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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.
SUCV2005-1360SUPERIOR COURT DEPARTMENT
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 7

BEFORE: GANTS, J.
 BOSTON, MASSACHUSETTS
 FEBRUARY 13, 2007

PAULA PIETRELLA
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 Court Reporters

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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Gregory Deschenes

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P R O C E E D I N G S

1 (In court at 9:10 a.m.)
 2
 3 THE COURT OFFICER: This Honorable Court is
 4 now open, you may be seated.
 5 MR. PRITZKER: Good morning, your Honor.
 6 THE COURT: All right. We need to talk about
 7 tomorrow. I expect schools are going to be closed
 8 tomorrow. I don't know whether that poses a problem
 9 for any of you by itself. I can't predict, but from my
 10 experience, when they say it's going to be snowing from
 11 midnight till the start of the school day and
 12 continuing into the school day and schools, being
 13 unsure what it will look like at two or three o'clock,
 14 will probably cancel. Does that by itself pose any
 15 problems for any of you?
 16 MR. PRITZKER: Not on the plaintiffs' side,
 17 your Honor.
 18 THE COURT: All right. On the defense side?
 19 MR. VARGA: Not for Zurich, your Honor.
 20 MR. ZELLE: No, your Honor.
 21 THE COURT: All right. And how about in
 22 terms of how far away each of you are coming, as well
 23 as witnesses?
 24 MR. PRITZKER: I live in Wayland, your Honor,

1 but I have a four-wheel drive vehicle.
 2 THE COURT: Anybody else who's
 3 environmentally unsound?
 4 MS. PINKHAM: I have one too. I'll take the
 5 minivan if that will your Honor feel better.
 6 THE COURT: But I expect you're using your
 7 exorbitant salaries to help plant trees somewhere to
 8 make up for the -- all right. Then I guess what we'll
 9 probably aim to do is start at 9:30 tomorrow, because I
 10 think the commute could be more difficult, trains will
 11 be delayed and such. So we'll aim for a 9:30 start,
 12 but it sounds as if there's no particular reason why
 13 anybody can't get here unless it's worse than
 14 predicted. Okay, let's get back to work.
 15 I have read the Manning deposition last
 16 night, so that is done.
 17 MS. PINKHAM: Thank you, your Honor. We have
 18 one more administrative matter. The plaintiffs would
 19 like to introduce certain selections of the defendants'
 20 discovery responses as their next exhibit. I'd like to
 21 do that now.
 22 THE COURT: I'm sorry. The defendants?
 23 Which defendant?
 24 MS. PINKHAM: All of them, your Honor. It's

1 production of documents.
 2 THE COURT: And the response to the
 3 production of documents, what's the relevance of that?
 4 MS. PINKHAM: AIG, in its response to
 5 document requests, stated that after a diligent it
 6 could not find any policies governing the adjustment of
 7 automobile liability claims.
 8 MR. ZELLE: I'm sorry, covering what?
 9 THE COURT: I'm sorry, it didn't have any?
 10 MS. PINKHAM: It does not have internal
 11 policies on how to adjust auto liability claims.
 12 THE COURT: Okay.
 13 MS. PINKHAM: And there's also a request for
 14 admissions.
 15 THE COURT: Okay. So that's part of their
 16 answer to the request for production?
 17 MS. PINKHAM: Yes.
 18 THE COURT: Okay. Well, that, too, would be
 19 a statement by an adverse party so it will be
 20 admissible. The only issue is whether it's relevant,
 21 but I don't know that we need to -- I'll read them.
 22 If they're not relevant, I'll ignore them.
 23 Okay, next witness.
 24 MS. PINKHAM: The plaintiffs call Gregory

1 a small selection of the discovery.
 2 THE COURT: The 30B(6).
 3 MS. PINKHAM: No. These are their answers to
 4 interrogatories, your Honor.
 5 THE COURT: Oh, answers to interrogatories.
 6 Okay. Any objection to those coming in?
 7 MR. VARGA: No, your Honor.
 8 THE COURT: Hearing none, they may come in as
 9 the next exhibit, which I think is 82.
 10
 11 (Exhibit No. 82, marked; Book of Selected
 12 Defendants' Discovery Responses.)
 13
 14 THE COURT: Okay.
 15 MR. ZELLE: I'd like to know the purpose for
 16 which -- these are pleadings -- why these are being
 17 offered.
 18 THE COURT: They're answers to ints so
 19 they're admissions --
 20 MR. ZELLE: Well, they're not answers to
 21 interrogatories.
 22 THE COURT: They're not answers to ints?
 23 MS. PINKHAM: Answers to interrogatories and
 24 responses to the production -- the one response to the

1 Deschenes.
 2 GREGORY DESCHENES, Sworn.
 3 THE COURT: Good morning, sir.
 4 THE WITNESS: Good morning.
 5 THE COURT: If you'd please state your full
 6 name and spell your last name.
 7 THE WITNESS: Gregory Paul Deschenes, D-e-s-
 8 c-h-e-n-e-s.
 9 THE COURT: First time being on the other
 10 side of the questioning?
 11 THE WITNESS: It is, unfortunately, your
 12 Honor.
 13 THE COURT: All right. Well, I'm sure you'll
 14 be a better attorney for having been on that side.
 15 THE WITNESS: So I've heard.
 16 THE COURT: You may proceed.
 17 DIRECT EXAMINATION BY MS. PINKHAM:
 18 Q Good morning, Mr. Deschenes.
 19 A Good morning.
 20 Q Were you subpoenaed to testify in this case?
 21 A I was.
 22 Q And are you represented by counsel in connection with
 23 your testimony?
 24 A I am.

1 MS. PINKHAM: And for the record, your
 2 Honor, my understanding is that Neil Moynihan, who is
 3 present, represents Mr. Deschenes.
 4 (By Ms. Pinkham)
 5 Q Is that true, Mr. Deschenes?
 6 A That's correct.
 7 Q Mr. Deschenes, could you describe generally your
 8 involvement in the lawsuit that was filed by Marcia
 9 Rhodes in July of 2002 against Carlos Zalewski and a
 10 number of other defendants?
 11 A Yes. Our law firm, Nixon Peabody, was retained to
 12 represent Building Materials Corporation of America,
 13 d/b/a GAF, in that lawsuit. I became involved in the
 14 lawsuit sometime in 2002, 2003, thereabouts as part of
 15 the team defending, I'll call it, GAF.
 16 Q And prior to your involvement in the case, was there
 17 another attorney at Nixon Peabody who was responsible
 18 for it?
 19 A Yes, there were several. There were several attorneys
 20 at Nixon Peabody involved in defending GAF, but Melissa
 21 Tierney was involved prior to my involvement. Other
 22 people who worked on the case at Nixon Peabody were
 23 Dennis Duggan throughout, and Grace Wu, who is an
 24 associate at the firm.

1 MR. GOLDMAN: Objection. Relevance, your
 2 Honor. Also, the document's not in evidence.
 3 THE COURT: He can describe it. I don't
 4 know what it is yet so it's hard for me to know what
 5 its relevance is. Why don't you describe the document.
 6 A It's been a long time since I've seen these documents,
 7 but it appears to be a lease agreement between Rollins
 8 Leasing Corporation and GAF Building Materials
 9 Corporation.
 10 (By Ms. Pinkham)
 11 Q And, Mr. Deschenes, after you became involved in the
 12 case, did you understand that the Rollins lease
 13 agreement was the operative agreement between Penske
 14 and GAF, your client?
 15 MR. GOLDMAN: Objection. Relevant to his
 16 understanding.
 17 THE COURT: Overruled. There is a question
 18 as to whether there was a dispute as to coverage which
 19 delayed the agreeing of an offer, so I assume that
 20 that's its relevance? All right. If that's its
 21 relevance, I will permit it.
 22 A I remember there was a lease agreement between the
 23 parties. Whether this was the operative agreement or
 24 not, I don't remember.

1 THE COURT: Who was lead counsel?
 2 THE WITNESS: Dennis Duggan throughout was
 3 the lead counsel on the case.
 4 (By Ms. Pinkham)
 5 Q Including the time period after which you became
 6 involved?
 7 A Yes.
 8 Q When you became involved in the case, did you review
 9 any of the correspondence or pleadings that have been
 10 filed?
 11 A I'm sure I did.
 12 Q I'm handing you a document, Mr. Deschenes, and ask if
 13 you recognize it.
 14 A I don't recognize the cover letter, but I do recognize
 15 the document attached to the cover letter.
 16 Q And the cover letter is a fax cover sheet?
 17 A No. There is a letter from Penske to Dennis M. Duggan,
 18 Jr., Esquire, dated April 1, 2002. That's what I was
 19 referring to. I don't recognize that document.
 20 Q Okay.
 21 A But the agreement which is attached to the document I
 22 have seen before.
 23 Q And what's your understanding of the agreement that is
 24 attached to the --

1 (By Ms. Pinkham)
 2 Q Do you have any memory that Penske had acquired an
 3 entity and the leasing arrangements that the other
 4 entity had had?
 5 A That was my --
 6 MR. GOLDMAN: Objection, your Honor. This
 7 witness is not competent to testify whether he has a
 8 memory of something happening. That's something that's
 9 memorialized through documents, if it's a relevant
 10 transaction.
 11 THE COURT: I'm sorry. You're saying that
 12 he can only have a memory if it's reflected in a
 13 writing?
 14 MR. GOLDMAN: Yes, your Honor. The
 15 question is asking this witness to characterize a
 16 transaction which he had no involvement in.
 17 THE COURT: I understand, but the issue is
 18 not -- the relevance, if there is any, goes to the
 19 extent to which there was a claim that there were
 20 matters of coverage which were still uncertain, which
 21 delayed the giving of an offer. So I will permit
 22 inquiry along those lines, if indeed that's how it
 23 plays out.
 24 Is it your contention that there were

1 issues of -- well, let me ask you. With regard to
2 Zurich, is there any contention that there are issues
3 of coverage which delayed the giving of an offer?

4 MR. GOLDMAN: There were issues of
5 coverage, but this witness and its firm had no
6 involvement in it.

7 THE COURT: Well, that goes --

8 MR. GOLDMAN: He was not representing
9 Zurich.

10 THE COURT: Well, I understand that, but --

11 MR. GOLDMAN: And without some foundation
12 for that -- if there's a foundation for that, then we
13 wouldn't have the objection.

14 THE COURT: All right. Well, I think it
15 would also be relevant to GAF if there was another
16 entity which was separately insured; would it not, Mr.
17 Deschenes?

18 THE WITNESS: I'm sorry, your Honor?

19 THE COURT: Would it be relevant to your
20 representation if there was another defendant who was
21 separately insured and had a separate policy which
22 could provide coverage?

23 THE WITNESS: We were not involved in any
24 insurance coverage determinations. But to answer your

1 Honor's question, it is my understanding that they had
2 separate representation, Penske, DLS, throughout the
3 underlying action.

4 THE COURT: All right. And did you make
5 any inquiry on your own as to whether or not Penske
6 indeed did have a separate insurance policy that could
7 arguably provide coverage?

8 THE WITNESS: At some point I think we did,
9 your Honor. I think we did at some point. I can't
10 recall exactly when, but we did.

11 THE COURT: You did what?

12 THE WITNESS: We made that inquiry.

13 THE COURT: Of whom?

14 THE WITNESS: Of the client and I believe
15 in interrogatories as well.

16 THE COURT: Okay. Back to you, Ms.
17 Pinkham.

18 (By Ms. Pinkham)

19 Q Mr. Deschenes, somewhere in the -- strike that.

20 Mr. Deschenes, in the binders before you,
21 in the binder that's marked as Plaintiffs' Exhibit 1,
22 could you please find Exhibit No. 6?

23 A Volume 1?

24 Q Yes. Have you found Exhibit 6?

1 A I have.

2 Q And Exhibit 6 is on Nixon Peabody letterhead; is it
3 not?

4 A It is.

5 Q And it is signed by Grace Wu, an associate at Nixon
6 Peabody?

7 A It is.

8 Q Had you seen this letter when you got involved in the
9 case in defending GAF?

10 A I probably did, but I have no specific memory of
11 looking at this letter.

12 Q Do you recall any communications after the date of the
13 July 3 letter to Penske in which Zurich or Crawford
14 contacted Nixon Peabody and instructed Nixon Peabody to
15 stop making coverage decisions?

16 A I have no memory of that. It may have been prior to my
17 involvement in the case.

18 Q Were you involved in the case at the time discovery was
19 being done?

20 A Yes.

21 Q Can you recall approximately where the case was in the
22 discovery period when you became involved?

23 A Written discovery was under way. By that I mean
24 document requests and interrogatories had been served

1 and were being responded to. I think that's when I
2 became involved in the case.

3 Q And did you review any of the documents that the
4 plaintiffs produced in response to GAF's request for
5 documents?

6 A I'm sure I did at some point, but Grace Wu did most of
7 the document review and production work on this case.

8 Q Did you review any of the medical records that were
9 produced by Mrs. Rhodes?

10 A My memory of the medical records is the first time that
11 I looked at the medical records was when we received a
12 settlement demand package sometime in the summer -- I
13 believe it was in August of 2003 -- and that's my first
14 memory of looking at the medical records themselves.

15 Q Prior to August of 2003, did you know whether Grace Wu
16 had reviewed the documents that were produced by the
17 plaintiffs?

18 A I'm sure she did, but what specifically she reviewed, I
19 don't know.

20 Q Do you recall ever receiving any memorandums or
21 communications from Grace Wu summarizing the documents
22 that were produced?

23 A I don't recall.

24 Q Mr. Deschenes, I'm going to ask you to now find

1 Plaintiffs' Volume 2, and if you could turn to Exhibit
2 66F, please.
3 A Okay.
4 Q And 66F is a transmittal letter that was produced by
5 the parties in this litigation. Could you turn to the
6 second page of Exhibit 66F, and under the paragraph
7 "Current Status" towards the end of the first full
8 paragraph, there's a sentence that begins: We have
9 spoken with defense for GAF, Greg Deschenes. He states
10 that he feels this matter should not run the usual
11 litigation course due to the severity of the injury.
12 Was that something that you did in fact
13 communicate to Jody Mills at Crawford in May of 2003?
14 A I don't have a specific memory of that, but clearly
15 that was the desire of my client at that time. GAF
16 wanted to try to see if they could settle this matter,
17 this matter being the underlying litigation.
18 Q Did you approach the plaintiffs in May of 2003 to make
19 an inquiry about settlement?
20 A I did.
21 Q Could you describe what you did?
22 A Yes. I might have made inquiry earlier than this, but
23 I do have a distinct memory of talking to Fred Pritzker
24 during the break of a deposition. I believe it might

1 Q You used the phrase "dual track," Mr. Deschenes, Can
2 you explain that to me?
3 A What I meant by that?
4 Q Yes.
5 A Fred's response at the time was that he wanted to
6 proceed with litigating the case. He wasn't willing to
7 stop conducting discovery, engaging in discovery, in
8 order to pursue settlement negotiations, that's my
9 memory and that's what I meant by "dual track."
10 THE COURT: This conversation occurred
11 roughly when, do you remember?
12 THE WITNESS: I remember it took place,
13 your Honor, during a break at the Zalewski deposition,
14 whenever that was. It might have been in June of 2003
15 because I do remember I had a trial that month, and I
16 remember coming out of a trial and going into that
17 deposition, so.
18 THE COURT: But you do have a specific
19 memory that it occurred during the Zalewski depo?
20 THE WITNESS: Oh, definitely. It was
21 during a break.
22 THE COURT: So if I find out what the date
23 of that is, I find out what the date of this
24 conversation was.

1 have been the first deposition taken in the case of Mr.
2 Zalewski. And I recall having a conversation with Fred
3 about trying to get the case off of the litigation
4 track and onto a settlement track whereby the parties
5 would mediate the matter.
6 Q And did you make any statements in connection with
7 discovery while pursuing mediation efforts?
8 A Yes, I did.
9 Q And what did you say?
10 A My proposal to Fred at the time, and this at the time,
11 was the wishes of my client who I represented, GAF, was
12 to trying to stay the litigation, not to go through the
13 usual course of discovery, depositions and so forth,
14 and to focus our efforts on mediation.
15 Q And how did Fred Pritzker respond to that?
16 A His response was that he refused to stay the discovery.
17 He wanted to proceed on both a litigation track and a
18 settlement track.
19 Q And does that mean that Mr. Pritzker was open to
20 pursuing mediation at the same time discovery was
21 ongoing?
22 MR. GOLDMAN: Objection. Leading.
23 THE COURT: Sustained.
24 (By Ms. Pinkham)

1 THE WITNESS: We have had prior discussions
2 about settlement, but I have distinct memory of that
3 occasion.
4 (By Ms. Pinkham)
5 Q Mr. Deschenes, do you have any memory of broaching the
6 subject of settlement or mediation separate from
7 discovery efforts?
8 MR. GOLDMAN: Objection. Leading.
9 THE COURT: Sustained. I'm not quite sure
10 what --
11 A I don't understand the question.
12 THE COURT: -- the question is, so why
13 don't you rephrase it.
14 MS. PINKHAM: Sure.
15 (By Ms. Pinkham)
16 Q Mr. Deschenes, did you ever discuss settlement with
17 Fred Pritzker where the only topic of the discussion
18 was settlement and not discovery?
19 A Yes.
20 Q Can you recall any of those conversations?
21 A Yes.
22 Q Could you please describe them?
23 A Well, after the conversation during the Zalewski, in
24 the break of the Zalewski deposition, Fred put together

1 a settlement demand and called me, I believe sometime
 2 in the summer of 2003, it probably was July of 2003,
 3 with a settlement offer.
 4 Q And what did Mr. Pritzker say to you?
 5 A He conveyed a settlement offer.
 6 Q Do you recall what it was?
 7 A I do. I believe it was eighteen and a half million
 8 dollars.
 9 Q Can you recall any additional facts about the
 10 conversation that you had with Mr. Pritzker?
 11 MR. VARGA: Objection. Asks for hearsay,
 12 your Honor.
 13 THE COURT: Overruled.
 14 A It was a fairly brief conversation. It probably lasted
 15 no more than 10 or 15 minutes. He described the basis
 16 of the offer. I mean, I can't remember the details of
 17 it, but he gave me some information about medical
 18 costs, special damages, pain and suffering, loss of
 19 consortium, and indicated that we would be receiving a
 20 follow-up package with all the supporting data to back
 21 up the oral settlement offer. That's my memory.
 22 (By Ms. Pinkham)
 23 Q At any point prior to July of 2003 when you had this
 24 conversation with Mr. Pritzker, had you requested a

1 thing was that we did receive a written settlement
 2 package.
 3 Q What did you do when you received the package?
 4 A I forwarded it on to the client, being GAF, and I
 5 forwarded it on to Crawford and asked that they forward
 6 it on to the carriers, Zurich and AIG.
 7 Q The demand package that you received, did it include a
 8 videotape?
 9 A Yes, it did.
 10 Q Did you watch the videotape?
 11 A Yes, I did.
 12 Q Did the demand package and videotape assist you in
 13 evaluating the settlement value of the case?
 14 MR. ZELLE: Objection, your Honor. It calls
 15 for attorney mental impression work product.
 16 MS. PINKHAM: It's a yes or no question, your
 17 Honor.
 18 THE COURT: I'll allow it, yes or no.
 19 A The question was whether it helped us in evaluating the
 20 case?
 21 (By Ms. Pinkham)
 22 Q Yes.
 23 A Yes.
 24 Q Mr. Deschenes, before you received the demand package

1 written demand from the plaintiffs?
 2 A Well, in connection with the conversation that we had
 3 at the Zalewski deposition, that's what I was looking
 4 for. I was looking for an offer.
 5 Q At some point after the conversation referencing the
 6 eighteen and a half million dollar demand, did Mr.
 7 Pritzker call you again?
 8 A Yes, he left me a voicemail message. I was away at a
 9 legal seminar out in Jackson Hole and I remember
 10 picking up the voicemail message from Fred indicating
 11 that you all, plaintiffs' counsel, were having
 12 difficulty putting together the settlement package
 13 because of some discrepancy in the numbers,
 14 discrepancies that actually worked in favor of the
 15 defendants in terms of double-counting some numbers,
 16 and that it was going to take a little more time to
 17 iron that out, but we should be receiving a settlement
 18 package at some point. That's my memory of the next
 19 communication.
 20 Q Okay. And after you received that voicemail did you
 21 ever speak with Mr. Pritzker about the package that he
 22 said he was going to send?
 23 A I don't remember. We may have had a brief conversation
 24 here or there about it, but I do remember the next

1 from Mr. Pritzker, do you have a memory of thanking him
 2 for informing you that the numbers were going to be
 3 different and --
 4 MR. GOLDMAN: Objection. Leading.
 5 THE COURT: Overruled.
 6 A Do I have a memory of thanking Fred?
 7 (By Ms. Pinkham)
 8 Q Yes, for letting you know that the numbers were
 9 different.
 10 A Yes, absolutely.
 11 Q Can you recall anything else about that conversation?
 12 A Not really. I mean it was just one of those unusual
 13 circumstances where, you know, there was a mistake and
 14 he owned up to the mistake and said the mistake was
 15 actually in our favor.
 16 Q Mr. Deschenes, were you at the deposition of Harold
 17 Rhodes in 2003?
 18 A I think I was.
 19 Q Did you in fact question him during his deposition in
 20 2003?
 21 A I'm sure I did.
 22 Q Do you recall him becoming upset during the deposition?
 23 A Yes, I think I do remember at times during the
 24 deposition he seemed to be upset.

1 Q Do you remember approximately when Mr. Rhodes' deposition was?

2 A I don't.

3 Q After you received the demand package from Mr. Pritzker, did you have any communications with him about it?

4 A Yes, I'm sure I did.

5 Q Did he ever call you and ask what was going on?

6 A Fred would periodically call and try to get an update as to where things stood.

7 Q And would he ask you when the plaintiffs could expect a response to the demand package?

8 MR. GOLDMAN: Objection. Leading.

9 THE COURT: Overruled.

10 A That was the point of his telephone call was to find what was happening and when the plaintiffs could expect to receive a response, yes. I mean that was the entire point of the phone calls.

11 (By Ms. Pinkham)

12 Q Can you recall how you responded to those periodic inquiries?

13 A Yes, I told him that we were working on it.

14 Q Were you ever able to give him a timeframe of when to expect a response?

1 we put it off. We agreed to defer them.

2 Q Mr. Deschenes, do you recall at any point in October of 2003 providing an analysis of the case to Crawford?

3 A I remember there was some report that either Crawford or Zurich requested of us; I have a memory of that.

4 Q Crawford forwarded you a report to complete. Do you have a memory of that?

5 A I don't -- as I said, I don't remember whether the format of the report came from Crawford or Zurich or both, but I do remember working with Grace on trying to complete a report of some kind.

6 Q Mr. Deschenes, I'm going to show you a document and see if it refreshes your recollection. This is Crawford & Company's privilege log that was produced in this case.

7 MR. ZELLE: I'm going to object, your Honor.

8 We're not going to see the report. That's clearly the case. And he's testified -- if he simply testifies I remember preparing a report, I think we've gotten as far as we can go.

9 THE COURT: I assume it's only to get the date; is that correct?

10 MS. PINKHAM: Yes.

11 THE COURT: All right. You may use that to refresh his memory as to what the time period was.

1 A I did not give him any timeframe other than to say that we were doing our best to respond.

2 Q Can you recall approximately how many times Mr. Pritzker contacted you asking for a status?

3 A I really -- I don't have a memory to today. It was periodic.

4 Q Mr. Deschenes, did Nixon Peabody notice the depositions of Marcia Rhodes and Rebecca Rhodes before the end of the discovery period in the underlying action?

5 A Yes, we did.

6 Q And do you recall that the depositions did not go forward on the date that they were initially noticed?

7 A That's correct.

8 Q What was your understanding of why the depositions did not go forward?

9 A We had an agreement that we worked out with your firm that it wasn't necessary to do the discovery prior to the case going to mediation. If the case went to trial, obviously we would need to take those depositions, but it was our view at that time that those depositions -- we did not want to have to make them go through the process of a deposition just for mediation. If and when it was necessary, we reserved and preserved the right to take their depositions, but

1 MS. PINKHAM: Sure.

2 (By Ms. Pinkham)

3 Q For the record I'm showing you a reference to Bates number 228 through 229, and the description is: Attorney-client privileged attorney work product report of case dated 10/20/03.

4 A And the question is, was that around the time that the report was prepared?

5 Q My question actually is, at the time that you completed the report in October of 2003, did you know whether it was Crawford asking you to complete it or whether it was Zurich who was asking you to complete it?

6 A Once again --

7 MR. GOLDMAN: Objection. Asking for privilege.

8 THE COURT: Well, I don't think that's privilege. But first of all, is that your memory as to when it was?

9 THE WITNESS: It is, your Honor, sometime in October 2003. As I testified before, I cannot remember whether the report was requested from Crawford or Zurich.

10 MS. PINKHAM: Your Honor, I've noticed that the next witness, who is scheduled to testify, has

1 entered the courtroom and I would ask that Nicholas
2 Satriano be sequestered during Mr. Deschenes testimony.
3 THE COURT: Let me see counsel at sidebar on
4 that.

5
6 SIDEBAR CONFERENCE:

7 THE COURT: Why?
8 MS. PINKHAM: I would not want Mr. Deschenes'
9 testimony to inform Mr. Satriano because they're going
10 to be testifying about the same series of events.

11 THE COURT: Okay. Let me hear from
12 defendants.

13 MR. PRITZKER: In particular, your Honor, a
14 meeting that they both attended.

15 MR. VARGA: Simply put, just in response to
16 that, we have not requested sequestration of Mr.
17 Rhodes, who sat through his wife's and his daughter's
18 deposition and his brother's deposition, although we
19 certainly had the right to.

20 MR. COHEN: Or. Fuell, who sat through Mills'
21 testimony.

22 MR. ZELLE: And Mr. Deschenes', who sat
23 through the testimony of --

24 THE COURT: They've both been deposed, I

1 assume. Has Deschenes been deposed?

2 MR. ZELLE: Sure has.

3 MS. PINKHAM: Mr. Deschenes has not.

4 THE COURT: Sorry?

5 MS. PINKHAM: Attorney Deschenes was not
6 deposed.

7 THE COURT: All right. Then he's going to
8 hear what Satriano says until after he testifies, so
9 I'll deny it.

10 END OF BENCH CONFERENCE

11

12 THE COURT: You may proceed.

13 (By Ms. Pinkham)

14 Q Mr. Deschenes, do you recall completing a report in
15 November of 2003 in the Rhodes case?

16 A My memory is that we completed a report sometime in
17 October of 2003, but my memory may be faulty on that in
18 terms of the dates. We completed some report in the
19 fall of 2003.

20 Q And did you have an understanding that the reports you
21 were completing were for Zurich to review?

22 A My understanding is that the reports were forwarded to
23 Zurich.

1 Q Mr. Deschenes, if you could find plaintiffs' trial
2 exhibits Volume 2, again for me. If you could turn to
3 Exhibit 67, please, I'm referencing the page that bears
4 the Bates stamp ZA-0573.

5 A 0573?

6 Q 73, yes. I think they're in reverse chronological
7 order.

8 A Yes, okay.

9 Q Right. I'm directing your attention to the entry that
10 is dated 10/23/2003, not the one that is redacted but
11 the one underneath it. Do you see the reference to e-
12 mail report again --

13 A Yes.

14 Q -- asking if it's been completed in reference to the
15 life care plan? The privilege log that we just looked
16 at referenced a report dated 10/20/2003; do you recall
17 that?

18 A I do.

19 Q Had you forwarded that to Crawford & Company after you
20 completed it?

21 A We sent the report whenever we completed it, but if
22 you're asking me when we completed it, I don't remember
23 whether it was October, November; I just don't
24 remember.

1 Q All right. Do you recall contacting Crawford & Company
2 and asking for authority to make a demand?

3 A I'm sure we had conversations with Jody Mills and the
4 people at Crawford about responding to the demand.

5 Q And if you could in fact look at the note entry
6 underneath the one that we just looked at, this one
7 dated 10/30/2003?

8 A Yes.

9 Q Jody Mills -- did you speak directly with Jody Mills in
10 the case below?

11 A Yes, on different occasions I had conversations with
12 Jody.

13 Q And Ms. Mills made an entry that you had left her a
14 message about authority and making a demand in order to
15 mediate?

16 A That's what this document says.

17 Q Do you have a memory of that?

18 A No.

19 Q In the October of 2003 time frame had you raised the
20 subject of mediation with plaintiffs' counsel?

21 A Yes.

22 Q Can you recall the substance of any of the
23 conversations that you had with plaintiffs' counsel in
24 October of 2003?

1 A I don't remember those conversations in October of
 2 2003, but I remember generally discussing the idea of
 3 mediation with plaintiff's counsel.
 4 Q Okay. Could you describe what you do recall?
 5 A Yes. I remember this might even go back to when we had
 6 our original settlement discussion during a break in
 7 the Zalewski deposition and I remember proposing
 8 mediation and Fred Pritzker. His response was you have
 9 to make a good faith settlement offer prior to the
 10 plaintiffs agreeing to going to mediation. The
 11 plaintiffs wanted a good faith settlement offer.
 12 Q Mr. Deschenes, at any point in your discussions with
 13 Mr. Pritzker about going to mediation, did he ever
 14 demand that a \$5 million offer be communicated as a
 15 condition of the plaintiffs agreeing to going to
 16 mediation?
 17 A No.
 18 Q Mr. Deschenes, did you get authority to communicate a
 19 settlement offer in October of 2003?
 20 A No.
 21 Q Were you involved in a conference call with
 22 representatives of Zurich and AIG in November of 2003?
 23 A Yes.
 24 Q What was the purpose of that conference call?

1 were part of the November conference call?
 2 THE WITNESS: I guess, your Honor, I just
 3 need a -- I don't know whether this is considered
 4 privileged by the court or not, these conversations.
 5 I'm a little bit hesitant to get into it without
 6 getting some direction on this.
 7 (By Ms. Pinkham)
 8 Q Let me ask you one more question, Mr. Deschenes.
 9 THE COURT: The parties have invoked some
 10 privilege, but I guess not as to this conversation?
 11 MR. ZELLE: Well, your Honor, we would -- I
 12 was just waiting time wise. I expect the foundation
 13 would be laid by Ms. Pinkham that Mr. Hohn was on the
 14 conversation. The court has ruled that that is a third
 15 party. It has been our argument that that does not
 16 waive the privilege, and we will renew that objection
 17 now to seek to preclude this testimony.
 18 THE COURT: All right. Well, that's
 19 overruled. I've previously ruled that the presence of
 20 the broker means that it is not a privileged
 21 communication because of the presence of a nonparty
 22 witness.
 23 THE WITNESS: Thank you for that instruction.
 24 MR. ZELLE: Just so the record is clear, the

1 A I had not set up the conference call. I believe it
 2 might have been set up by either GAF directly or GAF's
 3 broker, Willis. But the purpose of the call was to get
 4 everyone on the line and discuss a response to
 5 plaintiffs' settlement demand.
 6 Q Do you recall who participated in that conference call?
 7 A I know representatives from GAF were on the line,
 8 probably Bob Manning and perhaps Jane Gordon and house
 9 counsel.
 10 Q And what position did Mr. Manning hold?
 11 A I don't know what his exact title was, but he worked in
 12 the Risk Management Department of GAF. It might have
 13 been actually their affiliate, ISP, but essentially he
 14 worked in the risk management area.
 15 Q And who from Zurich was involved in the call?
 16 A I don't remember.
 17 Q Do you recall whether it was Kathleen Fuell?
 18 A See, that's what I -- I can't remember whether it was
 19 Kathleen Fuell on the line or not. I can't say for
 20 sure.
 21 Q Do you recall who participated in the conference call
 22 on behalf of AIG?
 23 A I believe Nick Satriano was on the line.
 24 Q And do you have any memory of the conversations that

1 objection has been presented in this court. We're not
 2 simply relying on the prior objection to the motion to
 3 compel.
 4 THE COURT: Okay.
 5 A Can you remind me of the question?
 6 (By Ms. Pinkham)
 7 Q Sure. Was Mr. Hohn also involved in a conference call
 8 in November of 2003?
 9 A I believe he was because I think he was instrumental in
 10 setting up the phone call.
 11 Q And now with that clarification, Mr. Deschenes, could
 12 you describe the substance of the conference call?
 13 A I'm sure we went through the status of the case,
 14 theories of -- plaintiffs' theories of liability,
 15 defenses'. I'm sure we discussed damages, plaintiffs'
 16 alleged damages. The only thing else I can recall
 17 about the conversation was that Nick Satriano said that
 18 he was new to the file and did not have a lot of the
 19 information that we were referring to.
 20 Q And is that the sum of what you can recall at this
 21 time?
 22 A That's what I can remember.
 23 Q Mr. Deschenes, if you could find plaintiffs' trial
 24 exhibits Volume Number 1 for me, please.

1 A Okay.

2 Q If you could find Exhibit 13 for me?

3 A Okay.

4 Q And if you could turn to the second page of this

5 document. For your understanding, Mr. Deschenes, Ms.

6 Fuell produced her notes of the conference call and

7 discovery on this case.

8 Mr. Deschenes, approximately a third of the

9 way down the document it reads: I committed to

10 recommending 2M tender of limits.

11 Do you recall whether the Zurich

12 representative made that statement during the

13 conference call?

14 A I don't have a memory here today, but they might have.

15 I just don't recall.

16 Q Okay. And now the sentence underneath that reads: No

17 way pltf -- plaintiff -- attorney will agree to mediate

18 unless we offer beforehand of 5 million.

19 Did you make any statements to Zurich to the

20 effect that the plaintiffs refused to mediate unless

21 there was a \$5 million offer?

22 A No. I do recall where that number came from, but no.

23 Q Okay. If you could please describe where the \$5

24 million number came from then?

1 ZA1191, in the lower right-hand corner, there's a note,

2 it's written diagonally, that says "jury verdicts" and

3 there's a dash and something is cut off and a copy and

4 then there's the number 19 million. Do you recall any

5 discussion of a \$19 million jury verdict during that

6 conversation?

7 A No.

8 Q By the time of the November 13, 2003 conference call

9 that we just discussed, had you or anyone else at Nixon

10 Peabody begun to do jury verdict research?

11 MR. ZELLE: I'm going to object, your Honor.

12 I mean, even doing jury verdict research I think

13 reveals work product.

14 THE COURT: No, I don't think. It's a yes or

15 a no.

16 A Yes.

17 (By Ms. Pinkham)

18 Q Mr. Deschenes, you testified that your memory was that

19 Mr. Satriano needed information during the call. Did

20 he ask anybody involved in the call to send him

21 documents?

22 A My memory is that after the phone call I wrote to Mr.

23 Satriano and sent some information that he requested.

24 Q Did you have any knowledge whether anyone else was

1 A As a defense group, and I think there were other

2 representatives of other defense group on the line for

3 this conversation, but as a defense group, we were --

4 MR. ZELLE: Objection. If this is going into

5 communications outside of this telephone conference

6 that Mr. Deschenes has had with defense people that was

7 not including Mr. Hohn or other third parties, I

8 believe it ventures into the area of privilege.

9 THE COURT: Well, we need some foundation as

10 to whether he's discussing what was said during this

11 telephone call or something that was said in a

12 conversation which did not include the broker. Do you

13 remember?

14 A I'm sure in this conversation the \$5 million figure

15 must have been discussed because it's here in the

16 notes. But without getting into conversations with

17 defense counsel, it was a number, frankly, that we were

18 kicking around, we were speculating, trying to come up

19 with a number, what would it take to get the case into

20 mediation, and it was just a guesstimate on our part as

21 to what the initial offer would be as the price of

22 admission to get the case into mediation.

23 Q Mr. Deschenes, down at the very bottom of the second

24 page of Exhibit 13, the page that bears the Bates stamp

1 sending him information?

2 A No.

3 Q And did you send him a package of information after the

4 November 13 conference call?

5 A I remember putting together a letter and sending him

6 materials. I think they were materials that he

7 requested.

8 Q On the conference call?

9 A Yes.

10 Q The conference call that Mr. Hohn was at, do you recall

11 what materials he requested?

12 A No.

13 Q Do you recall what materials you sent him?

14 A No.

15 Q Do you recall when it was that you sent Mr. Satriano

16 the information that he had requested?

17 A It was shortly thereafter. I don't know the exact

18 date.

19 Q Did you ever learn that Steven Panick at Crawford had

20 also sent documents to Mr. Satriano?

21 MR. ZELLE: Objection.

22 THE COURT: Sustained.

23 (By Ms. Pinkham)

24 Q Mr. Deschenes, during the conference call in November

1 of 2003, did you any representative of Zurich or GAF
 2 ask that Mr. Satriano respond to them in the future
 3 after he had had a chance to review the documents?
 4 MR. ZELLE: Objection.
 5 THE COURT: Overruled.
 6 A I don't remember the specific date that we asked for a
 7 response, but we certainly were pushing towards some
 8 sort of resolution as to what to do with the
 9 plaintiffs' settlement demand.
 10 (By Ms. Pinkham)
 11 Q Do you recall receiving any response from Mr. Satriano?
 12 A My next memory of the events was that Campbell became
 13 involved in the case shortly thereafter and then we had
 14 a meeting in March. That's what I remember happened
 15 next.
 16 Q Do you remember receiving any letters from Attorney
 17 Anthony Bartell after the conference call in November
 18 and before the meeting in March?
 19 A Well, Anthony Bartell was retained separately by GAF to
 20 represent GAF in connection with any coverage issues
 21 that may arise between GAF and AIG. As I said, I
 22 didn't have any involvement in that. But to answer
 23 your question, yes, I was copied on some correspondence
 24 between Anthony Bartell and AIG. I do remember that.

1 (By Ms. Pinkham)
 2 Q Were you CC'd on the letter that was attached?
 3 A Yeah. The one that's Bates stamped 1071, yes.
 4 Q And did you receive the document that's Bates stamped
 5 ZA1071?
 6 A Yes.
 7 MS. PINKHAM: Your Honor, I'd ask that this
 8 be moved in as plaintiffs' -- just the letter -- be
 9 moved in as Plaintiffs' Exhibit 20, as it was pre-
 10 marked with that number.
 11 MR. ZELLE: Objection. Is it being offered
 12 to show that it was received by Mr. Deschenes? If it
 13 is, it certainly has no relevance. If it's being
 14 offered to show --
 15 THE COURT: I don't know what the letter is.
 16 What is this letter?
 17 MS. PINKHAM: Your Honor, this is a letter
 18 from -- well, actually, let me ask the witness.
 19 (By Ms. Pinkham)
 20 Q Mr. Deschenes, could you read the second paragraph of
 21 the letter into evidence, please?
 22 MR. ZELLE: Objection, your Honor.
 23 THE COURT: If it's not in evidence, you
 24 can't read it into evidence. Can you at least tell me

1 Q And what was your understanding of the purpose of
 2 Anthony Bartell's involvement in the claim after the
 3 conference call?
 4 MR. ZELLE: Objection.
 5 THE COURT: Overruled.
 6 A My memory was that at that point GAF just wanted to
 7 make sure that there were no coverage issues, and
 8 Anthony's role was just to represent the client, the
 9 client being GAF, in connection with coverage issues,
 10 and my role was to defend the underlying case.
 11 (By Ms. Pinkham)
 12 Q And the coverage issues, were those only the coverage
 13 issues relating to the excess policy?
 14 A I think any coverage issues that may arise, whether
 15 it's with the primary policy or the excess policy.
 16 That was Anthony Bartell's role.
 17 Q Mr. Deschenes, I'm going to hand you a document that's
 18 been pre-marked as Exhibit 20, and ask if you recognize
 19 any part of that.
 20 MS. PINKHAM: Your Honor, this is one of the
 21 groups of letters that AIG has objected to.
 22 A I recognize the attached letter, the cover note. I
 23 know it's from Bob Manning, but I've never seen this
 24 before. I wasn't copied on the cover note.

