was after
 8 this report was prepared.

9 Q So you still didn't have it as of the time that you
 10 presented this to management?

11 A Correct.

12 Q And that's the only thing in here that you didn't know
 13 as of the time that you picked up the file, on the
 14 first page?

15 A Yes.

16 Q Let's go to the second claim, the description of the
 17 loss.

18 A Mm-hum.

19 Q Where did you pick up that description of the loss?

20 A I think that it was something that I prepared in
 21 conjunction with my review of the defense attorney case
 22 evaluation Crawford reports, the information that I had
 23 in the imaging system.

24 Q And that was already in the imaging system?

1 A As of the time of this report.

2 Q So that's not something that you waited to review the
3 plaintiffs' demand, Exhibit 10, before reporting?

4 A Before?

5 Q Before preparing this document?

6 A I'm sorry. It's not something I waited for what?

7 Q Strike that.

8 The information that you were relying on was
9 in Zurich's claim file, electronic claim file, prior to
10 your becoming involved in the case; isn't that so?

11 MR. VARGA: Objection.

12 THE COURT: Overruled.

13 A There's certain information that I don't remember
14 exactly when it became available. There's information
15 about the Town of Medway and the tree service that I
16 know we were discussing in our November 2003
17 teleconference. I was getting a lot of information at
18 that time, so I can't recall exactly where I obtained
19 this information.

20 (By Mr. Pritzker)

21 Q Well, that description of the loss doesn't do a lot of
22 -- strike that -- it doesn't spend a lot of time
23 talking about how the accident actually happened, does
24 it?

1 A It lists a lot of key players and participants in the
2 accident. It was an auto accident in which Mrs. Rhodes
3 was struck by a vehicle, but it also outlines several
4 different parties that were involved in this.

5 Q Does it talk about the straightness of the roadway?

6 A No.

7 Q Does it talk about the distance that the truck driver
8 traveled with clear visibility of Mrs. Rhodes' stopped
9 vehicle?

10 A Under description of loss?

11 Q Yes.

12 A No.

13 Q Or anywhere in this?

14 A It's about his sight, line of sight. Is that what
15 you're talking about specifically?

16 Q Yes.

17 A No, I don't believe I included that.

18 Q Did you include the fact that the officer was in full
19 uniform and wearing an orange vest?

20 A Are you reading that from any particular spot?

21 Q No.

22 A I don't have this memorized. Bear with me.

23 Q Well, if you looked at the police reports, it would
24 become pretty clear, would it not, Ms. Fuell, that the

1 officer was six-foot-four, was wearing a full uniform,
2 was wearing an orange vest, and was wearing white
3 gloves; isn't that so?

4 A I'd have to look at the police report to say exactly
5 what it said.

6 Q Well, we won't spend that time. Did you make reference
7 to the fact that the officer was wearing an orange
8 vest, white gloves, and was six-foot-four and was in
9 clear visibility of Zalewski's sight line?

10 A No, I did not.

11 Q Do you think that that would have made a difference,
12 since you're later on talking about other potentially
13 responsible parties to this accident, in reporting that
14 to your superiors?

15 A No. For me asking for my \$2 million reserve in
16 settlement authority?

17 Q Well, I thought you said that it wasn't just the 2
18 million that you were focused on, but you had to report
19 accurately all the information for AIG. Didn't you say
20 that?

21 A This report is an internal document; it doesn't go to
22 AIG.

23 Q So for you to get your approval, once again all you
needed was to show your superiors that there was a more

1 likely chance than not that the exposure of the \$2
2 million Zurich policy was going to be exhausted.

3 A I had to explain it to them in regards to both the
4 measurable damages in regards to our -- GAF's
5 responsibility to these other players and any
6 responsibility these other players may have to GAF.
7 It's a complex case that had a lot of factors that you
8 had to consider.

9 Q Under number 2, on the second page of your report, you
10 talk about coverage issues. Would you read that please
11 out loud?

12 A (Reading): A Reservation of Rights Letter was issued
13 July 2003 to advise Driver Zalewski and DLS of their
14 potential exposure for independent negligence, which
15 would not be covered for the contractual agreement
16 between GAF and DLS. This was pursuant to a coverage
17 opinion provided by outside counsel at Taylor, Duane,
18 Barton & Gilman.

19 Q What did you understand the independent negligence to
20 be that would not be covered?

21 A There was a question throughout the life of the file
22 list to Penske, the owner of truck and their
23 independent negligence?

24 Q I don't think that's what we're talking about, is it?

1 A Well, I've given you my full answer.
 2 Q Well, I wish, Ms. Fuell, that you would give the answer
 3 to my question.

4 MR. VARGA: Your Honor, I have to ask that
 5 the court allow the witness to at least finish the
 6 answer to the question.

7 THE COURT: Well, you didn't mention Penske
 8 in your discussion of coverage of issues, did you?

9 THE WITNESS: That's true, I did not mention
 10 Penske in this section.

11 THE COURT: So with regard to those persons,
 12 you chose not to reference Penske when you discussed
 13 any issue with regard to coverage issues.

14 THE WITNESS: Correct.

15 THE COURT: And why at that time did you
 16 choose not to include any mention of Penske?

17 THE WITNESS: I referenced them later on in
 18 the report.

19 THE COURT: But not under coverage issues.

20 THE WITNESS: No.

21 THE COURT: All right. And with regard to
 22 those persons you did identify, Zalewski and DLS, what
 23 did you understand to be the coverage issue?

24 THE WITNESS: I understood that there was a

1 question of what type of policies of insurance they
 2 had, what degree of control our insured had over Mr.
 3 Zalewski and DLS, if our insured was primary or excess
 4 in conjunction with any other policies that were
 5 available to DLS and Mr. Zalewski.

6 (By Mr. Pritzker)

7 Q That's not what you say in number 2, is it, Ms. Fuell?
 8 A I say that a Reservation of Rights Letter was issued to
 9 advise of their potential exposure to independent
 10 negligence.

11 Q Exposure for independent --

12 A For independent negligence.

13 Q And my question to you is, what did you understand the
 14 independent negligence issue was?

15 A There was some reference to DLS having negligent --
 16 hiring negligent training and supervision, and that
 17 would be independent negligence of DLS that might not
 18 be covered under our policy.

19 Q All right. So you understood that the reservation of
 20 rights didn't deal with Zalewski's operation of the
 21 vehicle on January 9, 2002, but rather whether or not
 22 if the plaintiffs proved independent negligence, that
 23 DLS was negligent in hiring Zalewski, that might not be
 24 covered? Is that your understanding?

1 A I'm trying to think it through in terms of the --
 2 overall it's a very complicated coverage position.
 3 There was independent negligence on the part of DLS,
 4 separately from Mr. Zalewski.

5 Q That's what the issue and that's what the reservation
 6 was?

7 A In addition to the other. We reserved our rights to
 8 indemnification for both Mr. Zalewski and to DLS for
 9 this loss, based on the other insurance that might be
 10 available.

11 Q You didn't say that here, did you?

12 A No, but I believe at the end I said we were continuing
 13 to review our coverage.

14 Q Let's go to the description of the injuries on page 3
 15 of your report. Was there anything in that description
 16 that wasn't in your claim file when you first picked it
 17 up?

18 A This information I obtained from the demand package
 19 that we received when I first picked it up.

20 Q You also could have picked it up from Jodie Mills'
 21 formal report; could you not?

22 A Jodie Mills had reference, yes, to certain aspects of
 23 her injury.

24 Q So you didn't even have to wait for Exhibit 10 because

1 it was in the electronic claim file, wasn't it?

2 A Wait for Exhibit 10 to describe an injury.

3 Q To describe Mrs. Rhodes' injuries.

4 A Yes, to describe the verbal information Crawford was
 5 receiving about the injuries.

6 Q Now, if we can, let's go to the next page, page 4.

7 This was your opportunity, was it not, to evaluate the
 8 case for management, true?

9 A And I know, and we'll get to the fact that you made a
 10 mathematical error, or at least a typo error in doing
 11 this.

12 A Correct.

13 Q But let's first understand what it was you were trying
 14 to do. You were trying, were you not, to show to
 15 management what the potential exposure was to this
 16 case; isn't that so?

17 A Yes.

18 Q And in doing so you were relying, in part at least, on
 19 numbers provided by counsel in Exhibit 10; isn't that
 20 so?

21 A Yes.

22 Q And you put down three ranges for your probability of
 23 the value of the case, did you not, low, median, and
 24 high?

1 A Yes.
 2 Q In doing that, you utilized a Zurich program in which
 3 you plugged in the medical damages and the future
 4 medical bills, and the program gave you certain
 5 numbers; isn't that so?
 6 A This report is a Word document and embedded within the
 7 document is Excel spreadsheet that has formulas built
 8 in to do the calculations.
 9 Q So if you put in the hard data, it, for instance, fills
 10 in the pain and suffering?
 11 A No. I have to fill in pain and suffering.
 12 Q Oh, so you did that yourself?
 13 A Yes.
 14 Q I didn't understand that. But once you do that, how do
 15 you get to the low, median and high, or do you fill
 16 those in as well?
 17 A The subtotal section of low, median and high, the
 18 detailed total and the estimated value, the darker
 19 sections, are cells that have formulas in them.
 20 Q Okay. And at least with the numbers that you were
 21 utilizing, the detailed total was low: \$15,317,000; the
 22 50 percent median was seventeen thousand -- let me
 23 start again.
 24 The subtotal for ten percent low was

1 \$15,317,000, true?
 2 A True
 3 Q The median was \$17,817,000, right?
 4 A Yes.
 5 Q And the high was \$20,567,000, right?
 6 A And then somehow you came to an estimated value, in
 7 quotes, of total damage award. And what is the
 8 estimated value of the total damage award? How is that
 9 calculated?
 10 A That's calculated by the Excel spreadsheet formulas.
 11 Q And it's either a median or it's an average, or
 12 something like that?
 13 A Right. It's a weighted average.
 14 Q Now, we all know, Ms. Fuell, that in the past medical
 15 bills, you picked up the total economic damage that was
 16 reported to you in Exhibit 10 by the plaintiffs; isn't
 17 that so?
 18 A Right. I incorrectly plugged in past and future
 19 medicals and costs.
 20 Q And then the future medical bills have different
 21 numbers attached to them; do they not?
 22 A Yes.
 23 Q Where do those come from?
 24 A From areas of your expert's life-care plan and our

1 expert's life-care plan. It gave ranges -- the life-
 2 care plan didn't specifically say "here are future
 3 medicals and this is a total of what we think it will
 4 cost." There were a lot of numbers going back and
 5 forth on estimated future costs for medicals, for
 6 medical supplies, for attending care, so I pulled those
 7 numbers out of some calculations in one of those two
 8 documents or defense counsel's reports.
 9 Q Did you yet have the defense life-care plan?
 10 A I don't remember. I referenced what the defense
 11 attorney report said in terms of these are
 12 possibilities for future costs. I don't believe that
 13 there was a version of our life-care plan that was
 14 dated sometime in November of 2003.
 15 Q Let's go back to Exhibit 10 again. You just said that
 16 the plaintiffs didn't identify the various elements of
 17 the life-care plan. But I believe that if you look --
 18 A I said they didn't total it up.
 19 Q Well, I believe they did. If you look at page 14 of
 20 Exhibit 10, do you see that there's two numbers right
 21 in the middle of the page; the cost of life-care
 22 planning, with 34.7 years remaining, and another number
 23 for life-care planning with 24.4 years remaining, and
 24 then an average?

1 A Yes.
 2 Q And then beyond that do you see that there's a future
 3 episodic costs on the next page?
 4 A Yes.
 5 Q And when you combine the two, do you see on page 15,
 6 right down on the bottom, the average present value of
 7 combined future needs?
 8 A Are you talking about Section E on page 15?
 9 Q Yes.
 10 A Yes.
 11 Q So that was the combined future needs before loss of
 12 household services, right?
 13 A Right.
 14 Q And not including the actual out-of-pocket costs that
 15 had occurred at the time of this report, of this
 16 letter, isn't that so, if you look at 16?
 17 A Correct.
 18 Q And when you add all of that up, it comes to special
 19 damages of \$2,817,419, right?
 20 A For present and future costs, yes.
 21 Q So that's all added up for you.
 22 A By you, yes.
 23 Q Now, let's go back, if we can, to what you were doing
 24 on Exhibit 19. You pick up the \$2,817,000, which is

1 what the plaintiffs were claiming as their total
 2 economic past and future, right?
 3 A Yes, I did.
 4 Q And then you added future medical bills in the next
 5 line item?
 6 A Yes, I did.
 7 Q So the future medical bills are wrong.
 8 A Yes -- well, you had presented that the life-care plan
 9 was a certain projected estimate and I knew that
 10 defense, we would have our own life-care plan.
 11 Typically a defense life-care plan is somewhat lower
 12 than a plaintiff life-care plan.
 13 Q But I don't understand. What is it on future medical
 14 bills that you were doing? You were trying to use
 15 defenses? You were trying to use plaintiffs? You were
 16 combining the two?
 17 A I was trying to come up with what, between all of the
 18 information I had at hand, looked to be a reasonable
 19 running theme or average. I knew I wasn't going to get
 20 an exact dollar and I didn't sit down and write every
 21 single number down and calculate it out.
 22 Q Okay. So you put down what is the error on the first
 23 column on these entries that you're looking at, which
 24 is the low column, how much is this off by?