1 to who -- I mean, you can proffer who it's to.
 2 THE WITNESS: It's a letter, your Honor, from
 3 Anthony --
 4 THE COURT: I'm speaking to counsel.
 5 THE WITNESS: Sorry.
 6 MS. PINKHAM: Your Honor --
 7 THE COURT: Who is it to and who is it from?
 8 MS. PINKHAM: It's a letter from Anthony
 9 Bartell to Nicholas Satriano at AIG Technical Services,
 10 Inc., informing Mr. Satriano --
 11 MR. ZELLE: Well, let's stop there. Mr.
 12 Satriano will be the next witness and she can seek to
 13 offer it through Mr. Satriano, if the purpose is to
 14 demonstrate that there was some notice given to Mr.
 15 Satriano about something.
 16 THE COURT: Okay. And what's the purpose of
 17 it being shown to Mr. Deschenes?
 18 MS. PINKHAM: Well, Mr. Deschenes received
 19 the letter and he can authenticate it, and therefore
 20 the plaintiffs wish to offer it at this point during
 21 the plaintiffs' case. And it does go to the notice to
 22 AIG that GAF --
 23 MR. ZELLE: Objection. Let's not get into
 24 the substance of it.

1 THE COURT: No, I can hear a proffer.
 2 MS. PINKHAM: Sure.
 3 MR. ZELLE: It's because it's --
 4 THE COURT: I can hear a proffer. Enough.
 5 Let me hear it. What's your proffer as to what his
 6 purpose is?
 7 MS. PINKHAM: Only for the purpose that AIG
 8 was aware, as of December 19, 2003, that its insured
 9 had retained counsel in order to obtain AIG's
 10 confirmance that it was providing coverage for the
 11 Rhodes claim under the excess policy.
 12 THE COURT: That's it? That's it? That's
 13 all it does?
 14 MS. PINKHAM: Well, there's a few more words
 15 in there, but ...
 16 THE COURT: That the purpose is to just say
 17 that it's basically Bartell saying I've been retained
 18 by GAF to represent him with regard to coverage matters
 19 involving AIG?
 20 MS. PINKHAM: And seeks a response, quite
 21 long overdue coverage determination.
 22 THE COURT: All right. And did this bear in
 23 any way upon your representation, Mr. Deschenes, of
 24 your client?

1 had no involvement in the coverage issue?
 2 A Why we were being CC'd?
 3 Q Yes.
 4 A Probably just so that everyone was just in the loop. I
 5 mean --
 6 Q Okay. Mr. Deschenes, after the November 2003
 7 conference call, did you begin to have direct
 8 communications with Mr. Satriano at AIG?
 9 A No.
 10 Q Other than the letter that you sent him in November of
 11 2003 and the package that you sent him?
 12 A As I testified previously, my memory is the next step
 13 was that we -- a meeting was set up in March of 2004.
 14 That's the next communication I had directly with Mr.
 15 Satriano.
 16 Q Okay. Do you recall that Attorney William Conroy
 17 contacted you to obtain copies of your files?
 18 A Yes. As I'll call them, the Campbell law firm became
 19 involved in defending GAF at that point, at AIG's
 20 request.
 21 Q And did you in fact send copies of your files to Mr.
 22 Conroy?
 23 A I'm sure we periodically sent information and they
 24 asked for more and we gave them more information.

1 THE WITNESS: Of GAF in the underlying
 2 litigation? No.
 3 THE COURT: All right. Well, it will
 4 probably come in through Satriano, but I don't think it
 5 needs to come in right now. So if it provides notice,
 6 it will be notice to Satriano. Frankly, if that's all
 7 that it said, it says nothing more than what I've
 8 already learned from Mr. Deschenes, which is that Mr.
 9 Bartell was brought in to represent GAF as to coverage
 10 issues, so I don't know quite know what the fuss is
 11 about, if that's all it does. So if that's all it
 12 does, it tells me almost nothing -- maybe nothing I
 13 don't know; at best almost nothing I don't know. So I
 14 don't quite know why we're struggling with it and why
 15 it's being brought through Mr. Deschenes.
 16 So when it comes to Mr. Satriano, when there
 17 are issues there that can be raised with regard to his
 18 discussions with Mr. Bartell, then we'll get into it.
 19 All right?
 20 MS. PINKHAM: Okay.
 21 THE COURT: So let's move on.
 22 (By Ms. Pinkham)
 23 Q Mr. Deschenes, what was your understanding of why you
 24 were being CC'd on Mr. Bartell's letters if your firm

1 Grace was more involved in that than I was.
 2 Q Okay.
 3 THE COURT: Before we leave the Campbell
 4 firm, you were the attorney for GAF.
 5 THE WITNESS: Correct.
 6 THE COURT: What was Campbell as you
 7 understood it?
 8 THE WITNESS: As I understood it, they were
 9 being introduced to the defense team by AIG. AIG
 10 claimed a right under their policy to associate in the
 11 defense. They wanted Campbell involved in the defense,
 12 as Mr. Satriano said, to enhance the defense efforts.
 13 THE COURT: So you understood them to be co-
 14 counsel on behalf now of GAF?
 15 THE WITNESS: At that point, I guess they
 16 would have been considered co-counsel. At some point
 17 they took over as lead counsel in the case, your Honor,
 18 in June of 2004. From then on they were pretty much
 19 lead counsel in the case, and Nixon Peabody took a back
 20 seat. But I'm kind of getting ahead of myself, but
 21 around 2004 is my best memory.
 22 THE COURT: But in terms of your
 23 understanding, your understanding was that Campbell was
 24 now also the attorney for GAF.

1 THE WITNESS: Yes. They were representing
 2 GAF at AIG's request.
 3 (By Ms. Pinkham)
 4 Q Mr. Deschenes, you referenced a March meeting. Can you
 5 describe for me what was the genesis of a March meeting
 6 in the case?
 7 A I cannot remember who called the meeting. I certainly
 8 did not. I think either the client through Fred Hohn,
 9 or perhaps Mr. Satriano reached out to Fred Hohn, I
 10 can't remember which it was, to request a meeting.
 11 Q Where was the meeting?
 12 A In New Jersey, at GAF's facility.
 13 Q And did Mr. Hohn attend this meeting as well?
 14 A He did.
 15 Q Can you recall who the other attendees were?
 16 A We had a cast of thousands, but we had about three or
 17 four people on the GAF side. I know Anne Peri was
 18 there, Bob Manning was there, Jane Gordon, myself, Fred
 19 Hohn, Nicholas Satriano, Bill Conroy, and I could be
 20 leaving somebody out, but, you know, that's my best
 21 memory.
 22 Q Can you describe what happened at that meeting?
 23 A My understanding of the meeting and reason it was
 24 called was two-fold: to introduce Bill into the

1 defenses in connection with liability and defenses.
 2 Q And can you tell whether there was any consensus or
 3 conclusion after that discussion?
 4 A No.
 5 Q Do you recall sharing the values of the case that you
 6 had calculated?
 7 A They weren't values of the case; they were the results
 8 of some jury verdict and settlement research that we
 9 had done.
 10 Q Do you have any present memory of the numbers that were
 11 discussed in the meeting?
 12 MR. ZELLE: Objection, your Honor. I'm just
 13 going to renew the objection we presented pretrial.
 14 Despite Mr. Hohn's presence, this should still be
 15 protected.
 16 THE COURT: It's noted and overruled, so you
 17 may answer. And again, to be clear, in the presence of
 18 Hohn, which I believe I found it was not a confidential
 19 communication within the attorney-client privilege.
 20 That's my ruling. Maybe some appeals court will visit
 21 that, but until then, Mr. Deschenes, we'll hear your
 22 answer.
 23 A Yes.
 24 (By Ms. Pinkham)

1 defense team and iron out any wrinkles there.
 2 THE COURT: Bill being Bill Conroy?
 3 A Bill Conroy, excuse me, from the Campbell firm; to
 4 introduce him into the defense team's efforts and then
 5 to discuss the case.
 6 Q Do you recall speaking during the meeting?
 7 A Sure.
 8 Q Do you recall what you said?
 9 A I'm sure that I probably went over the facts of the
 10 case, the circumstances of the accident. I'm sure I
 11 went over the plaintiffs' theories of liability and the
 12 defendants' defenses. I probably discussed the damages
 13 that were claimed, the special damages. I'm sure I
 14 discussed the life-care plans, the competing life-care
 15 plans. I have a memory there was a "Day in the Life"
 16 video that we all watched as well. That's my memory.
 17 Q Did you express your opinion as to whether the
 18 plaintiffs were likely to prevail if the case went to
 19 trial?
 20 A I don't really have a memory of that.
 21 Q Was there any discussion amongst the various people who
 22 attended the March 5th meeting about the likely outcome
 23 for trial?
 24 A I'm sure we discussed the probabilities and the

1 Q And what's your memory of the numbers that you
 2 discussed during the March 5 meeting?
 3 A My memory was there were two different numbers. One
 4 was a settlement number based on settlement research
 5 that we had done, and another number was a verdict
 6 number based on jury verdict research that we had
 7 done..
 8 Q Mr. Deschenes, if you could turn to Exhibit 31, which
 9 is in Plaintiffs' Volume No.
 10 A Yes. I'm there.
 11 Q Do you have any memory of what the settlement value you
 12 discussed at the March 5th meeting was?
 13 A As I testified previously, this was not a settlement
 14 value. These were just numbers that we came up with by
 15 doing some jury verdict and settlement research.
 16 Q Okay. And what was the purpose of you sharing this
 17 information with the people at the March 5th meeting?
 18 A We were discussing plaintiffs' settlement -- I'm sorry
 19 -- damages and settlement demand.
 20 Q Can you recall the settlement research that was
 21 communicated during the March meeting?
 22 A My memory is that the lower number was the settlement
 23 number that we came up with.
 24 Q Do you have any memory of what that number was?

1 A Not specifically, but I know it was in the \$6 million
2 range.
3 Q Okay. Mr. Deschenes, if you could turn to the second
4 page of Exhibit 31. Just so you know, Mr. Deschenes,
5 Mr. Satriano and AIG produced these notes during
6 discovery.
7 On the second page of Exhibit 31, there's a
8 Bates stamp 1889. Approximately two-thirds of the way
9 down the page, do you see two numbers?
10 A Yes.
11 Q And the first number is \$6,647,333 and has "settlement"
12 beside it?
13 A Yes.
14 Q Does that refresh your memory as to whether that was
15 the \$6 million figure that you discussed?
16 A Yes. That was the settlement number that we came up
17 with.
18 Q And the number underneath that is \$9,696,437, and
19 beside that it says "jury verdict."
20 A Yes.
21 Q Was the \$9 million figure based on the jury verdict
22 research that Nixon Peabody had performed?
23 A Yes.
24 Q During the meeting on March 5, 2004, did any of the

1 Q Did your jury verdict research include any cases from
2 Rhode Island?
3 A It may have.
4 Q Do you have any memory of a \$19 million jury verdict in
5 Rhode Island?
6 A I do.
7 Q Do you have any memory of the facts in the \$19 million
8 jury verdict in Rhode Island?
9 A Other than the fact that it may involve paraplegia, no.
10 Q At the March 2004 meeting, was there any discussion
11 about the \$16.5 settlement demand that the plaintiffs
12 had communicated?
13 A I really don't remember the discussions specifically on
14 that.
15 Q Did any representative of AIG make a statement that the
16 demand was too high?
17 A Well, I think we all thought in the room that the
18 demand was too high.
19 Q Did anyone make that statement?
20 A Yeah, everyone.
21 Q Including Mrs. Satriano?
22 A Everyone thought the demand was too high.
23 Q Was there any discussion about not responding to the
24 demands because it was too high?

1 attendees question how it was you came to these two
2 figures?
3 A I don't remember anyone questioning the numbers so much
4 as I made an explanation at the meeting of our
5 methodology, and I'm not sure whether I can get into
6 that, but.
7 THE COURT: If it was said at the meeting, it
8 was not privileged.
9 A We looked at cases -- we tried to stay away from cases
10 that involved product liability. We tried to find
11 automobile cases, if possible. We looked for cases
12 where the damages were severe, and we looked for cases
13 involving paraplegia, if we could find those cases..
14 And we looked for cases where liability was probable or
15 reasonably clear.
16 Q Did Mr. Conroy suggest during the March 5, 2004 meeting
17 that the way you had gone about doing your research was
18 improper?
19 A As I said, I don't remember any reaction one way or the
20 other to that presentation.
21 Q During the March 5, 2004 meeting --
22 A I should add that we tried to focus on cases in this
23 area as well. Obviously, we were more interested in
24 Massachusetts cases than cases in other jurisdictions.

1 A No.
2 Q Was there a consensus on the part of the GAF employees
3 who were at the meeting that the demand should be
4 responded to?
5 A As I said previously, GAF's wishes was they wanted to
6 have this case settled, so they obviously wanted a
7 response to the demand.
8 Q And did anyone communicate that at the meeting?
9 A Oh, yes.
10 Q Who?
11 A I believe Jane Gordon did most of the talking there.
12 Q And Jane Gordon was --
13 A In-house counsel for GAF.
14 Q Can you recall any of the statements she made at the
15 meeting?
16 A Other than the fact that she wanted a response to be
17 made to the \$16.5 million demand -- or actually, it was
18 higher at that point, I believe. My memory is the
19 demand had gone up. I don't know whether it was
20 nineteen and a half million or what it was at that
21 point, but I remember at some point interest was tacked
22 on to the demand so we weren't dealing with the sixteen
23 and a half million dollar demand anymore. I think it
24 was nineteen or nineteen and a half.

1 But Jane, her purpose was she wanted some
2 response to be made to the demand.
3 Q And did Ms. Gordon indicate what response in particular
4 she wanted to be made to the demand?
5 A No.
6 Q Was there a discussion of a \$5 million statement offer?
7 A I don't know whether we discussed the \$5 million figure
8 there. As I indicated previously, the \$5 million
9 figure was a guesstimate on the part of defense
10 counsel, what would it take to get the case to
11 mediation. My memory is that by the time we had the
12 meeting in March 2004, Zurich had already agreed to
13 tender its \$2 million limits and we were just trying to
14 figure out whether AIG was willing to make any
15 contribution at that point to get the case into
16 mediation. That's my memory.
17 Q Okay. And what's your memory of what AIG's position
18 was in terms of whether it was going to offer any money
19 to get the case to mediation?
20 A I can't remember whether it was at that meeting or
21 shortly thereafter, but I think AIG's position was, at
22 that point they didn't want to offer anything just to
23 get the case into mediation. They were -- "they" being
24 AIG -- expressed a willingness to mediate the case at

1 she was not pleased with the outcome.
2 Q Did she make any statements to that effect?
3 MR. GOLDMAN: Objection. Hearsay, your
4 Honor.
5 THE COURT: Well, only if it was said during
6 the course of the meeting in the presence of the
7 broker.
8 A I don't remember Jane saying anything while Fred Hohn
9 was in the room. But as I said, she wanted to get the
10 case headed toward statement. Obviously she was not
11 pleased with the outcome.
12 MS. PINKHAM: I have nothing further, your
13 Honor.
14 THE COURT: Any cross-examination? Mr.
15 Zelle?
16 MR. ZELLE: Yes. Thanks, Judge.
17 CROSS-EXAMINATION BY MR. ZELLE:
18 Q Let me start where we left off, Mr. Deschenes. During
19 the course of the meeting, was there any opposition
20 expressed by Mr. Conroy or Mr. Satriano to move toward
21 mediation?
22 A No. My memory is that they agreed, or Nick Satriano
23 said if you can get Fred Pritzker to mediate the case,
24 we'll mediate the case. That's my memory.

1 this meeting, but they didn't want to offer any money
2 prior to going to mediation. That's my memory.
3 Q Was there any discussion of planning a mediation at the
4 March 5, 2004 meeting?
5 A I don't know if we discussed mediators or anything like
6 that. I don't remember. We might have discussed
7 potential mediators for the case. I can't recall.
8 Q Mr. Deschenes, can you recall anything else about the
9 March 5th meeting that you haven't previously testified
10 to?
11 A Yes. I can recall discussing at that time that a
12 pretrial conference was coming up, that a motion to
13 amend the complaint -- I don't know whether it was the
14 third or fourth amended complaint -- had recently been
15 allowed. And I remember some discussion about
16 retaining an expert in the field of psychiatry to
17 conduct an independent medical examination of Marcia
18 Rhodes. I remember those things came up during the
19 course of the meeting.
20 Q Did you have the opportunity to observe Jane Gordon's
21 demeanor at the end of the meeting?
22 A Yes.
23 Q Can you describe it?
24 A Her overall goal was to try to get the case settled, so

1 Q When you were retained initially by GAF, were you
2 informed that your primary contact would be someone at
3 Crawford & Company?
4 A I came in in the middle of the stream, so to speak, so
5 I was not directly retained. Dennis Duggan, Melissa
6 Tierney had some prior involvement with the case. My
7 understanding is that they were communicating with
8 Crawford.
9 Q And, again, obviously not seeking for your testimony as
10 to anything that was disclosed, from that point
11 forward, after you were involved, your communications
12 in connection with the reporting were made to whom?
13 A I'm sure we reported both to Crawford and to GAF.
14 Q Prior to November of 2003, did you have any direct
15 communications with AIG?
16 A None.
17 Q You didn't. Either written or oral communication?
18 A No direct communications with AIG prior to -- I think
19 the first direct communication I ever had with anyone
20 from AIG on this matter was the conference call that we
21 had in November of 2003.
22 Q At the time you first spoke with Mr. Satriano was on
23 the conference call in November, correct?
24 A (Witness nodded.)

1 Q You need to answer audibly.
 2 A Yes.
 3 Q And at that point in time, had Mrs. Rhodes' deposition
 4 been taken?
 5 A No.
 6 Q It had been noticed prior to that time, correct?
 7 A Yeah. We noticed the deposition prior to the close of
 8 discovery.
 9 Q And there was an agreement that you would reach with
 10 Mr. Pritzker that was based on your mutual belief that
 11 if the case could be resolved without putting Mrs.
 12 Rhodes through a deposition, you'd try to do it. Is
 13 that a fair summation?
 14 A No, not in the sense of the mutual belief. I mean, I
 15 made a request to Fred. At the time we noticed the
 16 deposition, we preserved our rights to take the
 17 deposition. I'm not sure what Fred had in his -- what
 18 he believed, but he agreed to allow us to take the
 19 deposition later on if we needed to, if the case went
 20 to trial.
 21 Q Did he ask you to defer the deposition until after an
 22 attempt at mediation?
 23 A No.
 24 Q Prior to the first communication with AIG, had Rebecca

1 A That's my understanding, and that's my understanding of
 2 the purpose of having the physiatrist look at that.
 3 The life-care planner looked at some of those same
 4 issues.
 5 Q In November of 2003, did you perceive a sense of
 6 urgency on the part of GAF to move the case towards
 7 settlement?
 8 A Yeah, I mean, GAF wanted the case settled, no question
 9 about it.
 10 Q Going back to your involvement as defense counsel, and
 11 you indicated you didn't have involvement in coverage
 12 issues. As defense counsel, however, did you make an
 13 effort to obtain information by which one could
 14 determine other potential sources of funds that would
 15 be available, or could be available, to settle the
 16 case?
 17 A I'm sure we did. I don't have a specific memory of
 18 what we did. I mean, we brought in the tree company --
 19 I know I have a memory of that -- somewhere in the
 20 middle of the game.
 21 Q Was it your understanding of your role to obtain
 22 information concerning other potential sources of
 23 contribution to settlement but that you wouldn't
 24 analyze the policies themselves to determine priority

1 Rhodes' deposition been taken?
 2 A Same thing as Marcia Rhodes. We noticed the deposition
 3 and deferred taking it until we thought we needed to
 4 take the deposition for trial purposes.
 5 Q Prior to that conference in November, there hadn't been
 6 an independent medical exam taken of Mrs. Rhodes,
 7 correct?
 8 A Not by a physiatrist. We had a life-care planner
 9 examine her, but not a physiatrist, that's correct.
 10 THE COURT: I'm sorry, what is a physiatrist?
 11 THE WITNESS: I think it's someone who's in
 12 the physical medicine area.
 13 THE COURT: Was there any discussion as to
 14 why a person with that expertise would be appropriate
 15 for this?
 16 THE WITNESS: I think it was just to look at
 17 the severity of Mrs. Rhodes' damages and look at the
 18 ability of her to recover and recover some functioning.
 19 I believe that was the purpose of it. The life-care
 20 planner looked at some of the same issues.
 21 (By Mr. Zelle)
 22 Q Do you know whether physiatrists -- the practice of
 23 physiatry focuses in part on rehabilitation from
 24 paraplegia and other paralysis?

1 in that sort of --
 2 A As I said, I think we generally made that effort. I
 3 can't recall the specifics.
 4 Q And you do a significant amount of insurance coverage
 5 work yourself; is that right, Mr. Deschenes?
 6 A I do.
 7 Q And do you understand generally that excess insurers do
 8 not or cannot become actively involved in the
 9 settlement of a case until a primary policy has been
 10 put up?
 11 MS. PINKHAM: Objection.
 12 THE COURT: Has he been disclosed as an
 13 expert?
 14 MR. ZELLE: Not at all.
 15 THE COURT: Isn't that an expert question?
 16 MR. ZELLE: I'm just asking about his
 17 familiarity to show that he understands the process
 18 through which he was working on this case.
 19 THE COURT: You may ask him about this case,
 20 but not his general background and experience. We're
 21 not paying him for that today.
 22 MR. ZELLE: That's fine.
 23 THE WITNESS: If anyone wants to pay me.
 24 THE COURT: So if you want to pay him as an

1 expert, then you can ask him those questions, but right
2 now he's limited to his involvement in this particular
3 case.

4 (By Mr. Zelle)

5 Q In connection with your handling of this case, were you
6 proceeding under the understanding that AIG as the
7 excess carrier wouldn't be involved until Zurich's
8 primary limits had been made available or had been
9 offered?

10 A No. As defense counsel in this case, we were just
11 proceeding, trying to get authority to settle the case.
12 So to answer your question, no.

13 Q Let me ask you about the mediation. Mr. Pritzker
14 indicated that he needed a good-faith demand to go to
15 mediation; is that right?

16 A That's correct.

17 Q And in your experience, is mediation typically
18 something that a party participates in when they want
19 to settle a case?

20 MS. PINKHAM: Objection.

21 THE COURT: You may ask him about whether or
22 not -- I'm sorry, about this case. So you can ask him
23 what he understood in the context of this case.

24 MR. ZELLE: Let me rephrase the question.

1 going to be able to figure out their level of
2 commitment. After we did make a settlement offer I
3 believe of \$2 million, I had conversations with Fred
4 Pritzker and he did end up agreeing to mediate the case
5 at that point, and my memory was that he wasn't sure
6 whether the process was going to be worthwhile, given
7 that we had offered \$2 million. I think there was
8 comments to that effect, probably harsher words than
9 that, but it --

10 THE COURT: Partial words?

11 A Harsher words than that were used.

12 THE COURT: Oh, harsher.

13 A But what I remember was trying to convince him to get
14 the case into mediation when we offered \$2 million,
15 which was sometime in late March of 2004. It was right
16 before the pretrial conference, I do remember that. It
17 was like a day or two before the final pretrial
18 conference, which was April Fool's Day 2004.

19 Q Okay. Let's just focus on that time period. At that
20 time period, did Mr. Pritzker and you begin talking
21 about scheduling a mediation?

22 A No, not then. After the offer was conveyed, we had
23 subsequent discussions and Fred said, you know, I want
24 to mull it over. And a few weeks later he called up

1 (By Mr. Zelle)

2 Q Was it your impression in this case that Mr. Pritzker
3 or the plaintiffs were not particularly interested in
4 an immediate effort at mediation based on the
5 representation that they wanted a good-faith offer
6 before they went to mediation.

7 MS. PINKHAM: Objection.

8 THE COURT: Overruled.

9 A I mean, it was really difficult to gauge, to tell you
10 the truth. I mean, I wasn't quite sure of their level
11 of commitment to the settlement process, given that,
12 you know, they weren't willing to stay the litigation
13 to focus solely on settlement. You know, you're asking
14 me back then what was, you know, my mind, my
15 perspective on their willingness to settle the case.
16 It's really hard to say until you put a number on the
17 table.

18 (By Mr. Zelle)

19 Q What I'm trying to discern is whether you perceived,
20 based on Mr. Pritzker's statements, a sense of urgency
21 to get the case into mediation.

22 A Again, you know, the fact that they weren't willing to
23 just focus on settlement gave me some concerns or
24 pause. Until we put a number on the table, we weren't

1 and said we will agree to mediate, and I think -- my
2 memory is that I did not attend the mediation, but my
3 memory is that Fred said, you know, you guys can pick a
4 mediator.

5 Q Okay. And this was in the April 2004 time frame?

6 A Yes.

7 Q And did Mr. Pritzker at that time make any suggestion
8 or indicate in any way that the mediation had to occur
9 immediately?

10 A No.

11 Q Was there any opposition by Mr. Pritzker to schedule
12 the mediation in August, when it eventually took place?

13 A Not that I'm aware of, although, you know, at that time
14 I was kind of out of the loop.

15 Q I understand. During the discussions you had with Mr.
16 Pritzker, did he in any way express any objection to
17 the taking of Mrs. Rhodes' deposition before the
18 mediation?

19 A I can't say because I wasn't involved in those
20 communications. Campbell was handling the case at that
21 point.

22 Q I'm just asking about to you.

23 A I'm not aware.

24 Q And did Mr. Pritzker ever say anything to you about the

1 determination that was ultimately made to take the
 2 deposition of Mrs. Rhodes and Rebecca Rhodes before the
 3 mediation?
 4 A Did I have any discussions with Fred about that?
 5 Q Right.
 6 A No.
 7 Q Did you look into the issue of, in your defense of GAF,
 8 indemnification or contribution from Penske?
 9 A I'm sure we did.
 10 Q I'm not asking the substance of it.
 11 A I don't remember the substance or the specifics.
 12 Q Okay. Just whether that's something that you did.
 13 A I'm sure we did.
 14 Q And similarly, did you look into the potential for
 15 indemnification or contribution from DLS?
 16 A Again, same answer. I'm sure we did. I don't remember
 17 the substance or the specifics of it.
 18 Q How -- strike that.
 19 Was it your -- did you convey to AIG in
 20 either of the conversations that we've identified that
 21 have been found not to be privileged, the November or
 22 the April -- I'm sorry, the November telephone
 23 conference or the March 5 meeting, did you convey to
 24 AIG your view as to how an assessment of the value of

1 we said fine.
 2 Q Okay. Was there any discussion at the meeting about
 3 that delay in mediation?
 4 A We weren't even in -- at that point we weren't even in
 5 a position to mediate the case, because no offer had
 6 been conveyed. So as I think I testified previously, I
 7 don't remember a specific discussion at the March 2004
 8 meeting about the specifics of mediation, other than
 9 the fact that Nick Satriano said, you know, look, if
 10 you can get Fred Pritzker to mediate, we'll
 11 participate.
 12 Q Okay. You used the term "price of admission" to get
 13 the case into mediation. Was that your recollection of
 14 a subject that was discussed at the March 4 meeting?
 15 A I mean, that was my characterization.
 16 Q I understand.
 17 A It's basically a pre-demand. You know, in order to
 18 negotiate, we need a number prior to going to
 19 mediation. I mean, that's my characterization of it,
 20 that there was a price of admission.
 21 Q Okay. And the price of admission that was discussed
 22 was a \$5 million price.
 23 A There was some discussion about a \$5 million price. My
 24 understanding -- my memory is that that number came

1 the claim or the reasonable settlement range could be
 2 understood without an IME?
 3 A Did I explain? No, I didn't.
 4 Q Was there a suggestion at any time by AIG that Mr.
 5 Satriano or Mr. Conroy -- one of these two
 6 conversations -- that they wanted an independent
 7 medical exam?
 8 A As I mentioned, in the March 2004 meeting, there was a
 9 specific discussion about getting a physiatrist on
 10 board to conduct an IME.
 11 Q And did you express that that could provide some value
 12 in assessing the value of the claim?
 13 A We had absolutely no -- "we" being now GAF, okay?--
 14 they had no problem or issue with that discovery being
 15 done.
 16 Q Okay.
 17 A So, no, we didn't object to it.
 18 Q Okay. I guess what I'm asking is was there any
 19 statement made recognizing the benefit of doing that?
 20 A No. I mean, there wasn't a statement made one way or
 21 the other.
 22 Q Okay.
 23 A Bill Conroy said, you know, I have a physiatrist. I'd
 24 like to have the physiatrist examine Mrs. Rhodes, and

1 from the defense group collectively.
 2 Q Right.
 3 A As it turns out, we were wrong. I mean, we could get
 4 the case into mediation for \$2 million.
 5 Q During that March conference, was there any objection
 6 on the part of Mr. Satriano, either expressed
 7 personally or through counsel, that there shouldn't be
 8 a price of admission to mediate, that if a plaintiff
 9 wants to mediate, they're going to -- if they want to
 10 settle, they're going to recognize, especially an
 11 experienced lawyer, the benefit of mediation and
 12 they're going to come to mediation?
 13 A I think -- I do remember Nick Satriano expressing
 14 doubts or the wisdom of putting any money on the table
 15 as a price of admission to the mediation, yes.
 16 Q Okay.
 17 THE COURT: Excuse me one minute, counsel.
 18 (By Mr. Zelle)
 19 Q During the November conference call, was it during that
 20 time, that conference call, that Mr. Satriano said that
 21 he wanted to associate in counsel?
 22 A I don't remember whether it was during that call or
 23 shortly thereafter. But I know in December I think the
 24 Campbell firm was introduced.

1 Q Okay. And following the March meeting, the Campbell
2 firm began taking a greater role; is that right?
3 A Yes. Someone from the Campbell firm attended the
4 pretrial conference. It might have been Russ Pollack
5 who attended the pretrial on behalf of the Campbell
6 firm. I know they attended some of the depositions of
7 the doctors that were taken later on in the spring, and
8 then slowly, yeah, their role evolved until I think
9 June of 2004. At that point they took over as lead
10 counsel Grace Wu still was involved in the case, my
11 associate at trial, but Campbell was the lead counsel
12 at that point.
13 Q I'd like to focus on the time period between the
14 November conference call and the March meeting. At
15 that point in time, during that point in time, were you
16 providing information to Conroy to get him up to speed?
17 A Yeah. Anything their office requested we gave to them.
18 Q And prior to the March meeting, had anyone from the
19 Campbell firm entered an appearance in the case?
20 A You know, I don't remember when they specifically filed
21 an appearance, whether it was at the pretrial or before
22 the pretrial. I don't recall.
23 Q Are you aware of any opposition on the part of GAF to
24 the efforts to have Mr. Conroy get directly involved in

1 there was a Rhode Island case in there somewhere.
2 Q At the time that you mentioned -- you mentioned that
3 case at the meeting, correct?
4 A I don't remember.
5 Q Would it refresh your recollection if you saw the notes
6 of Mr. Satriano that Ms. Pinkham showed you that had
7 that \$19 million, that said "RA 19 million"?
8 A That wouldn't refresh my recollection.
9 Q And so I'm assuming my reference to it doesn't either.
10 Did you discuss at the meeting any of the
11 specifics of any of the cases that lead you to come up
12 with your number?
13 A Other than the general criteria that I discussed
14 previously, no. I don't remember getting into case
15 specifics at the meeting. We were covering a lot of
16 territory at that meeting. So I don't remember getting
17 into the nitty-gritty of discussing one case versus
18 another that we relied upon.
19 Q You indicated that some of the cases that you looked at
20 involved paralysis or paraplegia?
21 A We tried to look for cases that involved that where
22 injuries were fairly severe, yes.
23 Q Did you mention at the meeting that the numbers you
24 came up with were not all cases that involved

1 December?
2 A Yes.
3 Q Can you explain that, please?
4 A Yes. As you can see from the correspondence that we
5 talked about earlier, the concern was that GAF didn't
6 have a clear understanding as to whether AIG was going
7 to cover this loss, indemnify the loss if there was an
8 adverse verdict or statement. And so Anthony Bartell
9 wrote: Trying to iron out those coverage issues.
10 So the concern on GAF's part was, before Mr.
11 Campbell was introduced into the case and was going to
12 take over as defense counsel, they wanted to make sure
13 there were no coverage issues there, hanging out there.
14 So that was a concern. I do recall that.
15 Q Did that concern in any way delay or obstruct the
16 efforts by Conroy to work with you to get up to speed?
17 A I don't think so.
18 Q I'd like to focus now on the numbers you discussed for
19 jury verdict range and a statement range at the March
20 4th conference. At that point in time I believe you
21 testified that you had included in your assessment a
22 Rhode Island case that rendered a \$19 million verdict?
23 A As I said, I don't have any recollection of the
24 specifics of that case. But, yeah, my memory is that

1 paraplegia or paralysis?
2 A I'm sure we did. We tried to find those cases, but.
3 Q What I'm driving at, Mr. Deschenes, is did you provide
4 the other attendees at that meeting with information
5 from which they could discern generally the source of
6 information from which you derived your numbers?
7 A I remember explaining our methodology, and certainly if
8 they were interested, I would have provided more
9 details. You know, we had done research and if people
10 were interested, we would have given them the
11 information. It was more of an overview. Believe me,
12 it was an overview.
13 Q In the overview, did you explain that you looked at
14 cases outside Massachusetts?
15 A Yes.
16 Q Did you explain in the overview whether any of the
17 cases you looked at were Norfolk county cases?
18 A Yea, I don't remember whether we found a Norfolk case.
19 Certainly that was relevant and we were looking for the
20 specific venue and I can't remember if we were
21 successful in finding a Norfolk case. I know we found
22 several Massachusetts cases, but whether it was
23 specifically in Norfolk county or not, I can't
24 remember.

1 Q Tell me, the numbers that you discussed, at least as
2 reflected in Mr. Satriano's notes, are very precise
3 numbers down to the dollar?
4 A Yeah.
5 Q Was that an average; you just tallied them up and
6 divided?
7 A That's all it is, it's just an average.
8 Q And similarly, with respect to the verdicts, it was
9 just tallying up the verdicts?
10 A Just an average. There was no magic to those numbers.
11 Q As it turns out, there seems to have been, at least
12 with respect to that jury verdict number.
13 I'd like to know, if you can tell me, how
14 many cases were you adding up?
15 A I don't have a specific memory of that. I don't know.
16 Q Let's just speak with respect to the statement range.
17 Was it more than ten?
18 A I don't remember.
19 Q Can you tell me what the sources were of the
20 information, *Mass Lawyer's Weekly* or *Jury Verdict*
21 *Reporter*?
22 A We have a jury verdict and settlement reporter that we
23 subscribe to in the firm. I'm sure we enlisted our
24 librarians to help us out with that, too. I'm sure we

1 When you explained your methodology -- no,
2 that's not the question.
3 In your methodology, did you do any side-by-
4 side comparisons of the facts of the cases you were
5 preparing with the facts of the Rhodes case?
6 A You know, I'm sure we did, but I don't remember.
7 Q That's fine.
8 I'm pretty close to wrapping up here. Let me
9 just take a quick look through my notes.
10 Q I'd like to ask you about a conversation, your
11 conversations with Mr. Pritzker. Did you ever have a
12 conversation with him during which he said that
13 insurance wasn't a particularly significant concern for
14 him because -- let me stop the question.
15 A Yes.
16 Q And did he explain why it wasn't a concern to him?
17 A My memory is that right around the time of the final
18 pretrial conference, after we had conveyed the \$2
19 million offer and I was trying to persuade Fred
20 Pritzker to mediate the case, and I remember saying to
21 him it's critical that we get the case into mediation
22 to get all of the decision makers into the room,
23 together, who are holding the key in terms of any
24 financial contribution. And I explained to him that

1 looked at *Lawyer's Weekly*. You know, the usual things.
2 I think there's a New England publication that we
3 subscribe to. We probably looked at that.
4 Q In terms of the jury verdict, do you have any sense as
5 to the number of cases that went into that equation?
6 A I don't. I really don't.
7 Q Did you include that Rhode Island, that \$19 million
8 case in the equation?
9 A My memory is it probably was included in that. There
10 were some cases outside of Massachusetts, I know that.
11 They weren't all strictly Massachusetts, as much as we
12 tried to focus here.
13 Q In discussing your methodology, did you describe or did
14 you advise those attending the meeting that you had
15 excluded certain cases because they were just simply
16 not apposite?
17 A It's not so much excluding cases, but we wanted to kind
18 of stay away from the products liability cases. We
19 viewed those as kind of a different, a totally
20 different category of cases, so we tried to find more
21 automobile liability, personal injury cases like that.
22 Stay away from the products cases.
23 Q And in your methodology, you didn't do any -- strike
24 that.

1 there were two insurance company representatives that
2 had to be persuaded of the value of the case, so you
3 had to get them into the room. And I do remember his
4 response was: I don't care about insurance. I've got
5 deep pockets here. I've got GAF. I've got DLS. I've
6 got Penske. I don't need the insurance carriers. I do
7 remember that response.
8 Q Did you have any impression based on conversations you
9 had with Mr. Pritzker or anyone else prior to receiving
10 the demand package that the plaintiffs were ready to
11 settle?
12 A It's so hard to answer that question.
13 Q Well, let me put it this way. We know that there was a
14 demand given in July, correct?
15 A Yes.
16 Q That was the 18.5 million?
17 A Yes, that was orally conveyed to me.
18 Q And in the interim, between that oral demand and the
19 demand package, you had a conversation with Mr.
20 Pritzker wherein he said we've got to rework our
21 numbers, we don't have accurate information relative to
22 past medical costs, right?
23 A Yeah. I think that was actually a voice-mail message,
24 but, yeah.

1 Q And does that indicate to you that at least as of that
2 time, they weren't in a position where they could
3 settle the case?
4 A Yeah. I mean obviously we were looking for a demand
5 and the demand was not there yet.
6 Q Can you tell us why you were not copying -- strike
7 that.
8 Do you send routine -- I'm sorry -- send
9 reports to Crawford and GAF that summarized significant
10 developments in the case?
11 A My memory is that Grace did. She would correspond with
12 both Crawford and GAF.
13 Q Do you know why that information was not transmitted
14 directly to the insurance companies, either of the
15 insurance companies?
16 A Well, first of all, my understanding is that Crawford
17 was the third-party administrator, that we were
18 supposed to communicate with them, and that they would
19 forward communications on to the carriers; and
20 secondly, until November of 2003, I didn't even know
21 the identity of who at AIG was responsible for the
22 claim, so I wouldn't even have known who to communicate
23 with at AIG up until that point.
24 MR. ZELLE: That's all I have, Judge.