1 A One million -- past medical bills were approximately
 2 413,000.
 3 Q Correct.
 4 A So in the section where I say they were 2.8 million
 5 would be the difference, 2.4 million.
 6 Q And is it the same error on the next column?
 7 A No. I think the future medical bills were properly
 8 projected.
 9 Q On the middle one?
 10 A Correct.
 11 Q So what is the error on the middle one?
 12 A For future medical?
 13 Q Yes.
 14 A I don't think there's an error.
 15 Q What is the error in the entire calculation of the
 16 middle column?
 17 A On the fifty percent median?
 18 Q Yes.
 19 A The \$2.817 million figure.
 20 Q And what is the error on the high column?
 21 A The same figure.
 22 Q And are there any other errors on the first column down
 23 to the subtotal?
 24 A No. The pain and suffering is a very subjective

1 number. The future medical bills was an estimate, so I
 2 don't think there were any errors.
 3 Q But you put the pain and suffering number in there; did
 4 you not?
 5 A Yes, I did.
 6 Q And what did you use in order to calculate what a
 7 reasonable pain and suffering amount would be? How did
 8 you go about doing it?
 9 A I looked at defense attorney's analysis and your demand
 10 package and worked from a worst-case scenario, if you
 11 blackboarded it at trial and you received an award for
 12 everything you were asking for. And then I worked
 13 backwards and reduced accordingly.
 14 Q So if you look at the first column on page 4 of Exhibit
 15 19, the total would have been \$15,317,000, less 2.4
 16 million, or approximately \$13,000,000; is that correct?
 17 A Yes. I hadn't at that time received -- I was trying to
 18 do jury verdict analysis and get some better handle on
 19 the pain and suffering, but those were figures that I
 20 had available to me at that time.
 21 Q And you have had quite a bit -- you had had at the time
 22 that you prepared Exhibit 19 quite a bit of experience
 23 in adjusting; isn't that so?
 24 A Yes, I had.

1 Q And in the median column, the error was \$2.8 million,
 2 so instead of \$17,817,418 -- oh, I think you said --
 3 A The error was the 2.4 million throughout all three
 4 columns.
 5 Q Okay. So if you would subtract 2.4 million from the
 6 median column, it would come out to \$15,400,000,
 7 approximately; is that so?
 8 A Yes.
 9 Q And if you subtract the 2.4 million from the high
 10 column, it comes out to \$18,100,000, approximately?
 11 A Yes.
 12 Q And I'm sure you didn't both to recalculate what the
 13 computer would have told you, therefore, the projected
 14 value of the case is?
 15 A I did not.
 16 Q But presumably it's somewhere between 13 and \$18
 17 million; is that so?
 18 A It's less than 17 million.
 19 Q And I know you told me at your deposition that that
 20 would not -- that error would not have made any
 21 difference in your recommendations that you included in
 22 Exhibit 19, true?
 23 A True.
 24 Q Were those numbers ever communicated to AIG?

1 A No.

2 Q You have a last demand in here on page 5 of Exhibit 19,
3 of --

4 THE COURT: Before we leave page 4, when you
5 say ten percent low, what does that mean?

6 THE WITNESS: It's kind of convoluted. It's a
7 weighted average with the middle range being the
8 probable, you know, value of the case considering jury
9 verdict potential, concerning settlement value,
10 considering, you know, going to trial verdict
11 potential. The ten percent is if, on any given day, we
12 presented our Zurich numbers or AIG numbers, and
13 everything we presented and evaluated were accepted.

14 The ten percent high is, if, you know, it
15 went to trial and everything Mr. Pritzker would have
16 presented was accepted by a jury.

17 THE COURT: So, in essence, are you giving
18 essentially best case for insurance company, worst case
19 for insurance company and --

20 THE WITNESS: And probable middle ground,
21 yes.

22 THE COURT: Okay.

23 MR. ZELLE: Your Honor, I'm going to move to
24 strike this entire line of questioning. Unless there's

1 going to be some foundation laid for this software
2 program, maybe Ms. Fuell can do it, but I understand
3 this was not communicated to AIG; however, it is
4 something by which the court can make its own
5 consideration as to what was or was not a reasonable
6 settlement value. And where we don't have a foundation
7 for the software or the embedded calculations, I
8 suggest that it is inappropriate for the court to
9 consider the values as raw numbers.

10 THE COURT: That's overruled. The software
11 basically just helped you to figure out what the
12 estimated value is. You put in the rest.

13 THE WITNESS: Right.

14 (By Mr. Pritzker)

15 Q And that estimated value basically being an addition --
16 it's an addition function, and then --

17 THE COURT: I'm sorry, it's -- well, we'll
18 let her testify.

19 Is it fair to say that the estimated value is
20 generally going to be quite similar to the median
21 value?

22 THE WITNESS: Well, and it's going to weigh
23 in factors of percentages of liability, probability of
24 a defense verdict versus finding some portion of the

1 plaintiff verdict.

2 THE COURT: But in this case it was within
3 \$80,000 of the -- I'm sorry, within \$63,000 of the
4 median.

5 THE WITNESS: Yes.

6 THE COURT: Okay. Proceed.

7 (By Mr. Pritzker)

8 Q Just for clarification, Ms. Fuell, if you look at the
9 ten percent low column, the subtotal was apparently
10 down by the program?

11 A Yes.

12 Q And that is in addition function of the three numbers
13 above the subtotal?

14 A Yes.

15 Q And in the median column, the first three numbers on
16 that are again added, and the computer only adds for
17 you the numbers?

18 A Yes.

19 Q And on the high column, the first three numbers going
20 down are added, and the computer actually puts in the
21 addition?

22 A Yes.

23 Q So as to the 15 million-odd, 17 million-odd, and 20
24 million-odd numbers, the computer has done nothing but

1 an addition function?

2 A Correct.

3 Q And then when you get down to the detailed total, it's
4 the same addition number as in the subtotal because you
5 didn't put in anything for loss of consortium, did you?

6 A Correct.

7 Q Why didn't you put in anything for loss of consortium?

8 A I don't know why I did not.

9 Q Is it fair to say that these numbers do not include a
10 factor for loss of consortium?

11 A Well, I think future medical considered a lot of
12 attended care needs, but it didn't specifically give
13 loss of consortium.

14 Q Right below that, under "Liability Analysis," there's a
15 Probability of Plaintiffs' Verdict." Do you see that?

16 A Yes.

17 Q What did you put in there?

18 A One hundred percent.

19 Q Is that your number?

20 A Yes. I didn't feel there would be any negligence
21 attributed to Mrs. Rhodes.

22 Q And you attributed 60 percent to Zalewski, right?

23 A Yes.

24 Q And 20 percent to other insureds -- I'm sorry, to

1 insured, which meant who?
 2 A GAF and any type of employer, statutory obligation they
 3 might have to Mr. Zalewski and DLS. The -- go ahead.
 4 I'm done, sorry.
 5 Q This time I was going to let you answer.
 6 On the bottom of page 4, do you see: Per
 7 defense counsel, a recent paraplegic case in Rhode
 8 Island resulted in a \$19 million verdict?
 9 A Yes.
 10 Q So you knew that at the time of this, true?
 11 A That's what he had stated in the teleconference. I had
 12 asked him to back it up with something and I don't
 13 recall receiving that.
 14 Q Did that surprise you, given the numbers that you were
 15 working with at the top of page 4?
 16 A \$19 million seemed very high to me. Usually we can
 17 find a range of verdicts.
 18 Q Okay. If you can go back again to Exhibit 10, you'll
 19 see that on the last page of the text on page 17, the
 20 demand was sixteen million five.
 21 A I'm sorry, on the very last page, right?
 22 Q Yes, of the text.
 23 A Yes.
 24 Q Did you feel that that was out of hand, given the

1 numbers that you were working on on Exhibit 19?
 2 A It was a demand that you were making against all of the
 3 parties involved. I felt it was a high demand.
 4 Q Well, the numbers that you were working on were
 5 surprisingly close to that demand; were they not?
 6 A Yes.
 7 Q Once again, did you think that that demand as a demand
 8 for settlement was unreasonable?
 9 A I thought it was on the high end.
 10 Q We know that Mr. Chaney had already reported that he
 11 didn't think it was on the high end; isn't that so?
 12 MR. VARGA: Objection.
 13 THE COURT: If she knew that when she wrote
 14 this.
 15 A I would have to look at -- are you referring to Mr.
 16 Chaney's --
 17 (By Mr. Pritzker)
 18 Q Why don't we look at it, Exhibit 66L, in Volume 2.
 19 A Yes.
 20 Q Do you see under "Positioning"?
 21 A On the first page?
 22 Q No. This is on the second page. Down near the bottom
 23 there's a paragraph that says "Positioning." Do you
 24 see a sentence that says: Be aware that plaintiffs'

1 counsel is a successful, big-case lawyer.
 2 MR. PRITZKER: I had to read that into the
 3 record, your Honor.
 4 THE COURT: The record shall reflect that
 5 you're smiling when you do, yes.
 6 MR. VARGA: I think he was talking about Mr.
 7 Brown.
 8 (By Mr. Pritzker)
 9 Q Starting there, we're starting at the end of that
 10 sentence I just read, would you read into the record
 11 his next phrase.
 12 A (Reading): His demand is not unreasonable or out of
 13 hand, given the specials of just under "something"
 14 million.
 15 Three million, maybe?
 16 Q It's three million.
 17 A Hm-hmm.
 18 Q And you read that when you received it, didn't you?
 19 A Yes.
 20 Q And you read that prior to submitting to management
 21 Exhibit 19, true?
 22 A Yes.
 23 Q So you knew that defense counsel was reporting a
 24 verdict of 19 million; you knew that your own numbers

1 came up with 17 million, granted with an error in them;
 2 you knew that Crawford had submitted a report saying
 3 that 16.5 was not unreasonable or out of hand, true?
 4 A I knew that if this were a case that went through the
 5 entire litigation process and went to trial, there was
 6 a potential there it could get a high million-dollar
 7 verdict.
 8 THE COURT: I'm sorry. You write: Last
 9 demand 19.5 million. Where did you get that from?
 10 THE WITNESS: I'm trying to remember if it
 11 was from the legal report or Crawford report. I was
 12 looking at a lot of documents when I was writing this.
 13 THE COURT: But that differed from the demand
 14 letter.
 15 THE WITNESS: From the demand package.
 16 THE COURT: So you were aware that it was
 17 higher than the demand letter?
 18 THE WITNESS: Yes, that was a mistake.
 19 THE COURT: I'm sorry?
 20 THE WITNESS: I made a mistake when I wrote
 21 that as the last demand in my BI claim report.
 22 THE COURT: So you viewed this to be a
 23 mistake?
 24 THE WITNESS: Yes, because the demand package

1 from Mr. Pritzker said 16.5 million.

2 THE COURT: So when you say the demand was
3 high, do you mean the 19.5 million that you understood
4 it to be or do you mean the 16.5 million that was
5 stated in the report?

6 THE WITNESS: I thought 16.5 million was
7 high.

8 (By Mr. Pritzker)

9 Q Ms. Fuell, you know that this demand was not responded
10 to until, at the earliest, of March 31, 2004, don't
11 you?

12 A Yes, I do.

13 Q And that's when you authorized defense counsel to offer
14 the policy limits to the plaintiff for a full release
15 of the defendants; isn't that so?

16 A Yes.

17 Q Not before that, true?

18 A Not before then did I authorize that? Is that what
19 you're saying?

20 Q Yes.

21 A No, I had not. I had given the authority to go ahead
22 and tender the limits and use the limits by giving
23 reserve authority to Crawford, giving our limits to
24 AIG, yes.