1 A Yes.
2 Q And as of the November call, there were questions that
3 were discussed with regard to whether or not the
4 plaintiff could prove a case of liability against GAF;
5 isn't that correct?
6 A There were still some questions. I can't remember the
7 specifics or the issues that people were discussing,
8 but certainly there were questions about the liability,
9 yes.
10 Q And you describe for the group what those issues were
11 in the litigation; is that correct?
12 A Yes.
13 Q And one of the things you described was that the
14 plaintiff needed, in order to prove a case against GAF,
15 to prove control, some kind of control over the driver;
16 isn't that correct?
17 A There was an issue of respondeat superior in the case.
18 that's correct.
19 Q And there were still outstanding issues as to whether
20 the plaintiff could prove respondeat superior?
21 A Yes.
22 Q And that was discussed both during the November meeting
23 and then again during the March 2004 meeting, correct?
24 A Yes.

1 THE COURT: Okay. Who on behalf of Zurich?
2 Mr. Goldman.
3 MR. GOLDMAN: Yes.
4 CROSS-EXAMINATION BY MR. GOLDMAN:
5 Q Mr. Deschenes, it's correct, is it not, you were not
6 personally involved in this case until 2003?
7 A It might have been a little earlier than that, but
8 right around that. About 2003 is my best memory.
9 Q So at least most of 2002, if not the entire year, you
10 had no involvement in this matter; is that correct?
11 A That's correct.
12 Q And your client, once you did become involved, was GAF,
13 correct?
14 A That's correct.
15 Q And you didn't represent DLS or Zalewski, correct?
16 A That's correct.
17 Q And you didn't represent Penske, correct?
18 A Correct.
19 Q And you didn't he represent -- well, withdrawn.
20 Now, as regard to your client, the liability
21 of your client to the plaintiff was one of the things
22 that was discussed both during the November 2003
23 conference call and the meeting at GAF in March of
24 2004; is that correct?

1 Q But by the time the case developed and went to trial,
2 that was no longer an issue because the plaintiffs had
3 injected a new legal theory into the case; isn't that
4 correct?
5 A Correct. And my memory is that it was injected into
6 the case probably sometime in 2004, before the final
7 pretrial conference. That was the motion to amend that
8 I referred to earlier.
9 Q And that motion to amend was important to the -- in
10 fact, I think you said one of the things that was
11 discussed at the March meeting was that amendment or
12 proposed amendment; is that right?
13 A My best memory right now is that the amendment was
14 allowed at that point, but I could be wrong on the
15 timing of that. But I know that was on our minds at
16 that meeting.
17 Q And one of the things that was discussed at that
18 meeting, was it not, was that that legal theory, that
19 new legal theory that was injected, would basically
20 make it almost impossible for GAF to escape liability
21 to the plaintiffs; isn't that right?
22 Q It was an important event in the case, yeah.
23 Q And it was an important event because if the statutory
24 cause of action could be shown to be applicable, it

1 would create absolute liability for GAF or the driver;
 2 isn't that right?
 3 A I don't remember if it was absolute. There might have
 4 been some theories of defense, even to that statutory
 5 cause of action. But our view of the world was that
 6 those defenses weren't particularly strong.
 7 Q So would it be a fair summary to say that one of the
 8 defenses discussed at the March meeting was that if
 9 this amendment were allowed, the ability of GAF to
 10 escape liability for the driver's conduct would be
 11 minimal, if not non-existent; is that right?
 12 A I don't remember us discussing it to that level of
 13 specificity.
 14 Q But it would be a problem, in any event, for GAF?
 15 A We discussed it as an issue during the meeting, no
 16 doubt about it.
 17 Q But that was not in the case as of -- or at least the
 18 amendment had not been allowed as of the November 2003
 19 telephone conference, right?
 20 A I don't think so.
 21 Q And it certainly was not in the case, the amendment,
 22 that is, as of the time of the August 2003 demands; is
 23 that correct?
 24 A Yes, that's my memory.

1 yes, in the sense that in a case like this you would
 2 expect to see a settlement demand or package put
 3 together fairly early on. And we were trying to get
 4 this thing, the case, was off the litigation track and
 5 onto the settlement track, so, yes.
 6 Q And did you tell Mr. Pritzker that it was somewhat
 7 unusual not to have received the settlement demand?
 8 A Well, I was trying to convince him not to litigate the
 9 case as if it were a commercial case by propounding
 10 interrogatories and document requests and let's get
 11 this case off the litigation track and onto the
 12 settlement track.
 13 Q And if you had done that, it would not have been
 14 necessary to take the depositions of Marcia Rhodes and
 15 Rebecca Rhodes and Harold Rhodes, correct?
 16 A Well, at that time, yes, that was our assessment.
 17 Q And if you had done that -- well, first of all, when
 18 you talked to Mr. Pritzker in late June of 2003, did
 19 you ask him to make a "Day in the Life" video?
 20 A I don't remember asking him for that.
 21 Q That wasn't something you requested, correct?
 22 A No.
 23 Q And you wanted a settlement demand because you
 24 understood that -- withdrawn.

1 Q Now, I want to go back and just refresh your
 2 recollection for a second. You said you didn't
 3 remember the date of Mr. Zalewski's deposition; is that
 4 correct?
 5 A My best memory is that it was in June of 2003 sometime.
 6 Q Do you have Exhibit 10 there. It's a self-standing
 7 notebook. It's the demand package there. There it is.
 8 That's the demand package there. And if you go back in
 9 there, I think you'll see a copy of Mr. Zalewski's
 10 transcript. If you just take a quick look at the front
 11 page of that and tell us what the date of that is.
 12 A Well, it's consistent with my memory, June 26, 2003.
 13 Q Okay. So June 26, 2003 was the date of the discussion
 14 you had with Mr. Pritzker where you asked him for a
 15 demand; is that right?
 16 A That's correct.
 17 Q And up until that time, you had received no demand
 18 whatsoever from the plaintiffs; isn't that correct?
 19 A Correct.
 20 Q Now, was that unusual in your experience as an attorney
 21 in this type of case?
 22 MS. PINKHAM: Objection.
 23 THE COURT: Overruled.
 24 A I thought the way the case was handled was unusual,

1 Did you explain to Mr. Pritzker that in
 2 dealing with insurance companies, they usually need a
 3 settlement demand in order to respond or did you not
 4 get into that?
 5 A I didn't get into that.
 6 Q Now, there was a question as to when --
 7 THE COURT: We'll take our morning break. So
 8 how much longer do you have?
 9 MR. GOLDMAN: Ten minutes or so, your Honor.
 10 THE COURT: I'm afraid that's going to be too
 11 long to wait for the break, between that and the
 12 redirect, so we'll take our break and come back in 15
 13 minutes.
 14 (A recess was a taken at 11:05 a.m.)
 15 THE COURT: Okay, Mr. Goldman, you may
 16 proceed.
 17 MR. GOLDMAN: Thank you, your Honor.
 18 (By Mr. Goldman)
 19 Q Mr. Deschenes, I took the liberty during the recess to
 20 open up the exhibit books to Exhibit 72, which is the
 21 docket sheet for the case, not this case but the case
 22 that you were counsel on. And I turned it to page 13,
 23 and do you see there -- and that's an exhibit that's in
 24 evidence. There's an entry for the motion to amend the

1 complaint that we were just discussing; is that
 2 correct?
 3 A Can you give me some help as to where it is?
 4 Q Sure. I think it's a March 1 entry.
 5 THE COURT: Docket Entry 34.0. I can save
 6 you time. 34.0 and then it says that it was allowed on
 7 March 16, if that's what you mean.
 8 THE WITNESS: There it is. Okay. Yes, thank
 9 you.
 10 (By Mr. Goldman)
 11 Q So then just to put that in sequence or context of the
 12 events that we've been -- or that you've been
 13 testifying about, as of the date of the March 5 meeting
 14 at GAF, the motion to amend had been recently filed by
 15 four days earlier but had not yet been granted,
 16 correct?
 17 A Yes.
 18 Q And what was discussed at the meeting was the motion to
 19 amend and the implications for the case if that motion
 20 were granted; is that right?
 21 A Correct. And we objected to the motion to amend.
 22 Q And what the amendment did was it added a claim of
 23 strict liability against GAF under the federal motor
 24 carrier statute; is that correct?

1 A Correct.
 2 Q Now, if we go back to Exhibit 10, which is the demand
 3 package, which is not one of the things that's -- if
 4 you look at Exhibit 10, the letter right on the top,
 5 which is the letter from Mr. Pritzker laying out the
 6 plaintiffs' claim and demands?
 7 A Mm-hum.
 8 Q If you look at the section relating to GAF's liability,
 9 is there anything in there about strict liability under
 10 the federal motor carrier statute?
 11 A No.
 12 Q And that was never brought to you -- that claim -- that
 13 legal argument was never brought to your attention
 14 until the March 1 motion to amend; is that correct?
 15 A That's correct.
 16 Q Now, there was another question that arose during
 17 direct examination as to the date of your report, that
 18 is, the report that you did after the demand package
 19 came in, and open exhibit books to Exhibit 114 there,
 20 which appears to be an e-mail from you sending that
 21 evaluation letter; is that right?
 22 A It appears to be an e-mail from me to Kathleen Fuell.
 23 Q Kathleen Fuell of Zurich?
 24 A Yes.

1 Q And does that e-mail appear to be sending your
 2 evaluation letter?
 3 A It says: Claims Evaluation Worksheet/Pretrial Report.
 4 yes.
 5 Q And the date of that e-mail is what?
 6 A November 7, 2003. I wasn't sure whether it was October
 7 or November.
 8 Q Okay. So it would be fair to say then that you sent
 9 your evaluation letter to Zurich on November 7 of 2003?
 10 A That's what it appears to say.
 11 Q Now, you testified earlier that you were contacted
 12 about the November 19 conference call. That would be
 13 the call with the various players and the defense
 14 group. You were contacted by the broker about that?
 15 A Well, I wasn't sure who set up the call.
 16 Q Okay. So you don't know if Kathleen Fuell first
 17 requested it or the broker or your client first
 18 requested it.
 19 A I don't know.
 20 Q You don't know. Okay.
 21 Now, let's go to that November 19 conference
 22 call. I think you said you weren't sure if it was
 23 Kathleen Fuell or someone else from Zurich on the
 24 phone, right?

1 A I can't remember who from Zurich was on the phone.
 2 Q Okay. But there was someone, right?
 3 A There was somebody.
 4 Q Okay. And Mr. Satriano was on the call from AIG,
 5 right?
 6 A I remember Mr. Satriano being on the line.
 7 Q And there was someone from GAF?
 8 A Oh, yes.
 9 Q In fact, one or two people?
 10 A Probably at least two because I think Bob Manning and
 11 Jane Gordon participated.
 12 Q And the broker was on the phone.
 13 A Fred Hohn was on the call.
 14 Q Anybody else you recall being on that call?
 15 A I don't recall.
 16 Q Okay. Now, would it be fair to say that the spirit of
 17 that call was that it was everybody's understanding
 18 that it was going to take more than just \$2 million in
 19 order to settle this case?
 20 A Yes, I think that's fair to say.
 21 Q And did anyone take issue with that or disagree with
 22 that?
 23 A I don't remember anyone disagreeing with that.
 24 Q And did anyone from Zurich, regardless of whether it's

1 Ms. Fuell or someone else, say that Zurich was
 2 unwilling to contribute \$2 million for the settlement?
 3 A No. To the contrary. I think Zurich was in the
 4 process of tendering the 2 million at that point.
 5 Q Now, let's go to the March 5 meeting at GAF. In that
 6 meeting you said there was no one from Zurich present;
 7 is that true?
 8 A No one from Zurich was there.
 9 Q And that was -- and they were not invited; is that
 10 correct?
 11 A I wasn't involved in figuring out who was invited and
 12 who wasn't, so I can't answer that question.
 13 Q But at least they were not present because they had
 14 already made it clear that their \$2 million was
 15 available to be part of a settlement offer.
 16 A That is true.
 17 Q And the purpose of the meeting in March was to decide
 18 whether to put a settlement offer on the table, right?
 19 A Well, the purpose of the meeting was really two-fold.
 20 It was to introduce Campbell into the case as defense
 21 counsel and iron out any of the logistics there. And
 22 then, secondly, to discuss a response to the
 23 plaintiffs' settlement demand.
 24 Q Okay. And your client wished to make a settlement

1 Q So after that decision was made, AIG was not going to
 2 offer money before a mediation, then Zurich told you go
 3 ahead and offer the 2 million; is that correct?
 4 A Yeah. There was some issues that went back and forth
 5 which I was not directly involved with between Anthony
 6 Bartell, AIG and Zurich about the status of GAF's
 7 defense, and that held up making, conveying the \$2
 8 million offer while the parties were sorting that out.
 9 In other words, after the \$2 million offer was made,
 10 whose responsibility was it to defend GAF in the
 11 lawsuit? Was it Zurich's responsibility? Was it AIG's
 12 responsibility? And my understanding is that Anthony
 13 Bartell and folks at Zurich and AIG were having
 14 discussions about that. And so until I got the green
 15 light to convey the offer, that was holding things up.
 16 Q Okay. But as of the March meeting, Zurich had made it
 17 clear their money could be --
 18 A Oh, yes.
 19 Q -- included in a settlement offer, right?
 20 A No question.
 21 Q And then after the March meeting, later in March, you
 22 actually made the settlement offer, right?
 23 A At the end of March is my memory, that's correct.
 24 Q Of \$2 million, right?

1 offer in response to the demand; is that correct?
 2 A GAF did, yes.
 3 Q But Mr. Satriano thought that it would be better to go
 4 to mediation without first making a settlement offer;
 5 is that correct?
 6 A Correct.
 7 Q And it was AIG's decision as to what to do in that
 8 regard, wasn't it?
 9 A Well, yes.
 10 Q So therefore Mr. Satriano carried the day at that
 11 meeting; is that right? Well, let me ask it a little
 12 more clearly.
 13 There was no -- Mr. Satriano did not before
 14 the arbitration authorize a settlement offer; is that
 15 right?
 16 A Before the mediation?
 17 Q Right.
 18 A My understanding is that no offer was made prior to the
 19 mediation other than the \$2 million offer made by
 20 Zurich.
 21 Q That was my question. So Mr. Satriano never
 22 authorized, including AIG money in a settlement offer
 23 before the mediation.
 24 A Correct.

1 A Correct.
 2 Q And you don't know at what point in time Zurich told
 3 AIG -- in other words, it was some point in time prior
 4 to March 5, you don't know what point in time Zurich
 5 told AIG you're free to use our \$2 million --
 6 A I was not involved in those communications.
 7 MR. GOLDMAN: No further questions.
 8 THE COURT: All right. Any redirect?
 9 MS. PINKHAM: Yes.
 10 REDIRECT EXAMINATION BY MS. PINKHAM:
 11 Q Mr. Deschenes, when the initial complaint was filed
 12 against GAF, did you understand that the plaintiffs
 13 were alleging that GAF was responsible for the conduct
 14 of Mr. Zalewski because he was driving the truck
 15 carrying GAF's building materials?
 16 A My understanding of the theory of liability was
 17 respondeat superior, that he, Mr. Zalewski, for all
 18 intents and purposes, was our employee, even though he
 19 was not our employee, he was DLS's employee. That was
 20 my understanding of the theory of the plaintiffs' case.
 21 Q And during the course of discovery in the case, DLS and
 22 GAF took different positions as to who it was that
 23 controlled Mr. Zalewski?
 24 A That's correct.

1 Q And the amendment to that complaint in 2004 referenced
 2 GAF's status as a motor carrier, correct?
 3 A That's my memory.
 4 Q And do you recall that plaintiffs allege that as a
 5 motor carrier, GAF was considered the statutory
 6 employer of Zalewski?
 7 A Yes, that's consistent with my memory of your theory.
 8 Q And did Ms. Gordon during the March 5, 2004 meeting
 9 address the fact that GAF was a motor carrier and its
 10 obligations under the federal regulations?
 11 A I don't remember specific discussions about that issue
 12 and who spoke about it, other than the significance of
 13 that event and the amendment to the complaint and the
 14 change in theory of liability. But I don't remember
 15 Jane specifically addressing it or anyone else talking
 16 about it other than myself.
 17 Q You testified that GAF opposed the opposition to amend
 18 the complaint to make reference to GAF's position as a
 19 statutory employer?
 20 A My memory is we objected to your motion to amend, yes.
 21 Q And do you recall that GAF -- excuse me, strike that --
 22 that Grace Wu was actually the attorney that signed the
 23 opposition on behalf of GAF?
 24 A It could be. I don't remember.

1 Q I'm going to hand you a document, Mr. Deschenes, and
 2 see if it refreshes your recollection.
 3 A Yes. It appears to be our opposition to the motion to
 4 amend.
 5 Q And I'm just going to read a section, and you read
 6 along with me. I'm sorry, I only have one copy.
 7 I'm reading from paragraph 12 of defendant
 8 Building Materials Corporation of America d/b/a GAF.
 9 MR. GOLDMAN: Your Honor, I object to the
 10 exhibit. This isn't in evidence and it's being read
 11 from. I haven't seen it.
 12 THE COURT: And it's a pleading, so I'll let
 13 you read it. I'm not quite sure what the consequence
 14 is, but I'll let you read it.
 15 (By Ms. Pinkham)
 16 Q And the opposition that GAF filed, did GAF take the
 17 position that plaintiffs knew or should have known
 18 about this legal theory from the outset of this
 19 litigation? BMCA's name and the Department of
 20 Transportation number was clearly displayed on the
 21 truck involved in the accident?
 22 A Yeah, that's what it says in paragraph 12 of our
 23 opposition, which essentially was an argument that it
 24 was too late in the game to amend your pleading.

1 Q So, Mr. Deschenes, is it fair to say that GAF itself
 2 knew that it was a motor carrier as of the date of the
 3 accident since its name and DOT number was clearly
 4 displayed on the truck?
 5 A Did GAF know that?
 6 Q Yes.
 7 A I don't know what GAF knew or didn't know.
 8 Q In any event, the court denied GAF's motion to -- its
 9 opposition to the motion to amend the complaint?
 10 A Yes, it was denied.
 11 Q Do you recall -- actually I don't know. Were you aware
 12 that in July of 2004, there was a motion to continue
 13 the trial date in order to conduct additional discovery
 14 on the allegations of a third amended complaint?
 15 A Yes, I understand that that was filed.
 16 Q Were you involved in that filing?
 17 A Depends on what you mean by "involved," but --
 18 Q Did you draft it or file it?
 19 A No, I didn't draft it or file it. I was aware of it
 20 happening but, no, I did not draft it.
 21 Q Mr. Deschenes, I think you should still have in front
 22 of you plaintiffs' trial exhibits, Volume Number 2; I'm
 23 not sure if that's the one you're opened up to or not.
 24 I'm looking for Exhibit --

1 A I've got Volume 1 and Zurich's exhibits and Plaintiffs'
 2 Trial Exhibit 10.
 3 THE COURT: Exhibit 2 is the docket was that
 4 you had before.
 5 (By Ms. Pinkham)
 6 Q Mr. Deschenes, can you turn to Exhibit 72 for me,
 7 please?
 8 A Yes.
 9 Q Okay. And if you could turn to page 16 of Exhibit 72,
 10 I direct your attention to the entry 56.4
 11 Document list?
 12 Q And right underneath that there's a ruling on a motion?
 13 A Yes.
 14 Q Could you read that please?
 15 A You want me to read the docket entry?
 16 Q Yes please.
 17 A (Reading): Motion paragraph number 56.0 is denied as
 18 to additional discovery on the issue of vicarious
 19 liability. See paragraph 7 of the complaint and third
 20 amended complaint. GAF had sufficient notice from the
 21 beginning
 22 Q Okay, that's fine, Mr. Deschenes, thank you.
 23 Mr. Deschenes, in any of your conversations
 24 with Mr. Fritzker did he express a desire to negotiate

1 with you directly?

2 A As opposed to mediation?

3 Q Yes.

4 A He may have. I think he questioned whether mediation

5 was necessary at some point.

6 Q Can you recall any of the specifics of your

7 conversations with him on that topic?

8 A No, I can't.

9 Q Mr. Deschenes, you testified previously that Mr.

10 Pritzker would call you periodically for an update

11 after the demand letter was sent; do you recall that

12 testimony?

13 A Yes.

14 Q And when Mr. Pritzker would call you, would he ask you

15 what settlement figure was going to be communicated on

16 behalf of the defendants?

17 A I don't remember that so much as Fred just inquiring w

18 what's going on.

19 Q Okay. And you had asked Mr. Pritzker to put a number

20 on the table to start the settlement process, hadn't

21 you?

22 A Yeah, you have to start somewhere, so, yes.

23 Q And isn't it true that Mr. Pritzker was asking the same

24 of you in response?

1 after you extended the offer, he agreed?

2 A He said he had to mull it over for a bit, and he did,

3 and in a few weeks he got back to me and said he was

4 willing to mediate.

5 Q And was that in April of 2004?

6 A I think it was.

7 Q And in fact when Mr. Pritzker got back to you, he said

8 that he would agree to use whatever mediator the

9 defendants chose?

10 A Correct.

11 MS. PINKHAM: I have nothing further, your

12 Honor.

13 THE COURT: Any further questions of counsel?

14 MR. GOLDMAN: Just a couple.

15 RECROSS-EXAMINATION BY MR. GOLDMAN:

16 Q With regard to this idea of negotiating directly

17 outside of mediation, Mr. Pritzker made a demand on the

18 defendants, correct? In August of 2003, correct?

19 A Correct.

20 Q And then I think you've already testified that in

21 March, late March of 2004, the defendants, using

22 Zurich's money, offered \$2 million, correct?

23 A Correct.

24 Q Now did Mr. Pritzker, outside the context of any

1 MR. GOLDMAN: Objection. Leading.

2 THE COURT: Overruled.

3 A Yeah, he wanted to know what our response to the demand

4 was.

5 (By Ms. Pinkham)

6 Q And he was looking for a particular number?

7 A No. He didn't ask for a particular number. He wanted

8 a response to the demand.

9 Q Is it true that the first response to the demand was

10 the \$2 million offer that you had communicated shortly

11 before the pretrial?

12 A Yes.

13 Q Okay. You testified on cross-examination that at the

14 March 5th meeting, Mr. Satriano said that if you could

15 get Mr. Pritzker to agree to mediation, that AIG would

16 participate, right?

17 A Yes.

18 Q I'm not sure -- you gave another answer and I wasn't

19 sure of the time frame. You testified that after you

20 had extended the \$2 million offer to Mr. Pritzker, you

21 again asked him to participate in mediation; is that

22 true?

23 A That's correct.

24 Q And that when you asked him to participate in mediation

1 mediation, ever counter that with you with a reduced

2 demand?

3 A No, he did not reduce his demand in response to the \$2

4 million offer, if that's your question.

5 Q That was my question.

6 MR. GOLDMAN: I have no further questions.

7 THE COURT: Any further questions of counsel?

8 All right. I've got one.

9 With respect to the \$2 million offer that you

10 tendered, did you receive authorization to make that

11 offer? It's a yes or a no.

12 THE WITNESS: Oh, yes.

13 THE COURT: When did you receive

14 authorization to make that offer?

15 THE WITNESS: I can't give you an exact date,

16 your Honor, but the difficulty was the concern I

17 testified to previously about who was going to pick up

18 GAF's defense. There was discussion about the fact

19 that Zurich had made that commitment, but they at first

20 tendered that -- my understanding is they made the

21 tender to AIG, which was rejected, and then there was a

22 lot of scurrying back and forth at the end of March.

23 Finally, I got -- I received authorization from both

24 the client and Zurich to convey the \$2 million offer at

1 the end of March.

2 THE COURT: Do you know how much time had

3 passed between your receiving that authorization and

4 your actually --

5 THE WITNESS: Almost immediate. I mean as

6 soon as I got the authority, I picked up the phone and

7 called. There was no delay.

8 THE COURT: All right. That concludes my

9 questioning. Any questions of counsel within the scope

10 of mine?

11 MR. GOLDMAN: No, your Honor.

12 THE COURT: Thank you, you may step down.

13 All right. Next witness.

14 MS. PINKHAM: Plaintiffs call Nicholas

15 Satriano.

16 NICHOLAS SATRIANO, Sworn

17 MR. ZELLE: Your Honor, Mr. Satriano will be

18 presenting affirmative evidence as well. We had spoken

19 earlier about my giving an opening statement. I can do

20 it now or I can do it after Ms. Pinkham finishes.

21 I'd suggest that I be permitted to do that

22 now simply so what I testify about, Mr. Satriano's

23 testimony isn't in any way characterizing or

24 mischaracterizing what we're about to hear. I

1 THE COURT: Okay, you may proceed.

2 DIRECT EXAMINATION BY MS. PINKHAM:

3 Q Good morning. Mr. Satriano.

4 A Good morning, Ms. Pinkham.

5 Q Mr. Satriano, you recall you were deposed at Brown

6 Rudnick's offices last year?

7 A Yes.

8 Q And you gave some testimony regarding your duties as a

9 complex director on behalf of AIG Technical Services or

10 AIG Domestic Claims Inc?

11 A Yes.

12 Q Okay. So that you understand, we've just been

13 referring to your employer shorthand as AIG, okay?

14 A Yes.

15 Q Mr. Satriano, what are your duties as a complex

16 director at AIG?

17 A As a complex director at AIG I have several duties and

18 responsibilities. The first one is to handle a case

19 load of files that come in consisting of both claims,

20 as well as claims that have matured into litigation.

21 In that capacity I serve as a liaison between the

22 company and the insured and defense counsel,

23 essentially a team manager managing the claim file.

24 Q What's the purpose for which you manage the claim file?

1 obviously expect he will say certain things. That's

2 what I will suggest in my opening. If he testifies, I

3 will have to confirm my opening to what he has said and

4 I certainly don't want to be commenting on the

5 evidence. That's my concern.

6 THE COURT: All right. Any objection to

7 that?

8 MS. PINKHAM: Your Honor, I think it would

9 probably make sense to hear what Mr. Satriano says and

10 then Mr. Zelle doesn't need to worry about conforming

11 his statements.

12 MR. ZELLE: Actually, then I do have to.

13 THE COURT: Well, whenever anybody defers

14 opening, they have to have dealt with whatever occurred

15 beforehand.

16 I will permit the examination of Mr. Satriano

17 and then before the cross, slash, direct of him, then

18 I'll permit the opening to occur. So you may proceed.

19 Sir, please state your name and spell your

20 last name for the court reporter.

21 THE WITNESS: Nicholas Michael Satriano,

22 S-a-t-r-i-a-n-o.

23 THE COURT: And is Nicholas, N-i-c-h-o-l-a-s?

24 THE WITNESS: Yes, your Honor.

1 A Again, as a team builder and a team manager, what we

2 will do is a file will come into the office and we will

3 manage that claim and that particular file.

4 MS. PINKHAM: Your Honor, I'd like to

5 introduce a section of video of Mr. Satriano's

6 deposition. I offer it as admissions of a party

7 opponent under -- I'm not going to be able to pronounce

8 the name of the case, your Honor, but under Ruszczyk v.

9 Secretary of Public Safety, as Mr. Satriano's sworn

10 responses during his deposition are vicarious

11 admissions on the part of AIGDC as they address his

12 duties as a complex director on behalf of AIG, and his

13 statements were made still during the time of his

14 employment.

15 THE COURT: Okay. So you seek to offer those

16 as statements of an adverse party. Do you expect us to

17 stop to see the video?

18 MS. PINKHAM: It's eight minutes, your Honor,

19 I'm trying to make this a very efficient examination.

20 MR. ZELLE: Isn't it appropriate, your Honor,

21 that she ask the question and get the admission in

22 court, in live testimony, and only if it is

23 inconsistent with the deposition she can seek to

24 impeach him?

1 THE COURT: Well, that's the way it is
 2 generally done, but in theory it's still an admission
 3 of an adverse party, whether it be an answer to
 4 interrogatory or -- so I will allow it and I'll give
 5 you eight minutes, but frankly, I would read it, so at
 6 the end of eight minutes we'll be done. At 12 noon
 7 we'll get started.
 8 MR. ZELLE: Let me just express an objection,
 9 your Honor, that we --
 10 THE COURT: It's already been resolved, so
 11 it's --
 12 MR. ZELLE: It's not --
 13 THE COURT: It's already been said it's going
 14 to be admissible anyway. It's a statement of an
 15 adverse party. All statements of adverse parties are
 16 admissible. They can be admissible before his
 17 testimony or after. I'd rather have it before, so if
 18 there any issues that need to be addressed they can be
 19 addressed after. Mass. law contrary to Federal law
 20 actually permits it to be offered at the conclusion of
 21 the witness's testimony, which is problematic because
 22 the witness is not there to address it. So it is
 23 admissible even after he steps down, but I'd rather
 24 have it addressed before he steps down so that if there

1 Q And at the teleconference -- the two
 2 teleconferences that you have talked about here
 3 today, was there any discussion about anyone's
 4 belief that Zurich's \$2 million policy was going
 5 to be insufficient to settle the case and resolve
 6 the claim?
 7 A Oh, yeah. I mean, given the demand, and I think
 8 that was part of the frustration on their part, in
 9 terms of bringing us together. And that was, well
 10 hey, with \$2 million obviously it's not going to
 11 cover this. There's little we should be doing
 12 here with \$2 million. We need to talk to AIG, you
 13 guy have the excess, so what do you want to do
 14 now? So very similar to that.
 15 Q By February of 2004, what was your view as to the
 16 likely damages?
 17 A Again, you know, there was significant exposure.
 18 I mean, this was a case of very real possible
 19 exposure to the excess layer; and it was something
 20 that obviously that we needed to -- it was never
 21 really quantified.
 22 It was something that we all had some thoughts
 23 maybe of where the case should be but again my
 24 emphasis was to again bring the camps together and

1 are any issues he wishes to address in his cross, he
 2 may do so.
 3 It's one of the issue of state law which I'm
 4 familiar with because I actually prefer the federal
 5 law, but I don't have a choice here.
 6 So you have eight minutes. But in general
 7 I'm going to read prior statements and not see it in
 8 video because you're already two weeks into -- we are
 9 already likely to be spending a week or two more than I
 10 anticipated for the trial, so time is of the essence.
 11 You may proceed.
 12 MS. PINKHAM: Thank you, your Honor.
 13
 14 COURT REPORTER'S NOTE: The following testimony was recorded
 15 from a video deposition of Nicholas Satriano:)
 16
 17 Q Do you recall the specifics of any of any of the
 18 first teleconference that you participated in in
 19 the Rhodes case?
 20 A Yeah, I do. Essentially what occurred was that --
 21 a lot occurred. And essentially what occurred was
 22 that we had a 16.5 million dollar demand out
 23 there. We had an insured who obviously was very
 24 concerned about this litigation.

1 essentially say let's go to mediation, if need be,
 2 and let's see if this case can be resolved at
 3 mediation.
 4 Q Did you, as of February, 2004, did you agree that
 5 the likely damages in the case would exceed \$2
 6 million?
 7 A At that point I don't know exactly, I mean they
 8 very well could have, based upon the serious
 9 nature of the injuries. But, you know, \$2 million
 10 isn't something to just sort of sneeze at. It was
 11 a question of that's a lot of money to just say
 12 okay, it's definitely going to be more than that.
 13 I mean, there's -- it's just a lot of money. So I
 14 mean, I would not necessarily have agreed that it
 15 may have had a chance to relinquished as quickly
 16 as perhaps maybe she was looking to do.
 17 Q Were you aware as of February of 2004, that the
 18 defendants' life-care expert was of the opinion
 19 that Mrs. Rhodes' future care would cost
 20 approximately 1.4 million?
 21 A I should have been, since the date is October 6 of
 22 2003.
 23 Q And would you agree with me that just the future
 24 care alone would have only left \$600,000 under the

1 primary policy to cover the rest of the claim?
 2 MR. ZELLE: Objection.
 3 A Where I think you're going is not where I was
 4 coming from. I'm not necessarily agreeing or
 5 disagreeing with you that these numbers add up to
 6 \$2 million. What I'm essentially -- in terms of
 7 the value, it's not that clear cut. So I'm not
 8 sure where you -- I kind of know where you're
 9 going, but I don't necessarily understand your
 10 question.
 11 Q Okay. Let me ask it again. Is \$1.4 million only
 12 \$600,000 less than \$2 million?
 13 A Do you really want me to answer that?
 14 Q If you can.
 15 A I think I can handle that. So your point is?
 16 Q Could you answer the question please?
 17 A Repeat it.
 18 MR. ZELLE: What she's asking is two million
 19 minus one million -- what's two million minus 1.4
 20 million?
 21 A Six hundred.
 22 Q Okay. And as of February 2004, what was the
 23 total, if you knew, of medical expenses to date?
 24 A I have no clue.

1 the -- excuse me -- the jury verdict value would
 2 be higher if it were to go to verdict and that
 3 would be probably what some individuals there felt
 4 that it might come up to be if it went to verdict.
 5 Q Did you express your opinion on what you thought
 6 the value would be if the case went to verdict?
 7 A I may have. I mean, we were starting to talk
 8 numbers here, and I don't think I ever -- I do
 9 recall -- I don't ever -- I didn't ever disagree
 10 with where they were. It was just a question of
 11 we needed to agree on the way to get there,
 12 basically, and that was what was most important.
 13 It was pretty obvious that these ranges are not
 14 unreasonable ranges given the facts and the
 15 circumstances. But it was just a question of how
 16 best to proceed.
 17 Q Okay. Any of the representatives from GAF express
 18 their opinion on the value of the case and what
 19 strategy should be followed?
 20 A I don't specifically recall. I don't think people
 21 -- again, we really weren't -- there was -- I
 22 don't believe there was any colloquy about these
 23 numbers, the numbers that we -- the six and this
 24 nine thing. I think it was sort of, you know,

1 Q Okay. Did you have materials in your file that
 2 would provide you with that information?
 3 A Probably.
 4 Q Did you look at those materials in February of
 5 2004?
 6 A Probably.
 7 Q Okay. Would it be helpful if you wanted to review
 8 some of the materials now?
 9 A If you have specific questions about it.
 10 Q Well, let me ask you this. Did you review any of
 11 the medical bills that the plaintiffs produced as
 12 part of the exhibits to the August 13, 2003,
 13 demand?
 14 MR. ZELLE: Objection.
 15 A I don't recall.
 16 Q The \$6,647,000 figure that identified as a
 17 settlement range, where did that number come from?
 18 A I have no clue as I sit here. It probably was
 19 discussed by the principals there in terms of that
 20 may be in the Massachusetts in that particular
 21 venue. It was certainly not a number that I had
 22 picked out of -- a specific number.
 23 Q Same question for the \$9.696 million jury verdict.
 24 A Same thing. General discussion about, obviously,

1 it's a pretty accurate range or at least a range
 2 not to disagree with. I mean, obviously you want
 3 north of that and I'd like south of that, but
 4 still it's a range anywhere from, say, eight on
 5 that we were discussing in this case. But I don't
 6 recall a colloquy about that.
 7 Q Who said what about the fact that no one had
 8 responded to the August 13, 2003 settlement
 9 demand?
 10 A I don't recall specifically. Maybe it was Mr.
 11 Deschenes. I don't recall specifically. It was
 12 just a question of, again, the onus was on getting
 13 Mr. Pritzker to come to the table; if there was
 14 going to be a benefit to mediating this case. We
 15 had a pre-trial coming up, if the court was going
 16 to be of influence with respect to that. It could
 17 have simply have been settled by saying -- gone to
 18 the pre-trial and say, look, we recognize we have
 19 a settlement demand out there. We also recognize
 20 that, or, Judge, we have not formally responded to
 21 this, but frankly that could have been obviated by
 22 just saying to the judge and Mr. Pritzker standing
 23 there, hey guys, do you want to go to mediation?
 24 Are you interested in mediation?

1 I don't think the judge would have given two cents
2 about the letter at that point, you know. So
3 there were a lot of different ways to handle it.
4 The demand was so high. So it's sometimes, it's
5 ridiculous. It's way too high. You know, maybe
6 the evaluation was eight to ten or eight to
7 twelve, but certainly not sixteen. So I don't
8 care if we don't answer it at sixteen. I don't
9 care if it goes to fifty.

10 (END OF VIDEOTAPE DEPOSITION.)

11 THE COURT: Okay, the videotape that
12 was just shown will be marked as the next
13 Exhibit 83.

14 MS. PINKHAM: Yes, your Honor. We have
15 the disk we would be submitting and we have
16 references to the transcript as well.

17 THE COURT: Okay. Exhibit 83 will be
18 the videotape and 83A will be the transcript.

19
20 (Exhibit No. 83, marked; Videotape
21 Deposition of Nicholas Satriano.)

22
23 (Exhibit No. 83A, marked; Transcript of
24 Videotape Deposition of Nicholas Satriano)

1
2 THE COURT: All right, now that we've
3 done that, let's go back live to Mr. Satriano.
4 (By Ms. Pinkham)

5 Q Mr. Satriano, could you find the binder that's
6 marked Plaintiffs Trial exhibits Volume 2
7 please?

8 A Yes.

9 Q Now could you turn to the document that has been
10 marked as Exhibit 71 -- I'm sorry, Exhibit 70
11 please.

12 A 70?

13 Q Yes.?

14 A Yes.

15 Q And Mr. Satriano, the documents that have marked
16 as Exhibit 71 are actually a collection of two
17 sets of documents. I want to focus with you
18 first group that's numbered page 1 of 6. If you
19 could turn to the page that's marked 5 of 6 that
20 bears the Bates stamp 2206?

21 A Yes.

22 Q Now, Mr. Satriano, you were not assigned to the
23 Rhodes claim when it was first opened; is that
24 true?

1 A Yes.

2 Q Okay. In fact there were a number of complex
3 directors who had been assigned to the case
4 before you?

5 A I believe that there had been just one.

6 Q Tracey Kelly was the first adjustor assigned to
7 the case?

8 A Yes, I believe so.

9 Q Okay. And do you recall during your deposition
10 we discussed three other individuals?

11 A Yes.

12 Q Okay. In fact, just for your reference, Mr.
13 Satriano, in AIG's supplemental responses to
14 interrogatories, particularly interrogatory
15 number three -- if you'd like you can read along
16 with me -- and it's supplemental answer to
17 interrogatory three, AIG indicated that the
18 Rhodes matter was first assigned -- excuse me,
19 strike that -- was assigned Ellen Labanowski
20 from January of 2003 until February of 2004. Do
21 you see that?

22 A Yes.

23 Q And it's your understanding that Tracey Kelly
24 had been assigned to the claim before Ms.

1 Labanowski?

2 A Okay.

3 Q And after Ms. Labanowski, the claim was assigned
4 to Charles Patitucci?

5 A Yes, that's correct.

6 Q From February 2003 to April 2003. Then the
7 Rhodes matter was assigned to Andrew Strauss
8 from April 24, 2003 until June 6th of 2003?

9 A Yes.

10 Q Okay. And it was after Mr. Strauss no longer
11 had involvement with the claim that you were
12 assigned to the claim; is that right?

13 A Yes, that's correct.

14 Q And during the time period in which you were
15 assigned to the Rhodes claim you were supervised
16 by an individual named Richard Mastronado?

17 A Yes.

18 Q And Mr. Mastronado held the position of
19 assistant vice-president during the time period
20 in which he supervised you?

21 A Yes.

22 Q Okay. And do you recall, Mr. Satriano, that
23 when we looked through the excess claim notes
24 that are before you on Exhibit 70, that there

1 were no entries by Ms. Labanowski or Mr.
2 Patitucci or Mr. Strauss?
3 A Yes.
4 Q Now, let's focus on the entries themselves. The
5 one that starts on page 5 of 6, there is an
6 entry at the bottom of that page that's created
7 2-11-2002. Do you see that?
8 A Yes, I do.
9 Q And is it your understanding that this is the
10 entry that opened up the Rhodes claim in AIG's
11 claims note system?
12 A That would be my understanding.
13 Q Okay. And the note above the 2-11-2002 note
14 continues onto the previous page, page 406. I'd
15 like to draw your attention to the note that was
16 created 3-5-2002 by John Joanos; do you see that
17 note?
18 A I do.
19 Q Now, Mr. Satriano, the Rhodes claim was opened
20 up in the Excess Division of AIG, correct?
21 A For the case coming into excess, yes.
22 Q Yes. And apparently someone opening up the
23 claim, either Mr. Kurila or Mr. Joanos, opened
24 it up in the Excess Claims Division because

1 the Excess Claims Division, a determination had been
2 made by someone that the Rhodes claim posed a potential
3 exposure of \$1 million towards the excess policy; isn't
4 that right?
5 A The million dollar figure is not a figure that's set in
6 stone. What the evaluation would be is there is a
7 potential exposure to the excess layer; and yes, then
8 that particular case would be filtered to the
9 appropriate bureau.
10 Q Okay. And you'll note that on page 4 of 5 that
11 continues on to page 5 of 5 of Exhibit 70, the lengthy
12 note from Mr. Joanos. Did you review this when you
13 took over the file in June?
14 A Yes, I did.
15 Q Okay. And do you see a reference to the policy limits
16 of the primary policy on page 4 of 6
17 A Yes, I do.
18 Q So when the case was opened, AIG was aware that the
19 primary policy was \$2 million?
20 A Yes.

1 there was determination that the claim had the
2 potential to expose the excess policy by a
3 million dollars. Is that your understanding?
4 A Yes, but you're not completely correct.
5 Q Correct me.
6 A Mr. Kurila worked in a department called
7 Segmentation. And what would normally be the
8 procedure within that bureau is that there would
9 be notice given in any number of ways to AIG, as
10 a whole, of a claim being made with obviously a
11 particular policy at issue. Mr. Kurila then
12 would open a case file and then segment that to
13 the proper bureau.
14 Q Okay. So is it that Mr. Kurila made the
15 determination to open up the file in the Excess
16 Claims Division? Is that the clarification you
17 wanted to make?
18 A I'm not completely sure of the chain of command
19 with respect to the Segmentation unit and excess
20 specialty claims. There are a lot of bureaus
21 and sub-bureaus within the organizational
22 structure that you're referring to.
23 Q Okay. In any event regardless of who opened it up in

1 Q Okay. And continuing on to the next page, there's a
2 reference to John Chaney at Crawford & Company with a
3 phone number?
4 A Yes.
5 Q Okay. And there is a description of the accident and
6 some other facts that are contained in AIG's excess
7 claims notes, correct?
8 A Yes, there is.
9 Q Okay. And do you recall during -- strike that.
10 Is some of the information that is contained
11 on page 5 of 6 of Exhibit 70 information that came from
12 the Crawford & Company report?
13 A I don't know where that information came from.
14 Q Okay, well then let's look at another exhibit. If you
15 could to turn 66A for me, Mr. Satriano.
16 A Okay.
17 Q All right. I'm directing your attention -- I
18 apologize. The Exhibit 66A does not have page numbers.
19 I'm just going to have to count them for you.
20 On the second page of Exhibit 66A under
21 "Generalized description of the accident," you see it

1 reads: A tractor with tank trailer owned by Penske
 2 Truck Leasing Company and leased to GAF, marked with
 3 GAF graphics, driven by a contract driver, et cetera et
 4 cetera. Do you see that sentence?
 5 A Yes, I do.
 6 Q Okay. Could you turn back then to Exhibit 70, back to
 7 page 5 of 6, the page that we had just been looking at.
 8 Do you have it?
 9 A Yes.
 10 Q Okay. And under the paragraph entitled "accident," it
 11 describes where the loss occurred?
 12 A Yes.
 13 Q And then the next sentence is: A tractor with tank
 14 trailer owned by Penske Truck Leasing Company and
 15 leased to GAF, marked with GAF graphics, driven by a
 16 contract driver, et cetera et cetera.
 17 A Yes.
 18 Q Do you note the similarities between those two
 19 sentences, Mr. Satriano?
 20 A Yes. It looks as if it was taken from the report.
 21 Q Okay. Could you turn back to Exhibit 66A again for me?

1 participated in the November 2003 conference call with
 2 representatives from Zurich and Attorney Deschenes and
 3 representatives of GAF; is that true?
 4 A Yes.
 5 Q And you understood that at the time of that conference
 6 call, that the insured, GAF, was concerned about a
 7 \$16.5 million dollar that had been made on the Rhodes
 8 claim?
 9 A Yes.
 10 Q And during that conference call, you were not in a
 11 position to respond to some of the questions that were
 12 asked, were you?
 13 A No.
 14 Q And the reason for that was because the file that you
 15 had didn't have as much information as the other
 16 participants on the conference call, right?
 17 A Yes.
 18 Q And to remedy that, you had asked for people on the
 19 conference call to provide you with documents so that
 20 you could get up to speed on the case, right?
 21 A Yes.
 22 Q And during the conference call you were also aware that
 23 representatives of the defense team -- strike that.
 24 You recall a discussion of a \$5 million offer

1 A Okay.
 2 Q This time if you could turn to the page that starts
 3 with the heading, "Penske Truck Leasing." I believe
 4 it's the fifth page of the exhibit. Under claimant
 5 representation, Mr. Satriano, the second sentence
 6 references: Attorney Pritzker is well known locally as
 7 being one of the attorneys involved in a successful,
 8 multi-billion dollar tobacco litigation case.
 9 If you could switch back to Exhibit 70, again
 10 back to page 5 of 6. Are you there?
 11 A Yes, I am.
 12 Q And under the paragraph that references, it starts with
 13 "TT has representation," the third sentence of that
 14 paragraph reads: The attorney is well known as being
 15 one of the attorneys involved in a successful, multi-
 16 billion tobacco litigation case.
 17 A Yes.
 18 Q So based on the similarities of that, Mr. Satriano, do
 19 you believe that the first claim note in AIG's excess
 20 claim notes was based, at least in part, on the
 21 document that was marked as Exhibit 66A?
 22 A Yes.
 23 Q Mr. Satriano, it's my understanding that you

1 during the November 2003 conference call?
 2 A Yes.
 3 Q And were the participants on the conference call trying
 4 to get you to commit to pledge some of AIG's policy in
 5 order to communicate a \$5 million offer?
 6 A Well, there was a request for excess money, yes.
 7 Q And you said you couldn't respond to that request until
 8 you had more information, right?
 9 A Yes.
 10 Q And you understood after that conference call, that GAF
 11 and Zurich expected you to respond to the request for
 12 some of the excess coverage?
 13 A Well, my understanding at that point was that Zurich
 14 and members of GAF were reaching out to me as an excess
 15 carrier.
 16 Q Prior to the November 2003 conference call, had you had
 17 any idea that there had been a demand of \$16.5 million?
 18 A No.
 19 Q Mr. Satriano, when you took over handling of the Rhodes
 20 claim, you just testified that you reviewed the excess
 21 claims notes. Did you review any of the other
 22 materials in the file?
 23 A The only material that I reviewed in the file would
 24 have been either the excess claims notes that you're

1 speaking about and the Crawford reports, yes.
 2 Q And the Crawford reports were in your claims file?
 3 A Yes.
 4 Q You took over 2003; is that correct?
 5 A Yes.
 6 Q If you could turn to Exhibit 66 for me, and we'll start
 7 with Exhibit 66G.
 8 Do you have that in front of you, Mr.
 9 Satriano?
 10 A Yes.
 11 Q When you took over the claim in June of 2003, did you
 12 review the document that has been marked as 66G?
 13 A If Crawford's report was in the file, yes.
 14 Q Can you flip back to 66F for me, please?
 15 A Yes.
 16 Q Do you recall reviewing the May 6, 2003 liability
 17 transmittal letter?
 18 A Again, if it was in the file, I looked at it.
 19 Q Mr. Satriano, you recall that during your deposition,
 20 we spent some time going over the liability transmittal
 21 letters that were sent to AIG?
 22 A What are you referring to?
 23 Q Do you recall looking at the photocopies of the
 24 envelopes in which the liability transmittal letters

1 Q Okay. No, I'm sorry. I've gave the wrong --
 2 THE COURT: G.
 3 MS. PINKHAM: Thank you.
 4 (By Ms. Pinkham)
 5 Q The one we had just looked at 66G. And you'll see this
 6 is a document that has a claim number and handwriting
 7 on it?
 8 A Yes.
 9 Q And is that the claim number that you were responsible
 10 for in June 2003?
 11 A Yes. That was probably the excess claim number.
 12 Q Okay. It has your name handwritten on it?
 13 A My name, not my handwriting.
 14 Q Okay. Thank you for the clarification.
 15 And has a "received" stamp on the side?
 16 A Yes, it does.
 17 Q And just for the record, I'm referring to a document
 18 that's been Bates stamped 2099.
 19 And so the letter dated June 4, 2003 that's
 20 been marked as Exhibit 66G was in the claims file,
 21 correct?
 22 A Yes.
 23 MR. ZELLE: Your Honor, we can stipulate that
 24 the Crawford reports that reflect AIG stamps were in

1 were mailed to AIG?
 2 A Could you show me what you're looking at?
 3 Q Sure.
 4 A Okay. Yes.
 5 Q And you recall that a number of the transmittal letters
 6 that were produced by AIG not only had a copy of the
 7 envelope that was sent to AIG, but they were also
 8 either stamped "received" or had handwritten claims
 9 numbers or people's names on them?
 10 A They may have been, yes.
 11 Q And in fact, you testified that some of the handwriting
 12 on the documents was yours and so you knew you had
 13 reviewed certain documents because they had your
 14 handwriting on them?
 15 A That sounds correct. Again, I'd like to see anything
 16 you're referring to with respect to my handwriting.
 17 Q Sure. Well, let's start --just a sec, please.
 18 Frankly, I don't remember which handwriting was yours
 19 and which was somebody else's.
 20 Well, let's start with the letter that's
 21 dated June 4, 2003 that we had just looked at, the one
 22 that was marked as Exhibit 66, if I can cheat and look
 23 along with you here, F.
 24 A Here it is.

1 the claim file.
 2 THE COURT: Okay.
 3 MR. ZELLE: If that will move things along.
 4 (By Ms. Pinkham)
 5 Q And so you would have reviewed the May 6, 2003
 6 transmittal letter because it was in the file?
 7 A Yes.
 8 Q And similarly, you would have reviewed the July 22
 9 transmittal letter that's marked as 66H?
 10 A Yes.
 11 Q And the transmittal letters that are dated after July
 12 of 2003, do you recall that those were in your file as
 13 well, Mr. Satriano?
 14 A Yes.
 15 Q And so let's fast forward. I apologize, Mr. Satriano,
 16 I have myself in the wrong year.
 17 Okay. And if you could find the exhibit that
 18 was marked as 66J for me.
 19 A Got it.
 20 Q Okay. And on the second page of 66J, under "defense,"
 21 it reads: Nixon Peabody. There is a demand in for
 22 \$16.5 million. Medicals and video have been sent to
 23 your attention, et cetera, et cetera?
 24 A Yes, you're correct.

1 Q Okay. And the date of that transmittal letter is
 2 September 24, 2003, isn't it?
 3 A Yes.
 4 Q So you knew there was a demand of \$16.5 million before
 5 the November of 2003 conference call, correct?
 6 A Right, from the review of the Crawford letter.
 7 Q After the November 2003 conference call, were you
 8 contacted by anyone acting on behalf of he insured,
 9 GAF?
 10 A Your question is after the November conference call?
 11 Q Yes.
 12 A My recollection would be no. No one -- other than Mr.
 13 Bartell, no, but no one from GAF specifically. No
 14 employees of GAF.
 15 Q Okay. Well, did you receive any information from
 16 Steven Penick at Crawford & Company after the
 17 conference call?
 18 A Yes, I believe I did.
 19 Q Okay. He provided you with some of the information
 20 that you had asked for?
 21 A Yes.
 22 Q And you recall receiving a letter in a package from
 23 Attorney Deschenes after the November 2003 conference
 24 call?

1 letter.
 2 Q Mr. Satriano, did you notice that the date of the --
 3 strike that.
 4 Was this the first time you had ever had any
 5 communications with Mr. Bartell?
 6 A I believe so.
 7 Q Okay. And did you notice that when you received this
 8 letter, that it was dated December 19, 2003?
 9 A Yes.
 10 Q And did you notice that that was the one-month
 11 anniversary of the conference call in which
 12 representatives of the insured had asked AIG to commit
 13 to providing some of the excess funds for a settlement
 14 offer?
 15 MR. ZELLE: Objection. It just
 16 mischaracterizes.
 17 THE COURT: So whether he made reference to
 18 the time of the earlier call or not?
 19 THE WITNESS: Your Honor, the date really had
 20 no significance.
 21 MS. PINKHAM: Your Honor, I would move that
 22 that document be admitted into evidence.
 23 THE COURT: All right. Any objection?
 24 MR. ZELLE: There's a bunch of pages. We

1 A Yes.
 2 Q And you reviewed those materials when they sent them to
 3 you?
 4 A Yes.
 5 Q Now, you just referenced being contacted by Attorney
 6 Bartell. What's your memory of your first contact from
 7 Attorney Bartell?
 8 A I was extremely puzzled after my contact with Attorney
 9 Bartell.
 10 Q Mr. Satriano, I'm handing you a document that has been
 11 pre-marked as Plaintiffs' Exhibit 20.
 12 MS. PINKHAM: Your Honor, for the record,
 13 it's my understanding that AIG has not tested the
 14 authenticity of the document. It's only addressing the
 15 purposes for which it comes into evidence.
 16 (By Ms. Pinkham)
 17 Q I'm going to show you the second page of what has been
 18 pre-marked as Plaintiffs' Exhibit 20.
 19 Mr. Satriano, do you recall receiving that
 20 letter?
 21 A Yes.
 22 Q And you just testified that you were puzzled about the
 23 fact that Mr. Bartell was contacting you, correct?
 24 A Not that he was contacting me, but the comments in his

1 will not object to --
 2 THE COURT: Which pages --
 3 MR. ZELLE: It's Bates number --
 4 THE COURT: Which pages, Ms. Pinkham?
 5 MS. PINKHAM: Your Honor, I don't believe
 6 there was any challenge as to the authenticity of the
 7 cover page. In any event, the testimony that Mr.
 8 Manning provided indicated he's the author of the cover
 9 page that was circulated by which the letter from Mr.
 10 Bartell was circulated, and it attaches the Bartell
 11 letter. So I would move that both be admitted as
 12 Exhibit 20.
 13 MR. ZELLE: The cover page is a fax note from
 14 Mr. Manning to Mr. Hohn. We're not objecting to the
 15 letter being offered for the fact that it was received.
 16 Certainly we're not -- we are objecting to its offer as
 17 -- for the truth of the matter asserted, but I'm
 18 objecting on relevance grounds for the cover page and
 19 lack of foundation.
 20 THE COURT: I'll admit the letter itself but
 21 not the cover page. So the letter itself may come in
 22 as Exhibit 20, but not the cover page.
 23 THE COURT: It's not being sought for the
 24 truth of the matter asserted, correct?

1 MS. PINKHAM: I'm sorry, I couldn't hear you.
 2 THE COURT: It's not being sought to be
 3 admitted for the truth of the matter asserted. It's
 4 simply for the fact that this was what Mr. Satriano
 5 read and what Mr. Bartell had written, correct?
 6 MS. PINKHAM: Correct.
 7 THE COURT: Okay.
 8 MS. PINKHAM: Your Honor, there was testimony
 9 as to the cover letter that was attached in Mr.
 10 Manning's deposition and that's what I rely on.
 11 THE COURT: Let me ask Mr. Satriano. Do you
 12 recall receiving the cover letter?
 13 THE WITNESS: No, your Honor, I do not.
 14 THE COURT: All right. So the letter will
 15 come in, but not the cover letter.
 16 MS. PINKHAM: Okay. Thank you.
 17
 18 (Exhibit No. 20, marked; Letter from Anthony
 19 Bartell to Nicholas Satriano, dated December 19, 2003.)
 20
 21 (By Ms. Pinkham)
 22 Q Mr. Satriano, you didn't respond to Mr. Bartell's
 23 December 19, 2003 letter, did you?
 24 A No.

1 which we have no objection.
 2 THE COURT: Which pages --
 3 MR. ZELLE: Well, no objection other than --
 4 THE COURT: Let's find out. Which page or
 5 pages are you seeking to offer, Ms. Pinkham?
 6 MS. PINKHAM: All of them, your Honor,
 7 including the copy of the previous letter, the envelope
 8 that it was sent in, and the fax cover sheet that shows
 9 that it was also faxed.
 10 THE COURT: Okay. Mr. Satriano, were all
 11 received by you?
 12 THE WITNESS: Your Honor, again, the letter,
 13 most definitely. The fax cover sheet, I'm not sure.
 14 It probably was the case, as it seems to have been
 15 addressed to me.
 16 THE COURT: Okay. It may all come in with
 17 the same restriction, that is, simply to reflect what
 18 Mr. Satriano received from Mr. Bartell. So it may come
 19 in as Exhibit 23.
 20 MS. PINKHAM: Thank you.
 21 THE COURT: I still haven't seen 20 or 23.
 22 MS. PINKHAM: I'm working on getting you
 23 copies, your Honor. Here's 20.
 24

1 Q I'm handing you another document that's been pre-marked
 2 as Plaintiffs' Exhibit 23, and ask you if you recognize
 3 that.
 4 MR. VARGA: What exhibit number?
 5 MS. PINKHAM: Twenty-three.
 6 A Yes, I do.
 7 (By Ms. Pinkham)
 8 Q And this is another letter to you from Attorney
 9 Bartell, correct?
 10 A Yes.
 11 Q And this one's dated January 14?
 12 A January 14, 2004.
 13 Q Okay. And it attaches -- strike that.
 14 And you received this letter at some point
 15 after January 14, 2004?
 16 A Yes.
 17 MS. PINKHAM: Your Honor, I would ask that
 18 Plaintiffs' Exhibit 23 be introduced into evidence.
 19 THE COURT: Any objection with the same
 20 restriction, that it's not being offered for the truth?
 21 MR. ZELLE: That's right, your Honor. There
 22 are one, two, three, four, five, six pages attached to
 23 what's been provided to us as this exhibit. The first
 24 page is what I believe is being referred to and to

1 (Exhibit No. 23, marked; Letter from Anthony
 2 Bartell to Nicholas Satriano, dated January 14, 2004.)
 3
 4 THE COURT: Okay. You may proceed.
 5 (By Ms. Pinkham)
 6 Q So, Mr. Satriano, Attorney Bartell follows up and
 7 comments on the fact that you did to respond to his
 8 last letter; does he not?
 9 A Yes.
 10 Q And he also indicates that you did not respond to
 11 several voice mail messages that he had left for you?
 12 A Yes.
 13 Q Did you respond to the January 14, 2004 letter?
 14 A I know I wrote a letter to Mr. Bartell. I don't recall
 15 the specific date. It was after that letter,
 16 obviously. I just don't know if there was another
 17 letter in the middle of that or what.
 18 Q And you understood, didn't you, that Mr. Bartell, on
 19 behalf of your insured, GAF, was expressing concern
 20 that AIG had not indicated that it was going to provide
 21 coverage for the excess claim over Zurich?
 22 A I'm sorry.
 23 Q That's okay. Your answer was yes?
 24 A Yes.

1 Q I'm handing you another letter that has been pre-marked
 2 as Plaintiffs' Exhibit 28, and ask if you recognize
 3 that letter.
 4 A Yes, I do.
 5 Q And this is another communication from Mr. Bartell to
 6 you and to Mr. Conroy?
 7 A Yes.
 8 MS. PINKHAM: Your Honor, I would move to
 9 admit Plaintiffs' Exhibit 28.
 10 THE COURT: Any objection, with the same
 11 restriction?
 12 MR. ZELLE: Same objection.
 13 THE COURT: Okay. And the date of that, I'm
 14 sorry, is?
 15 MS. PINKHAM: It is February 4, 2004, your
 16 Honor.
 17 THE COURT: Okay. It may come in as Exhibit
 18 28.
 19
 20 (Exhibit No. 28, marked; Letter from Anthony
 21 Bartell to Nicholas Satriano and William Conroy, dated
 22 February 4, 2004.)
 23
 24 (By Ms. Pinkham)

1 A The defense meeting could have been discussed at the
 2 time of our November teleconference.
 3 Q Mr. Satriano, could you find Exhibit 70 for me again?
 4 It's in the binder that's marked Plaintiffs' Trial
 5 Exhibits Volume 2.
 6
 7 **END 07-123
 8
 9
 10
 11 Beginning TAPE 124
 12 THE WITNESS: Yes.
 13 (By Ms. Pinkham)
 14 Q If you could turn to page 2 of 6, starting from there
 15 beginning of the Exhibit that bears the Bates stamp
 16 2203.
 17 A Yes.
 18 Q And under the note that's dated 2-13 -- strike that.
 19 Under the note that's dated 2-24-2004,
 20 there's a reference that the defense meeting was
 21 scheduled for March 5, 2004?
 22 A Yes.
 23 Q And it's your testimony that you had asked Mr. Hohn to
 24 schedule the meeting?

1 Q And, again, in this February 4, 2004 letter, Anthony
 2 Bartell is again expressing concern over whether AIG is
 3 going to provide coverage for the claim?
 4 A Yes, he is.
 5 Q And he indicates that since AIG has already associated
 6 in another defense counsel, he would expect that you're
 7 going to confirm that the claim is covered. That's
 8 what he communicated to you?
 9 A Yes.
 10 Q Now, after the exhibit that's been marked as -- excuse
 11 me -- after the letter that has been marked as Exhibit
 12 28, which is dated February 4, 2004, you took steps to
 13 schedule a meeting with GAF?
 14 A Could you repeat your question again, please?
 15 Q Sure. After you received the February 4 letter from
 16 Attorney Bartell, you took steps to schedule a meeting
 17 with GAF, didn't you?
 18 A Steps had already been undertaken to schedule a
 19 meeting.
 20 Q Okay. And could you describe the steps that had been
 21 taken to schedule a meeting then?
 22 A I had spoken to Mr. Fred Hohn, the broker from Willis,
 23 and suggested that the defense team meet for a meeting.
 24 Q And do you recall when that was?

1 A I had suggested to Mr. Hohn that it would be a good
 2 idea.
 3 Q Why did you think it would be a good idea?
 4 A You have to understand what I was dealing with. I had
 5 a telephone call in November from the primary insurer,
 6 as well as the primary defense counsel, requesting that
 7 I become involved in the case. Not only were they
 8 requesting that I become involved in the case, but they
 9 were requesting money. At that point, it was clearly
 10 obvious that they were reaching up to me for my
 11 involvement, and then it was incumbent upon me to take
 12 steps, then, to bring this to a conclusion where we
 13 would all be on the same sheet of music and the same
 14 page.
 15 Q Okay. So you understood that in the November 2003
 16 conference call, the insured wanted AIG to step up to
 17 the plate, as it were?
 18 A Yes.
 19 Q In February of 2004, you took steps to schedule the
 20 meeting?
 21 A No. May I say something?
 22 Q Did you take steps to schedule the meeting earlier than
 23 February of 2004?
 24 A The meeting was discussed earlier than that time. It

1 was discussed perhaps during our teleconference. It
 2 was discussed with Mr. Hohn. You're referring to a
 3 date per the computer system when the note was created.
 4 The note was created on 2-24 of 2004. Merely because
 5 the note was created on 2-24-2004 does not mean
 6 specifically and literally that we then requested to
 7 have that defense conference subsequent to Mr.
 8 Bartell's correspondence.
 9 Q Could you look at the note that's right underneath the
 10 2-13, the one that says "created." I'm sorry, the one
 11 that is dated 2-13-2004.
 12 A Yes.
 13 Q There's a note that says created 2-13-2004?
 14 A Yes.
 15 Q And the note reads: On 2-13-04, sent out a formal
 16 letter, et cetera, et cetera?
 17 A Yes.
 18 Q And the note underneath that, the note that's dated 12-
 19 18-2003, if you could flip to the next page, page 3 of
 20 6 of Exhibit 70, that note entry says: As of 12-18-03,
 21 held two teleconferences, et cetera, et cetera?
 22 A Yes.
 23 Q So at least in those two notes you had a practice of
 24 making the note contemporaneous with the event; did you

1 whether or not I recall we had this conversation at the
 2 depositions. And supervisors will come in and they
 3 will look in the notes and evaluate or do a review, I
 4 don't know, as to what the status of the particular
 5 file is. And I'm sure they're comforted to see that
 6 there is participation by the complex director in the
 7 maturity of the file.
 8 Q Sure. So you put notes in the file not only as a
 9 recall, I think was the phrase that you had used, not
 10 only to help yourself but also so that your supervisors
 11 would know you were doing your job, right?
 12 A Correct.
 13 Q Okay. Could you turn to page 3 of 6 for me, Exhibit
 14 70.
 15 A Okay.
 16 Q Mr. Satriano, you'll see starting at the bottom there's
 17 an entry dated 11-08-2002, and that was an entry by Ms.
 18 Kelly, correct?
 19 A Yes.
 20 Q And the next entry chronologically is dated 8-29-2003.
 21 A Yes.
 22 Q And that's a note that you had made?
 23 A Yes.
 24 Q So between the November 8, 2002 time entry and the

1 not?
 2 A On the 12-18 note, yes.
 3 Q And the 12-13 note as well?
 4 MR. ZELLE: 2-13.
 5 MS. PINKHAM: 2-13, thank you, Mr. Zelle.
 6 A No. It's that way in the note, but again it does not
 7 explain -- again, what I am putting in there, these
 8 notes are to remind me and make references to what is
 9 going on in the lawsuit or in the particular claim
 10 file. Okay? They should not be interpreted as a
 11 literal play by play which coincides with the date that
 12 they are created.
 13 So for example, what I'm saying is, on 2-13,
 14 sent out a formal letter, which I probably did, on 2-
 15 13.
 16 Spoke to broker Fred Hohn. I could have had
 17 that conversation beforehand. Merely, I put it in the
 18 notes, so that it would be a recall as to what the
 19 status would be in the particular case.
 20 Q And you put important events that were going on in the
 21 case in the notes as a memory device?
 22 A Well, it's not a memory device for me. The purpose of
 23 these notes really are for supervisors to come in and
 24 take a look, if some supervisors have questions as to

1 August 29, 2003 time entry, the only entry as to what
 2 was going on in the claim was: Will follow up with
 3 primary regarding status, correct?
 4 A Yes.
 5 Q But you were not the one who was responsible prior to
 6 or for the whole time period in between Ms. Kelly and
 7 your first-time entry in August, correct?
 8 A Yes.
 9 Q You started in June of 2003 on the claim?
 10 A Yes.
 11 Q And can you see there's another entry above that dated
 12 9-26-2003. It was your entry?
 13 A Yes.
 14 Q And it again reads: Followed up for status of
 15 correspondence?
 16 A Yes.
 17 Q And right above it was the entry that you had made,
 18 that as of 12-18-03, had teleconferences with defense
 19 counsel and had associated in Bill Conroy, correct?
 20 A Yes.
 21 Q Okay. So nowhere in the excess claims notes does it
 22 indicate that as of November 13, 2003, you had a
 23 conference call with Zurich and the insured and they
 24 had asked AIG to contribute towards a settlement

1 amount, correct?
 2 A Yes.
 3 MR. ZELLE: Objection to the form. I think
 4 it was the 19th, just to clarify for the record.
 5 MS. PINKHAM: Thank you for the
 6 clarification, Mr. Zelle.
 7 (By Ms. Pinkham)
 8 Q Nor do the excess claim notes for the time period for
 9 which you were responsible for the claim indicate that
 10 you had received documents from Crawford & Company or
 11 defense counsel and had reviewed those documents,
 12 correct?
 13 A Oh, no.
 14 Q Mr. Satriano, you were aware, weren't you, before the
 15 March 2004 meeting with GAF that the demand was no
 16 longer \$16.5 million?
 17 A Yes.
 18 Q And how did you gain that knowledge?
 19 A I don't recall how I gained that knowledge. I know
 20 that the demand had been increased by Mr. Pritzker.
 21 Q Did you have any awareness of whether GAF was concerned
 22 about the fact that the demand had increased?
 23 MR. ZELLE: Objection, just with respect to
 24 the source of the information if it's within one of the

1 his work product on the case, including the reports
 2 that he had provided to Crawford and to Zurich?
 3 A Yes.
 4 Q And you review those reports when you receive them?
 5 A I reviewed everything that Mr. Deschenes sent to me. I
 6 have no specific knowledge of a particular report that
 7 you may refer to, but whatever Mr. Deschenes sent to me
 8 by way of the Rhodes file, his file, I did review, yes.
 9 Q Mr. Satriano, have you ever seen the privilege
 10 log that AIG produced in this case?
 11 A May I see it? I don't know what you're speaking
 12 about.
 13 MR. ZELLE: If it might shortcut things
 14 If the gist of this is, did Mr. Satriano receive
 15 privileged communications from Mr. Deschenes, I
 16 will stipulate that if that are identified on
 17 that log, then he did receive them.
 18 THE COURT: Okay. You may proceed.
 19 MS. PINKHAM: Your Honor, I'd like to
 20 mark the supplemental privilege log for
 21 identification please.
 22 THE COURT: It may be marked for I.D.
 23
 24 (Exhibit F for I.D., marked;

1 conversations that have been deemed not to be
 2 privileged.
 3 THE COURT: Or if it's with GAF and not
 4 counsel.
 5 MR. ZELLE: Correct.
 6 THE COURT: Okay.
 7 A GAF was concerned from day one. Of course they would
 8 have been concerned that demand was increased.
 9 A Mr. Satriano, do you recall what documents you had
 10 asked Attorney Deschenes to provide during the November
 11 2003 conference call?
 12 A Yes, I do.
 13 Q What were they?
 14 A I would have requested that Attorney Deschenes give me
 15 a copy of his complete file, which include any
 16 pleadings, any motions, any status reports, any reports
 17 regarding medical records, any medical records, any
 18 expert reports, photographs, contracts for insurance on
 19 the primary side of the house, any and all of that type
 20 of information.
 21 Q And do you recall receiving a package from Mr.
 22 Deschenes in November of 2004?
 23 A Yes.
 24 Q And do you recall that Mr. Deschenes provided you with

1 Supplemental Privilege Log.
 2
 3 MR. ZELLE: Can I get a copy of that?
 4 MS. PINKHAM: Sure.
 5 (By Ms. Pinkham)
 6 Q Mr. Satriano, very quickly, on page 10 of the
 7 document that's been marked as Exhibit F for
 8 I.D., do you see item number 33 is an undated,
 9 unsigned pre-trial report apparently prepared by
 10 Nixon Peabody?
 11 A Yes.
 12 Q And that was an eight-page document?
 13 MR. ZELLE: We'll stipulate that the
 14 log says it's an eight-page document.
 15 A Yes.
 16 (By Ms. Pinkham)
 17 Q And according to the stipulation then, Mr.
 18 Satriano, you reviewed that eight-page document?
 19 A Again, if it was provided in what Mr. Deschenes
 20 sent me, yes.
 21 Q Okay. And if you could turn to page 15 for me
 22 of the document that's been marked as Exhibit F
 23 for identification? Are you on page 15?
 24 A Yes.

1 Q Okay. And at the bottom of page 15 there's an
 2 item marked number 32, November 24, 2003 letter
 3 from Gregory P. Deschenes to Nicholas Satriano,
 4 and that was a three-page document addressing
 5 the factual and procedural background, damages
 6 and liabilities issue?
 7 A Okay, yes.
 8 Q Did you receive that?
 9 A If that's the letter that Mr. Deschenes sent me
 10 after our teleconference, yes.
 11 Q Did you also receive the November 7, 2003 e-mail
 12 from Gregory P. Deschenes to Kathleen Fuell that
 13 forwarded a claim evaluation worksheet and
 14 pretrial report that's been numbered as item
 15 number 16 on AIG's supplemental privilege log?
 16 A I never received any e-mail from Mr. Deschenes
 17 prior to our teleconference on November 19th.
 18 However, if this was again reproduced and made
 19 part as a copy of the material that he sent me
 20 in his file, then yes, I would have received it.
 21 MR. ZELLE: Just so it's clear, your
 22 Honor, the stipulation was that it was received.
 23 There is no stipulation that they were received
 24 on the date reflected on the document,

1 A Yes.
 2 Q And if you turn to page 17 for me, please, Mr.
 3 Satriano.
 4 A Okay.
 5 Q There is two items that I'd like to direct your
 6 attention to, Item 177, which is a July 7 2003
 7 status report from Gregory P. Deschenes to Jody
 8 Mills of Crawford & Company; and Item 183,
 9 August 15, 2003 status report from Gregory P.
 10 Deschenes to Jody Mills at Crawford & Company.
 11 A Okay.
 12 Q Were those status reports included in the
 13 material that Mr. Deschenes sent you following
 14 the conference call?
 15 A Again, I have no specific recollection that they
 16 were. Again, I asked Greg to send me his entire
 17 file.
 18 Q And in any event, whatever Mr. Deschenes
 19 forwarded to you, you did review?
 20 A Yes.
 21 MS. PINKHAM: Your Honor, I'd ask that
 22 the supplemental privilege log that was marked
 23 as Exhibit F for identification be entered as an
 24 Exhibit.

1 particularly where it's inconsistent with the
 2 testimony that he didn't receive anything prior
 3 to the conversation on November 19th. He's now
 4 looking at an entry on the log of a document
 5 that's dated November 7th. That very well may
 6 have been received, but I don't want -- I want
 7 it to be clear on the record that --
 8 THE COURT: It doesn't say it was sent
 9 to him. It says it was sent to Kathleen Fuell
 10 with a copy to Gordon and Mills.
 11 MR. ZELLE: Right.
 12 THE COURT: So the meeting was on the
 13 19th, and then on the 24th there is this letter
 14 from Greg Deschenes, and he also says, whether
 15 or not it's reflected here, that he received the
 16 case file from Mr. Deschenes, correct?
 17 THE WITNESS: Yes, Judge.
 18 THE COURT: Okay.
 19 (By Ms. Pinkham)
 20 Q And directing your attention actually to the
 21 next page, on page 16, the item marked 38, is
 22 December 4, 2003 letter from Greg P. Deschenes
 23 to Mr. Satriano, and the "regarding" is case
 24 status, plaintiffs' revised settlement demand?

1 MR. ZELLE: Objection.
 2 THE COURT: Basis?
 3 MR. ZELLE: Of my objection?
 4 THE COURT: Yes.
 5 MR. ZELLE: It has no probative value to
 6 anything other than what Mr. Satriano just testified
 7 about, his receipt of materials from Mr. Deschenes
 8 which were responsive to a request that he provide
 9 everything, that these may or may not have been
 10 included.
 11 MR. GOLDMAN: I have an additional objection,
 12 your Honor, which is that part of the privilege log
 13 which characterizes the documents, which is the
 14 characterization of AIG's counsel, which is not
 15 probative. I think the witness already testified what
 16 he got or didn't get, so I'm not sure what additional
 17 this exhibit would offer. But the characterizations
 18 are not in evidence and shouldn't be in evidence.
 19 THE COURT: Well, they are statements made by
 20 representatives of adverse parties reflecting what the
 21 documents contain, so I do think it is admissible.
 22 Pragmatically, that would be useful only for the dates
 23 of these particular documents, but I will admit it with
 24 that limited probative value. So it may come in as the

1 next exhibit, which I believe is 84.
 2
 3 (Exhibit No. 84, marked; Supplemental
 4 Privilege Log [previously F for I.D.]
 5
 6 MR. GOLDMAN: Your Honor, just as a technical
 7 matter for the record, we'd ask that that part of the
 8 documents and the characterizations be admitted as
 9 against AIG. AIG is not an adverse party of Zurich.
 10 THE COURT: Right. It's admissible only as
 11 to the party who stated it. Okay, you may proceed.
 12 MS. PINKHAM: Thank you.
 13 (By Ms. Pinkham)
 14 Q Mr. Satriano, at some point after the November 19, 2003
 15 conference call, did you receive a phone call from
 16 Kathleen Fuell following up on the conference call?
 17 A I may have, yes.
 18 Q Okay. Do you recall during that conversation with
 19 Kathleen Fuell in which she stated that Zurich was
 20 going to tender its 2 million policy limits to AIG?
 21 A Yes.
 22 Q Okay. And you recall that you informed Ms. Fuell that
 23 you and AIG do not accept verbal tenders of policy
 24 limits?

1 despite the fact that there was nothing in AIG's
 2 policies governing adjustment that required such a
 3 document, correct?
 4 A Well, I think we were requesting a written formal
 5 tender from her, not necessarily demanding one.
 6 Q Mr. Satriano, I've lost track of whether there is a
 7 binder up there entitled, "Selected Defendant'
 8 Discovery Responses."
 9 A Here it is.
 10 Q Thank you. Could you turn to Exhibit 6 for me, please.
 11 A Yes.
 12 Q All right and Exhibit 6 is AIG's responses -- excuse me
 13 Supplemental Response to Plaintiffs' First Set of
 14 Document Requests?
 15 A Yes.
 16 Q Okay. Could you turn to --
 17 THE COURT: I'm sorry, do we now have two
 18 Exhibit 6's?
 19 MS. PINKHAM: I'm sorry, it's six in the
 20 selected defendants', I didn't get the exhibit number ,
 21 your Honor, I apologize.
 22 THE COURT: Okay, so it's Tab 6 in the --
 23 MS. SACKETT: It's been marked as Exhibit 82,
 24 I believe, your Honor.