1 Q Let's clarify it, but before we clarify that and before
2 you put away Exhibit 19, you know that there was no
3 offer of settlement to plaintiffs' demand, which was
4 dated August 13, 2003, until March 31 of 2004; isn't
5 that so?

6 A Yes.

7 Q And in between, do you remember that the plaintiffs
8 actually sent out a new demand?

9 A I don't remember receiving any demand. I know I was
10 trying to work to get something out to AIG and to move
11 the case along behind the scenes. I didn't know if
12 Crawford or our defense attorney had responded to the
13 demand.

14 MR. ZELLE: Your Honor, I don't think that
15 was responsive to the question. I move to strike.

16 THE COURT: Motion to strike is allowed.

17 (By Mr. Pritzker)

18 Q Directing your attention to page 6, the last page of
19 Exhibit 19.

20 A Yes.

21 Q It's true, is it not, Ms. Fuell, that you and I never
22 talked before this case started?

23 A We did not.

24 Q And you have a note in there at the top that

1 plaintiffs' counsel has stated that he will not agree
2 to participate in any voluntary mediation of this claim
3 unless the co-defendants commit to a minimum settlement
4 offer of \$5 million. Where did you get that
5 information?

6 A That was information that I understood from a November
7 29 teleconference I had with defense counsel, AIG
8 Crawford.

9 Q Well, if you go back to the Crawford note, do you
10 remember John Chaney stating that plaintiffs' counsel
11 would not agree to go to mediation unless a good-faith
12 offer was submitted? Do you remember that?

13 A Are you talking about John Chaney's November note?
14 What note are you talking about?

15 Q Yes. If you go back to the same document we were just
16 looking at, Exhibit 66L, under "Positioning".

17 A Yes.

18 Q Right under what you just read at my request, or right
19 after that sentence which ends 3 million, he states:
20 He is also attempting to set up defendants for a 93A
21 violation by making an early demand.

22 Do you see that?

23 A Yes.

24 Q And then what does he say after that?

1 A (Reading): Asking for a good-faith offer before
2 submitting to non-binding arbitration.

3 Q And then again, after that?

4 A (Reading): We strongly -- it looks like he missed a
5 word -- surrendering Zurich's first layer of coverage,
6 2 million, as a good-faith position prior to mediation,
7 which we also endorse.

8 Q Now, you read that when it was received in November of
9 '03; did you not?

10 A Yes.

11 Q Again, before submitting Exhibit 19 to management,
12 true?

13 A Correct.

14 THE COURT: Okay. We're about to take our
15 break. Before we break, when did you actually submit
16 your BI claim report?

17 THE WITNESS: December -- I think December 17
18 or 19 of 2003.

19 THE COURT: Where is that stated on the
20 report?

21 THE WITNESS: The report does not have a
22 date. It was attached to an e-mail that I sent to my
23 manager.

24 THE COURT: You're not sure whether it was

1 12/17 or 12/19?

2 THE WITNESS: I would have to look at the e-
3 mail to get that exact date. I think it was the 17th.

4 THE COURT: Okay. Well, why don't you do
5 that during the break.

6 We will now take our morning break.

7 MR. PRITZKER: Thank you, your Honor.

8 (A recess was taken at 11:05 a.m. and resumed
9 at 11:25 a.m.)

10 THE COURT: Okay. Mr. Pritzker, why don't
11 you commence?

12 (By Mr. Pritzker)

13 Q Ms. Fuell, did you go back to your e-mail to determine
14 what the date was of your claim report?

15 A Oh, I'm sorry, I forgot to do that.

16 MR. VARGA: Your Honor, just to expedite just
17 a little, I think it's Exhibit No. 18, if I'm not
18 mistaken. That may be of some assistance.

19 THE COURT: Okay. Thank you, Mr. Varga.

20 MR. PRITZKER: I will accept that, your
21 Honor.

22 A It was 12/19/2003.

23 THE COURT: So it was 12/19. Now, that was
24 the date that it was transmitted?

1 THE WITNESS: Right. That's the date I e-
2 mailed my direct manager with the I-claim report
3 attached.

4 THE COURT: Okay. And what did you
5 understand the procedure to be from there?

6 THE WITNESS: Within the Zurich structure, we
7 prepare the BI claim report for anything above our
8 authority level or complex cases of this nature. My
9 manager reviews it and asks for any additional input,
10 reviews claim contents. If the amount we're asking for
11 is above her authority, she goes up the chain to her
12 manager, Tom Lysaught, who is the VP of Liability
13 Claims.

14 THE COURT: And was the amount above her
15 authority?

16 THE WITNESS: I believe it was.

17 THE COURT: But you can't directly e-mail Mr.
18 Lysaught?

19 THE WITNESS: No. At that -- no. At that
20 time, I was new to the company and so I had to go
21 through my manager to add any comments she might have
22 to just affirm that she agreed with my assessment and
23 my strategy.

24 THE COURT: And your manager was whom?

1 THE WITNESS: Kathy Langley. Do you need me
2 to spell that? L-a-n-g-l-e-y.

3 THE COURT: Okay. And it was Kathy?

4 THE WITNESS: Kathy, yes.

5 THE COURT: With a K or a C?

6 THE WITNESS: With a K.

7 THE COURT: And what's her title?

8 THE WITNESS: She was the Assistant Vice
9 President of TPA Liability Claims and International
10 claims.

11 THE COURT: And her boss was Mr. Lysaught?

12 THE WITNESS: Correct.

13 THE COURT: That's L-y-s-o-t-t?

14 THE WITNESS: L-y-s-a-u-g-h-t.

15 THE COURT: And his title?

16 THE WITNESS: Vice President of Liability
17 Claims, I believe.

18 THE COURT: And when you wrote your report,
19 did you understand it would have to go first through
20 Ms. Langley and then from her on to Mr. Lysaught?

21 THE WITNESS: Yes.

22 THE COURT: And had you ever before this
23 report submitted a BI claim report for an amount that
24 was beyond the authority of Ms. Langley to approve?

1 THE WITNESS: Yes, I had.

2 THE COURT: How many?

3 THE WITNESS: Between my end of July start
4 date and December, five or six, I'd be guessing.

5 THE COURT: All right. And was Mr. Lysaught
6 located with you in your office in Chicago, in
7 Schaumburg?

8 THE WITNESS: Yes, he was.

9 THE COURT: So you were all in the same
10 building?

11 THE WITNESS: Yes.

12 THE COURT: On the same campus at least?

13 THE WITNESS: Kathy Langley was in New York.

14 THE COURT: So Langley was in New York, but
15 Lysaught is in --

16 THE WITNESS: Schaumburg.

17 THE COURT: Is in Schaumburg.

18 THE WITNESS: Correct.

19 THE COURT: And how long did you understand
20 this process reasonably to take with regard to
21 approval?

22 THE WITNESS: It depended on the availability
23 of the parties. It was in December so we had the
24 holidays. Ms. Langley and Mr. Lysaught traveled quite

1 a bit, so, you know, it can take several weeks.

2 THE COURT: Now, the reason I ask is, look to
3 your last paragraph.

4 THE WITNESS: Of my BI claim report?

5 THE COURT: Yes, page 6.

6 THE WITNESS: I'm sorry. I've got a lot of
7 books here.

8 THE COURT: First of all, you say "we
9 recommend." Who's "we"?

10 THE WITNESS: I'm reporting this to Kathy and
11 Tom, but it is also a document that we can use to
12 report to our business unit for our underwriters to
13 look at the loss history, so I'm saying, you know, if
14 this is approved, we, the claim department, would
15 recommend it. But it's me recommending it to Kathy and
16 to Tom.

17 THE COURT: But you understood that this
18 report would potentially be seen by others.

19 THE WITNESS: Others within Zurich.

20 THE COURT: And then you go on to say you
21 recommend tendering our \$2 million policy limits to AIG
22 before year-end.

23 THE WITNESS: Yes.

24 THE COURT: This was on December 19, 2003.

1 THE WITNESS: Correct.

2 THE COURT: Why did you recommend that the
3 approval, the tender, be done, quote, before year-end,
4 close quote?

5 THE WITNESS: Because Mr. Satriano at AIG was
6 reviewing the information and was also going to be
7 leaving at some point to be deployed to the Gulf War.
8 The insured was anxious to -- we were all anxious to
9 move the case forward into settlement mode, into a
10 global settlement posture where we could get an offer
11 out, make an offer so that we could have a mediation
12 and try to move the case forward.

13 THE COURT: And you thought it was reasonable
14 on December 19 to get all the approvals that you would
15 need before the 31st of December?

16 THE WITNESS: I hoped to. I didn't know Ms.
17 Langley's or Mr. Lysaught's schedule during that time
18 period, holidays and work obligations.

19 THE COURT: Did you speak with Ms. Langley
20 after this was e-mailed to her?

21 THE WITNESS: Yes. I spoke to Ms. Langley.
22 She did end up leaving the company at the end of
23 December of 2003, so I know I asked her before she went
24 if she had heard from Tom and she said no, she had not

1 received the authority yet.

2 THE COURT: I'm sorry, she was leaving the
3 company?

4 THE WITNESS: She left the company at the end
5 of December 2003.

6 THE COURT: And did you know that she was
7 leaving when you sent her this e-mail?

8 THE WITNESS: No, I didn't.

9 THE COURT: When did you learn that she was
10 leaving?

11 THE WITNESS: I believe I learned the week of
12 Christmas.

13 THE COURT: The week between Christmas and
14 New Year's, you mean?

15 THE WITNESS: Correct.

16 THE COURT: And when you spoke with Ms.
17 Langley, that was after you had learned that she was
18 leaving?

19 THE WITNESS: After sending this, yes.

20 THE COURT: So you sent this, somebody told
21 you she was leaving --

22 THE WITNESS: Right.

23 THE COURT: -- then you spoke with Ms.
24 Langley?

1 THE WITNESS: Right. I said -- would have
2 said -- I don't remember exactly what I said, but this
3 was one of the things that were an open item before she
4 left, so I inquired as to whether she had heard
5 anything.

6 THE COURT: All right. And when you spoke
7 with her, which I -- well, is it fair to say that you
8 spoke with her after Christmas but before New Year's?

9 THE WITNESS: Yes.

10 THE COURT: And at that time did you
11 understand from Ms. Langley that Ms. Langley had given
12 the appropriate approval?

13 THE WITNESS: Yes. She had recommended --
14 made the recommendation to Mr. Lysaught. She did not
15 have the approval authority to \$2 million.

16 THE COURT: Okay. Back to you.

17 (By Mr. Pritzker)

18 Q If I could just follow up before going back into the
19 line of questioning that I was on before the break, if
20 we look, Ms. Fuell, at Exhibit 24.

21 A Yes.

22 Q Do you see that that's a couple of e-mails from you to
23 Tom Lysaught?

24 A Yes.

1 Q And then back to him, from him to you?
 2 A On Exhibit 24?
 3 Q Do you see at the top --
 4 A I don't see any response from Tom.
 5 Q The first e-mail's at the bottom of Exhibit 24, on page
 6 ZA-0932.
 7 A Yes.
 8 Q Which is from Fred Hohn to you, right?
 9 A Correct.
 10 Q And that e-mail says: Any progress to report on this
 11 sensitive issue?
 12 A Correct.
 13 Q Did you know what that meant?
 14 A He was asking if I had the authority to tender the
 15 claim to AIG.
 16 Q Now, who was Fred Hohn?
 17 A He was the broker for GAF.
 18 Q In fact, he had been following this quite closely in
 19 the October/November/December time period; had he not?
 20 A I know that I spoke to him at least in November, yes.
 21 Q And here we are now in January and he's asking whether
 22 or not there's any progress. And what do you do?
 23 A I sent a note to Tom Lysaught asking if he had reviewed
 24 the authority request wherein we tender -- I meant to

1 say we recommend we tender our \$2 million policy limits
 2 to AIG. If you need another copy of the BI claim
 3 report, I can resend it. Thank you, Tom. I should be
 4 in tomorrow.
 5 Q Did he need another copy?
 6 A I don't know if he did in response to this one. At
 7 some point I provided him another copy of the BI claim
 8 report.
 9 Q And then it was when that Mr. Lysaught approved it?
 10 A I believe it was January 22.
 11 Q Okay. If you look at Exhibit 25, do you see that you
 12 are writing to Steve Penick, are you not, at the
 13 bottom: Okay to raise the BI reserve to 2 million?
 14 A Yes.
 15 Q And that was on the 23rd of January.
 16 A Correct.
 17 Q So after you pushed Mr. Lysaught, as we saw on the
 18 21st, he responded fairly quickly.
 19 A Yes.
 20 Q Is there any particular reason why you waited almost a
 21 month before reminding Mr. Lysaught that he hadn't done
 22 anything on this, quote, sensitive issue?
 23 MR. VARGA: Objection.
 24 THE COURT: Overruled.