1 A I sent Kathleen an e-mail indicating that I needed, in
 2 writing, a formal tender from her on behalf of Zurich.
 3 Q Okay. And she responded to that e-mail with her own e-
 4 mail; did she not?
 5 A She did.
 6 Q And you responded back and indicated that you would not
 7 accept a tender via e-mail, correct?
 8 A Yes, correct.
 9 Q And the reason why you would not accept an e-mail
 10 tender of policy limits is that you viewed the tender
 11 of policy limits as a formality and that it should be
 12 done formally with a letter and a writing, correct?
 13 A Not only did I, but my supervisor, Mr. Mastronado, did.
 14 I was responding to what my supervisor's requirement
 15 would be as well.
 16 Q Okay. And that requirement, however, is not set forth
 17 in any policy of AIG, is it?
 18 MR. ZELLE: Objection. Just for clarity,
 19 we're not talking about an insurance policy here.
 20 We're talking about a --
 21 THE COURT: I think I know that. Go ahead.
 22 A None that I'm aware of, no.
 23 (By Ms. Pinkham)
 24 Q Okay. So you were demanding a formal written letter

1 THE COURT: The Defendants' Answers to
 2 Interrogatories, okay. So it's Tab 6 to Exhibit 82.
 3 MS. PINKHAM: Yes.
 4 THE COURT: I don't think I have that, do I?
 5 Do I have Exhibit 82?
 6 MR. BROWN: We'll find you a copy.
 7 THE COURT: All right. We should use our
 8 last minute wisely.
 9 MS. PINKHAM: Okay.
 10 (By Ms. Pinkham)
 11 Q Mr. Satriano, Tab 6 of Plaintiffs' Exhibit 82, would
 12 you turn to the second page for me, please.
 13 A Yes.
 14 Q Thank you. Request No. 4 asks for any and all
 15 documents relating to or constituting policies and
 16 procedures for adjusting or otherwise processing
 17 personal injury and/or motor vehicle accident claims,
 18 including but not limited to any and all claims manuals
 19 relating to personal injury and/or motor vehicle
 20 accident claims.
 21 Could you read on the next page the
 22 supplemental response number four?
 23 A (Reading): AIGDC is unable to adequately respond
 24 because request number four --

1 MS. PINKHAM: I'm sorry, Mr. Satriano, I must
 2 have directed you to the wrong --
 3 MR. ZELLE: Excuse me, your Honor, I don't
 4 have -- Mr. Brown, if you could just point out to me,
 5 I'm looking at Tab 6.
 6 MR. BROWN: I also handed you a loose copy of
 7 what would be Tab 6.
 8 MR. ZELLE: Okay.
 9 THE COURT: Tab 6?
 10 MR. ZELLE: Page?
 11 MS. PINKHAM: The request number four is on
 12 page two and a supplemental response is on page three.
 13 (By Ms. Pinkham)
 14 Q Mr. Satriano, I was actually just asking you to read
 15 the supplemental response, please.
 16 A Okay, sorry.
 17 Q That's okay.
 18 A Supplemental response number four: Notwithstanding its
 19 prior objections to this request and without waiving
 20 same, AIGDC further responds that a comprehensive
 21 investigation has failed to reveal any written policies
 22 or procedures for processing personal injury and/or
 23 motor vehicle accident claims that were in effect
 24 during the time of the underlying tort litigation.

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 163, is a
 complete, true and accurate transcription of the
 above-referenced case.

 Paula Pietrella

 Faye LeRoux

1 Q Thank you, Mr. Satriano.
 2 MS. PINKHAM: Your Honor, would this be an
 3 appropriate point to break?
 4 MS. PINKHAM: I think so. It's one o'clock.
 5 Roughly how much longer do you expect to have with him
 6 on your direct?
 7 MS. PINKHAM: I think about half an hour or
 8 forty-five minutes, your Honor.
 9 THE COURT: All right. In keeping with your
 10 representation with respect to the time to do that,
 11 okay, we shall plan to reconvene, weather allowing, at
 12 9:30 tomorrow.
 13 (Hearing adjourned at 1:01 p.m.)

Pages: 137

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.
SUCV2005-1360SUPERIOR COURT DEPARTMENT
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 8

BEFORE: GANTS, J.
 BOSTON, MASSACHUSETTS
 FEBRUARY 14, 2007

PAULA PIETRELLA
 FAYE LEROUX

3

4

National Union Fire Insurance Company

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I N D E XOpening Statement

(By Mr. Zelle) 56

WITNESS DIRECT CROSS REDIRECT RECROSS

Nicholas Satriano (Resumed)

(By Ms. Pinkham) 5
 (By Mr. Zelle) 54, 70

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
32	Letter to Nicholas Satriano from Anthony Bartell, March 18, 2004	34
80A-1	Page from Exhibit 80A with Bates Stamp 3134	49
85	Time Stamped Transmittal Letters	9

FOR I.D.

None

P R O C E E D I N G S

(In court at 9:40 a.m.)

THE COURT OFFICER: This Honorable Court is now open, you may be seated.

THE COURT: Good morning. All right, let us proceed with Mr. Satriano, who braved the wind and rain.

And as you know, sir, you remain under oath, so I don't need to place you under oath.

THE WITNESS: Yes, your Honor.

THE COURT: Ms. Pinkham, you may proceed.

THE COURT: All right. Ms. Pinkham, you may proceed. Thank you.

MS. PINKHAM: Thank you, your Honor.

NICHOLAS SATRIANO, Resumed.

DIRECT EXAMINATION BY MS. PINKHAM, Continued:

Q Good morning, Mr. Satriano.

A Good morning, Ms. Pinkham.

Q Mr. Satriano, yesterday I had showed you some of the documents that we looked at in your deposition, and I did not have a copy for you, so I wanted to remedy that this morning.

Mr. Satriano, do you recognize the documents that I just handed you?

1 A Yes.

2 Q What do you recognize them as?

3 A Those are liability transmittal letters from Crawford.

4 Q And they were received by AIG?

5 MR. ZELLE: I'm going to object, your Honor.

6 What we've received are production copies that include

7 redacted things, so I'm certain that these were not

8 received -- that these letters were not received by

9 AIG. These indicate materials that were redacted.

10 THE COURT: Right. I assume they were

11 received by AIG without redaction.

12 MR. ZELLE: That's a point.

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. I would have known that.

15 Okay. Mr. Satriano, you do have a microphone

16 so you don't need to speak quite as loudly as before,

17 all right? So whenever I see my court reporter's head

18 jerk, then I know that it's too loud.

19 Okay, you may proceed.

20 (By Ms. Pinkham)

21 Q Mr. Satriano, were the documents received by AIG?

22 A Yes.

23 MS. PINKHAM: I'd like to offer that as the

24 next plaintiffs' exhibit, your Honor.

1 MR. ZELLE: I'm going to object, your Honor.

2 These --

3 THE COURT: I don't know what these are.

4 These are transmittal letters from --

5 MS. PINKHAM: Crawford & Company transmittal letters, your Honor.

6 THE COURT: Okay. And your purpose is to show that they, indeed, were received by AIG?

7 MS. PINKHAM: Yes.

8 THE COURT: All right. Well, what are they?

9 MS. PINKHAM: They're the same ones that have already been marked as exhibits in this case, your

10 Honor. The reason I am offering is because that AIG --

11 THE COURT: Okay. We don't need to -- Lord knows we have enough exhibits. So we have 66A through -- is it A through O?

12 MS. PINKHAM: Yes.

13 THE COURT: Okay. So basically you're saying that Mr. Satriano received Exhibits 66A through O, albeit not in redacted form.

14 MS. PINKHAM: No, your Honor. The set that I have just marked is the set that was received by AIG on or around the time that Mr. Satriano was responsible for the case.

1 THE COURT: Okay. Which are?
 2 MS. PINKHAM: Going backwards, starting at
 3 Exhibit --
 4 THE COURT: Let's start with A. Are they A
 5 through what?
 6 MS. PINKHAM: They're in the reverse
 7 chronological order, your Honor, so it's from L back.
 8 THE COURT: So A through F.
 9 MS. PINKHAM: No, your Honor. They are F
 10 through L.
 11 THE COURT: Okay. So those were received by
 12 AIG.
 13 MS. PINKHAM: Yes. And they're received and
 14 stamped, there's time stamps on these documents, your
 15 Honor. That's only purpose for which I'm offering
 16 them.
 17 THE COURT: So that these will reflect the
 18 time that they were received?
 19 MS. PINKHAM: The dates, I should say, your
 20 Honor.
 21 THE COURT: All right. Any objection?
 22 They may come in as Exhibit 85.
 23
 24

1 (Exhibit No. 85, marked; Time Stamped
 2 Transmittal Letters.)
 3
 4 THE COURT: Just so I'm clear, the redactions
 5 I see on that I assume would mirror the redactions in
 6 66F through L?
 7 MR. ZELLE: No.
 8 MS. PINKHAM: It depends on what time they
 9 were produced, your Honor. Some of those documents
 10 were redacted at various times and produced in various
 11 redactive form. And, again, I'm only offering this
 12 exhibit for the "received" stamp that is on the
 13 documents.
 14 MR. ZELLE: The answer to your question, your
 15 Honor, is no. The complete copies or unredacted copies
 16 were produced after your Honor ruled on one of the
 17 motions.
 18 THE COURT: So the least redacted versions
 19 are 66F through L?
 20 MS. PINKHAM: Correct.
 21 MR. ZELLE: They are completely unredacted,
 22 your Honor.
 23 THE COURT: Are they?
 24 MR. ZELLE: Yes.

1 MS. PINKHAM: Not necessarily, your Honor.
 2 THE COURT: I haven't gone through each one.
 3 But in any event --
 4 MR. ZELLE: All right.
 5 MS. PINKHAM: Attorney-client communications
 6 are at least based on the privilege logs.
 7 THE COURT: There are a few which appear to
 8 have -- 66F appears to have some redactions, but they
 9 are the least redacted version. Okay.
 10 (By Ms. Pinkham)
 11 Q Mr. Satriano, could you turn in plaintiffs' trial
 12 exhibit Volume No. 1, to Exhibit 28? I think that's
 13 about where we left off yesterday.
 14 A I think 28 is Volume 2 because my Number 1 goes to 25.
 15 Oh, I have it.
 16 Q Turning to the second page of Exhibit 28, Mr. Satriano,
 17 the last sentence of the first paragraph, Mr. Bartell
 18 writes: Further delay jeopardizes settlement
 19 discussions and exposes AIG to extra contractual
 20 liability.
 21 Do you see that sentence?
 22 A Yes.
 23 Q Did you contact Mr. Bartell to ask him what extra
 24 contractual liability he was referencing in his letter?

1 A No.
 2 Q Could you turn to Exhibit 30, please?
 3 Mr. Satriano, yesterday there was some
 4 discussion and testimony on your part about the
 5 conversations and e-mails exchanged between you and
 6 Kathleen Fuell regarding Zurich's efforts to tender its
 7 policy, and I just wanted to put a date on those
 8 conversations. And the document that's been marked as
 9 Exhibit 30 is the e-mails that you two exchanged on
 10 February 13, 2004?
 11 A Yes.
 12 Q Okay. And so you were aware as of February 13, 2004
 13 that Zurich was going to make efforts to tender its
 14 policy?
 15 MR. GOLDMAN: Objection to form, your Honor.
 16 THE COURT: Sustained as to the form.
 17 A I can't --
 18 THE COURT: It's sustained. It's time for a
 19 new question.
 20 (By Ms. Pinkham)
 21 Q Mr. Satriano, what was your understanding of what
 22 Kathleen Fuell was trying to accomplish in mid-December
 23 of -- excuse me, February of 2004 in connection with
 24 Zurich's \$2 million policy limits?

1 MR. GOLDMAN: Objection.
 2 THE COURT: Overruled. You may answer. If
 3 it's overruled, you may answer it.
 4 THE WITNESS: Thank you.
 5 A Kathleen Fuell and I had a conversation of her
 6 intention to offer up the \$2 million on the Zurich
 7 policy. We had a further conversation regarding
 8 Zurich's duty to defend. Those two issues were the
 9 crux of these e-mails.
 10 Q Okay. Thank you.
 11 And now, Mr. Satriano, you had become
 12 familiar with the case by February of 2004?
 13 A Yes.
 14 Q And you recall in your deposition I asked you the
 15 following question -- for the record, it's at page 148,
 16 line 22.
 17 Question: By February of 2004, what was your
 18 view as to the likely damages?
 19 Answer: Again, you know, there was
 20 significant exposure. I mean, this was a case of very
 21 real, possible exposure to the excess layer, and it was
 22 something that, obviously, we needed to -- it was never
 23 really quantified. It was something that we all had
 24 some thoughts about, maybe, where the case should be.

1 Q Question: What was the purpose of this meeting?
 2 And at line 19 of page 167: We needed to
 3 discuss our strategy going forward in the case, which
 4 was to include responding, if at all, to Mr. Pritzker's
 5 letter and also discussing whether or not mediation was
 6 something that we would -- were going to bring up and
 7 continue.
 8 So you knew that mediation was going to be
 9 discussed at the March 5, 2004 meeting?
 10 A Yes.
 11 Q Could you turn to Exhibit 31, please?
 12 A Yes.
 13 Q Now, Mr. Satriano, Exhibit 31, these are your
 14 handwritten notes of the March 5 meeting?
 15 A Yes.
 16 Q If I could direct your attention to the third page of
 17 Exhibit 31, it bears the Bates stamp 1888.
 18 A 1888 is the second page of my notes, not the third.
 19 Q Oh, I'm sorry. Mine's in the wrong order. So as long
 20 as we both have 1888, I think it will make sense.
 21 A Yes.
 22 Q Okay. At the top of that page, could you just read
 23 what those first two lines are?
 24 A Okay. It would be principal defenses, dash, that would

1 But, again, my emphasis was to, again, bring the camps
 2 together in and essentially say let's, let's go to
 3 mediation, if need be, and let's see if this case can
 4 be resolved at mediation.
 5 Do you recall that testimony?
 6 A Yes.
 7 Q And so following your analysis in February of 2004,
 8 there was the meeting at GAF headquarters on March 5,
 9 2004, correct?
 10 A Yes.
 11 Q And you recall in your deposition I asked you what the
 12 purpose of that meeting was, and I'm referencing your
 13 deposition transcript at page 167, line 15.
 14 Question --
 15 MR. ZELLE: Your Honor, can we just have the
 16 questions placed to the witness instead of just reading
 17 the deposition in? I mean, we've heard deposition
 18 reading and it's just going to go a lot more quickly, I
 19 think.
 20 THE COURT: If you just want to read it in,
 21 then he could have slept in late. But why don't you
 22 proceed. If you're asking him about it, you can do it
 23 to move on, but I trust we're here for live testimony.
 24 (By Ms. Pinkham)

1 mean indemnification and contract or. And right
 2 underneath that I wrote "but problems."
 3 Q Do you recall testifying in your deposition, I asked
 4 you to go through the same process of reading your
 5 notes for me because I was having difficulty with your
 6 handwriting?
 7 A Yes.
 8 Q And do you recall that in your deposition you said the
 9 first line referenced "independent contractor, but
 10 problems"?
 11 A Yes. You may be correct. IND to me is either
 12 indemnification or independent. You're right.
 13 Q And you were aware that the claim against GAF asserted
 14 its responsibility for the actions of Mr. Zalewski, who
 15 was driving the vehicle?
 16 A Yes.
 17 Q And GAF took the position that Mr. Zalewski was an
 18 independent contractor and therefore it was not
 19 responsible?
 20 A Yes.
 21 Q Okay. And so is that the problems that you were
 22 referencing in your notes?
 23 A Probably.
 24 Q Okay. You were aware, however, by March 5 of 2004 that

1 the driver, Mr. Zalewski, was going to be found liable,
 2 weren't you?
 3 A Well, no, not as you put that.
 4 Q Mr. Satriano, do you recall yesterday before we began
 5 we showed some videotape of your testimony --
 6 A Right.
 7 Q -- in the deposition? And one of the segments that was
 8 shown was question that I had asked you that are
 9 reflected on page 96 of your transcript. The question
 10 was: As --
 11 MR. ZELLE: What line, Margaret?
 12 MS. PINKHAM: Line 6 is the question.
 13 MR. GOLDMAN: Page 96?
 14 MS. PINKHAM: Yes.
 15 (By Ms. Pinkham)
 16 Q Question: So as of December 18, 2003, when you made
 17 the claim note that we were just looking at, had you
 18 formed an opinion as to the liability of the case?
 19 Answer: Yeah. I recognized that there was a
 20 very good chance that significant liability was going
 21 to be imposed against someone on the defense side of
 22 the house. Again, we were looking at different
 23 relationships. It was going to definitely rest with
 24 the driver, clearly, in this particular case.

1 THE COURT: Today the jury's already reached
 2 its verdict, so --
 3 THE WITNESS: Yes, your Honor.
 4 THE COURT: So are you saying it's the same
 5 likelihood then as there is today, which is a hundred
 6 percent?
 7 THE WITNESS: Yes, your Honor.
 8 THE COURT: Okay. So basically you knew that
 9 there was no chance on God's green earth that Zalewski
 10 would not be found liable for the injuries to Ms.
 11 Rhodes.
 12 THE WITNESS: Yes.
 13 (By Ms. Pinkham)
 14 Q Mr. Satriano, could you turn to Exhibit 69, please.
 15 This one is in plaintiffs' trial exhibits Volume Number
 16 2.
 17 A Yes.
 18 Q Mr. Satriano, this is the insurance policy between
 19 National Union Fire Insurance Company of Pittsburgh,
 20 Pennsylvania, and Building Materials Corporation of
 21 America GAF Corporation; is it not?
 22 A Yes.
 23 Q Could you turn to page, I believe it's the fourth page
 24 of the exhibit that bears the Bates stamp 1974.

1 So that was your opinion as of the end of
 2 December of 2003, wasn't it, Mr. Satriano?
 3 A Right.
 4 Q So you also then had the understanding that the driver
 5 was going to be -- that liability was definitely going
 6 to rest with the driver when you were at the meeting in
 7 March of 2004, right?
 8 A Well, there was a likelihood. That's not what you
 9 asked.
 10 Q You testified that it was definitely -- it was going to
 11 definitely rest with the driver.
 12 A I know what I testified to, Ms. Pinkham. What I'm
 13 indicating to you is that the question that you just
 14 asked me was not the same question that you asked me at
 15 the deposition.
 16 THE COURT: Are you saying today that as of
 17 this meeting in March of 2004 you believed there was a
 18 significant possibility that Mr. Zalewski would not be
 19 found negligent and responsible for the injuries to Ms.
 20 Rhodes?
 21 THE WITNESS: No, your Honor. What I'm
 22 simply saying is that the exact same likelihood of
 23 liability existed back then as there is today. I don't
 24 believe that's what she asked.

1 A Yes.
 2 Q And that's the definition section of the policy?
 3 A Yes.
 4 Q Can you turn to the next page, please. It bears the
 5 Bates stamp 1975. I'm sorry, Mr. Satriano, I should
 6 have stuck with 1974. Down at the bottom, paragraph
 7 (e), insured, and there is a definition of "insured" on
 8 that page?
 9 A Yes.
 10 Q And it continues on to the next page 1975?
 11 A Yes.
 12 Q All right. Could you look down at definition number 8
 13 for me?
 14 MR. ZELLE: If it moves things along, your
 15 Honor, we'll stipulate that Mr. Zalewski was entitled
 16 to the benefits under the policy as an insured -- as an
 17 additional insured, if that's where we're going.
 18 THE COURT: Are you stipulating that that was
 19 known as of the time that National Union was involved
 20 in the case in the very beginning?
 21 MR. ZELLE: I think a timing question can be
 22 asked as to when that was determined, if that's where
 23 we're going. I'm not looking to --
 24 THE COURT: That's where we're going. All

1 right you may proceed.
 2 (By Ms. Pinkham)
 3 Q Mr. Satriano, could you read the definition at number 8
 4 into the record for me, please?
 5 A (Reading): Any person, parenthesis, other than your
 6 partners, executive officers, directors, stockholders
 7 or employees, close parenthesis, or organization with
 8 respect to any auto owned by you, loaned to you or
 9 hired by you or on your behalf and used with your
 10 permission. However, the coverage granted by this
 11 Provision 8, period, does not apply to any person using
 12 an auto while working in a business that sells,
 13 services, repairs or parks autos unless you are in that
 14 business."
 15 Q And Mr. Satriano, you were familiar with the definition
 16 section of the policy?
 17 A Yes.
 18 Q And you were aware of it as of the March 5, 2004,
 19 meeting; were you not?
 20 A Yes.
 21 Q Okay. And had you been aware that Mr. Zalewski was an
 22 insured under National Union's policy as of the end of
 23 December when you retained counsel?
 24 A Yes.

1 subject matter of the testimony and then move on.
 2 MS. PINKHAM: Sure.
 3 (By Ms. Pinkham)
 4 Q First let me ask you, Mr. Satriano, do you recall that
 5 at the March 5, 2004, meeting Attorney Deschenes
 6 described how it was that he calculated certain numbers
 7 that you included in your notes?
 8 A I recall that Attorney Deschenes presented us with two
 9 numbers at that meeting.
 10 Q Okay. Does that mean you don't recall any discussion
 11 of how he calculated those numbers?
 12 A I don't specifically recall any discussion about how he
 13 did it.
 14 Q Okay. Could you turn back to Exhibit 31 for me,
 15 please.
 16 A Yes.
 17 Q Okay. Thank you. If you could turn to the page that
 18 bears the Bates stamp 1889 at the bottom. Do you have
 19 it Mr. Satriano?
 20 A Yes.
 21 Q Okay. And the center of the page, that's where you
 22 made the notes of the numbers that Attorney Deschenes
 23 shared with the people who were at the meeting?
 24 A Yes.

1 Q And when was it that you determined that Mr. Zalewski
 2 was an insured under that National Union policy?
 3 A One of the first things that a complex director does,
 4 that I do, is evaluate coverage liability and damages
 5 at some point. Coverage is an important equation
 6 factor. In doing so, a complex director will take a
 7 look at the insured, evaluate whether that is the named
 8 insured under the policy and take a look at any other
 9 factors-- for example, here we have Mr. Zalewski as an
 10 employee -- and decide whether or not there is
 11 coverage.
 12 Q Okay. Mr. Satriano, my question for you was, when did
 13 you first determine that Mr. Zalewski was an insured
 14 under the National Union policy?
 15 A I don't specifically recall when.
 16 Q Had you looked into that matter after the November 19,
 17 2003, conference call?
 18 A I'm sure I did.
 19 Q Now at the March 5, 2004, meeting Attorney Deschenes
 20 described the method that he used to determine a
 21 settlement value of the case. You were in the
 22 courtroom yesterday when he gave that testimony?
 23 MR. ZELLE: Object to the form, your Honor.
 24 THE COURT: You may simply reference the

1 Q And you testified during your deposition that you did
 2 not disagree with those ranges, correct?
 3 A Yes.
 4 Q And you also testified that those ranges, the \$6.6 and
 5 the \$9.6 million range, were not unreasonable given the
 6 facts and circumstances of the case, correct?
 7 MR. ZELLE: Objection.
 8 THE COURT: Overruled.
 9 A If you say I did in my transcript, then I did, yes.
 10 (By Ms. Pinkham)
 11 Q Do you recall seeing the video that we watched
 12 yesterday morning, Mr. Satriano?
 13 A Yes.
 14 Q Do you recall that was the portion of the video that
 15 was shown yesterday?
 16 A I believe so, yes.
 17 Q Okay. Now at the March --
 18 MR. ZELLE: Excuse me, your Honor. I want to
 19 make an objection with respect to that video. There
 20 were objections, some of which were in the video, some
 21 of which were edited out of the video. I'd ask that
 22 the court obviously rule on those objections when it
 23 reviews those.
 24 THE COURT: You've waived them, it's too

1 late.

2 MR. ZELLE: No, they were just as to form.

3 THE COURT: You should have waived them at

4 the time when they were presented. I don't plan to go

5 back to what I did yesterday, so we're going to move

6 on.

7 (By Ms. Pinkham)

8 Q Now, Mr. Satriano, you understood that GAF was asking

9 at the March 5, 2004, meeting that AIG contribute \$3

10 million towards a settlement offer to be communicated

11 to the plaintiffs in the Rhodes case?

12 A Yes.

13 Q Okay. And you understood that was the same request

14 that they had made in the November 19, 2003, conference

15 call?

16 A Yes.

17 Q Okay. At the March 5, 2004 meeting you were of the

18 opinion that it wasn't necessary to contribute \$3

19 million towards a settlement offer in order just to get

20 the case to mediation; is that correct?

21 A Yes.

22 Q Is it fair to say that your position at the March 5,

23 2004 meeting was that you were happy to go to mediation

24 but you did not want there to be a \$3 million price tag

1 Q And those are the business cards of the people who

2 attended the meeting?

3 A These are the business cards of some of the people that

4 attended the meeting, not everyone.

5 Q Okay, well one of the business cards is for Anthony

6 Bartell; do you see that?

7 A Yes.

8 Q Okay. And you understood that Anthony Bartell

9 represented GAF -- he's been referred to as coverage

10 counsel for GAF?

11 A Yes.

12 Q And that was your understanding of the role that he

13 played?

14 A Yes.

15 Q In fact by the time of the March 5, 2004 meeting you

16 had received a number of letters from Mr. Bartell?

17 A Yes.

18 Q Okay. And you understood, didn't you Mr. Satriano, the

19 fact that GAF's associate general counsel and its

20 outside counsel, coverage counsel, the fact that they

21 were at the meeting meant that this was a very

22 important for GAF?

23 A Of course.

24 Q And you recall that at the meeting -- strike that.

1 associated with going to mediation?

2 A That's correct, a \$3 million price tag or a \$5 million

3 price tag.

4 Q Okay. There was going to the \$3 million from AIG's

5 policy?

6 A That was the suggestion, yes.

7 Q Okay. And you understood that the \$5 million offer

8 that GAF wanted to present would have included the \$2

9 million of Zurich's primary policy?

10 A Yes.

11 Q Mr. Satriano, you recall that Jane Gordon was at the

12 March 5, 2004 meeting?

13 A Yes.

14 Q And did you just reference the copies of the business

15 cards that you had included in your notes that are

16 marked as Exhibit 31?

17 A Yes.

18 Q Okay. What was Jane Gordon's position?

19 A She was the associate general counsel in the litigation

20 department.

21 Q And just so the record is clear, the fourth page of

22 Exhibit 31 that bears the Bates stamp 1890 contains

23 photocopies of business cards?

24 A Yes, it does.

1 Do you recall that at some point in time

2 after you had communicated your position that you did

3 not think it was necessary to contribute \$3 million to

4 get to mediation, that the GAF representatives

5 thereafter asked you if you would contribute any amount

6 less than \$3 million towards a settlement offer to the

7 Rhodes?

8 MR. ZELLE: Objection.

9 THE COURT: Overruled.

10 A Yes.

11 (By Ms. Pinkham)

12 Q Okay. And that was Jane Gordon who specifically made

13 that request?

14 A I don't specifically recall if it was Jane's request or

15 not.

16 Q Okay, well what's your memory of what request was made

17 to you?

18 A I believe there was a discussion regarding what, if

19 any, number I was willing to pay to bring Mr. Pritzker

20 to mediation.

21 Q Okay. And your response to that was?

22 A No amount of money.

23 Q No number. Do you recall that anyone at that meeting

24 asked you to confirm that you were not willing to put

1 even one penny on the table?

2 A I'm sorry, I don't recall that.

3 Q Okay. Could you turn to Exhibit 29 for me, please.

4 A Yes.

5 Q Now, Mr. Satriano, Exhibit 29 contains e-mail

6 communications from Jane Gordon, Robert Manning and to

7 Kathleen Fuell, correct? Starting at the bottom of the

8 page.

9 A Yes.

10 Q Okay. And the last sentence -- excuse me, strike that.

11 And this e-mail, could you read the second

12 sentence of the e-mail that Jane Gordon sent on

13 February 9 of 2004?

14 MR. ZELLE: Objection, your Honor,

15 foundation, that this isn't something that ever was in

16 Mr. Satriano's possession.

17 THE COURT: Well, it's in evidence, so we can

18 all read it to ourselves together. It begins, "I

19 reminded him"?

20 MS. PINKHAM: No, your Honor, it begins, "We

21 would like to be in position."

22 How about I read it and you make sure that I

23 read it correctly.

24 (Reading): We would like to be in a position

1 (By Ms. Pinkham)

2 Q Mr. Satriano, at the March 5, 2004 meeting, you

3 indicated that AIG was willing to mediate the case?

4 A Yes.

5 Q And you asked Mr. Deschenes to approach Mr. Pritzker to

6 get his consent to go to mediation?

7 A Probably, yes.

8 Q Okay. Mr. Satriano, I'm handing you a document that's

9 been pre-marked as Exhibit 32.

10 MS. PINKHAM: Your Honor, this is another

11 Anthony Bartell letter, and I believe that AIG

12 objections to this letter are the same that we've gone

13 over a number of times.

14 THE COURT: We'll find out.

15 MR. ZELLE: Not quite.

16 THE COURT: Okay. They can speak for

17 themselves, in any event. This is a letter, you can

18 proceed, having shown it to him.

19 (By Ms. Pinkham)

20 Q Mr. Satriano, is this letter addressed to you?

21 A Yes.

22 Q And at the fourth page --

23 MR. GOLDMAN: I'm sorry, what exhibit number

24 was that?

1 to inform plaintiffs' counsel that Zurich has tendered

2 2 million but that AIG won't put up a penny. The only

3 way we're going to move this issue is for the

4 plaintiffs' lawyer either to go ahead and schedule a

5 mediation or somehow drag AIG in front of the judge.

6 Mr. Satriano, does that refresh your

7 recollection of whether Jane Gordon used the phrase

8 that AIG won't put up a penny during the March 5, 2004

9 meeting?

10 A Absolutely not.

11 Q At that March 5, 2004 meeting you asked Mr. Deschenes

12 to approach Mr. Pritzker to see if Mr. Pritzker would

13 agree to go to mediation --

14 THE COURT: I'm sorry, the e-mail he wrote

15 was written on February 9, 2004.

16 MS. PINKHAM: Yes, it was.

17 THE COURT: A month before the March meeting.

18 MS. PINKHAM: Yes.

19 THE COURT: How could that refresh his memory

20 as to what was said at the March meeting?

21 MS. PINKHAM: It's a very particular phrase,

22 your Honor, so I thought it might have stuck in his

23 mind.

24 THE COURT: Okay. It didn't. Let's move on.

1 MS. PINKHAM: It was pre-marked as 32.

2 (By Ms. Pinkham)

3 Q The fourth page of the exhibit, does that include a

4 photocopy of the envelope with your name, addressed to

5 you?

6 A Yes.

7 Q And the date of this letter is?

8 A The letter is dated March 18, 2004.

9 Q Okay. And is there a "received" stamp on the front of

10 the document that's been pre-marked as Exhibit 32?

11 A Yes, there is.

12 Q And what date is indicated on the "received" stamp?

13 A It says: Received in Excess Claims March 24.

14 Q And Mr. Satriano, you began a military leave of absence

15 at some point in mid-March of 2004; is that true?

16 A Actually it was to Iraq in early March 2004.

17 Q And we had some discussion about your last day at AIG

18 during your deposition; do you recall that?

19 A Yes.

20 Q And you first testified that your last day was March

21 12th?

22 A Yes, that's correct.

23 Q And you recall there is an entry into the excess claim

24 notes after that date that you had made?

1 A After March 12th?

2 Q Sure. If you'd like you could turn to Exhibit 72 --

3 no, I think I sent you to the wrong one. It's Exhibit

4 70.

5 Are you at Exhibit 70, please, Mr. Satriano?

6 A Yes.

7 Q Okay. And on the first page of this exhibit, page 1 of

8 6, there's an excess claims note that you entered on

9 3/16/2004?

10 A Yes.

11 Q Okay. And so you were still at AIG as of March 16 of

12 2004?

13 A It appears from the note that that's correct, but I

14 thought for sure my last day was March 12.

15 Q In any event, the entry that you made on March 16 of

16 2004 indicates that you had advised counsel at the

17 Campbell firm and Fred Horn -- I think that was

18 supposed to be Fred Hohn, the broker for GAF, that you

19 were going to be leaving and that pending a transfer

20 Rich M. would handle the file; is that correct?

21 A Yes, but I had told him, Fred, at the meeting that I

22 was going to be leaving.

23 Q Okay. And Rich M. was Richard Mastronardo?

24 A That's correct.

1 MR. ZELLE: Well, I will object, your Honor,

2 because to the extent that this becomes a very material

3 piece of evidence, which I think is extremely unlikely.

4 We don't have to bring Mr. Mastronardo.

5 MS. PINKHAM: That's my point, your Honor.

6 THE COURT: Well, I think I will admit it,

7 not because Mr. Satriano saw it but because it was

8 received by AIG. But, again, it's admissible only to

9 the extent that it was something received by AIG. So

10 it will come in as Exhibit 32.

11 MR. ZELLE: Is the objection noted, your

12 Honor?

13 THE COURT: The objection is noted, but

14 overruled.

15

16 (Exhibit No. 32, marked; Letter to Nicholas

17 Satriano from Anthony Bartell, dated March 18, 2004.)

18

19 (By Ms. Pinkham)

20 Q Mr. Satriano, Richard Mastronardo was your supervisor

21 in March of 2004?

22 A Yes.

23 Q Do you know who his supervisor was?

24 A His supervisor would have been at that time, I believe,

1 Q And he was your supervisor?

2 A Yes.

3 MS. PINKHAM: Your Honor, I would move to

4 offer Exhibit 32 into evidence.

5 THE COURT: Any objection?

6 MR. ZELLE: Yes, your Honor. It's certainly

7 an appropriate subject for Mr. Mastronardo, who will

8 testify as part of our case, and I submit that at that

9 point in time we will make the objection we have

10 previously made regarding Bartell letters and likely

11 will be offered for notice purposes, but this isn't the

12 right witness.

13 THE COURT: Okay. This is a letter that you

14 saw before you left for Iraq?

15 THE WITNESS: No, your Honor. Mr. Bartell's

16 last letter I did not.

17 THE COURT: How is it admissible through this

18 witness?

19 MS. PINKHAM: Because it was received by AIG,

20 your Honor. I don't intend to ask him any substantive

21 questions about it, but I would like it to be into

22 evidence now rather than await some future witness's

23 appearance.

24 THE COURT: All right.

1 Bryan Pedro.

2 Q And do you know to whom Mr. Pedro reported?

3 A That probably was a Mr. David Crowe.

4 Q Do you know who Andrew Barberis is?

5 A Andrew Barberis would have been the next level

6 supervisor, yes.

7 Q Above whom?

8 A That would have above Mr. Pedro and Mr. Crowe.

9 Q Okay. Thank you.

10 Could you turn to Exhibit 38 for me, please,

11 Mr. Satriano.

12 A Yes.

13 Q Now, again, this letter was not addressed to you. It

14 was after the time you began your military leave?

15 A Yes.

16 THE COURT: I'm sorry, 68, you said?

17 MS. PINKHAM: Thirty-eight, your Honor.

18 (By Ms. Pinkham)

19 Q Mr. Satriano, in any of your dealings with Mr. Bartell,

20 including the correspondence that you had received

21 prior to the March 5, 2004 meeting, had you ever taken

22 the position that GAF was intentionally in breach of

23 its duty to cooperate?

24 A No. I wrote a letter to Mr. Bartell, and I don't

1 believe -- I did not indicate that at all.
 2 Q Okay. Could you turn to the second page of Exhibit 38
 3 for me, please?
 4 A Yes.
 5 Q And towards the very bottom of the page, the second
 6 sentence from the bottom, it states: We view this as a
 7 potential breach of the policy's cooperation clause set
 8 forth above.
 9 And can you tell me who sent this letter?
 10 A This letter was sent by, I believe, my -- excuse me, my
 11 successor, Martin Maturine, although I did not know
 12 Martin Maturine. I never met him.
 13 Q And you're aware through the discovery in this case,
 14 the fact that you were deposed, that Mr. Maturine took
 15 over the file after you began your military leave?
 16 A I don't recall if we spoke about that at the
 17 deposition, but apparently Mr. Maturine did take over
 18 the file after I left.
 19 Q And so the record is clear, do you have Exhibit 82 in
 20 front of you, Plaintiffs' Exhibit 82, it's in a
 21 standalone binder.
 22 Do you have it?
 23 A Yes.
 24 Q Could you turn to tab 5 of Exhibit 82 for me?

1 supplemental answer to interrogatory number 3 indicates
 2 that Mr. Maturine handled the Rhodes matter from
 3 approximately March 2004 to June 2004, correct?
 4 It's the first full paragraph of supplemental
 5 answer to number 3.
 6 A Yes. It says that, yes.
 7 Q Back to Exhibit 38, Mr. Satriano.
 8 A Okay.
 9 Q The first page of Exhibit 38, the letter to Mr.
 10 Bartell, the last sentence of the first paragraph --
 11 actually, strike that.
 12 Does it appear that -- strike that.
 13 The first sentence reads that Richard
 14 Mastronardo asked me to respond to your letter dated
 15 May 17, 2004. Do you see that, Mr. Satriano?
 16 A Yes, I do.
 17 Q And the last sentence of the next paragraph reads: We
 18 are at a loss to perceive the purpose of your letter in
 19 that we do not recognize any conflict between the
 20 interests of National Union and BMCA.
 21 A Yes, I see that.
 22 Q Mr. Satriano, in any of your conversations with --
 23 strike that -- with any of your communications with
 24 Attorney Bartell, did he ever inform you that it was

1 MR. ZELLE: If we're just trying to get this
 2 in as a business record, your Honor, we're certainly
 3 willing to stipulate that this was a business record
 4 with the objection that it not be considered as
 5 evidence for the truth of the matter asserted. I'm
 6 just trying to move things along here.
 7 THE COURT: Okay. I have not seen it, so is
 8 it already in evidence?
 9 MS. PINKHAM: Which document, Exhibit 38?
 10 THE COURT: Thirty-two.
 11 MS. PINKHAM: We've moved on to Exhibit 38,
 12 your Honor.
 13 MR. BROWN: They're in their own binder,
 14 that's what she's referring to.
 15 THE COURT: Okay. Thirty-eight is already in
 16 evidence.
 17 MS. PINKHAM: Correct. And I was asking the
 18 witness about the author of Exhibit 38 and the timing
 19 of when the author of Exhibit 38 is addressed and AIG's
 20 supplemental answer to interrogatory number 3, which is
 21 contained in Tab 5 of Exhibit 82.
 22 Are you there, Mr. Satriano?
 23 A Yes.
 24 Q And the second -- excuse me. The first paragraph of

1 his position there was a conflict of interest between
 2 AIG and the insured?
 3 A No, I don't believe so. Mr. Bartell was most concerned
 4 about us confirming the availability of coverage.
 5 Q Could you turn to Exhibit 39 for me, please?
 6 A Yes.
 7 Q Mr. Satriano, could you turn to the second page of
 8 Exhibit 39, please. It bears the Bates stamp ZA0792.
 9 A Yes.
 10 Q Mr. Satriano, were you aware that Bill Conroy at the
 11 Campbell firm had a partner named William Rubert?
 12 A Yes.
 13 Q Had you ever had any dealings with him?
 14 A Yes.
 15 Q The bottom paragraph of the second page of Exhibit 39
 16 is an e-mail from Mr. Rubert at the Campbell firm to
 17 Gregory Deschenes and to other representatives of GAF.
 18 Do you see that?
 19 A Yes.
 20 Q Now, Mr. Satriano, this e-mail indicates that Mr.
 21 Rubert informed AIG of Ms. Gordon's concern about
 22 filing a motion to continue a trial date; does it not?
 23 A If you could give me a minute.
 24 Q Sure.

1 MR. ZELLE: I'm going to object, your Honor.
 2 I mean the document says what it says, and it's --
 3 THE COURT: He's in Iraq right now. Were you
 4 keeping up with any of your work when you in Iraq, or
 5 were you fully occupied in Iraq?
 6 THE WITNESS: I was fully occupied, your
 7 Honor.
 8 THE COURT: So he can read it and so can I.
 9 I mean, I don't understand what he's being asked to do
 10 here. It was not seen by him during the course of his
 11 duties.
 12 MS. PINKHAM: Okay. I'll move on, your
 13 Honor.
 14 THE COURT: It's in evidence, so it seems to
 15 be a poor use of time.
 16 (By Ms. Pinkham)
 17 Q Could you turn to Exhibit 41 for me, please?
 18 A Yes.
 19 Q And on the second page of Exhibit 41, the third full
 20 paragraph, Mr. Maturine writes to Mr. Bartell:
 21 National Union would also prefer to postpone mediation
 22 until the completion of discovery. Do you see that?
 23 A Yes.
 24 Q And at the March 5, 2004 meeting, you had indicated

1 MR. ZELLE: Object to the form.
 2 THE COURT: Sustained. It's a reasonable
 3 range.
 4 (By Ms. Pinkham)
 5 Q You also testified that it was a pretty accurate range,
 6 didn't you?
 7 A If that's what I said in the deposition, yes.
 8 Q And you said it was not a range -- at least it was not
 9 a range to disagree with, correct?
 10 A What I meant with respect to those numbers --
 11 Q Mr. Satriano, was that your testimony?
 12 THE COURT: I've already heard it, so if
 13 you're going to ask him something to repeat it, I've
 14 already heard it. If you want to ask him to explain
 15 it, then explain it. But if all you want to do is to
 16 repeat it again, that's not a good use of my time.
 17 I've already seen the deposition. I've already heard
 18 him speak about it earlier.
 19 (By Ms. Pinkham)
 20 Q Mr. Satriano, you had reviewed the Crawford & Company
 21 transmittal letters that were in your file?
 22 A Yes.
 23 Q And you understood that Crawford had been able to
 24 analyze liability and damages in the case in 2003?

1 that AIG was willing to participate in mediation,
 2 hadn't you?
 3 A Yes.
 4 Q And if you read on further in that same paragraph, the
 5 fifth sentence I believe, it reads: National Union
 6 looks forward to participating in mediation as soon as
 7 liability and damages can reasonably be analyzed. This
 8 is not a new precondition, as your letter states.
 9 Do you see that?
 10 MR. ZELLE: Can you read the rest of that?
 11 Q (Reading) Comma, but rather remains the foundation on
 12 which every analysis of every claim is made.
 13 Did I read that correctly?
 14 A Yes, you did.
 15 Q All right. Now, Mr. Satriano, in your dealing with the
 16 Rhodes claim before you began your military leave, you
 17 were able to assess the case and put a value on the
 18 case without two depositions, Rebecca Rhodes and Marcia
 19 Rhodes, being conducted; isn't that true?
 20 A No, it's not.
 21 Q You've previously testified that you believed that the
 22 \$6 to \$9 million range that was identified by Attorney
 23 Deschenes at the mediation was a pretty accurate range;
 24 did you not?

1 A I did not know what Crawford did. They were just a
 2 bunch of letters with conclusions. I could not speak
 3 as to how they arrived at their conclusions.
 4 Q And you understood that Kathleen Fuell at Zurich had
 5 been in position to assess liability and damages
 6 without any additional discovery beyond that which had
 7 been conducted in 2003; did you not?
 8 A I had never had any conversation with Ms. Fuell until
 9 the November teleconference. So, again, I cannot
 10 answer your question because I had no idea what she had
 11 an opportunity to assess as to liability and damages.
 12 Q And you also understood that Attorney Deschenes, who
 13 had represented GAF, had been able to assess liability
 14 and damages in the case without conducting depositions
 15 of Marcia and Rebecca Rhodes; did you not?
 16 A Again, same answer. The only contact I had with
 17 Attorney Deschenes was during that teleconference when
 18 he insisted that we put up money.
 19 Q I'm sorry, I couldn't hear you.
 20 A That we put up money.
 21 Q The teleconference in --
 22 A In November of 2003.
 23 Q And then after that teleconference, Mr. Deschenes
 24 forwarded to you his file, including all of the work

1 product that was listed on AIG's supplemental privilege
 2 log, correct?
 3 A What I stated to you yesterday is what I stand by
 4 today. He sent me a bunch of -- a letter and a bunch
 5 of attachments. Whatever was part of those -- those
 6 attachments were essentially received but for one.
 7 Q Okay. And if AIG indicated that the documents that
 8 were forwarded by Mr. Deschenes were his work product
 9 and analysis of liability issues, then you would stand
 10 by that, correct?
 11 A No.
 12 Q Mr. Satriano, could you turn to Exhibit 45 for me,
 13 please?
 14 A Yes.
 15 Q Mr. Satriano, is Exhibit 45 a standard type of document
 16 that's contained in AIG's files?
 17 A It's what's commonly referred to as a narrative memo.
 18 Q A narrative memo?
 19 A Yes.
 20 Q And you've drafted these types of memos yourself?
 21 A Yes.
 22 Q And you understand that this is the narrative memo that
 23 was prepared after you had begun your military leave?
 24 A Yes.

1 that would go to --
 2 MR. ZELLE: Your Honor, I'm going to make an
 3 objection. These are documents that we very recently
 4 produced to plaintiffs in response to your Honor's
 5 order that we produce -- that we search for and produce
 6 what we can find in connection with the Olivera case.
 7 Unless there's some foundation that's going
 8 to be laid here for Mr. Satriano to testify about some
 9 personal involvement in that case, I don't think it
 10 could possibly lead to admissible evidence.
 11 THE COURT: All right. Are you intending to
 12 ask him about that case?
 13 MS. PINKHAM: Depending on if he recognizes
 14 the forms of the other documents.
 15 THE COURT: Well, do you have any familiarity
 16 with that case?
 17 THE WITNESS: Not with that case, your Honor.
 18 THE COURT: Did that case play any role in
 19 your decision as to how to proceed in the Rhodes case?
 20 THE WITNESS: No, your Honor.
 21 THE COURT: Let's move on.
 22 (By Ms. Pinkham)
 23 Q Mr. Satriano, could you turn back to Exhibit 41 for me?
 24 A Yes.

1 Q And you recall that during your deposition we went
 2 through the narrative memo that's been marked as
 3 Exhibit 45, and I had asked you to compare the numbers
 4 that are set forth on page 3 of Exhibit 45 to the
 5 numbers that were presented as part of the plaintiffs'
 6 settlement demand in August of 2003?
 7 A If we did so, yes.
 8 Q Do you have a memory of doing that?
 9 A No, not as we sit here today.
 10 Q Do you have Exhibit 10 in front of you, Mr. Satriano?
 11 It's a large binder, Plaintiffs' Exhibit 10.
 12 MR. ZELLE: Your Honor, we're willing to
 13 stipulate that the numbers reflected on Exhibit 45
 14 match up with numbers in plaintiffs' demand package,
 15 Exhibit 10.
 16 THE COURT: Okay.
 17 (By Ms. Pinkham)
 18 Q Mr. Satriano, I'm showing you a collection of documents
 19 and ask if you recognize the form.
 20 Do you recognize the form of that memo, Mr.
 21 Satriano?
 22 A Yes, I do.
 23 Q And what do you recognize it to be?
 24 A It's a few documents. The first is the narrative memo

1 Q And this is the letter from Mr. Maturine to Anthony
 2 Bartell. Could you turn back to the second page for
 3 me?
 4 A Yes.
 5 Q Okay. The first sentence of the second full paragraph
 6 indicates that: We doubt that any trial attorney would
 7 want to proceed to trial without any idea what Mrs.
 8 Rhodes would say on the stand. Do you see that?
 9 A Yes.
 10 Q Now, Mr. Satriano, you had some expectation of what
 11 Mrs. Rhodes would testify to during her deposition,
 12 even before she was deposed, didn't you?
 13 A Sure.
 14 Q Okay. You could have reasonably expected, for an
 15 example, that Mrs. Rhodes would have testified that her
 16 injuries were devastating, correct?
 17 A Yes.
 18 Q And that her injuries had a very detrimental effect on
 19 her daughter and her husband?
 20 A Yes.
 21 Q And that she was very frustrated by the limitations
 22 imposed upon her because of her injuries?
 23 A I guess, sure.
 24 Q I mean, any reasonable person would expect that that

1 would be how any person who had been rear-ended by a
 2 truck and paralyzed would testify, correct?
 3 MR. ZELLE: I'm going to object on
 4 argumentative grounds, your Honor.
 5 THE COURT: Yes.
 6 (By Ms. Pinkham)
 7 Q Mr. Satriano, do you know what a victim impact
 8 statement is?
 9 A I'm aware of the term, yes.
 10 Q In fact, you were an assistant district attorney for a
 11 number of years in New York?
 12 A Yes.
 13 Q And you did criminal cases?
 14 A Yes.
 15 Q So what's your understanding of what a victim impact
 16 statement is?
 17 A Depending upon the jurisdiction that you're in, it
 18 generally is a statement with respect to the impact of
 19 that particular occurrence on a person.
 20 Q Mr. Satriano, I'm going to ask you to find a document
 21 that's in the very large pile in front of you.
 22 Mr. Satriano, I just handed you a copy of a
 23 document that bears the Bates stamp 3134 at the bottom.
 24 A Yes.

1 Mr. Satriano, you have the document that's
 2 been marked at Exhibit 80A-1 in front of you?
 3 A Yes.
 4 Q Could you look at the second sentence of Exhibit 80A-1?
 5 Does it reference it being a victim impact statement?
 6 A Yes.
 7 Q Yes, it does?
 8 A Yes, it does.
 9 Q Mr. Satriano, were you aware that Carlos Zalewski, the
 10 driver of the truck, had been charged with operating to
 11 endanger?
 12 A Yes.
 13 Q And --
 14 A Excuse me. I was aware that he had been charged. I
 15 wasn't specifically aware of what he had been charged
 16 with.
 17 Q All right. And were you aware at some point that he
 18 had entered a plea?
 19 A Yes.
 20 Q And was it your understanding that in November of 2002,
 21 Carlos Zalewski admitted to facts sufficient for a
 22 guilty finding on the charge of negligent operation of
 23 a motor vehicle?
 24 MR. ZELLE: Objection. 2002?

1 Q And this is a subset -- and I had pulled that document
 2 from Exhibit 80A?
 3 A Yes.
 4 MS. PINKHAM: Your Honor, I'd ask that this
 5 document just be marked separately so that I can put
 6 the original in back with the Exhibit 80A.
 7 THE COURT: This is part of 80A. And 80A is
 8 the --
 9 MS. PINKHAM: Documents produced in response
 10 to GAF's first request for production of documents in
 11 the underlying case.
 12 THE COURT: Okay. And you want to, I'm
 13 sorry, identify --
 14 MS. PINKHAM: I just want to mark it
 15 separately, your Honor, so that the --
 16 THE COURT: Okay. You may then mark it as
 17 80A-1.
 18 MS. PINKHAM: Thank you.
 19
 20 (Exhibit Number 80A-1, marked; Page from
 21 Exhibit 80A with Bates Stamp 3134.)
 22
 23 (By Ms. Pinkham)
 24 Q Mr. Satriano, I'm going to hand you this one.

1 MS. PINKHAM: In November 2002.
 2 MR. ZELLE: He wasn't involved in 2003, how
 3 could he be aware of anything in 2002?
 4 MS. PINKHAM: I asked if it was the --
 5 THE COURT: She's asking if he was aware, in
 6 November of 2002, Mr. Zalewski had pleaded to -- had
 7 admitted to facts sufficient for a finding of guilty.
 8 (By Ms. Pinkham)
 9 Q Had you been aware of that, Mr. Satriano?
 10 A One moment, please.
 11 Q Sure.
 12 A Okay. Please repeat the question for me.
 13 Q Had you been aware that in November of 2002, that
 14 Carlos Zalewski had pleaded to facts sufficient to
 15 warrant a guilty finding on the charge of negligent
 16 operation of a motor vehicle?
 17 A What I was made aware of at the March meeting was that
 18 a plea of nolo contendere was entered on behalf of Mr.
 19 Zalewski. I can't specifically answer the question
 20 with all the elements that you've brought to me, but I
 21 was aware that there was some arrangement where a plea
 22 was entered, yes.
 23 Q Okay. And you had made a note of that?
 24 A I did, yes.

1 Q And that's reflect in Exhibit 31?

2 A Exhibit 31, my handwritten notes.

3 Q Okay. Thank you.

4 Could you turn back to Exhibit 80A-1, please,

5 Mr. Satriano?

6 A Yes.

7 Q Focusing on the fifth paragraph. It begins, "I do

8 remember ...?"

9 A Yes.

10 Q Could you read that aloud for me, please?

11 A (Reading): I do remember immediately knowing upon

12 impact that I was now paralyzed from the waist down,

13 but I also knew that I was not a quadriplegic, as

14 evidenced by the searing pain above my waist.

15 Q Could you go down another few paragraphs and read the

16 first two sentences that begins "I don't even

17 remember."

18 A (Reading): I don't even remember the first blood clot,

19 but the second, which was in my left leg, was something

20 that I will never forget. For the first five months of

21 my recovery, my left leg was so swollen it took two

22 people to lift it when I was transferred into my

23 therapeutic wheelchair.

24 Q Thank you. Could you read the first two sentences of

1 Honor.

2 THE COURT: Okay. Mr. Zelle.

3 CROSS-EXAMINATION BY MR. ZELLE:

4 Q Why don't you explain to the court, Mr. Satriano, why

5 you believed that it was necessary to have a deposition

6 from Mrs. Rhodes before evaluating or before you could

7 thoroughly evaluate the case?

8 A A deposition is an incredibly valuable tool for which

9 to have. First and foremost, it gives us an

10 opportunity to take a first-hand look at Mrs. Rhodes

11 and to really assess her condition, her appealability

12 as a witness and really get to know her. It's the

13 first opportunity to have a real opportunity to be

14 introduced to that particular person.

15 There's a lot of information that results out

16 of a deposition; certainly, the witnesses' accounts as

17 to the facts and the circumstances, the recovery

18 period. You also are introduced into the family's

19 dynamic when speaking about how this incident has

20 affected family members and other relations. You also

21 are introduced to that person's state of mind of

22 medical or physical occurrences before the accident and

23 certainly how they were exacerbated in any way, shape

24 or form, or if they were exacerbated.

1 the next paragraph?

2 MR. ZELLE: Your Honor, I think this is in.

3 THE COURT: If it's already in evidence, I

4 can read it as well as he can. Be mindful of the time.

5 You already have exceeded the time you anticipated for

6 his direct, so why don't you use whatever -- how much

7 longer do you expect with him?

8 MS. PINKHAM: This is my last area.

9 THE COURT: All right. Well, I don't really

10 need him to read what I can read. I can read as well

11 as he can.

12 (By Ms. Pinkham)

13 Q So, Mr. Satriano, it's true, isn't it, that during the

14 time period in which you were involved in the Rhodes

15 claim, you had access to information that would have

16 told you and AIG exactly what Marcia Rhodes would have

17 testified to in a deposition?

18 A No. This obviously -- I understand the dates and what

19 you're referencing, but I did not have this. I was not

20 aware of it, nor was this even something considered at

21 that time that I was involved with that March meeting

22 or before that. I understand the sequence of events

23 and the dates, yes.

24 MS. PINKHAM: I have nothing further, your

1 You also are given an opportunity to assess

2 that witness's opportunity to present herself or

3 himself in a trial setting or a formal setting, and you

4 learn a lot about that particular witness. It's a most

5 invaluable tool.

6 MR. ZELLE: Your Honor, I'm proceeding with

7 the witness because you asked me to. I do want to give

8 an opening, but I'd rather use this time --

9 THE COURT: *No. Go ahead.

10 MR. ZELLE: It doesn't matter. I thought the

11 court wanted me to proceed with Mr. Satriano.

12 THE COURT: I said your opening would have to

13 follow her direct.

14 MR. ZELLE: Okay. Then I prefer to do it now

15 because I will be mentioning things that I believe Mr.

16 Satriano will say I submit it's better that he not be

17 here.

18 THE COURT: Okay. So if you wish him to

19 leave, he can. He's not sequestered in general, but if

20 you want him to be so --

21 MR. ZELLE: I'd feel more comfortable.

22 THE COURT: Okay. How long will you be?

23 MR. ZELLE: About fifteen

24 THE COURT: Okay. Get coffee on the second

1 floor.
 2 THE WITNESS: Thank you, judge.
 3 THE COURT: All right. I'll hear your
 4 opening.
 5 MR. ZELLE: Thank you, your Honor.

7 OPENING STATEMENT

8 BY MR. ZELLE:

9 MR. ZELLE: Your Honor, I'm going to
 10 outline our evidence. It will show that there
 11 was no unfair and deceptive claims handling
 12 practices on the part of AIG. I believe the
 13 evidence will also establish that there was not
 14 any injury, compensable injury, incurred by the
 15 plaintiffs as a result of any conduct on the
 16 part of AIG.

17 National Union issued an excess policy.
 18 The terms are clear; they set forth what AIG'S
 19 duties are to GAF. They specifically say that
 20 AIG does not have any duty to defend, but it
 21 does have a right to associate in counsel.

22 The evidence is going to show that it
 23 was in November 2003 that AIG first rolled up
 24 its sleeves to get involved with this case, and

1 AIG'S involvement was precipitated by the
 2 efforts on the part of Zurich and GAF and
 3 defense to reach up to AIG and ask for AIG's
 4 involvement. Again, there will be some testimony
 5 that AIG is a claim handling administrator for
 6 National Union, which issued the policy to GAF.

7 The evidence will show that when AIG
 8 was informed by defense counsel and Zurich and
 9 GAF that the Zurich policy limits were
 10 available, that Mr. Satriano told Ms. Fuell that
 11 he couldn't accept a tender unless it was in
 12 writing. And Mr. Satriano will explain what he
 13 meant. He'll explain that it was his
 14 supervisor's directive to obtain written, formal
 15 written tender, and he'll explain the reason for
 16 that. He'll explain that the reason that he
 17 wanted it in writing was so that there was a
 18 firm understanding between AIG and the primary
 19 carrier as to their respective obligations going
 20 forward, not only in terms of control over the
 21 money but control over the defense and the
 22 payment of the defense costs.

23 Mr. Satriano will testify that Ms.
 24 Fuell agreed that it was important to iron out

1 the parties' respective positions with respect
 2 to a continuing defense obligation and that Ms.
 3 Fuell told him that she would respond to him
 4 with a formal written tender which explained
 5 that. And that letter, that formal written
 6 tender, was provided on March 29, 2004. It
 7 included a demand, the court will see, that AIG
 8 assumed the defense of the insured. However,
 9 Zurich retracted that position and three days
 10 later Zurich informed AIG that it would continue
 11 to incur the costs of defense counsel, Mr.
 12 Deschenes and defense counsel appointed to Mr.
 13 Zalewski and DLS and Penske.

14 The evidence will also show that two
 15 days after the tender was made, the formal
 16 written tender was made to AIG, that defense
 17 counsel offered the Zurich policy limit to the
 18 plaintiffs. At that point, the tender was
 19 meaningless because AIG didn't have control over
 20 that money to use to either entice Mr. Pritzker
 21 in mediation or not.

22 The evidence presented by AIG will
 23 focus primarily on two time periods, the
 24 November 19 through March 2004 period where Mr.

1 Satriano was involved, and then the April 2004
 2 through trial and beyond when AIG, before trial,
 3 was trying to obtain information that it
 4 believed was necessary to thoroughly evaluate
 5 the claim and ultimately to settle the claim.

6 Mr. Satriano will testify that he
 7 wanted to get all the information that he
 8 believed was necessary to evaluate the claim
 9 before he evaluated the claim, that he was
 10 reluctant to engage in any quantitative analysis
 11 before he had that information. He will also
 12 testify that during the time period between
 13 November and March, he worked to review the
 14 information that was provided to him. He worked
 15 to associate in counsel because he felt more
 16 comfortable having his counsel reporting to him
 17 and actually did not feel confident with Mr.
 18 Deschenes, and he'll explain the reasons why.

19 He'll testify that there was resistance
 20 by GAF to Mr. Conroy's association in the case,
 21 and he will explain that until the March
 22 meeting, there was not an agreement by GAF to
 23 permit Mr. Conroy to be directly involved to
 24 communicate directly with Mr. Pritzker. His

1 testimony will demonstrate that he diligently
2 worked to build a team, to get up to speed
3 personally to obtain the information that he
4 believed was necessary to undertake a valuable
5 assessment of the claim. He's going to explain
6 that there were questions concerning insurance
7 coverage. He will testify that he requested --
8 and as of the time that he left he did not
9 receive an analysis that he had requested of
10 coverage that had been performed by Zurich. And
11 he'll explain why that was important to his
12 assessment, not of the value of Mrs. Rhodes'
13 injuries, but as to the exposure to GAF under
14 the National Union policy.

15 He'll testify about the efforts that he
16 believed were necessary in March to put the case
17 into a reasonable position to go to mediation.
18 He'll identify the deposition of Mrs. Rhodes, an
19 IME of Mrs. Rhodes, particularly one that is
20 performed by a physiatrist, or a physical
21 medicine specialist, whose job it is -- whose
22 practice area includes assessing paralysis and
23 spinal cord injuries and recovery from those
24 injuries. He'll testify that there was

1 on behalf of GAF and AIG. But going back to Mr.
2 Satriano, he's going to testify that that was a
3 sideshow, that it didn't interfere with his
4 efforts to evaluate the case.

5 Testimony will be provided by Mr.
6 Nitti, through his deposition I believe on
7 plaintiffs' case, also by Ms. Kelly, whose Mr.
8 Nitti's supervisor. She'll explain that Mr.
9 Nitti had just started with AIG, that she worked
10 with him very closely in the evaluation of the
11 Rhodes claim. She'll explain, Ms. Kelly will,
12 that there are many variables that going into
13 evaluating a claim. And she will testify that
14 given a rather limited amount of information
15 that AIG had that was obtained through discovery
16 by defense counsel, it was more difficult than
17 in most cases.

18 She'll testify that from the
19 information that was available to AIG, she and
20 Mr. Nitti did their best to evaluate the claim
21 and develop a number to present to their
22 supervisor -- this was Mr. Pedro -- to request
23 authority to settle the case during mediation.
24 She'll also testify that that wasn't the be-all

1 information in the life-care plan that made
2 projections as to Mrs. Rhodes' recovery, but
3 that was far different from the type of
4 information that could be provided by a medical
5 doctor who specializes in that arena.

6 Mr. Satriano will testify that after he
7 left he spoke with his supervisor, Mr.
8 Mastronardo, about picking up the case so that
9 there wasn't any beats missed in handling the
10 case. Mr. Mastronardo was only involved for a
11 short time. Mr. Mastronardo will testify as to
12 his involvement as to what he believed needed to
13 be done -- this was in April of 2004 -- to
14 effectively resolve the case, to obtain the
15 information, get the case into mediation and
16 give it a shot at settlement before trial

17 The period after April was initially --
18 the claim was handled by Mr. Maturine. Mr.
19 Maturine, the documents will show, was focused
20 on again team building and making sure that
21 GAF's concerns regarding the associating in of
22 Mr. Conroy were addressed. And as the court
23 will see from the documents, there certainly was
24 a rather defined dispute as between Mr. Bartell

1 and end-all, that in her experience, when
2 parties, whether at mediation or at any other
3 time when they are negotiating, are within
4 reaching distance, that is, within a close
5 range; a telephone call to Mr. Pedro is
6 generally sufficient to obtain sufficient
7 authority to close the deal.

8 Ms. Kelly will testify that when she
9 was looking at the case, when she and Mr. Nitti
10 were working with the case, one of the most
11 difficult things for them to assess was Mrs.
12 Rhodes' future recovery. And there will be
13 evidence that we will present as to Mrs. Rhodes'
14 testimony at trial, testimony personally from
15 Mrs. Rhodes, testimony from her healthcare
16 professionals, that as of that time, September
17 of 2004, she had not begun her rehabilitation
18 process. And there will be testimony also from
19 the trial that we will introduce from the
20 physicians that it was extremely unusual for
21 paraplegics to be three years out from the
22 accident and not to have begun their
23 rehabilitation. And she will explain that she
24 did her best despite having that detailed

1 information, despite having a history of
 2 recovery, to put a value on the future loss,
 3 both the economic loss and the non-economic
 4 losses.

5 She will also testify, based on
 6 information that she had received through the
 7 deposition, through the independent medical
 8 examination, that she believed that there was a
 9 -- that Mrs. Rhodes could make significant
 10 physical and emotional gains once she began her
 11 rehabilitation process, and that she factored
 12 that into her assessment of the value of the
 13 case. She will testify that depositions and
 14 IMEs are typically available for review by the
 15 excess carrier at the time the primary carrier
 16 tenders its limit, and that in her view they are
 17 critical to the evaluation.

18 She will testify in detail about her
 19 experience in evaluating cases, how she does
 20 that, and why she believed that her evaluation,
 21 which led to authority, her request for
 22 authority, of \$1.75 million from AIG, which
 23 represented her view that the reasonable
 24 settlement value or a reasonable offer at the

1 recovery during the mediation. And she will
 2 explain that, in her experience, having that
 3 opportunity to speak in front of the plaintiff
 4 is often a significant issue in moving the case
 5 closer to settlement.

6 She's going to testify as to her basis
 7 for believing that there would be a contribution
 8 of \$1 million to the settlement pool based on
 9 the insurance available to McMillan's Tree
 10 Service. In addition, on that subject there
 11 will be expert testimony. Mr. Cormack will
 12 testify. Bill Cormack is a veteran of 40-some
 13 years in the insurance industry. He's going to
 14 testify about standard industry practices on the
 15 primary side, on the excess side, what insurers
 16 do to evaluate cases, on the relationship
 17 between primary and excess carriers, and about
 18 the inter-workings of the insurance industry,
 19 how things generally work, the standard industry
 20 practices.

21 The other expert we will be presenting
 22 is Mr. Todd. He'll testify on the subject of
 23 the reasonableness of AIG'S efforts to settle
 24 and specifically the reasonableness of the

1 time of the mediation would be as high as \$4.75
 2 million. She'll explain why she thought that
 3 was a reasonable figure to have in her mind
 4 going into mediation.

5 She'll testify that she has, in her
 6 experience, a routine familiarity with jury
 7 verdicts involving paralysis cases, burn cases,
 8 quadriplegic cases, disfigurement cases, brain
 9 injury cases, very high-value claims, including
 10 information concerning Massachusetts cases.
 11 She'll testify that she did not review any
 12 specific cases in connection with her valuing --
 13 attempting to establish a reasonable settlement
 14 value for this case, but that it was a part of
 15 her experience and her general knowledge.

16 She'll also testify that based on her
 17 experience, the presence of the plaintiff at the
 18 mediation increases the likelihood of
 19 settlement. And she'll testify that she was
 20 disappointed when she learned from Mr. Nitti,
 21 who attended the mediation, that Mrs. Rhodes was
 22 not present. She'll testify that she had
 23 expected prior to the mediation to learning more
 24 about the family dynamic, about Mrs. Rhodes'

1 offers that were made.

2 Both Mr. Cormack and Mr. Todd will
 3 testify that it is a well-established practice
 4 that meaningful settlement discussions are not
 5 pursued until the reasonable, meaningful,
 6 thorough analysis of the claim can be
 7 undertaken, and that attempting to do so sooner
 8 than that generally is not only futile but
 9 frustrating.

10 Our other witness will be Mr. Pritzker.
 11 And he will testify, we expect, to provide a
 12 backdrop to demonstrate that the conduct on the
 13 part of AIG in presenting offers specifically,
 14 and the amount of the offers, were reasonable in
 15 light of the demands that were made.

16 We expect that upon consideration of
 17 Mr. Pritzker's testimony this court will
 18 conclude that the package, the negotiation
 19 package of the plaintiffs, could reasonably be
 20 understood or interpreted by an insurer, a
 21 reasonable insurer, to indicate that plaintiffs
 22 would not settle for anything less than \$10
 23 million.

24 As Mr. Rhodes has not yet testified, I

1 will suggest that there will be testimony by Mr.
2 Rhodes that following the mediation, he made the
3 decision that he would prefer to have the jury
4 decide the case, and he no longer wished to
5 consider further settlement discussions or
6 negotiations.

7 Following the conclusion of the
8 evidence, your Honor, we submit that there will
9 be no factual basis to find that this case ever
10 reached a point where liability, as that term is
11 used in 93A, was reasonably clear because the
12 information provided with respect to future
13 damages and the assessment of the value of that
14 claim was never reasonably clear. But more
15 significantly, we will show that despite that,
16 your Honor, good-faith efforts were undertaken
17 to resolve this case and to settle this case and
18 that fair offers were made to effectuate
19 settlement.

20 The evidence will show that AIG'S
21 offers were within the range of reasonable
22 settlement offers and that AIG satisfied its
23 obligations as an insurer. There will be
24 evidence that Ms. Pinkham herself expressed the

1 those are found to be causally related to the
2 conduct of AIG, and we submit there will be no
3 evidence to support that finding, those damages
4 claims, even as claimed, are a infinitesimal
5 fraction of what plaintiffs are seeking as
6 punitive damages and therefore no punitive
7 damage award that conforms to double or treble
8 damages can fairly be awarded in this case.

9 That's all I have.

10 THE COURT: Bring back Mr. Satriano.

11 (Mr. Satriano resumed the witness
12 stand.)

13 THE COURT: Welcome back. You may
14 proceed.

15 MR. ZELLE: Thank you, your Honor.

16 (By Mr. Zelle)

17 Q Do you understand, Mr. Satriano, that the insurance
18 policy issued by National Union to GAF defined the
19 rights and the duties of the insurer in connection with
20 claim handling?

21 MS. PINKHAM: Objection.

22 THE COURT: Overruled.

23 A Yes.

24 Q And let me direct your attention. Do you have Exhibit

1 view after the trial that a \$2 million jury
2 verdict award was a realistic concern.

3 And finally, the evidence will show,
4 your Honor, that to the extent that there is any
5 finding of liability for unfair and deceptive
6 practices or any finding that plaintiffs
7 sustained compensable damages, that this was not
8 due to any willful or knowing conduct on the
9 part or misconduct on the part of AIG. And
10 consequently, there is no evidence that would
11 support a finding of willful or knowing or an
12 award of punitive damages.

13 The only evidence that plaintiffs -- or
14 that this court will have to consider at the end
15 of the day of damages, are damages for what will
16 be referred to as garden-variety emotional
17 distress or lost wages, based on what we believe
18 the evidence will show were Mr. Rhodes'
19 commitment to be near his wife as opposed to a
20 financial concern, and evidence of costs that
21 are alleged to have been incurred due to the fee
22 arrangement that the Rhodes family had with the
23 Brown Rudnick firm.

24 To the extent, your Honor, that any of

1 69? I believe it's in the second -- is it the second
2 volume? Yes, it's the second volume.

3 A Yes.

4 Q Let me direct your attention to -- it's Bates number
5 01972. And, Mr. Satriano, I'd just like you to
6 identify for the court where the policy defines the
7 rights and the duties of the excess carrier in
8 connection with the defense investigation and
9 settlement of claims.

10 A That would be in Section II, under the word "defense,"
11 in subsection A, and further subsection paragraph
12 number 1.

13 Q And under subsection 2, does that continue over to the
14 next page?

15 A Yes.

16 Q And is that the source of your understanding of what
17 the excess carrier's duties are in terms of defense
18 investigation and settlement?

19 A Yes, that is. That would continue into further
20 subsection C.

21 Q Thank you. Are you an attorney, Mr. Satriano?

22 A I am.

23 Q And were you in private practice prior to beginning
24 your work at AIG in the Excess Claims Unit?

1 A Yes, I was.
 2 Q How long did you practice?
 3 A I've been admitted since 1989, and I began working with
 4 AIG in 2003.
 5 Q In your private --
 6 THE COURT: I'm sorry. Which D.A.'s office
 7 did you work for?
 8 THE WITNESS: The Queens County District
 9 Attorney's Office.
 10 (By Mr. Zelle)
 11 Q In your private practice, did you have insurance
 12 company clients?
 13 A Yes, I did.
 14 Q Did you work for them as defense counsel in personal
 15 injury and other tort claims?
 16 A Yes, I did.
 17 Q Will you explain for the court what the standard
 18 practice is when a claim is assigned to -- strike that.
 19 Within the AIG Excess Claims Group, were
 20 there separate tracks?
 21 A Yes.
 22 Q What were the tracks?
 23 A Within excess specialty claims, there were essentially
 24 three different tracks, or sub-bureaus. And

1 contrary. Perhaps sometimes a great number of cases
 2 are into our department, but they wind up being
 3 resolved with primary funds and therefore the cases
 4 then just close in the Excess Department.
 5 Q I'd like you to explain the standard practice with
 6 respect to when an excess carrier gets -- rolls up its
 7 sleeves and starts digging into a case.
 8 A Quite simply --
 9 MS. PINKHAM: Objection.
 10 MR. ZELLE: To the metaphor?
 11 THE COURT: Well, wait. An excess carrier in
 12 general or when he did?
 13 MR. ZELLE: Well, no. Well, I can lay a
 14 foundation.
 15 (By Mr. Zelle)
 16 Q In your practice, have you developed an understanding
 17 of how excess carriers in the industry generally deal
 18 with claims?
 19 A Yes.
 20 Q And what's the basis of that understanding?
 21 A The basis is my own experience.
 22 Q And how long did you work in Excess Claims?
 23 A Since 2003.
 24 Q Okay. So based on your experience, will you explain

1 essentially, within those, the case would come and
 2 arrive from segmentation and it would be looked at by
 3 one of the managers or the assistant vice presidents.
 4 What then would happen is, based upon the jurisdiction,
 5 the state, it would then be assigned to either the
 6 north division, the southeast division, or the west
 7 division.
 8 Q Okay. When a claim is assigned into the Excess Claim
 9 Group, does that reflect -- and when I say "assigned,"
 10 when the claim initially comes in, does that reflect
 11 anything other than the fact that AIG wrote an excess
 12 policy?
 13 A Into excess, that there would be a possibility that the
 14 excess policy may be exposed.
 15 Q And when you say "exposed," can you explain for the
 16 court what that means?
 17 A There are numerous claims that come into the Excess
 18 Department. There's a possibility, based upon the
 19 severity of the injury and the circumstances of the
 20 case, that the excess policy may be impacted, or monies
 21 from the excess policy may be extended for whatever
 22 particular reason. Merely because the case comes into
 23 the Excess Department does not necessarily mean that
 24 excess money is going to be used; it's really quite the

1 what the standard practice is for when an excess
 2 carrier, particularly when they're limited to AIG. You
 3 haven't work for other companies, have you?
 4 A No, I have not.
 5 Q All right. At AIG, what was the standard practice for
 6 when you become as an excess adjuster, an excess
 7 director actively involved in a claim?
 8 MS. PINKHAM: Objection.
 9 THE COURT: If it's limited to AIG, I will
 10 permit it. If it goes beyond AIG, then he's testifying
 11 as an expert. If it's limited to AIG, he may say what
 12 happens with AIG.
 13 A The short answer to the question is that when the
 14 primary carrier reaches up or seeks out the excess
 15 company.
 16 (By Mr. Zelle)
 17 Q Okay. And typically when, based on your experience at
 18 AIG, when was it that the excess -- excuse me -- the
 19 primary carrier would reach up for the excess carrier's
 20 involvement?
 21 A That would be when they make a request for money.
 22 Q Typically, what information is available at that time?
 23 A In my file?
 24 Q I'm speaking about in your general experience, when the

1 primary carrier, when a primary carrier is asking for
 2 money, what information do they provide to you?
 3 A Sure. The primary carrier would provide to us
 4 information as to the reason for the request for money
 5 and what, if anything, they expect us to do with
 6 respect to the litigation.
 7 Q When you receive information, what do you do?
 8 A I read it and I become familiar with that information.
 9 Q And can you tell me what type of information you
 10 typically receive from a primary carrier?
 11 A Sure. Typically, from the primary carrier, I would
 12 receive updates as to the status of the litigation. I
 13 would receive reports, status reports, from defense
 14 counsel. On occasion I would receive medical report
 15 letters explaining the different types of damages and
 16 how they've impacted that particular person. I would
 17 also receive financial information if the primary
 18 carrier has undertaken an analysis as to life-care plan
 19 information. I would receive photographs if they are
 20 in the file, in the primary carrier's file, any and all
 21 other information regarding other experts that they may
 22 have ascertained during the course of the case file or
 23 the claims litigation, and essentially, everything in
 24 the primary's file.

1 Q When you took over the Rhodes matter, other than the
 2 Crawford reports that you've identified, was there any
 3 other information in the file?
 4 A Just the Crawford reports.
 5 Q Did --
 6 THE COURT: I'm sorry. Which time period are
 7 you talking about?
 8 THE WITNESS: That would be when I took over
 9 the file in the June time period.
 10 THE COURT: June of?
 11 THE WITNESS: June of 2003 up to November of
 12 2003.
 13 (By Mr. Zelle)
 14 Q Well, then, let me --
 15 THE COURT: I'm sorry.
 16 THE WITNESS: I'm sorry. June of 2003, when
 17 I first was assigned the file, your Honor.
 18 THE COURT: And when did you receive
 19 Deschenes' report?
 20 THE WITNESS: That would have been subsequent
 21 to the teleconference, November of 2004.
 22 MR. ZELLE: Three.
 23 THE WITNESS: Three. Excuse me.
 24 (By Mr. Zelle)

1 MS. PINKHAM: Your Honor, I would move to
 2 strike that entire line of questioning, as it is based
 3 on Mr. Satriano's experience at AIG. He started with
 4 the company in May of 2003, he took over the Rhodes
 5 claim in June of 2003, and then he left on a military
 6 leave in March of 2004. So I don't believe there's
 7 been sufficient foundation laid for this.
 8 THE COURT: It goes to weight, not to
 9 admissibility. It's overruled.
 10 (By Mr. Zelle)
 11 Q Is it, in your experience, typical for defense counsel
 12 to provide AIG with reports contemporaneous with --
 13 that is, evaluation reports contemporaneous with the
 14 time they're prepared?
 15 A Yes.
 16 Q Was that the case when you took over the Rhodes file in
 17 June of 2003? Were there status reports from counsel?
 18 A No.
 19 Q Was there --
 20 THE COURT: I'm sorry. When you say
 21 "counsel," which counsel?
 22 THE WITNESS: Primary defense counsel, Mr.
 23 Deschenes.
 24 (By Mr. Zelle)

1 Q When you took over the file, can you explain why it was
 2 that you didn't make an effort to obtain reports from
 3 defense counsel or any other information?
 4 A Sure. There's essentially two reasons why I did not do
 5 that. First and foremost, I'll refer you to the
 6 policy. Within the provisions of the policy, there is
 7 no duty on the part of the excess carrier to do that.
 8 It's written in the policy that the duty to defend and
 9 handle the litigation is done by the primary carrier.
 10 In my mind, and in the practice, the primary carrier is
 11 responsible for the investigation of the claim,
 12 settlement, and the defense of the claim.
 13 The second reason is, quite simply, it's just
 14 not done. Within the industry standard and practice
 15 within the industry is that the excess carrier --
 16 MS. PINKHAM: Objection.
 17 THE COURT: I'll permit him to say what the
 18 practice was at AIG.
 19 A The standard within AIG is that the excess carrier just
 20 is informed by the primary. They do not become
 21 involved in that investigation that I referred to you
 22 with respect to the primary carrier.
 23 Q Can you now just focus on the telephone conference on
 24 November 19, 2003. Had you been given any advance

1 notice of this telephone conference?