1 A He is a very busy person. He travels quite a bit. We
 2 had the holidays that came up. So I gave him a chance
 3 to review this complex case and I asked him -- as a
 4 followup, I did follow up with him and asked have you
 5 had a chance to review it.
 6 (By Mr. Pritzker)
 7 Q In any event, you then turn around and tell Crawford
 8 it's okay to reserve it.
 9 A Yes.
 10 Q What about the tender?
 11 MR. ZELLE: Objection.
 12 THE COURT: Sustained as to the form. It's
 13 fair to understand --
 14 MR. PRITZKER: I will ask another question.
 15 THE COURT: I have some as well. If you
 16 don't ask them, I will, but go ahead. We'll give you a
 17 chance since you're just starting out in this business.
 18 (By Mr. Pritzker)
 19 Q The BI claim report, Exhibit 19, requested to raise the
 20 reserves and to tender; did it not?
 21 A Correct.
 22 Q What was Mr. Lysaught giving you approval for?
 23 A He gave me the \$2 million reserve in settlement
 24 authority and he had no objections to the strategy I

1 outlined in the BI claim report regarding tender,
 2 regarding the authority.
 3 Q How did you learn that?
 4 A I think he wrote me an e-mail saying okay, to proceed
 5 as recommended. I'm sorry, there was a lot of e-mails
 6 going back and forth with information.
 7 THE COURT: That e-mail came when?
 8 THE WITNESS: January 22, I think.
 9 (By Mr. Pritzker)
 10 Q Ms. Fuell, would you look at Exhibit 68.
 11 A The redacted Z notes?
 12 Q Yes. That was where I was looking.
 13 Q And if you would look at ZA-1159?
 14 A Yes.
 15 MR. ZELLE: I'm sorry, I didn't get that.
 16 MR. PRITZKER: ZA-1159.
 17 (By Mr. Pritzker)
 18 Q What does that say in the Z notes?
 19 A (Reading): January 23, 2004. BI claim report and
 20 reserve settlement authority reviewed with Tom Lysaught
 21 and Kathy Langley in December 2003. Am authorizing the
 22 TPA to increase the reserves on the data transfer file.
 23 Also advised them and broker that we are tendering
 24 policy limits to AIG, the excess carrier. TPA had

1 previously sent the following e-mail, Kathleen.
 2 To date, allocated expenses total
 3 \$215,949.98. The current expense reserve is at
 4 250,000. The BI reserve is still at 50,000. We need
 5 your okay to raise it to policy limits of 2 million,
 6 Steve Penick.

7 Q In any event, the first part of that note indicates
 8 that you had received both the reserve authority and
 9 the tender authority on January 23, '04?

10 A Correct.

11 Q What did you do next as it related to tender? Before
 12 you even get there, you knew that the reserve authority
 13 was only a first step to either tendering or to
 14 offering the \$2 million policy limits in settlement;
 15 did you not?

16 A Yes.

17 Q The reserve by itself didn't do anything; it was just a
 18 first step in the process, true?

19 A Correct.

20 Q And the next step would be to actually tender the
 21 policy to AIG, true?

22 A I did all of it fairly simultaneously. I received the
 23 settlement authority. I called -- I sent an e-mail to
 24 Steve Penick. In fact, at some point I asked Steve

1 Penick to verify that Mr. Satriano was still at AIG.
 2 December 23rd I believe I e-mailed or called -- I
 3 called Mr. Penick and tendered our policy limits.
 4 Q You called Mr. Penick or Mr. Satriano?
 5 A I'm sorry. Mr. Satriano at AIG.
 6 Q And what was his response?
 7 A He said that he could not accept a verbal tender of the
 8 policy limits. He wanted something in writing that
 9 also would clarify what would happen to our defense
 10 obligations to GAF. So he wanted a detailed response
 11 both to -- he wanted the tender in writing and he
 12 wanted us to explain what our defense obligation would
 13 be.

14 THE COURT: The telephone call was when?

15 THE WITNESS: January 23, 2003 -- 2004.

16 (By Mr. Pritzker)

17 Q Is there a Z note that indicates your conversation with
 18 Mr. Satriano?

19 A No.

20 Q So you just remember having called him?

21 A Yes.

22 Q Can you say that Mr. Satriano said "I need it in
 23 writing"?

24 A Yes.

1 Q What was the next thing you did as it related to
 2 tender?

3 A I was exploring what our defense obligation would be.
 4 I wasn't sure, so I conferred with coverage counsel and
 5 our Zurich in-office claim legal staff as to what our
 6 defense obligation would be.

7 Q Now, the defense obligation is talking about who was
 8 going to pay for the defense lawyers, the defense team,
 9 to continue the litigation, true?

10 A Correct, for all of the GAF, DLS and Penske.

11 Q So notwithstanding the fact that you now had the
 12 authority from Mr. Lysaught to tender the policy, you
 13 were exploring who was going to have to pay for the
 14 defense costs, true?

15 A Yes, I was asked by AIG to provide that information in
 16 writing.

17 Q And this delayed the written tender of the Zurich
 18 policy to AIG; did it not?

19 A The written tender, yes. I had already told AIG
 20 verbally you have our policy limits to use when you're
 21 attempting any settlement of the case.

22 Q In fact, at some time did you write to AIG telling
 23 them, giving them the tender?

24 A I wrote to them February 13, 2003, and I wrote a formal

1 letter in March 29 -- I'm sorry, February 13, 2004 and
 2 March 29, 2004.

3 Q If we look at Volume 1 of the exhibit books in Exhibit
 4 32 -- strike that.

5 Do you see it?

6 A Yes, I do.

7 Q That's an e-mail on February 9, 2004, where you're
 8 reporting to Jane Gordon that you spoke to Nicholas
 9 Satriano -- and he's the AIG adjustor?

10 A Yes, he is.

11 Q By telephone a few weeks ago and he said that he was
 12 not accepting any such tender unless he received it in
 13 writing, as he was still evaluating the claim?

14 A Yes.

15 Q And is that an accurate statement as best you remember
 16 if of your conversation with Mr. Satriano?

17 A Yes.

18 Q All right. And then on February 13, if you look at
 19 Exhibit 30, you communicate to us -- I'm sorry. Let's
 20 look at both e-mails that appear on Exhibit 30. The
 21 bottom one is first; is it not?

22 A From Nick Satriano? Yes.

23 Q And that to Crawford, true?

24 A To Crawford and myself.

1 Q Okay. And the subject is basically the tender?
 2 A Right.
 3 Q And he says: Please be advised that do date, AIG TS
 4 has not received any formal offers of tender regarding
 5 this file. Be advised that any formal offer must --
 6 and he capitalizes "must" -- be in writing and not --
 7 and he capitalizes "not" -- communicated in electronic
 8 form. In an effort to clarify any misinformation
 9 regarding tender, my current understanding is that the
 10 primary insurer has not relinquished their duty to
 11 defend the insured in this litigation. We fully expect
 12 the primary insurer to continue and further its
 13 obligation to defend the insured in this matter.

14 Have I read that accurately?

15 A Yes, you have.

16 Q Did you have any conversation about who was going to
 17 bear the defense costs in the conversation with Mr.
 18 Satriano?

19 A In my previous conversation I told him that I would
 20 review the policy and give him an answer on that, but
 21 that he had our policy limits to use as he saw fit.

22 Q Okay. And then you write back to him on -- is it the
 23 same day?

24 A Yes.

1 Q Yes. And I'm not sure why but you give him your
 2 address as Zurich North America, 1400 American Lane in
 3 Schaumburg, Illinois with the zip code, right?
 4 A Right, I don't know why I gave him that.
 5 Q Well, it's the exact same note that Crawford has had
 6 for all of these many years for Zurich; is it not?
 7 A The exact same note?
 8 Q The exact same address, I apologize.
 9 A Crawford had it as our head office, yes.
 10 Q All right. And in fact you are now reporting to Mr.
 11 Satriano that a few weeks ago you called to advise that
 12 you were offering up the policy limits; do you not?
 13 A Yes, I do.
 14 Q And you tell him basically -- well, you said that
 15 regardless of whether or not you have our position in
 16 writing -- this is the last paragraph -- you are fully
 17 aware of our assessment of this matter and should have
 18 no problem proceeding accordingly in the best interest
 19 of our mutual insured. Right?
 20 A Yes.
 21 Q As far as you were concerned had you tendered the
 22 policy?
 23 A Yes, I had.
 24 MR. ZELLE: Objection.

1 THE COURT: Overruled.

2 A Yes, there is no requirement, to my knowledge, that I
 3 had to do any tender in writing, either via e-mail or
 4 via letter.

5 MR. ZELLE: Your Honor, if I can be heard.
 6 It's not the in-writing issue. The question was
 7 "tender the policy." The document makes it clear that
 8 we're talking about tendering the policy limits.
 9 "Tendering the policy" includes a lot more than the
 10 limits and it was just the form of the question, your
 11 Honor, and I want to make sure the court understands
 12 that the question, as answered, may not be the response
 13 to the question that was asked.

14 THE COURT: I'm not quite sure what that
 15 means but let me make sure. I think I understand Ms.
 16 Fuell.

17 You had said that you had essentially
 18 communicated, both orally and in writing to Satriano,
 19 that Zurich was tendering the \$2 million policy to AIG,
 20 meaning, I gather, that Zurich was committing to pay \$2
 21 million towards any settlement that AIG may enter into;
 22 is that fair?

23 THE WITNESS: That is fair.

24 THE COURT: And it's also fair that there was

1 a question as to who, once this tender of the 2 million
 2 had occurred, who would be responsible to pay the
 3 defense costs, and that issue was one that you had not
 4 yet resolved?

5 THE WITNESS: Correct. I told him we would
 6 continue defending, but he had our money, our \$2
 7 million policy limit.

8 THE COURT: I thought I understood you and I
 9 have.

10 You may proceed.

11 (By Mr. Pritzker:)

12 Q Okay. And just to clarify the record, you understood
 13 when I asked the question that I was referring to
 14 tendering the Zurich policy limits of \$2 billion
 15 dollars, true?

16 A Yes.

17 Q Okay. When did the formal written tender occur?

18 A March 29, 2004.

19 Q And is that part of Exhibit 33?

20 A Yes, it is.

21 Q Why did it take until March of 2004 to give the formal
 22 tender when you had indicated verbally in November of
 23 2004 that you were doing so and then sent him the e-
 24 mail in February of 2004 that you considered it done?

1 MR. ZELLE: Objection, your Honor.

2 MR. VARGA: Objection.

3 THE COURT: Sustained as to the form.

4 MR. PRITZKER: Let me start again.

5 THE COURT: Why don't you just ask the
6 question.

7 (By Mr. Pritzker:)

8 Q Can you tell me why it took, Ms. Fuell, from February
9 13, 2004 to March 29, 2004, to send the formal written
10 tender of the policy limits as indicated in Exhibit 33?

11 MR. VARGA: Objection.

12 THE COURT: Overruled.

13 A Mr. Satriano had asked us to clarify our defense
14 obligations under the policy. In addition to giving
15 him the \$2 million loss limits to do with what he saw
16 fit, I was working with coverage counsel and with our
17 claim legal department. Our policy has an unusual
18 endorsement that states that if you tender, formally
19 tender a claim or offer up the money, that your defense
20 obligations are extinguished. And I was trying to --
21 it's very unusual to not issue a payment but not have a
22 defense obligation. So I was working with coverage
23 counsel.

24 I was trying to find a way to put the money

1 somewhere, either in a bank or in somebody's hands, and
2 also clarify what our defense obligations were to GAF
3 and our additional insureds, as well as our obligation
4 to AIG.

5 (By Mr. Pritzker:)

6 Q Did you send out the letter of March 29, 04', a draft
7 of which is attached to Exhibit 33?

8 A Yes, I did.

9 Q Did you receive a response from anybody at AIG?

10 A Yes, I did.

11 Q What was the response?

12 A We received a response from Mr. Anthony Bartell who is
13 an attorney that was chosen by GAF to review their
14 defense obligation, and we received a response from
15 AIG.

16 Q What was that response that you received from AIG?

17 MR. ZELLE: Objection, your Honor. I think
18 that in fairness to the court we need to look, at least
19 momentarily, as Mr. Pritzker is setting a nice
20 foundation for many questions, by reading what a
21 response is to, I think that either by examination of
22 the witness or simply the court should look at what it
23 is that Mr. Satriano or AIG is responding to.

24 THE COURT: Meaning that what he should do is

1 say let's turn to Exhibit X and we'll see the response

2 in writing?

3 MR. ZELLE: Let's see the writing to which it
4 is responsive. We've said this is responsive to --

5 THE COURT: I'll let him do his examination,
6 but if there is a written response, tell me the exhibit
7 and I'll look at it and then we'll go from there. If
8 there is an oral response -- was it an oral response or
9 a written response?

10 THE WITNESS: I think it was written.

11 MR. ZELLE: I'm sorry, your Honor, I'm not
12 making myself clear. It's not the response, it's what
13 is being responded to.

14 The letter from Zurich, Exhibit 33, it's --
15 THE COURT: Right, I've read it.

16 MR. ZELLE: Okay, that's all I needed. I
17 should have simply asked, I'm sorry.

18 THE COURT: I'm listening to Ms. Fuell and
19 reading, I apologize to Ms. Fuell if that appears to
20 be impolite, but that's what I need to do.

21 So, yes, I have read the content of Exhibit
22 33, including the letter from Zurich.

23 (By Mr. Pritzker)

24 Q Ms. Fuell would you look at Exhibit 36.

1 A Yes.

2 Q Did you receive this letter?

3 A Yes.

4 MR. ZELLE: Bear with me. This is not an
5 agreed-to exhibit, your Honor.

6 THE COURT: Exhibit 36?

7 MR. ZELLE: Thirty-six? It's not in the
8 book.

9 MR. PRITZKER: This is the letter --

10 MR. ZELLE: Excuse me, let me make an
11 objection and let me look at the exhibits. I don't
12 believe it's been agreed to, Mr. Brown.

13 MR. BROWN: Your Honor, it was objected to by
14 Zurich initially and then at the start of trial --

15 THE COURT: By Zurich?

16 MR. BROWN: By Zurich, initially. And I
17 think that was just part of trying to figure out what
18 the documents were, because then on the first day of
19 trial they then informed us that there were only two
20 documents that they continued to object to and this was
21 not one of them. At that time I handed copies to all
22 counsel and let them update their books as they see
23 fit.

24 THE COURT: If there is any objection, I'll

1 hear it.

2 MR. ZELLE: I have no objection, your Honor.
3 THE COURT: Okay. Let's proceed.

4 (By Mr. Pritzker)

5 Q Would you look at Exhibit 36, Ms. Fuell, or have you
6 done so?

7 A Yes.

8 Q Did you receive it?

9 A Yes, I did.

10 Q Would you read the last sentence of the third paragraph
11 of the letter?

12 A (Reading): As stated by Mr. Mastronado during your
13 discussion with him earlier this week on behalf of
14 National Union, AIGTS hereby rejects Zurich's tender of
15 its primary policy limits.

16 Q When did you receive that?

17 A April 2nd. I think that he -- yes, he e-mailed it to
18 me April 2nd of 2004.

19 Q Did you receive a verbal rejection earlier than that?

20 A It states I had. I don't recall really what -- I don't
21 really remember talking to him earlier in the week.

22 Q Take a look at Exhibit 34.

23 A Yes.

24 Q This is from who to who?

1 A It's from Richard Mastronado to Anthony Bartell,
2 counsel for GAF; himself; me, and copied to Jane
3 Gordon, Corporate Counsel for GAF; and Peri in Risk
4 Management at GAF; Greg Deschenes, who was the defense
5 attorney for GAF; William Conroy at Campbell Trial
6 Lawyers, who I think AIG retained in December 2003;
7 Nick Corona at McCarter --

8 Q Well, rather than go through all of that, Ms. Fuell, is
9 this forwarded from you to various people including
10 attaching or forwarding on an e-mail from Mr. Materine
11 [sic] to you?

12 A I forwarded Mr. Mastronado's e-mail.

13 Q I'm sorry, I meant Mr. Mastronado's e-mail to you?

14 A Yes, I forwarded that onto Ed Shulkin, who was our
15 coverage attorney.

16 Q All right. Would you read the first two lines of the
17 e-mail that you're forwarding on?

18 A From Mr. Mastronado?

19 Q Yes.

20 A (Reading): As indicated yesterday, we believe Zurich's
21 position is incorrect and is contrary to the language
22 in the National Union policy. I have verbally rejected
23 Zurich's purported tender.

24 Q Does that refresh your recollection that you heard a

1 verbal rejection before your received Exhibit 36?

2 A Yes.

3 Q All right. Now I'd like to change subjects, unless the
4 court has other questions about that.

5 THE COURT: No, go ahead.

6 (By Mr. Pritzker)

7 Q You indicated, did you not, that there was a telephone
8 conference in November of 2003 that you participated
9 in; isn't that so?

10 A Yes, November 19, 2003.

11 Q And I believe when we left before the morning break we
12 were looking at Exhibit 66 -- I'm sorry at Exhibit 19 -
13 -- and I was asking you questions about the comment
14 that you put on that BI report on page six, which
15 states: Plaintiffs' counsel has stated that he will
16 not agree to participate in any voluntary mediation of
17 this claim unless the co-defendants commit to a minimum
18 settlement offer of \$5 million.

19 And I believe also before the break you
20 reviewed Mr. Chaney's note, which is contained in 66L,
21 which said: Plaintiffs are looking for a good-faith
offer.

1 A Yes.

2 Q Do you remember that?

3 A Yes I do.

4 Q Now I want to direct your attention to this meeting in
5 November of 2003. Would you look at Exhibit 67, which
6 are the Crawford notes.

7 A Yes.

8 Q If you look at ZA-0571, which is a note of 11/19/03.

9 A I'm sorry, which date did you state?

10 Q 11/19/03.

11 A Yes.

12 Q It starts out: Conference call with Kathleen Fuell,
13 Zurich, Bob Manning -- Kathleen Fuel, Zurich; Bob
14 Manning, GAF; Fred Hohn, Willis; Nick Satriano, AIG TS,
15 slash, Greg Deschenes, defense counsel . Talking about
16 getting to a mediation.

17 Def -- which you understood -- or do you
18 understand that's defendants?

19 A Defense counsel, I think.

20 Q (Reading): Defense feels we need to come strong with
21 an offer in the \$5 million range to get claimant

1 attorney to even consider mediation.

2 Do you see that?

3 A Yes, I do.

4 Q And in fact that was discussed in the November
5 conference; was it not?

6 A Yes, it was.

7 MR. VARGA: Objection.

8 THE COURT: Overruled.

9 (By Mr. Pritzker)

10 Q Do you remember that it was defense counsel who
11 suggesting the \$5 million?

12 A From my notes in the conference call I had written down
13 that you would not accept an offer under -- an opening
14 offer under \$5 million. So that was between writing my
15 notes and listening in to the conference call that was
16 my understanding of the offer.

17 Q All right, let's look at your notes. If you would turn
18 to Exhibit 33. I'm sorry, Exhibit 13.

19 A Yes.

20 Q Can you confirm that these are the notes that you wrote
21 at this conference call?

1 A Yes, they are.

2 Q And if you look down, it's going to be hard to do --

3 A Sorry about my handwriting.

4 Q -- about a third of the way down, do you see the words:
5 I committed to recommending \$2 million tender of
6 limits?

7 A Yes, right under the name Steve Penick at Crawford; I
8 stated that, yes. I wrote that.

9 Q Okay. And then right after that is: No way plaintiff
10 attorney will agree to mediate unless we offer
11 beforehand of \$5 million.

12 A Yes.

13 Q And you don't know whether or not that was being
14 discussed as an opinion of everybody or whether or not
15 that was a demand of plaintiffs' attorney, do you?

16 A No. What we did was we were discussing what would it
17 take to get the Rhodeses to a mediation.

18 Q All right. If you look further down there is a line
19 that says: Different brakes, dash, police felt brakes
20 were not a significant cause of loss.

21 Do you see that?

1 A Right. And: Expert says can't tell.

2 Q And was that your understanding as of November 19 or
3 were you just writing down what other people were
4 telling you?

5 A It was my understanding in the conversation and having
6 reviewed defense counsel report and all of the other
7 file documentation. But I think the reason why I wrote
8 it down here was because it was discussed during the
9 conversation.

10 Q And then further down do you see a sentence that
11 starts: DLS, although the "D" is partly cut off?

12 A Yes.

13 Q And then a dash. Would you read that into the record?

14 A (Reading): DLS, dash, claiming coverage under our
15 policy but independent exposure for properly
16 investigating driver qualifications et cetera.

17 Q So once again you've written down there that the
18 possible defense -- and were you referring to the
19 reservation as well under the defense?

20 A I was mostly listening during this conversation. It

1 was defense counsel bringing AIG and Zurich and

2 Crawford and Mr. Manning up to speed on the legal
3 merits of the case, the open issues regarding the case.

4 Q Do you remember whether or not -- it was Mr. Deschenes,
5 was it not, for the defense?

6 A He was the primary speaker during -- there were three
7 different firms. GAP had its own firm, DLS and
8 Zalewski had their own firm, and Penske had their own
9 defense firm.

10 Q Do you remember whether or not there was any discussion
11 of what the value of the claim was?

12 A I don't think that we had really discussed the value of
13 the claim. I think we discussed what it would take to
14 bring the case to mediation.

15 Q Okay. You know that ultimately after the tender the
16 case went to trial, true?

17 A Yes, I do know that.

18 Q And is it true that you weren't paying quite as close
19 attention after the tender as you were before the
20 tender?

1 A I knew that I couldn't effectuate further settlement
 2 once our \$2 million was offered. I was monitoring the
 3 litigation costs.

4 Q You never expected the \$2 million offer to settle the
 5 case, did you?

6 A No, I didn't.

7 Q But you did authorize it as of March of 2004, you
 8 authorized the offer to be made of the two thousand
 9 dollars [sic]?

10 A Yes.

11 Q And then it went to trial and there was a judgment,
 12 right?

13 A Correct.

14 Q Did Zurich pay that judgment?

15 A We paid our share of the judgment.

16 Q Did you do so before or after Zurich received notice of
 17 a 93A violation?

18 MR. VARGA: Objection.

19 THE COURT: Overruled.

20 A We issued the payment after we received the 93A

1 correspondence.

2 (By Mr. Pritzker)

3 Q In fact, the sequence is that a 93A demand was made
 4 upon Zurich, true?

5 A From the time I heard of the judgment, I was trying to
 6 verify what our obligations were for any payment of
 7 such judgment, should we post a bond, what our
 8 obligations were to, and to whom we would pay the
 9 money.

10 Q And at the same time you received a 93A demand, true?

11 A True.

12 Q And there was a response to the 93A demand; was there
 13 not?

14 A Yes.

15 Q And that response was in December of 2004; was it not?

16 A The written response, yes.

17 Q Was there any verbal response before that?

18 A You were conversing with our coverage attorney, Mr.
 19 Arbarbinol.

20 Q Was there to your knowledge any verbal response before
 21 then?

1 A I know you were communicating with Mr. Arbarbinol. I
 2 don't know what the --

3 Q Do you know what the communication was about?

4 A I knew that he was talking to you about the case and
 5 that you had indicated if we could get a settlement
 6 offer out before the end of the year, that you might
 7 not pursue a 93A action against Zurich.

8 Q Do you remember that Zurich paid \$2.3 million in
 9 December of '04?

10 A Yes.

11 Q Do you know that it was paid without a release?

12 A Yes, as a voluntary payment.

13 Q If you'd look at Exhibit 63, please.

14 A The Gallagher Bassett notes?

15 Q Gallagher Bassett was the successor TPA to Crawford &
 16 Company; were they not?

17 A Yes, they were.

18 Q And they were the TPA on the Rhodes file as of the time
 19 of the judgment?

20 A I don't know if GAF transferred the TPA handling
 21 responsibilities from Crawford to Gallagher Bassett. I
 22 think I was speaking to Steve Penick at Crawford in

1 September.

2 Q Okay. Well, in any event, the document, which is
 3 Exhibit 63, is a Gallagher Bassett report; is it not?
 4 A Yes, it is.

5 Q And it was reported, amongst other people, to you at
 6 Zurich?

7 A Yes.

8 Q And it indicates that the total expense paid, incurred,
 9 and paid to the plaintiff was \$2,324,995, right?

10 A Correct.

11 Q And it also indicates that the defense expense was
 12 \$646,016, true?

13 A I think that the net payment was \$556,016.38.

14 Q Well, you're right. You're reading from a different
 15 column. Incurred was 646,016, right?

16 A Right.

17 Q And paid was \$556,016, true?

18 A True.

19 Q You knew that the defendants had conceded liability
 20 before trial; did you not?

21 A I found that out after I found out about the trial and
 22 the judgment.

23 Q Okay. And you knew, did you not, from the first time
 24 that you picked up the Rhodes file that Mrs. Rhodes was

1 rendered a paraplegic with incredible personal injuries
2 and complications, right?