2 A I spoke to the broker, Mr. Fred Hohn, shortly before

3 the teleconference.

4 Q And what did Mr. Hohn tell you?

5 A That there was going to be a teleconference on that

6 day.

7 Q Did he explain to you prior to the telephone conference

8 what the purpose was of the telephone conference?

9 MS. PINKHAM: Objection.

10 THE COURT: Overruled.

11 A He said to me that we were going to speak about the

12 case and it had become necessary for me to participate

13 in the teleconference.

14 (By Mr. Zelle)

15 Q Did he tell you who was going to be involved in the

16 telephone conference?

17 A Not specifically. He just indicated members of the

18 insured, GAF, and defense counsel.

19 Q Who was involved in the teleconference?

20 A Sure. The individuals that were involved in that

21 teleconference were Mr. Hohn, on behalf of the broker,

22 Willis. It would have been Mr. Manning, I believe,

23 from GAF. It would have been Ms. Peri, I believe. Ms.

24 Gordon, although I'm not sure if Ms. Gordon and Ms.

1 A Yes.

2 Q Why didn't you take some affirmative step at that time,

3 once you knew that there had been a demand of 16-plus

4 million dollars?

5 A Again, it's simply not done. It's in the policy.

6 That's a policy provision, as well as the standard,

7 certainly within my department at AIG, but also with

8 respect to the industry.

9 MS. PINKHAM: Objection.

10 MR. GOLDMAN: Objection, your Honor.

11 MS. PINKHAM: Move to strike.

12 Q Just confine your answer --

13 THE COURT: That last phrase is stricken.

14 A I'm sorry.

15 (By Mr. Zelle)

16 Q Confine your answers to your personal experience.

17 A Within AIG, yes.

18 Q You may be auditioning to be an expert someday, but

19 here you're just a fact witness.

20 Can you explain what your reaction was to the

21 information provided to you by Mr. Deschenes?

22 A I was upset with Mr. Deschenes. I was very upset with

23 Mr. Deschenes. You have to understand the position

24 that I was in. It was November, there were only

1 Peri were both involved in the teleconference. It was

2 definitely Mr. Deschenes, as defense counsel, and it

3 was Kathleen Fuell, as primary representative.

4 Q Who was the principal speaker during this

5 teleconference?

6 A It was really Mr. Hohn. He was sort of the moderator

7 of the conference, him and Mr. Deschenes.

8 Q What did you learn from Mr. Deschenes during this

9 telephone conference?

10 A Mr. Deschenes made a strong request for money from me

11 at the teleconference.

12 Q What did you learn from Mr. Deschenes regarding the

13 development or the information that had been developed

14 in the case?

15 A I had learned that there was a request to have Mr.

16 Pritzker come to mediation, and they wanted money to

17 come to mediation. They wanted the excess carrier to

18 pay money.

19 Q Prior to the telephone conference, were you aware that

20 there had been a demand made by the plaintiffs?

21 A Yes, from the Crawford reports.

22 Q Why was it that upon seeing that there had been a

23 demand made -- did the Crawford report also reflect

24 that it was a demand in excess of \$16 million?

1 reports from Crawford & Company in my file. Those

2 reports I did not view as reliable because, again, they

3 contained a lot of conclusions and did not explain the

4 basis for which those conclusions were made. And all

5 of a sudden, the first time in this litigation that I'm

6 hearing from my defense counsel, or the defense counsel

7 of the insured, is with a request for money.

8 Q Did you inform Mr. Deschenes at that point in time that

9 you didn't have anything to even begin your evaluation?

10 A I did inform Mr. Deschenes, as well as everyone on that

11 teleconference, that I did not possess the degree of

12 information that they did on that teleconference.

13 Q And did anyone respond to that indication by you that

14 you needed more information?

15 A They all responded, yes.

16 Q And what was the response?

17 A There was great frustration expressed, that AIG

18 incredulitively [sic] -- sorry. There was disbelief

19 that I did not possess the same degree of information

20 that they possessed.

21 Q Did --

22 THE COURT: And how did they manifest their

23 incredulity?

24 THE WITNESS: They indicated, your Honor, to

1 me that I can't believe you don't have this information
 2 and that you don't know what we know, and it was
 3 certainly rather upsetting.
 4 (By Mr. Zelle)
 5 Q Did you tell them -- did you say during this
 6 teleconference that it was their responsibility to get
 7 you that information?
 8 MS. PINKHAM: Objection. Leading.
 9 MR. GOLDMAN: Hearsay, your Honor.
 10 THE COURT: Overruled.
 11 (By Mr. Zelle)
 12 Q Well, what did you say in response to the expression of
 13 incredulity?
 14 A I quickly decided that for the purposes of a productive
 15 conference, that road was not a road that I was very
 16 comfortable going down. It wasn't important for me --
 17 it wasn't as important for me to explain what I didn't
 18 have and why didn't I have it, as what I did need to do
 19 and what we needed as a group to do to move this case
 20 along. So I then changed my tone and indicated to
 21 them, look, it is what it is, but this is what we need
 22 to get this thing going.
 23 Q Did you say anything to this group in an effort to
 24 chart a future course of action?

1 at some point to offer up the limits of the policy.
 2 However, she was still looking into and obtaining
 3 details and information from Mr. Deschenes.
 4 Q Was she clear on November 19 that she didn't have
 5 authority to extend or tender an offer of \$2 million?
 6 MR. GOLDMAN: Objection. Leading, your
 7 Honor.
 8 THE COURT: Overruled.
 9 A Yes, she was clear on that.
 10 THE COURT: Was she clear that she said that
 11 she had not yet received authority?
 12 THE WITNESS: Yes, Judge.
 13 THE COURT: I'm sorry. When you said you
 14 would bring in counsel, did you mean associated counsel
 15 or do mean coverage counsel?
 16 THE WITNESS: I would associate in defense
 17 counsel.
 18 THE COURT: That's what you said?
 19 THE WITNESS: Yes.
 20 (By Mr. Zelle)
 21 Q What was the response -- did anyone respond to your
 22 indication that you wanted to associate in counsel?
 23 A Yes.
 24 Q What was the response?

1 A I did.
 2 Q What did you say?
 3 A I requested Mr. Deschenes provide me as soon as
 4 possible with a copy of his file and the information
 5 that he possessed during this teleconference. I also
 6 made a request from anyone that was willing to
 7 certainly provide me with documents that I needed,
 8 based on information that they had. I indicated that I
 9 was going to bring in counsel. And I had indicated a
 10 strong possibility that it was a good idea for all of
 11 us to get together again in the future and certainly
 12 follow up our conversation.
 13 Q Did you make it clear or express during that conference
 14 that you were going to get to work on this file?
 15 A Absolutely. Clearly the primary carrier was reaching
 16 up to me at that point. And, again, with respect to
 17 how I operate, that was an opportunity for me to now
 18 become fully involved in the case.
 19 Q With respect to the primary carrier, during the
 20 teleconference, was there any indication that there was
 21 additional work to be done by the primary carrier?
 22 A Yes.
 23 Q What was that?
 24 A Ms. Fuell had indicated to me that it was her intention

1 A There was pushback on it. Again, they viewed it --
 2 Q That's okay. Let me ask you another question.
 3 During this telephone conference on November
 4 19, what indicated to you that there was some
 5 resistance to your associating in counsel?
 6 A They expressed strong doubts as to why I was doing
 7 that.
 8 Q Did you explain during this telephone conference why
 9 you wanted to do it?
 10 A Well, there were several reasons why I wanted to do it.
 11 THE COURT: The question is, what did you
 12 express to them?
 13 (By Mr. Zelle)
 14 Q What did you say, if anything, during the November 19
 15 telephone conference to explain your reasons for
 16 wanting to associate in counsel?
 17 A First, I indicated to them that I wanted to bring
 18 counsel in to augment the defense team and to become
 19 fully involved and integrated into the defense team. I
 20 also indicated to them that I wanted to view certainly
 21 the material and the information that they possessed,
 22 and I certainly wanted the new defense counsel to have
 23 that same opportunity, to view the information that
 24 they possessed.

1 Q Can you explain why you decided on November 19, 2003,
 2 to exercise the right to associate in counsel?
 3 A At that point, I did not -- having spoken to Mr.
 4 Deschenes for the very first time and asking --
 5 Q Go ahead.
 6 A Having spoken to Mr. Deschenes for the very first time
 7 and having received the request from him for money, I
 8 did not have complete and enjoy complete confidence in
 9 Mr. Deschenes at that point, and therefore that's why I
 10 decided to augment the team and bring in and associate
 11 in Mr. Conroy. Additionally, it was clear to me that
 12 Mr. Deschenes had complete and total reliance on the
 13 Crawford & Company letters. I did not enjoy that same
 14 opinion.
 15 Additionally, it was clear to me that Mr.
 16 Deschenes, from his response to me regarding that
 17 conference and his request for money, that he did not
 18 have familiarity with meeting the needs of an excess
 19 complex director.
 20 Q Can you tell me, sticking with the November 19
 21 conference call, what was said about responding to the
 22 settlement demand made by Mr. Pritzker?
 23 A Yes. There was a discussion that this should be paid,
 24 this amount of money. An amount of money, \$5 million,

1 Q What did you say?
 2 A I told everyone on that conference call that the
 3 Crawford reports to me were not helpful because they
 4 were merely based upon a lot of conclusion and there
 5 was not sufficient detail in there to explain the
 6 analysis for which they arrived at those conclusions.
 7 Q Did during this conference call Zurich indicate they
 8 wanted more details before they would be able to
 9 complete their analysis?
 10 MR. GOLDMAN: Objection. Leading.
 11 THE COURT: Overruled.
 12 A Ms. Fuell did indicate that she needed more details
 13 from Mr. Deschenes, yes.
 14 (By Mr. Zelle)
 15 Q Following the telephone conference, did Mr. Deschenes
 16 provide you with some of the materials that were
 17 discussed on the -- strike that.
 18 Did he provide you with some materials?
 19 A He did.
 20 Q When was that?
 21 A I'm sorry, when?
 22 Q Yeah. How long after the conference call.
 23 A That was shortly after the conference call.
 24 Q Would you say within a week or two?

1 should be paid to Mr. Pritzker merely to get him to the
 2 table to discuss that, and I vehemently disagreed with
 3 that and said that I was not in agreement with that
 4 strategy.
 5 Q With respect to --
 6 THE COURT: We'll take our break. We should
 7 reconvene -- I think I've got to do two other matters,
 8 so 20 minutes.
 9 (A recess was taken at 11:30 a.m.)
 10 THE COURT: Mr. Zelle.
 11 MR. ZELLE: Thank you, your Honor.
 12 (By Mr. Zelle)
 13 Q Mr. Satriano, was there any discussion during the
 14 November 19th conference call about the Crawford
 15 reports by Ms. Fuell?
 16 A I don't recall.
 17 Q Did you make any comments concerning the Crawford
 18 reports?
 19 A I may have, yes. I indicated that that was the only
 20 contents of my file.
 21 Q During the conference call, did you express your view
 22 as to why the Crawford reports weren't sufficient to do
 23 any meaningful evaluation?
 24 A Yes.

1 A That would be fair, yes.
 2 Q Did Mr. Deschenes at that time identify the materials
 3 he was sending to you?
 4 A He may have indicated that. I asked him to send me the
 5 materials that he possessed.
 6 Q What materials did he send you within a couple of weeks
 7 after the conference call?
 8 A There was a letter that Mr. Deschenes sent to me. May
 9 I refer to that?
 10 Q I'd prefer you just identify what materials you
 11 received.
 12 A I believe I received perhaps some reports from Mr.
 13 Deschenes. There would have been medical information,
 14 medical record information. The contents would have
 15 included a life-care planner report, I believe. And
 16 also the letter made reference to an attachment of the
 17 "Day in the Life" video. However, that was not
 18 included in the attachments.
 19 Q Was the demand package -- I believe it's Exhibit 10 if
 20 you need to look at it -- was that included in the
 21 materials that Mr. Deschenes sent you within a couple
 22 of weeks after the conference call?
 23 A Yes, it was.
 24 Q Did he send you within a few weeks of the conference

1 call pleadings?

2 A Yes.

3 Q Did he send you any substantive evaluations that he had prepared?

4

5 A I believe so, yes.

6 Q What did you do when you received those materials?

7 A I reviewed those materials.

8 Q Was it your expectation that -- strike that.

9 During the November 19 conference call, did

10 you explain that you wanted materials sent to associate

11 counsel as well?

12 A Yes.

13 Q Do you know whether there were materials sent to

14 associate counsel?

15 A I know eventually Mr. Conroy received information and

16 materials. I know that was well after my request

17 during that conference.

18 Q Other than the materials that were sent to you within a

19 few weeks after the conference call, did Mr. Deschenes

20 provide you, or did anyone provide you, with any

21 additional materials relating to the Rhodes claim

22 before the March 4 meeting?

23 A Yes.

24 Q What else did you receive?

1 Q Can you tell us what it was that you didn't have that

2 you believed was necessary to thoroughly evaluate the

3 claim?

4 A The first thing that I did not have was the deposition.

5 Q Can you tell us why it was that you believed the

6 deposition of the plaintiff was necessary to thoroughly

7 evaluate the claim?

8 A Again, a deposition is a very important item for me to

9 have --

10 THE COURT: You say "a" deposition. Are you

11 referring to a deposition of the plaintiff?

12 THE WITNESS: Yes. Mrs. Rhodes' deposition

13 would have been extremely helpful to me in evaluating

14 the case with respect to damages.

15 (By Mr. Zelle)

16 Q Can you explain why?

17 A Certainly. A deposition, again, is a perfect

18 opportunity for me to become introduced to the witness,

19 to the plaintiff herself, to get to know her, to

20 understand the dynamics of what she's testifying. It's

21 an opportunity for me to understand the facts of the

22 case as she portrays them. It is an opportunity for me

23 to view her as a potential witness, whether or not she

24 makes a good appearance as a witness, whether or not

1 A I believe I received some reports from Mr. Stephen

2 Penick.

3 Q And what did you receive from Mr. Penick?

4 A Again, final documents from, I believe, from Crawford &

5 Company.

6 Q What materials were included in the Crawford & Company

7 files?

8 A Again, I specifically don't recall, but I know that

9 would have been, again, probably copies of the Crawford

10 reports that were being sent to me and perhaps some

11 medical documentation. I don't want to guess, but I

12 know, again, I asked them for information.

13 Q What material or information did you not have prior to

14 the March 2004 meeting that you believed was necessary

15 to undertake a thorough evaluation of the Rhodes claim?

16 MS. PINKHAM: Objection.

17 THE COURT: Sustained as to leading. Now

18 we're getting into things that matter, so assumes

19 what's not yet in evidence.

20 (By Mr. Zelle)

21 Q Did you have prior to the March claim -- excuse me, the

22 March meeting -- everything that you believed was

23 necessary to thoroughly evaluate the claim?

24 A No.

1 she would have potential jury appeal. It is also a

2 wonderful opportunity for the counsel that I associated

3 in, Mr. Conroy, an experienced trial attorney, to have

4 an opportunity to make those same determinations

5 because he would be the person that would be

6 questioning Mr. Rhodes.

7 Q Were you aware in March that there were also loss of

8 consortium claims that were included as part of the

9 Rhodes case?

10 A Yes, I was.

11 Q And prior to March, did the file include deposition of

12 either of the loss of consortium plaintiffs?

13 A I believe so.

14 Q Which one?

15 A Mr. Rhodes.

16 Q And what did you do with that deposition transcript?

17 Did you have a copy of the transcript?

18 A I don't specifically recall.

19 Q Do you recall reviewing either the transcript or a

20 summary?

21 A Yes.

22 Q And tell us what you derived in terms of moving you

23 toward an evaluation from your review of either the

24 deposition transcript or the summary?

1 A Again, with respect to the deposition summary,
 2 especially for Mr. Rhodes, that would have given us an
 3 opportunity to understand the family dynamic of what
 4 was going on, how Mr. Rhodes' life certainly was
 5 changed as a result of this incident, their
 6 relationship both prior to the accident and subsequent
 7 to the accident, and again, his relationship with other
 8 social entities and certainly family members, I know
 9 they have a daughter. That certainly would have been
 10 information for me to review.
 11 Q Was there a loss of parental society claim included by
 12 the Rhodeses' daughter, Mrs. Rhodes' daughter?
 13 A I don't recall. I believe so.
 14 Q Do you recall whether there was a deposition transcript
 15 or a summary in the materials you reviewed before the
 16 March meeting?
 17 A Not from the daughter.
 18 Q Can you explain why you -- is that something you would
 19 want to have to thoroughly evaluate a claim that
 20 included loss of parental society claims?
 21 A Sure. Again, all of these are important factors for
 22 which I need to make before I can have an evaluation
 23 done, a proper evaluation done. This type of
 24 information, it's almost demanding of me to have that

1 Q What did he expect from you to justify a request for
 2 settlement authority?
 3 MS. PINKHAM: Objection.
 4 THE COURT: Sustained in that form. You can
 5 ask what you understood you had.
 6 MR. ZELLE: I'll reframe the question, your
 7 Honor.
 8 (By Mr. Zelle)
 9 Q What do you provide or seek to provide to your
 10 supervisor to justify settlement authority requests?
 11 A Information, specific detailed information that would
 12 have come from Mrs. Rhodes' deposition, their
 13 daughter's deposition, Mr. Rhodes' deposition, specific
 14 information that I would have analyzed in light of
 15 other factors that I would use to again come up with a
 16 number and offer that number to plaintiffs' counsel.
 17 Q The other factors that we'll discuss in more detail
 18 later, but generally did that include information that
 19 was included in the settlement demand package?
 20 A That would have included information in the settlement
 21 demand package amongst other things that I required,
 22 the deposition being one of several others.
 23 Q What else did you not have in March of 2004 that you
 24 believed was necessary to thoroughly evaluate the

1 information because, in fairness, it assists me in my
 2 evaluation and it certainly justifies their request in
 3 terms of the settlement package. So I'm doing them
 4 justice as well, the plaintiffs, to become familiar
 5 with that information.
 6 Q Can you explain how detailed information assists you in
 7 obtaining settlement authority?
 8 A With respect to what I do, I have to deal with detailed
 9 information because it assists me in putting a number.
 10 I'm in a position and I'm required to produce a number,
 11 a number, not a range, but a number for which I believe
 12 this will make a family and an injured person whole
 13 again.
 14 This is a very difficult process and it's a
 15 process not to be taken in a most quick fashion.
 16 There's a detailed analysis because what you have to do
 17 is come back to the plaintiffs' counsel with a
 18 responsible number based upon data.
 19 Q Did you have a million -- what was your settlement
 20 authority at the time you were handling the Rhodes
 21 claim?
 22 A I had no authority at that time.
 23 Q What did your supervisor -- was that Mr. Mastronardo?
 24 A Yes.

1 claim?
 2 A The other item that we did not have was an independent
 3 medical examination.
 4 Q Why was it that you believed that was necessary to
 5 thoroughly evaluate the claim?
 6 A The independent medical examination that I desired was
 7 a physical medicine specialist, or also what's called a
 8 physiatrist. Those individuals are unique in that they
 9 are medical doctors with the experience and expertise
 10 in evaluating the future prospects of rehabilitative
 11 recovery to people like Mrs. Rhodes, people that have
 12 suffered serious spinal injuries.
 13 Q Can you distinguish the information that you expected
 14 to receive or you expect to receive from a physiatrist
 15 from the type of information that was included in the
 16 life-care plan that was provided by the plaintiffs?
 17 A The life-care planner is an excellent tool as well, but
 18 it is not a comprehensive overall tool that I would
 19 unilaterally rely on. In our particular case, the
 20 life-care planner was Mrs. Mattson, or Ms. Mattson.
 21 Ms. Mattson, although credentialed, is not a medical
 22 doctor, so the degree and the specificity of the
 23 physical aspects of Mrs. Rhodes' future recovery would
 24 have been contained in the IME. The life-care plan is

1 a plan which again considers everything that a person
 2 is to incur in their life for a particular life period,
 3 to come up or quantitatively come up with a number as
 4 the what their needs will be.
 5 Q Other than the deposition of plaintiffs and an
 6 independent medical exam, were there other things that
 7 you believe were necessary to thoroughly evaluate the
 8 claim --
 9 A Yes.
 10 Q -- that you didn't have?
 11 A Yes.
 12 Q Can you tell us what else?
 13 A Other important information would have included
 14 information regarding any and all other primary
 15 insurance policies or, frankly, insurance policies that
 16 we or I would have viewed as an excess carrier, those
 17 funds available before excess funds would have been
 18 contributed.
 19 Q What did you have as of March to review with respect to
 20 assessing whether there were other sources of insurance
 21 or funds available to contribute to the settlement?
 22 A Nothing.
 23 Q Did you ask for that?
 24 A Yes.

1 Q What other --
 2 THE COURT: Before you leave this subject, in
 3 regard to primary sources of insurance, as to which
 4 insured?
 5 THE WITNESS: That would be GAF or other
 6 individuals that may be contractually related. In this
 7 particular case, for example, your Honor, Penske or the
 8 tree service or even Driver Logistics, the individuals
 9 that provided Mr. Zalewski.
 10 THE COURT: Did you ask GAF, who you were in
 11 touch with, if they had any other primary policies?
 12 THE WITNESS: I don't recall if I asked GAF.
 13 I know I asked Ms. Fuell.
 14 THE COURT: What did you ask GAF, since they
 15 were your insured?
 16 THE WITNESS: I would have spoken to the risk
 17 manager. It perhaps came up at the meeting that we
 18 were getting together. But, again, prior to that
 19 meeting, I did not.
 20 THE COURT: Prior to which meeting?
 21 THE WITNESS: Prior to the March meeting.
 22 A Generally, it is the primary carrier. The relationship
 23 between the primary and the excess carrier will have
 24 this conversation because generally the information

1 Q Was that provided to you before you left for Iraq?
 2 A It was not.
 3 Q Can you tell me why -- as a foundation question, do you
 4 understand why it is important to the insured to pursue
 5 other available sources of insurance that might come
 6 before the excess policy?
 7 A Yes.
 8 MS. PINKHAM: Objection.
 9 THE COURT: Overruled.
 10 Q Will you explain your understanding?
 11 A That information is important because, number, one,
 12 there's an obligation and a requirement in the policy
 13 which states that other forms of insurance are to go
 14 first, that we are to consider -- we as the excess
 15 carrier -- will consider any and all other information
 16 as primary available insurance before the excess
 17 policy. Additionally, that has a direct relationship.
 18 It's also an obligation on our part because it has a
 19 direct relationship to eventually the types of premiums
 20 that an insured will be paid. So, therefore, if other
 21 forms of insurance are extended to pay out in a
 22 settlement, then it reduces the future, sort of,
 23 underwriting risk or liability, so to speak, that the
 24 insured would be facing.

1 will be provided at some point, because both the
 2 primary carriers, as well as the excess carriers know
 3 that that's just the reality of the situation.
 4 (By Mr. Zelle)
 5 Q Mr. Satriano --
 6 MS. PINKHAM: Objection. I move to strike
 7 that last answer.
 8 THE COURT: As to what others would know,
 9 it's stricken.
 10 (By Mr. Zelle)
 11 Q Mr. Satriano, just to make it clear, did you obtain
 12 that information prior to the March meeting?
 13 A No, I did not.
 14 Q Did you ask for that information prior to that meeting?
 15 A Yes, I did.
 16 Q And did you ask --
 17 THE COURT: Who did you ask of it from?
 18 MR. ZELLE: That's my question.
 19 THE WITNESS: Ms. Fuell.
 20 THE COURT: That's all?
 21 THE WITNESS: That's my recollection, your
 22 Honor. I may have, your Honor, but my recollection is
 23 Ms. Fuell.
 24 (By Mr. Zelle)

1 Q Can you explain why you asked Ms. Fuell?

2 A Again, because it's the duty and obligation on behalf

3 of the primary carrier to produce that information for

4 us.

5 MR. GOLDMAN: Objection. Move to strike,

6 your Honor.

7 THE COURT: Overruled.

8 (By Mr. Zelle)

9 Q Inasmuch as you were looking for other potential

10 sources of insurance from the other defendants, how --

11 let me ask you this.

12 What do you do now, Mr. Satriano?

13 A With respect to this issue?

14 Q No, no. What's your current position, employment?

15 A Oh, I'm sorry. Right now I'm a primary claims handler.

16 Q Okay. And as a primary claims handler, is it one of

17 your responsibilities to seek for the benefit of your

18 insureds other potential sources of insurance?

19 A Yes.

20 Q And do you seek it for the same reason that you

21 previously described, because it could inure to the

22 financial benefit?

23 A Yes. There's also other reasons, too.

24 Q In your experience, how do you go about obtaining that

1 the case is in litigation, they will make inquiries

2 into other entities' risk managers and writers on

3 behalf of our insured seeking to obtain information on

4 other policies.

5 Q Among the materials that Mr. Deschenes sent to you

6 within a couple of weeks after the November 19

7 conference call, did he send you responses to document

8 demands for other insurance policies?

9 A I don't specifically recall. I believe so.

10 Q Did you review the insurance policies that were

11 available?

12 A I don't -- no. I did not see any other insurance

13 policies. That material was not included.

14 Q Okay. Did you develop an understanding during the

15 November 19 telephone conference as to who was

16 directing or controlling the efforts of defense

17 counsel?

18 A Frankly, it was difficult to understand whether or not

19 anyone was controlling defense counsel.

20 Q Okay. Let's go back to the types of information that

21 you needed to thoroughly evaluate the claim that you

22 didn't have in March of 2004. I think you've

23 identified the deposition, the IME, and other insurance

24 information. Are there other things?

1 information?

2 A Generally, you will deal with the broker and try to

3 obtain that information.

4 Q When you say "the broker," you mean with respect to

5 your policyholder?

6 A That's correct.

7 Q What about with respect to other defendants? How do

8 you expect or how do you go about getting that

9 information?

10 A Again, as the primary insurer, what you'll do is

11 sometimes speak to risk managers and you'll speak to

12 other entities and you'll speak to defense counsel as

13 well. There's a hesitancy sometimes on our parts to

14 speak to our insureds about this also because in their

15 minds sometimes this raises questions as to whether or

16 not the insurance company is intending to disclaim or

17 insure under a -- or a cover, excuse me, under an ROR

18 or a Reservation of Rights. You have to be very

19 careful who you obtain this information from.

20 Q How does defense counsel go about obtaining information

21 as to whether there's insurance of co-defendants that

22 might apply as primary insurance?

23 A They will make demands from those entities, that those

24 entities are represented in any way, shape or form. If

1 A Yes.

2 Q Can you tell the court?

3 A Also, what I would like to have was other information,

4 additional information regarding Mrs. Rhodes' pre-

5 accident emotional or mental condition. That

6 information was necessary because with respect to the

7 pleadings, plaintiffs were pleading at exacerbation of

8 a pre-existing condition. So information regarding her

9 condition beforehand would have been relevant to my

10 analysis.

11 Q And in discussions that you had, non-privileged

12 discussions, whether in March or November, did you ever

13 express a desire to pursue that information?

14 A Yes.

15 Q Is there any other type of information that you believe

16 was necessary to thoroughly evaluate the claim that you

17 didn't have in March of 2004?

18 A Yes.

19 Q What is that?

20 A That would have been analysis or status records from my

21 defense counsel, as well as counsel that I brought on

22 to associate in here.

23 Q Was it your intent in November of 2003 to immediately

24 involve Mr. Conroy in the direct development of the

1 case, of the Rhodes case?
 2 A Yes, it was.
 3 Q As of March, had he been accepted as a member of the
 4 defense team to be directly involved?
 5 A No.
 6 Q Did you undertake any evaluation, Mr. Satriano, of the
 7 claim for settlement purposes before the March 5
 8 meeting?
 9 A No.
 10 Q Can you explain why you didn't?
 11 A Again, I did not have all the information necessary to
 12 make my evaluation. Those items we've just spoken
 13 about, I needed that information so that I could make a
 14 thorough analysis and come up with a good evaluation.
 15 Q Throughout the course of your handling -- I understand
 16 you were deployed in mid-march, but throughout the time
 17 you handled the Rhodes claim, did you ever make any
 18 determination as to what a reasonable settlement range
 19 would be?
 20 A No.
 21 Q During the meeting on March 4, Mr. Deschenes identified
 22 numbers which you recorded in your notes, correct?
 23 A Yes.
 24 Q Did he indicate that he believed that a \$6 million

1 A I believe so.
 2 THE COURT: I'm sorry. You believe that
 3 that's what he said?
 4 THE WITNESS: I believe that's what he said.
 5 I was frankly surprised at how specific the number was,
 6 but I believe that's what he said.
 7 THE COURT: But he said he had done it after
 8 doing jury research?
 9 THE WITNESS: Yes, your Honor.
 10 THE COURT: So when you said you didn't know
 11 how he got the number, you understood that he got it
 12 from jury research.
 13 THE WITNESS: Yes, your Honor.
 14 (By Mr. Zelle)
 15 Q For clarity sake, the \$6 million wasn't a jury number,
 16 was it? It was -- well, strike that.
 17 THE COURT: I'm sorry. From settlement
 18 research. I'm sorry.
 19 THE WITNESS: Yes.
 20 A The \$6 million number was not the number for this case.
 21 This was a number he just came up with.
 22 (By Mr. Zelle)
 23 Q With respect to, I believe, the \$9,700,000, did you
 24 have an understanding at the meeting as to how Mr.

1 number was a reasonable settlement range for the Rhodes
 2 case?
 3 A What I recall Mr. Deschenes indicating --
 4 Q That's a yes or no question.
 5 A I'm sorry?
 6 Q I'm not asking you to tell me what he said. I will,
 7 but just follow my question.
 8 Did Mr. Deschenes indicate that he thought
 9 the reasonable settlement range of the Rhodes case was
 10 \$6 million?
 11 A No.
 12 Q How did he describe the number that you recorded in
 13 your notes, that \$6,647,333 number?
 14 A He introduced the \$6 million number, with that great
 15 degree of specificity, as a settlement number.
 16 Q And how did he come up with that settlement number?
 17 A He had indicated -- I don't know, but he had indicated
 18 that it was essentially a number that he came up with.
 19 Q Okay. Do you recall him explaining that he had done
 20 some research and come up with cases, added up the
 21 cases and divided, and that's how he came up with the
 22 number?
 23 MS. PINKHAM: Objection.
 24 THE COURT: I'll allow it.

1 Deschenes came up with that number?
 2 A Again, the same answer. He would have gone through the
 3 same process and again arrived at a number with a very
 4 high degree of specificity. That would have been the
 5 verdict value.
 6 Q During the March 4 meeting, was the primary subject of
 7 discussion with respect to AIG's ongoing participation,
 8 was that subject whether AIG would put in \$3 million so
 9 that a \$5 million offer could be made?
 10 A Yes.
 11 Q During the meeting was there any discussion of a
 12 reasonable settlement range for the Rhodes case?
 13 A No.
 14 Q Was it your view, or tell me, what was your view with
 15 respect to the \$5 million enticement offer?
 16 A I was very disappointed with the \$5 million enticement
 17 offer, and I did not agree with it. I felt it was
 18 disingenuous and I felt that it was not a good way to
 19 proceed on this case. Merely paying Mr. Pritzker \$5
 20 million to come to the table to mediate the case, to
 21 me, did not speak well for the fact that there was an
 22 intention to have a meeting of the minds to resolve
 23 this case in the favor of the Rhodeses.
 24 THE COURT: I'm sorry, I don't understand

1 that answer.

2 THE WITNESS: Your Honor, I was upset at the

3 fact that there was essentially a pre-condition of a

4 payment to entice Mr. Pritzker to come to mediation.

5 Mr. Pritzker wanted to be paid, as Mr. Deschenes

6 described, the admission price for coming to mediation.

7 I did not agree with that strategy, nor did I agree

8 with his position, Mr. Pritzker's.

9 THE COURT: Where did you learn -- how did

10 you learn that Mr. Pritzker had set a number as a pre-

11 condition to mediation

12 THE WITNESS: Because Mr. Deschenes said that

13 Pritzker wanted \$5 million to come to the table.

14 (By Mr. Zelle)

15 Q Did your objection to the \$5 million price of admission

16 have any bearing on the demand -- strike that.

17 Did the amount of the demand -- did you

18 understand what the amount of the demand was in March?

19 A Yes, I did.

20 Q Okay. And did the amount of the demand have any

21 bearing on your view that five dollar [sic] price of

22 admission was not something you were going to agree to?

23 A Five dollar price of admission I would have paid.

24 Q I'm sorry, five million.

1 186 and 187, and the court's attention to your

2 deposition. I'm going to ask you to read it to

3 yourself and everyone can read it to themselves. My

4 question to you, Mr. Satriano, is, please explain what

5 you meant when in responding to the question -- this is

6 on page 186: Who said what about the fact that no one

7 had responded to the August 13, 2003, settlement

8 demand?

9 MS. PINKHAM: Your Honor, would you like to

10 know what the answer was so you can then understand --

11 THE COURT: I think I'd like to know the

12 answer.

13 MR. ZELLE: I'm sorry, I thought you had the

14 transcript.

15 THE COURT: I perhaps do somewhere in the

16 midst these eight binders, but it would probably save

17 some time by --

18 MR. ZELLE: Let me give you one, unless you

19 would like him to read it, whatever you think is going

20 faster.

21 THE COURT: I don't know how long it is.

22 MR. ZELLE: It's two pages.

23 THE COURT: Then I had better read it.

24 MR. ZELLE: All right. I've give you these

1 A Yes, it did not have any bearing on it.

2 Q Can you explain that?

3 A Again, I did not feel that that was the proper strategy

4 to take. It would have set an artificial ceiling,

5 artificial starting point at the mediation, which was

6 improper. It certainly had no relationship to

7 resolving this case with respect to the Rhodeses.

8 We had quite a high settlement demand and in

9 looking at that high settlement demand, we also had a

10 request for a payment to participate in mediation.

11 Those two factors said to me that they are, frankly,

12 not serious about resolving this case.

13 Q All right. Now, Mr. Satriano, did you indicate at the

14 March 4 meeting that you thought 8 to \$10 million was a

15 reasonable settlement range?

16 A I believe I said 8 to 10 -- no, I said 8 to \$10

17 million, that figure, no.

18 Q Just answer my question, all right. I think you

19 anticipate where I'm going and we'll talk about your

20 deposition testimony. But my question is, at the March

21 5 meeting did you indicate that you believed 8 to \$10

22 million was a reasonable settlement range?

23 A No.

24 Q All right. I'm going to direct your attention to pages

1 pages.

2 MS. PINKHAM: That was part of what I had

3 shown. I can show it again if you want, your Honor.

4 THE COURT: I'll just read it.

5 Okay.

6 MR. ZELLE: Let me put a question to the

7 witness.

8 (By Mr. Zelle)

9 Q Can you tell me what you meant when you referred to an

10 8 to \$10 million settlement range in response to the

11 question as to what was said in response to responding

12 to the settlement demand ?

13 A Yes.

14 Q Will you please do that?

15 A What I meant at that time was that I did not care what

16 range we were speaking about. The 8 to 10 range was

17 definitely not my evaluation or my opinion regarding

18 whether or not this was an appropriate range or not.

19 What the bottom line there was in the context of what

20 we were speaking about, it was what was it going to

21 take to bring Mr. Pritzker to mediation. And the more

22 important fact was that we were not going to pay money

23 to bring Mr. Pritzker to mediation. Those numbers were

24 insignificant in that regard. They were not

1 evaluation, not an evaluation, and certainly not a
 2 range by me or anyone else.
 3 Q You didn't have a settlement range in mind at the time
 4 of the March 4 meeting, correct ?
 5 MS. PINKHAM: Objection.
 6 A No.
 7 MR. ZELLE: It's foundation, your Honor.
 8 THE COURT: Well, no. Tell me. You said
 9 it's way too high, you know, maybe the evaluation was 8
 10 to 10 or 8 to 12, but certainly not 16. So what did
 11 you mean when you said that maybe the evaluation was 8
 12 to 10 or 8 to 12?
 13 THE WITNESS: What I mean, your Honor, is
 14 that it could have been anything. It could have been 8
 15 to 10, 16 to 19. It could have been anything. It was
 16 simply a number that was suggested -- it could have
 17 been suggested by anybody as to what the range was or
 18 what their feelings were. The bottom line is that it
 19 was not -- there was never going to be money paid to
 20 Mr. Pritzker, as far as I was concerned, to come to
 21 mediation. That was not a value that I placed or a
 22 range that I placed. That was merely a tirade, quite
 23 frankly, that indicated that I did not care what range
 24 was suggested by anyone as being appropriate. We were

1 Q Are you saying you had no information or insufficient
 2 information?
 3 A Insufficient information.
 4 Q I'd like to ask on a new topic, Mr. Satriano, what
 5 factors you consider, how you go about making an
 6 evaluation for settlement purposes. What factors do
 7 you consider?
 8 A What I consider in evaluating for settlement purposes
 9 are essentially two major categories. The first
 10 category would be those items that fall within the
 11 realm of economic damages. The second category would
 12 be those items that fall within the realm of non-
 13 economic damages.
 14 Q Let's start with the economic damages. Can you break
 15 that down?
 16 A The economic damages fall essentially within three or
 17 four sub-topics. The economic damages are those
 18 damages that, as we commonly say in our profession, can
 19 be black-boarded, or those damages that are
 20 quantitative in nature. They would include medical
 21 costs. They would include wages. They would also
 22 include any type of lifestyle accommodations that
 23 needed to be made as a result of this injury.
 24 Q What are the types of economic damages that you

1 not going to pay Mr. Pritzker for coming to mediation.
 2 That is the context for which that should be
 3 understood.
 4 (By Mr. Zelle)
 5 Q Would it have made any difference in your decision not
 6 to pay Mr. Pritzker to come to mediation if you had a
 7 settlement range in mind that you believed was
 8 reasonable?
 9 A No.
 10 Q You testified in response to questions by Mr. Pritzker
 11 about -- that you didn't disagree with numbers that Mr.
 12 Deschenes had stated in the meeting. Can you explain
 13 what you meant when you said you didn't disagree --
 14 well, strike that.
 15 Did you say at the meeting in March 4 that
 16 you didn't disagree with the numbers?
 17 A I may have.
 18 Q Explain what you meant when you testified in response
 19 to Ms. Pinkham's question that you didn't disagree with
 20 the numbers?
 21 A What I meant is that I had no information for which to
 22 base an opinion on, whether it was correct, accurate,
 23 wrong or right. I had no information to determine
 24 whether or not that was an appropriate range.