3 MR. ZELLE: Object to the form, your Honor.

4 THE COURT: Sustained.

5 MR. PRITZKER: I have no other questions,
6 your Honor.

7 THE COURT: All right. Any cross-
8 examination? Mr. Varga?

9 CROSS-EXAMINATION BY MR. VARGA:

10 Q Ms. Fuell, since I know you fairly well, I'm going to
11 call you Kathleen; is that okay?

12 A That's fine.

13 Q All right. You testified you began working on the
14 Rhodes file sometime in September of 2003; do you
15 recall that?

16 A Yes.

17 Q Okay. Can you explain to the court why it was that the
18 file was reassigned to you from David McIntosh?

19 A Yes. When I joined Zurich, there were two people,
20 David and another gentleman, that were responsible for
21 the TPA liability oversight at Zurich. I was an add-
22 to-staff, so it was a re-juggling of accounts --
23 insured assignments for oversight.

24 Q So it was a reassignment of all of the GAF claim

1 business from Mr. McIntosh to you?

2 A GAF and other insureds between Ira and Dave, yes.

3 Q Okay. Did the reassignment have anything to do with
4 the Rhodes file?

5 A No, it did not.

6 Q Now, when we started earlier this morning, Mr. Pritzker
7 asked you and Judge Gants asked you some questions
8 about GAF's insurance program, and I'd like to ask a
9 few more about that.

10 You used the term a few times, "bundle"
11 versus "unbundle." First of all, can you tell us what
12 kind of insurance program GAF purchased from Zurich,
13 bundled or unbundled?

14 A GAF purchased a package of insurance that was auto
15 liability insurance and general liability insurance.
16 In addition, when they purchase a policy of insurance,
17 they determine whether they choose to have their claim
18 handling services handled by that insurance carrier.
19 If so, they would pay for those claim handling services
20 to Zurich and the claim officers would handle the
21 claims on their behalf. That's what we call our bundle
22 program with the Zurich claim handlers or claim
23 officers.

24 Q Just to be clear, the bundle means you bundle the

1 coverage that you buy plus the claim administration
2 services both from Zurich, correct?

3 A Correct.

4 Q Okay. And now could you explain "unbundled," please?

5 A Unbundled, which is what GAF selected, would be a
6 program where they place their policy of -- they pay
7 for a policy of insurance coverage from Zurich, but
8 they select -- they determine that they want to pay
9 another entity, a third-party claim administrator, to
10 handle their claims.

11 Q So they essentially purchase the claim administration
12 services from a different entity, in this case,
13 Crawford?

14 MR. PRITZKER: Objection. I'm objecting as
15 to form, your Honor.

16 THE COURT: I understand.

17 A Yes. They chose not to have Zurich handle their
18 claims. They wanted a TPA to handle it instead, and
19 they paid that TPA to do so.

20 (By Mr. Varga)

21 Q All right.

22 THE COURT: Did they pay directly?

23 THE WITNESS: Yes.

24 (By Mr. Varga)

1 Q And based on your experience in your 20 years in the
2 insurance industry, and particularly in casualty
3 insurance, do you know why it is that some
4 policyholders, some insureds, elect to purchase bundled
5 coverage versus unbundled coverage? Or let me say
6 unbundled coverage versus bundled coverage?

7 A If they select a TPA to handle their claim handling
8 services, they feel it gives them greater control over
9 the claim investigation matters. It also saves them
10 money if they're negotiating a better cost for the
11 claim handling services from the TPA as opposed to an
12 insurance carrier.

13 Q And just if you would remind us who it was that
14 selected Crawford as the TPA to administer GAF claims
15 or claims against GAF.

16 A GAF did.

17 Q Can I direct your attention, please, and

18 THE COURT: I'm sorry. Before you leave
19 there, am I correct, though, that there were only on a
20 certain number of TPAs that Zurich would accept?

21 THE WITNESS: It varied between -- yes, under
22 20. We had about 20 TPAs in the marketplace that we --

23 THE COURT: Gallagher was on your list of
24 acceptable TPAs?

1 THE WITNESS: Yes, they were.

2 MR. PRITZKER: Your Honor, did you mean
3 Crawford?

4 THE COURT: I meant Crawford.

5 THE WITNESS: Oh, okay. Crawford was also.

6 THE COURT: I meant Crawford.

7 THE WITNESS: Yes. Crawford was an accepted

8 TPA.

9 (By Mr. Varga)

10 Q Kathleen, if you wouldn't mind, please turn in the
11 second volume of plaintiffs' exhibits, please. I know
12 you've got a few up there, so. The second volume, to
13 Exhibit 62.

14 This is the TPA or third-party administrator
15 agreement that we looked at earlier this morning. Do
16 you recall this?

17 A Yes, I do.

18 Q And you're familiar with this document, right?

19 A Yes, they're pretty familiar.

20 Q Okay. I notice at the top of the document it says:
21 Third-Party Administrator Agreement, Zurich American

22 Insurance Group, and in parentheses, Insured Funded.

23 What does that mean?

24 A I think if you go to page 2 of the document, it talks

1 about a loss fund account.

2 Q Well --

3 A Well, it basically means the insured and the business
4 unit, our underwriters, work together and say okay, you
5 want to unbundled your claim handling services, how are
6 we going to handle the financials because the reserves,
7 the money payout is going to be paid -- all handled by
8 the TPA. So someone has to give the TPA the money to
9 do so.

10 Q And in an insured-funded arrangement, who is it that
11 gives the TPA the money to make payments or expenses
12 for losses?

13 A The insured, GAF.

14 Q All right. So in this case it would have been GAF that
15 would fund a loss fund account?

16 A Right.

17 Q All right. Can you just direct us or direct the court
18 to the page or portions of the TPA agreement which
19 provide that, please, again, in Exhibit 62.

20 A Right. On page 5, ZA-0068. On section 5 it says loss
21 fund account.

22 (Reading): A claim administrator shall enter
23 into a separate agreement with the insured as of the
24 effective dates of this agreement with respect to

1 certain financial obligations between claim
2 administrator and insured, the separate agreement.

3 Q All right. And just a question. Is there a definition
4 of the term "loss fund account" in this document, to
5 your knowledge?

6 A Yes. That's the one that's on page 2, ZA-0065.

7 Q All right. And if you could please direct the court to
8 that?

9 A It's on the bottom of the page, the last definition:

10 (Reading): A loss fund account shall mean a
11 bank account established by the claim administrator in
12 a bank approved by the National Association of
13 Insurance Commissioners, where the insured shall
14 deposit funds to be held and maintained through the
15 term of the agreement by the claims administrators.
16 The loss fund account shall provide a source of funds
17 for the claim administrator to pay obligations under
18 the policy for claims and A.L.A.E. prior to
19 reimbursement.

20 Q All right. So we understand from your earlier
21 testimony who funds that account, that escrow account.
22 But could you explain for us when, for example,
23 attorneys' fees have to be paid on a file or on a claim
24 that is in suit and being defended, where does that

1 money come from?

2 A If it's within -- it's funded by the insured, within
3 their \$250,000. If they've exhausted their \$250,000
4 obligation, the TPA would turn to Zurich and say, can
5 you wire-transfer us some funds to put into our account
6 and the Zurich would go back to GAF for their portion
7 of it.

8 Q But if the \$250,000 has not been depleted, the
9 insured's financial responsibility has not been
10 depleted, the funds will come from the loss fund
11 account?

12 A It will come from GAF into that loss fund account, yes.

13 Q Thank you. Is there anything in the Third-Party
14 Administrator Agreement, Exhibit 62, that explains or
15 states who is responsible for paying for the claim
16 administration services performed by Crawford &
17 Company?

18 A That, I think, is on page 6, or 5.

19 Q Let me direct your attention to page 6, fees and
20 expenses, is that what you're referring to?

21 A Yes. Thank you for that.

22 Q I'm not going to ask you to read that into the record,
23 but can you just explain your understanding of what
24 that provides with respect to whom has to pay the claim

1 administration fees or fees for claim administration
 2 services for a third-party administrator?
 3 MR. PRITZKER: Objection.
 4 THE COURT: It's paid by GAF, correct?
 5 THE WITNESS: Correct.
 6 THE COURT: Okay.

7 (By Mr. Varga)

8 Q Now, Kathleen, I want to talk about the notice of this
 9 accident to Zurich. We talked a little bit about this
 10 this morning. But, again, can you remind us when
 11 Zurich first received notice of Mrs. Rhodes' auto
 12 accident?

13 A It was in August of 2002, when John Chaney called Mr.
 14 McIntosh.

15 Q All right.

16 MR. PRITZKER: Objection.

17 THE COURT: Sustained. Is it fair to say
 18 that your understanding of the file, the only written
 19 record indicating knowledge, is as of that date?

20 THE WITNESS: Correct.

21 THE COURT: Okay.

22 (By Mr. Varga)

23 Q Based on your understanding of the file and your review
 24 of the file when you assumed oversight

1 responsibilities, did you see anything in the file that
 2 indicated to you one way or the other that the company
 3 had received an earlier notice than the telephone call
 4 that you just testified about from Mr. Chaney to Mr.
 5 McIntosh in August of 2002?

6 A No.

7 Q Do you have an understanding, based on your work for
 8 Zurich and in your work in the casualty insurance
 9 industry, as to how in a claim of this kind notice --
 10 or how Zurich is supposed to receive notice? How is it
 11 supposed to work?

12 A Under the conditions of the policy and with a
 13 sophisticated insured and broker like we had in this
 14 case, either the insured or the broker would notify
 15 Zurich about the claim.

16 Q Would you explain your answer a little further, please?

17 A Basically, it's the insured's responsibility to notify
 18 us of claims that are presented on their policy.
 19 Because GAF is a -- and Mr. Manning was a savvy
 20 insurance risk manager and GAF was -- I'm sorry -- and
 21 Willis was a very involved service-oriented broker,
 22 between the two of them they would talk about when a
 23 claim of this nature happened, they would talk about it
 24 and they would have an obligation to give notice to

1 Zurich.
 2 MR. PRITZKER: I ask that that be stricken,
 3 your Honor.
 4 THE COURT: Overruled.

5 You say they have an obligation, obligation
 6 under what

7 THE WITNESS: Under the conditions of the
 8 policy, they're required to give us notice of any
 9 claim.

10 THE COURT: Of all claims?

11 THE WITNESS: In a case where it's unbundled,
 12 we do not receive notice of most of the claims because
 13 they're within a certain financial -- up in claim
 14 handling authority, we give it to Crawford.

15 THE COURT: So when do you say under the GAF
 16 policy that there was an obligation to notify Zurich?

17 THE WITNESS: They're obligated to notify
 18 Zurich of an exposure that might impact our policy.

19 THE COURT: And when are they supposed to do
 20 that?

21 THE WITNESS: They're supposed to do it as
 22 soon as it might be something that would impact Zurich.

23 MR. VARGA: Your Honor, I might be able to
 24 clarify it.

1 (By Mr. Varga)

2 Q If I can ask, Kathleen, to please turn to Exhibit 61 in
 3 the same book that you have there, which is a document
 4 that's in evidence. It's a copy, is it not, of the
 5 Zurich insurance policy and the Massachusetts Business
 6 Auto form that was issued to GAF?

7 A Right. It's a copy of the business auto policy,
 8 including Massachusetts coverage.

9 Q All right. And to your understanding, does this policy
 10 address the obligation of notice to Zurich?

11 A Yes.

12 Q Can you direct us to that, please? And if I may speed
 13 this up, may I ask you to look at the bottom right-hand
 14 corner of the page. Turn to BMCA0074, please.

15 A Thank you. Yes.

16 Q All right. Can you direct the court to the condition
 17 that discusses notice?

18 A Section 2, on the bottom of the page, on the left-hand
 19 side. It states: Duties in the event of accident
 20 claim, suite or loss:

21 (a) In the event of accident claim, suit or
 22 loss, you must give us, or our authorized
 23 representative, current notice of the accident and
 24 loss.

1 Q And if I can then ask you to turn back to Exhibit No.
 2 62, which is the Third-Party Administrator Agreement?
 3 A Yes.
 4 Q And I want to ask you. Is there anything that you're
 5 aware in this agreement, the Third-Party Administrator
 6 Agreement, between Zurich and Crawford & Company that
 7 designates Crawford to receive notice of a claim on
 8 behalf of Zurich?
 9 A No.
 10 Q Is there any other document that you're aware of in the
 11 form of an agreement or that -- an agreement between
 12 Crawford and Zurich that authorizes Crawford to receive
 13 notice of a claim such as this on behalf of Zurich
 14 American Insurance Company?
 15 A No.
 16 Q Based on your review of the claim file, both initially
 17 when you took over the oversight responsibilities and
 18 after that time, do you have an understanding as
 19 whether the lack of notice to Zurich before August of
 20 2002 delayed the investigation or administration of the
 21 Rhodes claim in any way?
 22 A No. Crawford was working with GAF and defense counsel
 23 to investigate it.
 24 Q And just to be clear, you mentioned the term "Willis"

1 before, and I'd like you, if you could, to clarify who
 2 you understand Willis is and what their role is.
 3 A Willis is the broker that -- a broker is someone that
 4 the insured would go to and basically helps them market
 5 their insurance needs with various insurance carriers.
 6 They help them obtain insurance, retain the insurance
 7 information, and deal with any insurance issues that
 8 might come up at a later time.
 9 Q Based on your experience again at Zurich and prior to
 10 Zurich and Kemper and other companies, do you know
 11 whether Willis is also a broker that provides some
 12 assistance, or any assistance, to policyholders with
 13 respect to claims?
 14 A Yes, they are.
 15 Q What types of things, if you know, did Willis do, or
 16 services that it provided with respect to claims for
 17 GAF?
 18 A They can receive notice of a claim. They can notify a
 19 primary insurance carrier, an excess insurance carrier
 20 of a claim, give claim advice in a general sense about
 21 common, you know, claim issues and investigation. They
 22 help them track loss runs and history in relation to
 23 the entire insurance program that might impact the
 24 insured's costs.

1 Q And just to be clear, if I understand your prior
 2 testimony, you stated that the way this notice is
 3 supposed to work to Zurich on a claim like this would
 4 impact the company's exposure, is that either the
 5 insured or the broker, in this case Willis, would be
 6 required to give notice?
 7 A It'd be their responsibility to get the notice to
 8 Zurich, yes.
 9 THE COURT: Directly to Zurich?
 10 THE WITNESS: Yes.
 11 THE COURT: Are you saying that under this
 12 policy was a breach for GAF to have provided notice of
 13 its claim to Crawford as opposed to directly to Zurich?
 14 THE WITNESS: No.
 15 THE COURT: So Crawford was an authorized
 16 representative of Zurich with respect to receiving
 17 notice of claims by GAF?
 18 THE WITNESS: No. What I'm saying is that in
 19 a claim of this nature, it was the responsibility of
 20 the insured and/or the broker to notify us as soon as
 21 possible.
 22 THE COURT: Because?
 23 THE WITNESS: Because it was a claim that had
 24 a lot of issues in terms of the extent of obligations

1 under our insurance policy. It may have exposure to
 2 GAF and other entities. It was a serious, complex
 3 claim that needed our involvement.
 4 THE COURT: Okay. But if it was not a
 5 serious, complex claim, it would be sufficient to
 6 notify simply Crawford?
 7 THE WITNESS: Correct.
 8 THE COURT: All right. And where do I see in
 9 the policy advice to the insured as to -- or in the
 10 contract with Crawford as to when notice must be given
 11 to Zurich of such a claim?
 12 THE WITNESS: Of a smaller claim?
 13 THE COURT: No, of a complex claim. Of what
 14 you refer to as a complex claim.
 15 THE WITNESS: It doesn't differentiate
 16 between whether it's a complex claim or not a complex
 17 claim.
 18 THE COURT: So, basically the distinction
 19 that you draw is not contained in any writing?
 20 THE WITNESS: Correct.
 21 THE COURT: Where does it come from?
 22 THE WITNESS: It comes from our unbundling
 23 claim handling experience. There are many claims that
 24 the TPA handles that Zurich never receives notice of

1 because we don't receive any paperwork. It doesn't
2 require our involvement.

3 THE COURT: Okay.

4 (By Mr. Varga)

5 Q Ms. Fuell, if you could elaborate on that, I'd like to
6 ask you -- and, again, I think you may have talked
7 about this earlier, but is there a particular
8 authority, dollar authority, that Crawford & Company
9 had under this program to administer claims without
10 having to go to Zurich to seek approval for a
11 settlement payment, for example?

12 A Yes. They had \$100,000 in authority from us.

13 Q So if there were claims that Crawford was administering
14 of which it had received notice from GAF that it was
15 administering for GAF that had a combined expense and
16 loss payment below \$100,000, that was not something
17 that Zurich would expect to be involved in?

18 A No, we would not.

19 Q Can I ask you to -- do you have the defense exhibits up
20 there, Exhibits 101 through 126?

21 If I may approach, your Honor?

22 A I don't believe I do.

23 MR. VARGA: Your Honor, we had submitted a
24 set of exhibits, both the court's copy and then to the

1 clerk yesterday morning.

2 THE CLERK: Is that them?

3 MR. VARGA: Yes.

4 And, your Honor, do you have a set as well?
5 THE COURT: Yes.

6 (By Mr. Varga)

7 Q I'm just going to hand you that book of exhibits.

8 A Thank you.

9 Q Take a look at that.

10 A If somehow these all fall down, I apologize in advance.
11 Q If I can ask you to turn these to Exhibit 126. This is
12 in evidence already, but have you seen this document
13 before?

14 A Yes, I have.

15 Q Can you tell us what this is, please?

16 A It's a Crawford & Company Risk Management Services set
17 of specific instructions, specific to Building
18 Materials Corporation, also known as GAF.

19 Q And do you know -- well, let me step back for a moment.

20 When a policyholder selects a third-party
21 administrator in an unbundled program like GAF had,
22 does it typically give the third-party administrator
23 its own instructions and guidance with respect to how
24 an insured wants the claims to be handled or

1 administered?

2 MR. PRITZKER: Objection.

3 THE COURT: I'll allow it.

4 (By Mr. Varga)

5 Q In your experience.

6 A Yes.

7 Q And how do you know that?

8 A I audit claim files of the TPAs routinely as part of my
9 job, and frequently I see such documents in the claim
10 files.

11 Q All right. And when GAF retained Crawford to
12 administer claims against GAF under this Zurich
13 insurance program, did it provide any such instructions
14 to GAF -- I'm sorry, to Crawford?

15 A Yes.

16 Q All right. And is that what this document is, to your
17 knowledge?

18 A Yes.

19 Q All right.

20 A To my knowledge, that's what this is.

21 Q Now, this document I believe is 11 pages long. Can you
22 describe for us the purpose of this, as you understand
23 it?

24 A As part of their unbundling of the claim handling

1 services, as I stated before, the insured likes to have
2 a higher element or feeling of control over the claim
3 handling. It's giving instructions on what their
4 preference is to the TPA as to what their demands are
5 as to how their claim should be handled.

6 Q All right. And are there any provisions or
7 instructions in this document, Exhibit 126, that
8 pertain to reserve setting or reserve authority?

9 A Yes, they are.

10 Q Could you please direct us to them?

11 A Yes. It won't take long, I promise. It is on page
12 7ZA-0097.

13 Q All right. Can you give us a paragraph, please?

14 A (Reading): Authority limits apply per claimant, secure
15 all additional authority over branch threshold from Mr.
16 Robert Manning.

17 Then it goes on to say --

18 Q Can I just pause for a moment? Do you know who Mr.
19 Manning is?

20 A Mr. Manning is a Risk Manager at GAF.

21 Q Was he the risk manager who was working there at the
22 time of the Rhodes claim, to your knowledge?

23 A Yes, he was.

24 Q All right. I'm sorry. So continue, please.

1 A And then it gives three categories: check, settlement
 2 and reserve. And their authority was -- just for
 3 reserve, for example, 0 for PL, which would be product
 4 liability; \$5,000 for GL, or general liability; and
 5 \$10,000 for worker's compensation and auto liability.

6 Q AL is auto liability?

7 A Yes.

8 Q Okay. And then for reserve changes, just briefly
 9 describe what that is.

10 A It states: Reserve changes in the aggregate of 10,000
 11 or more on all files. Need to be discussed with Mr.
 12 Manning.

13 Q So under these instructions, then, Mr. Manning has to
 14 have input on reserve changes; is that correct?

15 A Correct.

16 Q All right. And you also had gone over, I think,
 17 settlement under the paragraph above that, (b)
 18 Settlement?

19 A Yes.

20 Q Can you explain those notes to us?

21 A In addition to setting reserves, they do not have any
 22 settlement authority for a products liability claim.
 23 For a general liability claim, Crawford has \$5,000 in
 24 authority. And for a worker's compensation and auto

1 liability claim, they had \$10,000.

2 Q All right. Now, are there any instructions, to your
 3 knowledge, in this document, Exhibit 126, that discuss
 4 or address the selection of experts or consultants?

5 A Yes.

6 Q Can you direct us to that?

7 A It's on page 6ZA-0096, Section 10.

8 Q I see. And can you read that, please?

9 A (Reading): Experts contact Mr. Robert Manning, address
 10 in paragraph 9, before selecting/employing experts on
 11 losses reserved over \$10,000, work comp/AL, \$15,000/GL
 12 or on catastrophic or exceptional losses.

13 Q And, Ms. Fuell, without reading the -- obviously the
 14 other provisions here, there are a lot of subparagraphs
 15 here: surveillance, undercover investigation,
 16 structured settlements, releases, defense counsel
 17 billing. Those are all under it looks like a paragraph
 18 on page ZA-94. It says "cost containment." Do you
 19 have an understanding of what that refers to?

20 A Right. The insured is very closely managing the costs
 21 of investigating the claims, so they want to have
 22 control over -- Crawford is just not authorized to
 23 incur these claim handling costs without going through
 24 GAF.

1 Q And so, again, this is -- through this document, GAF is
 2 exercising its ability to dictate, to some extent
 3 anyway, how Crawford administers claims against GAF?

4 A Yes.

5 Q Now when you became involved with the Rhodes claim in
 6 September of 2003, again who was the -- what law firm
 7 was defending GAF?

8 A Nixon Peabody.

9 Q Do you know who selected Nixon Peabody to be the
 10 defense firm for GAF?

11 A GAF had selected them in January of 2002.

12 Q So sometime just after the accident?

13 A Correct.

14 Q And at that time Zurich, from your prior testimony, did
 15 not have notice of the claim, correct?

16 MR. PRITZKER: Objection.

17 THE COURT: Sustained.

18 A Correct.

19 Q Did Zurich have any role in selecting Nixon Peabody?

20 A No, we did not.

21 Q At that time was Nixon Peabody among -- strike that.

22 In January 2002, to your knowledge, again if
 23 you know, did Zurich have a selected group of panel
 24 counsel, for example, that it would refer cases to

1 against its insureds in the Boston area?

2 A Yes, we did.

3 Q And do you know if Nixon Peabody was one of those panel
 4 counsel?

5 A They aren't our panel counsel now. I don't think they
 6 were then.

7 THE COURT: I'm sorry. They were or were not
 8 then?

9 THE WITNESS: I didn't look back. I don't
 10 know. I don't think they were. I don't think we've
 11 had a panel counsel relationship with them. A panel
 12 counsel is basically just we're familiar with the firm,
 13 we're familiar with their rates, and I don't think they
 14 were one of the firms that we had as -- this is a firm
 15 we would commonly go to.

16 Q Now, I want to go back to and continue with the time
 17 when you initially got the file and you took it over.

18 You said it was sometime in September of 2003 that you
 19 first picked it up; is that right?

20 A Correct.

21 Q Was the demand package that had been marked as Exhibit
 22 10, was that already in Zurich's possession in the file
 23 at that time?

24 A I think because of its size it was received by Zurich

1 in part of the overall claim contents, yes.
 2 Q So by the time you arrived, it was there? Strike that.
 3 By the time that you assumed control or
 4 oversight of this claim, that demand package was
 5 already in Zurich's possession?
 6 A Yes.
 7 Q And did you review the demand package at that time when
 8 you started with this file?
 9 A Yes, I did.
 10 Q And what other documents did you review, either paper
 11 or electronic, to get up to speed on this file?
 12 A I reviewed everything that we had in our claim file,
 13 the Zurich claim notes and system setup, a demand
 14 package. I had some questions about coverage. I asked
 15 for a coverage attorney to send me some clarification.
 16 I reserved everything that we had in our possession.
 17 Q We've talked about the claim file, and I think we've
 18 been -- the term electronic claim file has been used
 19 once or twice. Can you explain how at that time that
 20 you took over the oversight of the Rhodes case how the
 21 documents in the claim file were stored?
 22 Electronically? Paper? How were they stored?
 23 A Zurich -- supposedly it's a paperless system. It's
 24 hard for me to get over the paper hurdle. But when we

1 receive mail, it is sent to our imaging center, data
 2 processing, where the scan the mail and they put it
 3 into an electronic system. They reference a claim
 4 number and then they forward that claim document to
 5 whoever they can verify is handling the claim at the
 6 time.
 7 Q And they would do that by referencing the claim number,
 8 you said?
 9 A Yes. Or they -- if it's got a specific person's name
 10 on it, they might find that person, they might not.
 11 Q A specific person at Zurich, like an employee of
 12 Zurich?
 13 A Right.
 14 Q I see. All right. And so there's a department that
 15 actually loads those documents into the electronic
 16 database?
 17 A They scan it in whatever technologically how -- yes, it
 18 gets into the imaging system.
 19 Q And do you have a name for that system, for the
 20 computer system in which you can review the documents?
 21 A It's our imaging system or our CWS system, Claim --
 22 it's an electronic scan of all of our documentation.
 23 Q All right. And does the imaging system -- well, did
 24 the imaging system, with respect to the Rhodes claim,

1 contain e-mail correspondence that might have been
 2 exchanged between Zurich people and the TPA, for
 3 example?
 4 A Generally, if it's what we consider to be a critical or
 5 a pertinent e-mail, we'll try to print it and what we
 6 call drop it to our e-mail system, which means we drop
 7 it into a mail bin and ask someone to scan it into our
 8 electronic system. It doesn't have -- each and every
 9 piece of e-mail is not automatically entered into our
 10 imaging system.
 11 Q We took a look earlier today at some liability
 12 transmittal letters and other reports from Crawford &
 13 Company. Do you remember that?
 14 A Yes.
 15 Q And I believe Mr. Pritzker asked you the question
 16 whether Exhibits A and B were in the claim file at the
 17 time that you took control -- I'm sorry, 66A and 66B,
 18 which were the January 2002 and April 2002 reports from
 19 Crawford & Company. I think you testified that they
 20 were not in the file; is that right?
 21 A That's correct.
 22 Q Okay. With respect to other liability transmittal
 23 letters and other reports from Crawford that you did
 24 see, were those in paper form or on the imaging system

1 when you saw them?
 2 A They were on the imaging system.
 3 Q All right. And when you examined documents on
 4 the imaging system in your efforts to educate
 5 yourself on the Rhodes claim, did you see either
 6 the January 2002 report from Crawford, which is
 7 Exhibit 66A, or the April 2002 report from
 8 Crawford, which is Exhibit 66B, on the imaging
 9 system?
 10 A No, I didn't.
 11 Q And at any time since then that you've accessed
 12 the imaging system on the Rhodes case, did you
 13 see those two documents?
 14 A No, they weren't in our claim file, which is --
 15 everything in our claim file is the imaging
 16 system, unless it's a -- the "Day in the Life"
 17 wouldn't be on the imaging system because you
 18 can't scan it.
 19 Q But any other documents, paper documents that
 20 you received would be there?
 21 A Yes.
 22 Q I going to ask you please to turn to --
 23 THE COURT: Counsel, before you leave
 24 the filing system, let me ask you, when Zurich

1 receives notice of a claim, how is that
 2 generally done?
 3 THE WITNESS: Notice from the insured
 4 -- Zurich has a call center and they can either,
 5 via the Internet or by telephone or by fax,
 6 report it to our claim call center in Colorado
 7 Springs, Colorado, and they take the report of
 8 the claim, whether they can verify it's a proper
 9 Zurich policy or not, and then they set up a
 10 claim in the claims system. That would be when
 11 they report the claim. Information is either
 12 mailed to us at our respective office that
 13 someone's aware of. For most of the claims for
 14 Zurich, they're called into our call center.

15 THE COURT: Just to be clear --

16 THE WITNESS: I know that was a bad
 17 answer. I'm sorry.

18 THE COURT: With regard to claims that
 19 are orally provided, the first step, I gather,
 20 is to create a claims file?

21 THE WITNESS: Correct.

22 THE COURT: And who does that?

23 THE WITNESS: On the bundled side? If
 24 it's called into our call center, the call

1 center will create a claims file.

2 THE COURT: How about on the unbundled
 3 side?

4 THE WITNESS: On the unbundled side, we
 5 don't generally set up a separate claim file
 6 other than perhaps to put in Z notes. It's an
 7 electronic data feed from the TPA.

8 THE COURT: How do you know where to
 9 put it?

10 THE WITNESS: How do I know where to
 11 put the notes? The data feed from the TPA can
 12 take anywhere from 30 to 90 days. And it's
 13 basically a data feed of their financials, since
 14 they keep the reserves in all of the payments on
 15 the file.

16 THE COURT: Let me see if I can sort
 17 out. When you started with this file, am I
 18 correct in understanding that you were able to
 19 go to a claims file with regard to the Rhodes
 20 case?

21 THE WITNESS: Correct.

22 THE COURT: So there was a distinct
 23 electronic Rhodes file?

24 THE WITNESS: Yes, there was.

1 THE COURT: And how would you access
 2 that?

3 THE WITNESS: I would enter the claim
 4 number into our claims system.

5 THE COURT: Okay. So the claim number
 6 is your entrée to that electronic file?

7 THE WITNESS: That's correct.

8 THE COURT: All right. And how does a
 9 claim number get created?

10 THE WITNESS: It's either created by
 11 the data feed from the TPA, which creates
 12 basically an unchangeable file; it's just a
 13 record of financial transactions. Or in a case
 14 like this, if it's something where we need to
 15 put some notes in, we can ask a claim
 16 administrator to set up what we call it a "let-
 17 rest file." It's basically a file that doesn't
 18 have reserves; it's just going to contain system
 19 notes.

20 THE COURT: All right. And with regard
 21 to the actual Rhodes file, how was the claims
 22 number made here?

23 THE WITNESS: The claims number, I
 24 reviewed all the documents and there was a

1 let-rest file that David McIntosh had asked to
 2 be opened up because we didn't have the data
 3 feed from the TPA.

4 THE COURT: Okay. So he actually
 5 created it?

6 THE WITNESS: He had someone within
 7 Zurich create it, yes.

8 THE COURT: Which means that there was
 9 no number beforehand?

10 THE WITNESS: Not to my knowledge.

11 THE COURT: All right. Now, with
 12 regard to your scanners, did they scan every
 13 document that is provided by mail to Zurich?

14 THE WITNESS: I have never worked in
 15 the -- I haven't even been in the document
 16 system, so forgive me. But the mail that they
 17 receive that isn't, say, sent to me personal and
 18 confidential so it has to come delivered to me,
 19 if they receive it via it being mailed to 1400
 20 American Lane, they do scan it into the system.

21 THE COURT: Okay. But how does it get
 22 from the scanned system into the electronic
 23 claims file?

24 THE WITNESS: When they scan it into

1 the system, they look on an index registry of
 2 claims and they try to find a claim number that
 3 matches that piece of information, either via
 4 date of loss, or a claimant name, an insured
 5 name. They try to find a claim number on our
 6 Zurich system.

7 THE COURT: But if the claim had not
 8 yet been reported, it would not be on that
 9 system?

10 THE WITNESS: Correct.

11 THE COURT: So if you turn to 66A, is
 12 there anything on that document that would
 13 indicate to which file in Zurich this should go?

14 THE WITNESS: It's carbon copied to
 15 Zurich. Given the date of the document and the
 16 date of the loss, we wouldn't have had a claim
 17 file in our system yet.

18 THE COURT: Does that answer your
 19 question?

20 MR. VARGA: If I may, your Honor --

21 THE COURT: No. So I guess my question
 22 then is, if this document is sent to Zurich,
 23 what would routinely happen to it?

24 THE WITNESS: They would have looked

1 for a claim file or a claim handler or something
 2 that would reference that Zurich had an open
 3 claim with regard to this document.

4 THE COURT: But you're telling me that
 5 as of January 30, they wouldn't have found any?

6 THE WITNESS: Correct.

7 THE COURT: So what do they do when
 8 they get this document and don't find any open
 9 claim at Zurich?

10 THE WITNESS: I don't know what they do
 11 with it. I'm not trying to be -- I just don't
 12 know what happened to it, if they received it.

13 THE COURT: Okay.

14 (By Mr. Varga:)

15 Q Where we have a document like that, 66A,
 16 assuming it arrives at Zurich, where there's no
 17 claim set up for it, is that one reason why you
 18 said before that you expect and understand that
 19 in a case like this, where there is an
 20 expectation or a possibility that the loss might
 21 affect Zurich's exposure, that is, over 250,000,
 22 there is a possibility that you expect that the
 23 broker or the insured will actually directly
 24 notify Zurich?

1 A Yes.

2 Q Within --

3 MR. PRITZKER: I'm sorry, your Honor,
 4 but I think there's been some misleading here.
 5 There is an identity of an insurance number, an
 6 insurance policy number, on the first page of
 7 this document.

8 THE COURT: It's says "our file." I
 9 agree. But are you telling me that that file
 10 number would not assist the scanners to know
 11 where it should go?

12 THE WITNESS: That's a Crawford file
 13 that's listed.

14 THE COURT: So that wouldn't help
 15 anybody in the Zurich scanner's office to know
 16 where to put it?

17 THE WITNESS: Correct.

18 MR. PRITZKER: Your Honor, I was
 19 referring to the insurance policy number under
 20 coverage. On the first page, it says
 21 "coverage".

22 THE COURT: Oh, okay.

23 THE WITNESS: The BAP number.

24 MR. VARGA: Your Honor, I would like to

1 do my examination. Mr. Pritzker will have the
 2 opportunity --

3 THE COURT: I understand that. But
 4 since we're here, would you expect them to read
 5 the entire document to figure out where it
 6 should go?

7 THE WITNESS: They would look for an
 8 insured name; they would have looked at the
 9 policy number and plugged it into our system and
 10 tried to see if a claim number came up. It
 11 hadn't been created at Mr. McIntosh's request at
 12 that point and the data feed would not have been
 13 received from Crawford.

14 THE COURT: All right. And you don't
 15 know what they do with regard to documents that
 16 don't appear to have a home in Zurich?

17 THE WITNESS: I'm sorry, I don't.

18 THE COURT: Okay.

19 (By Mr. Varga:)

20 Q When the broker or the insured give notice to
 21 Zurich directly, to whom do they give the notice
 22 for a claim like this?

23 A They would give notice to either a business unit
 24 and the underwriting person that would forward

1 it on to the proper claim area, or if they knew
 2 people in the claim area, they might send it in
 3 that way.

4 Q And do you know brokers from your own work at
 5 Zurich?

6 A Yes.

7 Q There are brokers that you've dealt with?

8 A Yes.

9 Q On a regular basis?

10 A Yes.

11 Q And do you sometimes receive notice from them of
 12 a claim?

13 A Frequently I do, yes.

14 Q And that didn't happen in this case, did it?

15 A No.

16 MR. VARGA: Your Honor, I could
 17 continue for a few minutes, or if you'd like to
 18 break, we can do it at this time.

19 THE COURT: You have 60 seconds. Do
 20 the best you can.

21 MR. VARGA: I want to see if we can do
 22 this quickly.

23 (By Mr. Varga:)

24 Q Can I ask you please in the Exhibit Binder 2,

1 Kathleen, to please look at Exhibit Number 75.

2 A I'm hurrying. Sixty-five, did you say?

3 Q 75.

4 THE COURT: Plainly we're going to be
 5 using that time to do that. So we'll begin
 6 there tomorrow. We start tomorrow at 9:30, in
 7 terms of testimony. We'll plan to start at 9
 8 o'clock in terms of me seeing the "Day in the
 9 Life" video, all things going well. Counsel can
 10 or cannot be present for that, that's up to you,
 11 but I'll be watching the video. I don't expect
 12 there is to be a need for any testimony, so I
 13 will not ask the court reporter be here until
 14 9:30.

15 And the National Mock Trial
 16 Competition, which will be using this courtroom,
 17 will begin tomorrow night and continue on to
 18 Friday and Saturday, so we'll need to move that
 19 to a corner before close of business on
 20 Thursday, okay? All right. We are adjourned.

21 MR. PRITZKER: Your Honor, I would like
 22 to in the morning address the motion on the --

23 THE COURT: As soon as the "Day in the
 24 Life" video is completed. I will bring in the

1 court reporter.

2 (Hearing ended.)

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