1 typically review when you're evaluating a case?
 2 A First and foremost, we look at wages. We will look at
 3 future -- I'm sorry.
 4 We look at medical costs. We would look at
 5 past medical costs and we would look at future medical
 6 costs. Mrs. Rhodes had a condition before the
 7 accident. We would look and see at what her medical
 8 condition costs were. After the accident, we would
 9 take a look and see exactly what her finite medical
 10 costs were by way of doctor fees, nursing fees,
 11 healthcare fees, medical costs in a hospital, any types
 12 of diagnostic procedures that needed to be done, any
 13 type of physical therapy procedures that needed to be
 14 done. Those would be the types of damages, finite
 15 damages, finite numbers, that speak to medical costs.
 16 Q How do you go about determining whether medical costs
 17 submitted in support of a claim are necessary and
 18 reasonably related to the accident?
 19 A I'd make that analysis myself, and if I would need
 20 assistance from other individuals or other experts, I
 21 would obtain those experts as well.
 22 Q Okay. Why don't you tell us now what you do to
 23 determine what is necessary and reasonable in terms of
 24 future medical costs?

1 A Again, with future medical costs, you would obtain the
 2 information and speak to someone like a life-care
 3 planner and enlist those individuals to assist you in
 4 making your determination, if these are reasonable and
 5 necessary medical costs for which can be incurred as a
 6 result of bringing that person as close to possible as
 7 they could be to the condition that they were in before
 8 the accident.
 9 Q And as of the time -- well, during the time you were
 10 handling the Rhodes claim, did you take the opportunity
 11 to review the medical costs and review the life-care
 12 plans with respect to future medical costs?
 13 A I did.
 14 Q Okay. You mentioned lost wages. Was there any lost
 15 wage claim for Mrs. Rhodes?
 16 A There was no lost wage claim for Mrs. Rhodes, no.
 17 Q Can you tell how that factors into a valuation or an
 18 evaluation of the claim?
 19 A If there is a situation where there's a loss of
 20 consortium claim, there may be a lost wage claim for
 21 Mr. Rhodes. That would again all be grouped within
 22 that family dynamic that we were speaking about in that
 23 you have to look at this as a whole and see what costs
 24 are now included.

1 again. Some individuals do have that
 2 opportunity; modifications need to be made to a
 3 car or a van.
 4 With respect to their home,
 5 modifications need to be made in terms of
 6 installing a rail to gain entry to the home.
 7 Obviously, stairs could not be traversed
 8 anymore. There's also modifications in the
 9 bathroom. Certainly bars and certainly
 10 assistant toilet devices and things like that
 11 that can be added as far as lifestyle
 12 accommodations. A host of others. It could be
 13 electronic, you name it. But all these things
 14 are factored into those economic damages.
 15 Q Okay. And at the time you were handling the
 16 case did you have some information in the
 17 life-care plans relative to these lifestyle
 18 accommodations.
 19 A Yes.
 20 Q Are there any other economic costs that you
 21 generally consider?
 22 A Those would represent the three major ones. To
 23 answer your question, probably no; but again,
 24 looking at it with the life-care plan in total.

1 For example, if Mr. Rhodes was the primary
 2 caretaker, certainly that was going to affect his
 3 ability to be an income earner.
 4 Q Okay. And you used the term "black-boarding." Did you
 5 consider in connection with the Rhodes case during the
 6 time you were handling it whether there was going to be
 7 any wage loss black-boarded.
 8 A Yes.
 9 Q What did you determine?
 10 A I don't believe there was a high, if any,
 11 lost-wage claim.
 12 Q Okay. What other economic costs are there in
 13 addition to medical costs and wages?
 14 A The third area would have been lifestyle
 15 accommodations.
 16 Q Can you explain what you mean by that?
 17 A Again, you take a look at what the family
 18 situation was like prior to the accident and
 19 certainly post-accident. In Mrs. Rhodes' case,
 20 and certainly a paraplegic case, clearly
 21 individuals would need modifications in their
 22 home if that is going to aid in their recovery,
 23 their recuperation. What I'm speaking about is
 24 if the person would have an opportunity to drive

1 Q Okay. If you have all of these economic damages
 2 and you have a great amount of detail with
 3 respect to these economic damages, can you make
 4 an assessment, a reasonable, thorough,
 5 appropriate assessment of the value, the
 6 settlement value of the case?
 7 A No.
 8 Q Have you ever heard of a rule of thumb that you
 9 can use to multiply specials to come up with a
 10 reasonable settlement range?
 11 A I've heard of that, yes.
 12 Q Will you tell the court what you think about
 13 that?
 14 A I don't agree with that.
 15 Q Why not?
 16 A It's artificial and incorrect. For example,
 17 there's information that states that perhaps a
 18 quantitative formula can be one or two or three
 19 times the salary, for example, and this would
 20 produce that result. But it's incorrect, and
 21 I'll illustrate that.
 22 If Bill Gates sprained his ankle, then
 23 by that analogy this would be a ridiculous
 24 amount of money that would be expended on

1 economic damages. It would not be correct. So
2 there is no formula that produces that result.

3 MS. PINKHAM: I object. I would move
4 to strike the analogy.

5 THE COURT: Well, I'm not going to
6 strike Bill Gates.

7 MR. ZELLE: Careful when you talk about
8 Bill Gates. He's watching.

9 THE COURT: I don't think that. You
10 can proceed.

11 (By Mr. Zelle:)

12 Q Let's move then, Mr. Satriano, to the
13 non-economic factors that you consider in
14 evaluating a claim. I'm not asking you in order
15 of priority, but why don't you start by
16 identifying a factor.

17 A The non-economic factors represents the most
18 difficult part of my job in evaluating a proper
19 settlement number. The non-economic factors
20 would include those factors that are not
21 quantifiable as the economic damages are. They
22 are grouped in several groups.

23 Q Well, why don't we do it this way. Why don't
24 you identify a factor and then I'll ask you why

1 you believe that's an important factor and how
2 you consider that factor.

3 A The most important factor that we'll start with
4 is the plaintiff herself or himself.

5 Q Why is that significant?

6 A That is significant because juries identify with
7 particular plaintiffs. For example, if you have
8 Mother Theresa as your plaintiff and if you have
9 a convicted felon as your plaintiff, the rule is
10 that juries will look at both of those people in
11 different manners. So that's why dealing with
12 your plaintiff is most important.

13 Q Okay. And what did you have in March for
14 purposes of assessing Mrs. Rhodes as a
15 plaintiff?

16 A I really didn't have much information. Just
17 whatever reports I had.

18 Q Well, you had a "Day in the Life" video. Does
19 that provide any information that you could
20 consider in assessing her as a plaintiff?

21 A The "Day in the Life" video, it is possible to
22 have a generalization of someone with the "Day
23 in the Life" video, but it is not dispositive of
24 a complete understanding of that person because

1 the "Day in the Life" video is essentially a
2 scripted performance.

3 Q Okay. What's the next factor or another factor
4 that you'll consider?

5 A Another factor will be the type of injury that a
6 person sustains.

7 Q And will you tell me where on scale of
8 settlement values -- strike that.

9 Are there injuries that, in your
10 experience, generate a higher settlement value
11 than paraplegic cases?

12 A Yes.

13 Q And what types of cases are those?

14 A Notwithstanding the types of injuries that Mrs.
15 Rhodes sustained here, and certainly recognizing
16 that they are serious and life altering, other
17 injuries such as burns, serious scarring and
18 disfigurement, cases where a person loses limbs,
19 those types of cases and certainly quadriplegia,
20 those types of cases, the reality is, garner
21 higher amounts and higher awards than a
22 paraplegic case.

23 Q Okay. In your experience, have you dealt with
24 brain damage or cognitive impairment claims?

1 A Yes, I have.

2 Q Do those generally generate higher awards than,
3 in your experience, than paraplegic cases?

4 MS. PINKHAM: I object as lacking
5 foundation.

6 THE COURT: He may discuss his state of
7 mind at the time of the March 4 conference.

8 A I'm sorry?

9 THE COURT: You can discuss your state
10 of mind, your knowledge as of the March 4
11 conference.

12 (By Mr. Zelle:)

13 Q The gist of it is, I don't want to know if you
14 had not any sense of that before March 4 if it's
15 something you developed later than if you don't
16 have a foundation to respond.

17 A I'm sorry. I'm not following.

18 Q I'll ask a you question.

19 Mr. Satriano, at the time of the March
20 4 conference -- I'm sorry, the March 5
21 conference, did you have a sense as to whether
22 brain damage injuries or cognitive impairment
23 injuries generally returned higher verdicts or
24 higher settlement values than paraplegic cases?

1 A Yes.

2 MS. PINKHAM: Objection.

3 THE COURT: Overruled.

4 (By Mr. Zelle:)

5 Q What is another factor that you like to consider

6 when doing your settlement evaluation?

7 A Another factor to consider, again, is this

8 family dynamic. The family relationship is a

9 very important factor. If you have a family

10 that is a strong, loving family, certainly that

11 will have an impact on the jury. If a person

12 frankly doesn't have family or is disassociated

13 from their family, that would have an effect as

14 well.

15 Q Is information that you would consider in

16 assessing that factor developed through

17 depositions?

18 A Yes.

19 Q What other ways would you develop information

20 that would enable you to assess that factor?

21 A Another factor would be the character of --

22 Q Before we get there. Other than depositions,

23 are there any other ways that you could gain

24 insight into the family dynamic?

1 Q Did you form any impression in terms of your

2 review of the information?

3 A Yes.

4 Q What was that?

5 A The facts indicated that Mr. Zalewski certainly

6 was affected by this accident. Certainly his

7 life was changed as well. He remained at the

8 scene; he participated in the post-accident

9 involvement, whether with police or other

10 individuals, in giving statements. He remained;

11 he did not flee the scene.

12 Q What other information do you consider in

13 evaluating a claim for settlement purposes?

14 A Other information that I would look to would be

15 the venue of the case.

16 Q At the time that you were involved did you have

17 any information from your -- strike that.

18 Had you any information from any source

19 regarding the character of this venue?

20 MS. PINKHAM: I'm going to object to

21 the extent that he's seeking to elicit advice

22 from counsel that --

23 MR. ZELLE: Yeah, I do want to reframe

24 that.

1 A Sure. For example, what we spoke about before,

2 the pre-accident mental or emotional condition.

3 That would have been another opportunity for me

4 to gain insight into the family dynamic.

5 Q Okay. Any other factors?

6 A Yes, the character of the defendant is a very

7 important factor.

8 Q And how does that play into your settlement

9 evaluation?

10 A The reality of the situation is that juries will

11 identify more with a defendant, for example,

12 that after the accident would remain there and

13 render assistance or participate with police

14 officers, as opposed to someone in a hit-and-run

15 accident that just flees the scene.

16 Q Okay.

17 MS. PINKHAM: I object and move to

18 strike. Lack of foundation.

19 THE COURT: Overruled.

20 (By Mr. Zelle:)

21 Q In connection with this case, did you have any

22 information from which you were able to assess

23 the character of the driver, Mr. Zalewski?

24 A Yes.

1 THE COURT: All right.

2 (By Mr. Zelle:)

3 Q Other than identification -- strike that.

4 During the course of discussions you

5 had on November 19 or in the course of the March

6 meeting, in either of those did you get any

7 information that enabled you to assess how

8 Norfolk County, Massachusetts was as a venue?

9 A No.

10 Q Did you undertake any effort to obtain that

11 information?

12 A Not at that time.

13 Q How would you typically receive that information?

14 A From counsel.

15 Q When you say counsel there, are you referring to the

16 counsel you associate in?

17 A Yes.

18 THE COURT: Did you ask counsel?

19 THE WITNESS: Mr. Conway?

20 THE COURT: Any counsel.

21 THE WITNESS: Yes.

22 THE COURT: When?

23 THE WITNESS: That would have come up at the

24 of the March conference, uh

1 THE COURT: Was it discussed at the March
2 conference?
3 THE WITNESS: No. That was not a priority at
4 the March conference.
5 THE COURT: Well, when was the first time
6 that you had a discussion with any attorney as to what
7 the jury verdict were like in Norfolk county?
8 THE WITNESS: Well Mr. Conroy and I, for
9 example --
10 MR. ZELLE: Not the substance.
11 THE COURT: I did not ask for the context; I
12 just asked for the date.
13 THE WITNESS: That would have been in March
14 of 2004, before I left.
15 THE COURT: Do you have a memory of that
16 conversations?
17 THE WITNESS: Yes.
18 THE COURT: So some time between March 5 and
19 roughly March 17?
20 THE WITNESS: Yes, your Honor.
21 (By Mr. Zelle)
22 Q After the March 5 conference, without disclosing the
23 substance, did you have a meeting or a conference with
24 counsel in connection with his further involvement in

1 assess how that would play into a settlement value?
2 THE COURT: I'm sorry. You totally lost me.
3 Let's step back. You spoke about a factor is
4 the availability of co-defense counsel. What does that
5 mean?
6 THE WITNESS: If there are co-defense counsel
7 that are representing co-defendants at litigation, you
8 want to learn as much as you can about the individuals
9 that are sitting at the same defense table. If those
10 individuals are successful, if they have trial-ability
11 and experience, what reputation they bring to this type
12 of litigation, that would be extremely important in
13 whether or not a jury is going to be listening and
14 available -- be listening to what defense counsel is
15 saying.
16 THE COURT: So when you say "availability,"
17 you mean capability?
18 THE WITNESS: Yes, I'm sorry, your Honor.
19 THE COURT: All right. Okay.
20 (By Mr. Zelle)
21 Q What about plaintiff's counsel? Do you consider the
22 capability of plaintiff's counsel in assessing the
23 settlement of a claim?
24 A Yes, that would be another factor.

1 the case?
2 A Yes.
3 Q Let's go back the factors that you liked to consider or
4 that you do consider in evaluating settlement. What
5 else do you like to have?
6 A Another important factor is the availability of co-
7 defense counsel or to factor in co-defense counsel and
8 certainly co-defendants.
9 Q Did you have that information in this case?
10 A No.
11 Q What information did you have with respect to -- well,
12 you did know who the co-defendants were, correct?
13 A I knew the name whom they were, yes.
14 Q Of the parties -- I'm speaking about the defendants,
15 co-defendants DLS and Penske.
16 A Yes.
17 Q How did that factor into your assessment?
18 A When you have people that juries are evaluating and
19 when you have corporations that are being evaluated by
20 juries, the reality of the situation is that juries
21 identify more with people than they do corporations.
22 Q I've got it.
23 With respect to defense counsel during the
24 time you were involved, did you any opportunity to

1 Q Did you have information to you regarding Mr. Pritzker
2 prior to the March meeting?
3 A Yes.
4 Q What was the information that you had?
5 A The information --
6 THE COURT: I'm sorry. Are you waiving any
7 privilege?
8 MR. ZELLE: I'm not.
9 (By Mr. Zelle)
10 Q In the course of the November 19 conference, was there
11 any comments regarding qualifications of Mr. Pritzker?
12 A Yes.
13 Q And what did you hear?
14 A What I heard was reinforced by what Ms. Pinkham brought
15 up to me, and that was that Mr. Pritzker was a well-
16 respected plaintiff's attorney, that he had been
17 successful before in other litigation, tobacco
18 litigation, multi-million -- excuse me -- billion-
19 dollar litigation, and that Mr. Pritzker certainly was
20 a very worthy adversary.
21 THE COURT: Do you want to end on that note?
22 You've got a minute more if that's not the note you
23 want to end on.
24 MR. ZELLE: Your Honor, it makes no

1 difference. I'm as anxious to move this along. I'll
 2 take as much time as the court would allow.
 3 THE COURT: Well, you've got a minute.
 4 MR. ZELLE: Well, I can see his head
 5 swelling. I'm going to do this for Mr. Pritzker's
 6 benefit so he doesn't get a headache here.
 7 (By Mr. Zelle)
 8 Q Can you give us another factor, Mr. Satriano, that
 9 might not swell Mr. Pritzker's head.
 10 A Sure. Another factor would be pain, what we commonly
 11 call pain and suffering, and also how that relates to
 12 the injury as well.
 13 Q How do you go about --
 14 THE COURT: Well, that's going to be a longer
 15 discussion.
 16 MR. ZELLE: Yes, it will.
 17 THE COURT: We will end on that note,
 18 probably a more appropriate note than the earlier one,
 19 with all due respect to Mr. Pritzker. So we reconvene,
 20 all things considered, at 9 o'clock tomorrow morning.
 21 MR. PRITZKER: Your Honor, I think tomorrow
 22 was a 9:30 day.
 23 THE COURT: That was last Thursday. Is it
 24 this Thursday?

1 MR. ZELLE: Yes, it's a Thursday morning
 2 commitment.
 3 THE COURT: Okay. We'll say 9:30.
 4 (Hearing adjourned at 12:54 p.m.)
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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 137, is a
 complete, true and accurate transcription of the
 above-referenced case.

 Paula Pietrella

 Faye LeRoux

PROCEEDINGS

(In court at 9:35 a.m.)

THE COURT: All right, let's get to work.

Mr. Satriano, you may return to the stand. Good morning. You remain under oath, as you know.

Mr. Zelle, you may proceed. I guess it's day three, isn't it?

THE WITNESS: Yes, your Honor.

THE COURT: All right. I'm keeping track.

All right, go ahead.

NICHOLAS SATRIANO, Resumed.

CROSS-EXAMINATION BY MR. ZELLE, (Continued):

Q Mr. Satriano, when we finished yesterday, we were talking about factors that you consider in investigating a claim and attempting to -- an effort to undertake to evaluate claims. Are there some other factors you'd like to mention?

A Yes.

Q Please go right ahead.

A One other factor would be the injured party's pre- and post-accident mental, physical and emotional condition.

Q Can you explain how that's assessed by you?

A That would be assessed at the time of the deposition.

We would look at factors -- I would look at factors as

to that person's ability with respect to the injury, how they're coping with the injury, if there are any residual sequela with respect to any emotional damage, any relationship issues, also their physical condition and the like.

Q And in the materials that you were provided by Mr. Deschenes in connection with the Rhodes case, did you have all the documentation that you needed to undertake an assessment of the pre-accident and post-accident physical and mental and emotional factors?

A No.

Q What was it that you did to obtain -- in an effort to obtain that information?

A We wanted the scheduling of an independent medical examination performed by a physiatrist.

Q Do you look at the pre- and post-accident level of social interaction of a plaintiff and loss of consortium plaintiffs?

A Yes. That would be another factor.

Q Why is that considered?

A Again, you are attempting to get a picture of the injured person, as well as their family members, to put a value on what is going on in their life today. For example, you're looking at the degree. If you have a

rather gregarious couple, if they were out, if they were socially active within their community, certainly now there could be -- obviously, that would change, or it may not change, and for that reason you'd look at those issues, to see how their lives have been affected.

Q Apart from taking depositions, is there any other way that you would go about seeking that type of information?

A The deposition would be really a very good way because you could explore that area with your counsel.

Q Any other factors you'd like to mention?

A Yes. Another area would be the family's ability and/or responsibility towards resolve, their resolve to recovery, what I call.

Q What did you have to assess in the Rhodes file, in the materials that you received from Mr. Deschenes, as to the efforts by the family to recover?

A There was not much information. There was some medical information but really nothing with respect to that area.

Q And other than the IME and depositions, is there anything else that you would typically do to develop that type of information?

A Again, the deposition, and the IME especially, would really tell us, because that would be the specialty of the physiatrist to comment on the ability or the opportunity for recovery or as close to rehabilitation and return as possible.

Q What was your understanding at the time of your review of the materials provided March of 2004 as to what recovery, if any, had been made by Mrs. Rhodes in terms of her physical recovery?

A I could not make that determination because Mrs. Rhodes had -- I simply didn't have enough information. Mrs. Rhodes also had suffered some setbacks.

Q How do you translate your assessment of these factors into a number?

A Essentially, what I do is I gather both my personal experience, I would meet with counsel and discuss and take into consideration counsel's input as well. We would also factor into, or I would factor into the relationship to jury verdict reports and information and research like that, and also discuss this with my supervisor.

Q In connection with the Rhodes case, did you ever get any jury verdict research or settlement value research?

A No.

1 Q Why didn't you do that?

2 A It was too soon.

3 Q When you say "too soon," could you explain that a

4 little more?

5 A Sure. We were still waiting for information. We were

6 still developing information.

7 Q Directing your attention --

8 THE COURT: I'm sorry. It was too soon as of

9 when?

10 MR. ZELLE: As of the March --

11 THE WITNESS: March, your Honor.

12 THE COURT: As of the March meeting you're

13 referring to?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 (By Mr. Zelle)

17 Q As of the time of the March meeting, had GAF agreed to

18 permit Mr. Conroy to become directly involved?

19 A No.

20 Q Was GAF's opposition to Mr. Conroy's direct

21 participation reflected in communications you received

22 from Mr. Bartell?

23 A Yes.

24 Q What did you think about the assertion by Mr. Bartell

1 THE COURT: When?

2 THE WITNESS: I believe I did that in

3 February in answer to his letters.

4 MR. ZELLE: That letter was not copied to Mr.

5 Hohn, therefore, it has not been identified as a -- or

6 it's not been produced because it's within -- there

7 were -- to the extent Mr. Bartell was certainly

8 adversarial to AIG on some issues, he was also counsel

9 for GAF, the insured, and this court has determined --

10 THE COURT: So you're saying that his telling

11 Bartell that there indeed is no issue of coverage is

12 something that you consider to be privileged?

13 MR. ZELLE: No, but there's other

14 communications in that letter.

15 THE COURT: Okay.

16 MR. ZELLE: But we have it through testimony,

17 your Honor. We didn't produce the letter and I'm not

18 offering the letter.

19 THE COURT: Okay.

20 (By Mr. Zelle)

21 Q During the meeting in March, was there discussion

22 concerning Mr. Conroy's direct involvement thereafter?

23 A Yes.

24 Q And what was your understanding as to GAF's position as

1 that a determination as to whether -- I shouldn't say

2 determination.

3 What did you think about the position

4 reflected in Mr. Bartell's letters that GAF could not

5 even consider the question of Mr. Conroy's involvement

6 before National Union confirmed that it would provide

7 indemnification benefits for GAF?

8 A I did not know what Mr. Bartell was speaking about. I

9 believe the word I used yesterday was "puzzled." Mr.

10 Bartell raised issues as to whether or not I was going

11 to provide a written exclamation that coverage is going

12 to be provided. Coverage was never an issue. I never

13 raised that issue with Mr. Bartell or anyone else.

14 Q When you say "coverage is not an issue," you're

15 speaking to the limited coverage for GAF as opposed to

16 other coverage that might be available for other

17 parties, other defendants; is that right?

18 A Yes. My answer would be relegated to coverage just for

19 GAF under the excess policy.

20 THE COURT: So why didn't you write Bartell

21 and say coverage has never been an issue, I don't know

22 what you're talking about?

23 THE WITNESS: At some point I did, your

24 Honor.

1 of March 5?

2 A They were still resisting Mr. Conroy's involvement.

3 Q Why did you want Mr. Conroy -- strike that.

4 In the November telephone conference, did you

5 explain to those on the telephone call why you wanted

6 Mr. Conroy to become directly involved?

7 A Yes.

8 Q What did you say?

9 A I indicated that I wanted Mr. Conroy to set up an

10 immediate channel of communication to Mr. Pritzker.

11 Q Why did you think that would be of benefit to moving

12 the case forward?

13 A I thought that was a great idea in moving -- just that,

14 moving the case forward, and Mr. Conroy would have

15 indicated to Mr. Pritzker that we were on the job and

16 moving forward and hopefully a response would have been

17 shortly coming.

18 Q During the time period that you were involved with the

19 Rhodes claim, or was it your general practice to

20 request a formal, written tender?

21 A Yes.

22 Q And was there any written policy at AIG that applied to

23 the Excess Claim Unit that there be formal, written

24 tenders?

1 A No.

2 Q Did your supervisor require you to obtain a formal,
3 written tender?

4 A Yes.

5 Q Did you have an understanding of the reasons that you
6 wanted formal, written tenders?

7 A Yes.

8 Q What were the reasons?

9 A The reason was so that in receiving information
10 regarding the tender, you are in a position to
11 understand what is being tendered and what relationship
12 it has to the duty to defend.

13 Q When did Ms. Fuell first inform you that the Zurich
14 policy limits would be available to use to make an
15 offer to the plaintiffs?

16 A January 23, 2004.

17 Q Was that by telephone?

18 A Yes.

19 Q And what did you do? What did you say?

20 A I said I understood what she was saying to me, but I
21 also told her that I needed this in writing.

22 Q Was there any further communications before there was
23 an exchange of e-mails in mid-February?

24 A Yes. Ms. Fuell and I discussed the duty to defend.

1 Did I read that correctly?

2 A Yes.

3 Q Does that statement reflect the concern that you had
4 throughout the time from January 23 until the time you
5 left for Iraq?

6 A Yes, sir.

7 Q Is that consistent with Ms. Fuell's statements to you
8 concerning the defense obligation?

9 A No.

10 Q Did the concern that you had with respect to the
11 ongoing defense obligation delay the review of
12 materials that you had received from Mr. Deschenes?

13 A No, it did not.

14 Q Did it delay the review of materials received from --
15 that AIG received from Crawford?

16 A No, it did not.

17 Q Did the opposition by GAF to your efforts to associate
18 in Mr. Conroy delay your efforts to investigate the
19 claim?

20 A Yes.

21 Q And how did that delay your efforts?

22 A Quite simply, it delayed Mr. Conroy from obtaining the
23 information that I needed to offer a number on this
24 case for settlement.

1 Ms. Fuell had indicated to me that GAF -- excuse me --
2 Zurich was not relinquishing the duty to defend.

3 Q And was that reflected in the e-mail communication in
4 mid-February?

5 A Yes.

6 Q Did you have any concern regarding Zurich's position
7 relative to the continuing defense obligation?

8 A Yes.

9 Q Despite what representation had been made by Ms. Fuell?

10 A Yes.

11 Q What was the basis of your concern?

12 A The text of the Bartell letters.

13 Q I'm going to show you a document. It's a letter dated
14 March 29, 2004. It's Exhibit 33.

15 If you look at Exhibit 33 -- do you have
16 that, Mr. Satriano?

17 A I do.

18 Q I'd like you to look at the second page of the letter.
19 It's Bates numbered ZA0951.

20 A Yes.

21 Q It's after the indented paragraph. It says: Based
22 upon the express language of this policy endorsement,
23 this formal tender of coverage limits ends Zurich's
24 duty to defend.

1 Q I'd like to direct your attention now, Mr. Satriano, to
2 testimony that was presented on direct exam. It was
3 actually what was shown on a video clip, or at least
4 some of that.

5 I'll try to make this as straightforward
6 as I can, but as I'm referring to the deposition shown
7 here and your deposition testimony back in I believe it
8 was August, it's important that you listen carefully to
9 the questions, specifically the time periods.

10 Do you have any recollection today as to
11 whether in March of '04, at the meeting, you expressed
12 any opinion as to what the value of the case would be
13 if it went to trial?

14 A Yes.

15 Q What's your recollection today?

16 A That I did not.

17 Q I'm going to direct your attention -- do you have a
18 copy of your transcript there?

19 A I don't know. Is it part of the exhibits?

20 Q I don't know if you have it or not. I think it was
21 marked as an exhibit. The transcript that went along
22 with the video clip, is that marked as --do we know
23 what exhibit that is?

24 MR. BROWN: 83.

1 THE COURT: The video is 83A.
 2 MR. ZELLE: Okay. If you don't mind my
 3 working off the same copy as the witness, your Honor.
 4 THE COURT: You may.
 5 (By Mr. Zelle)
 6 Q You were asked at your deposition, and again it was
 7 part of the video clip -- this is on page 177, at the
 8 bottom, line 20. The question is: Did you express
 9 your opinion if the case, what the value would be if
 10 the case went to a verdict?
 11 And your answer was -- why don't you just
 12 read the first two sentences, if you would?
 13 A My answer is: I may have. We were -- I mean, we were
 14 starting to talk numbers here. I don't recall. I
 15 didn't ever agree with where they were.
 16 Q I think you misread that. It says: I didn't ever
 17 disagree.
 18 A Disagree -- excuse me, I'm sorry -- with where they
 19 were.
 20 Q Mr. Satriano, when you were referring to numbers, can
 21 you tell us what you were referring to?
 22 A Yes.
 23 Q What numbers were those?
 24 A The numbers were the \$19.5 million settlement demand

1 numbers that Mr. Deschenes said were averages of his
 2 jury verdict and settlement research?
 3 A I didn't have an -- I didn't have sufficient
 4 information for which to -- I may have, yes.
 5 Q Do you have any recollection as to what it was you said
 6 about those numbers?
 7 A In my deposition, I may have indicated that I did not,
 8 I believe, disagree with those numbers.
 9 Q My question is this. At the March 4 meeting, did you
 10 say I don't disagree with those numbers?
 11 A No.
 12 Q Let me again direct your attention to the testimony
 13 that was presented to this court by the videotape. If
 14 you'd look at page 178, it's a continuation of that
 15 answer. Can you just read beginning at line 3 the
 16 remainder of what was offered as evidence.
 17 A (Reading): It was a question of we had to agree on the
 18 way to get there basically and that is what was most
 19 important. It was pretty obvious that these ranges are
 20 not, you know, are not unreasonable ranges given the
 21 facts and circumstances, but it was just a question of
 22 how best to proceed.
 23 Q What did you mean when you're saying it was a question
 24 of a way to get there of how to proceed?

1 offered by Mr. Pritzker. The other number was the \$5
 2 million request to go to mediation, and the other
 3 numbers were Mr. Deschenes's average of the settlement
 4 value, I believe at 6 million plus, and the verdict
 5 value, verdict average, at 9-plus something million.
 6 Q Did you during the course of this meeting say anything
 7 about the number 19.5 million, the settlement demand?
 8 A I did.
 9 Q What did you say?
 10 A I said that it was too high.
 11 Q Were there other people who made comments about that
 12 number?
 13 A Yes.
 14 Q What were their comments?
 15 A Everyone essentially joined that this was too high of a
 16 number.
 17 Q Did you make any statement during the meeting about the
 18 \$5 million number that was said to be a admission price
 19 for mediation?
 20 A Yes.
 21 Q What did you say about number?
 22 A Again, I disagreed with that number. I simply said I
 23 wasn't going to pay it.
 24 Q At the March 4 meeting, did you say anything about the

1 A The numbers that we were speaking about were just that,
 2 they were just numbers. The important part here was
 3 going forward and how to proceed to Mr. Pritzker's --
 4 how to proceed in response to Mr. Pritzker's settlement
 5 demand package. That was the crux of what we were
 6 doing.
 7 Q During the mediation, did you say on March 5 that the
 8 numbers that Mr. Deschenes identified were not
 9 unreasonable?
 10 A No.
 11 MS. PINKHAM: Objection. Did you ask him
 12 about mediation?
 13 MR. ZELLE: I'm sorry.
 14 Q I meant to say during that meeting on March 5, did you
 15 express an opinion, any opinion, about the numbers that
 16 Mr. Deschenes identified?
 17 A No.
 18 Q Did you say that those ranges, did you say on March 5
 19 that those numbers were not unreasonable?
 20 A No.
 21 Q During the presentation of your deposition by way of
 22 videotape, I'm going to direct your attention -- this
 23 is on page 186.
 24 The question is: Who says what -- this

1 begins on line 9: Who says what about the fact that no
 2 one had responded to the August 13, 2003 settlement
 3 demand.
 4 Do you see that?
 5 A Yes.
 6 Q And you have a lengthy answer. I'm going to cut down
 7 to the end of that answer. It begins on page 187, line.
 8 Would you just read from there to the end.
 9 A (Reading): The demand was so high, so it was sometimes
 10 -- well, it's ridiculous. It's way too high. You
 11 know, maybe the evaluation was 8 to 10 or 8 to 12, but
 12 certainly not 16. So I don't care if we don't answer
 13 it at 16. I don't care if it goes to 50.
 14 Q Would you read the next question?
 15 A (Reading): Question: What was your feeling in this
 16 case for this claim?
 17 Q And would you read the answer? Is there an answer
 18 there? Just read the answer.
 19 A There is no answer.
 20 Q The question was: What was your feeling about the 8 to
 21 \$10 million range?
 22 A The question was: What was your feeling in this case
 23 for this claim?
 24 Q Let me show you your whole transcript.

1 A I informed Rich about the status of the case, what we
 2 were doing and our strategy going forward regarding
 3 depositions, IMEs, and so on and so forth.
 4 Q Did you say anything to him about settlement value or
 5 range of settlement?
 6 A No, I did not.
 7 Q Prior to the March 5, 2004 meeting, did you think that
 8 mediation would have been productive?
 9 A No.
 10 Q Why not?
 11 A We simply did not have sufficient information. We
 12 needed more information.
 13 MR. ZELLE: I don't have anything further,
 14 your Honor.
 15 THE COURT: Mr. Goldman.
 16 MR. GOLDMAN: Thank you, your Honor.
 17 CROSS-EXAMINATION BY MR. GOLDMAN:
 18 Q Good morning.
 19 A Good morning.
 20 Q I just want to go over your discussions with Kathleen
 21 Fuell and your recollection of those discussions. Did
 22 you review your deposition transcript in preparation
 23 for your testimony today?
 24 A Yes.

1 MR. ZELLE: I just need to ask, has what's
 2 been marked as 83A a complete copy of what was shown on
 3 the video?
 4 MS. PINKHAM: Yes.
 5 MR. ZELLE: So the question was asked and not
 6 answered on the video?
 7 MS. PINKHAM: If that's what it says, yes.
 8 (By Mr. Zelle)
 9 Q The question is, this is on page 187 and begins on line
 10 16: Was that your feeling in this case for that claim?
 11 What was your answer?
 12 A The answer was: No.
 13 MR. ZELLE: Bear with me for one second, I'm
 14 almost through, your Honor.
 15 (By Mr. Zelle)
 16 Q Before you left for Iraq in mid-March, did you bring
 17 your supervisor up to speed on the case?
 18 My question, Mr. Satriano, did you bring your
 19 supervisor up to speed on your active cases before you
 20 left for Iraq?
 21 A Yes, I did.
 22 Q And who was your supervisor?
 23 A Richard Mastronardo.
 24 Q And what did you tell him about this case?

1 Q And do you recall testifying in your deposition that
 2 you did not remember whether Kathleen Fuell was on
 3 either of the two telephone conferences you had with
 4 Greg Deschense, the broker, and Mr. Manning?
 5 A If that's what I said, I don't recall it.
 6 Q You don't recall it. Let me show you -- if I might
 7 hand you a complete copy of the transcript here. I
 8 draw your attention to page 83.
 9 A 83?
 10 Q Yes. Tell me when you've found it there.
 11 A Yes.
 12 Q And starting on line 17, if I might just read with you.
 13 The question is: Okay. And now did you say you think
 14 you spoke with Mr. Manning or Mr. Hahn in the summer of
 15 2003?
 16 The answer is: I believe we had at least two
 17 telephone conversations, two teleconferences, and the
 18 people present at those telephone conferences were Mr.
 19 Manning, Mr. Hahn, and Mr. Deschenes, myself, and I'm
 20 not sure who else might have been on that.
 21 Does that refresh your recollection as to
 22 what you testified to in your deposition?
 23 A Yes.
 24 Q So at the time of your deposition, would it be fair to

1 say you did not remember if Ms. Fuell was on either of
 2 those telephone conferences?
 3 A I guess so. I said I'm not sure who else may have been
 4 on them.
 5 Q In fact, you also testified in your deposition at
 6 different times, did you not, that you had no
 7 independent -- you're sure you did talk to Ms. Fuell at
 8 some time during this claim but that you had no
 9 independent recollection of those discussions.
 10 Do you recall testifying to that?
 11 A Again, if that's what I said in my deposition.
 12 Q If I can draw your attention to page 207 of the
 13 transcript.
 14 A I'm there.
 15 Q Actually, just turn back on page, page 206, starting at
 16 line 17. The question was: Mr. Satriano, you
 17 testified earlier today you spoke to a woman by the
 18 name of Kathleen Fuell from Zurich American; is that
 19 correct?
 20 Answer: Yes.
 21 Question: You testified she had participated
 22 in a telephone conference with other representatives of
 23 the defendant; is that correct?
 24 Answer: No. She may have. I don't know

1 a telephone conversation with Kathleen Fuell? And my
 2 answer on line 16 is: Yes.
 3 Q Correct.
 4 A Okay.
 5 Q And then on page 208, you're asked: Other than
 6 documents you reviewed today, you have no independent
 7 knowledge of the contents of that telephone
 8 conversation correct?
 9 A Yes. My answer was: That would be correct, to that
 10 question.
 11 Q Now, you never reviewed the Zurich insurance policy,
 12 did you?
 13 A I do not believe I did.
 14 Q In fact, you never asked for it either, did you?
 15 A No. My recollection is that I did ask for it.
 16 Q I would ask you to turn to page 143 of the transcript
 17 of your deposition.
 18 A I'm there.
 19 Q Before we go there, did you ever ask at any time during
 20 your investigation of this claim for copies of
 21 insurance policies that might insure either GAF or any
 22 of the other defendants?
 23 A Again, I may have with Mrs. Fuell.
 24 Q You think you asked Ms. Fuell for that?

1 specifically if she did or didn't. The first or second
 2 one, I have no recollection of that.
 3 Does that refresh your recollection as to
 4 what you testified to in your deposition?
 5 A Yes.
 6 Q And if I could ask you to turn to page 208, line 16,
 7 they're discussing the telephone conference you had
 8 with Ms. Fuell regarding the tender. The question
 9 there is: Okay. But other than the documents reviewed
 10 today, you have no independent knowledge of that
 11 contents of that telephone call; is that correct?
 12 And your answer was: That would be correct.
 13 A I'm confused as to what you want. You're saying the
 14 question two down that I probably had a conversation
 15 where I said I did and answered yes?
 16 Q Right.
 17 A On page 207?
 18 Q Page 208.
 19 A But the one I'm talking about was 207 that I did, if
 20 you look at the question.
 21 Q It says you did have a conversation, correct?
 22 A No, no. Line 12, you're confusing it. Line 12, it
 23 says: So it's your testimony, based on documents that
 24 you have seen today, that you believe you probably had

1 A That I don't recall. That would be typically the type
 2 of information that I would ask the primary insurer.
 3 Q Do you recall testifying in your deposition that you
 4 didn't because essentially you were inexperienced on
 5 the job at the time you were handling this claim?
 6 A Well, you need to direct me to that one.
 7 Q Let's look at page 143, line 6. Do you recall being
 8 asked and giving this answer:
 9 At any point after the two teleconferences
 10 did you ask anybody on the defense team if they had
 11 made an investigation into whether there were other
 12 primary policies that may provide coverage for the
 13 Rhodes claim?
 14 Answer: As I do my job now, after having
 15 done many more months and years of experience as a
 16 complex director, if I'm going to talk to you and you
 17 were my defense counsel or a representative of the
 18 insured and my file is thin, I would say to you I need
 19 you to provide me correspondence, any sort of material
 20 that would have generated copies of policies, any
 21 coverage letters or denials or reservations, or any
 22 correspondence between you and perhaps coverage counsel
 23 hired by you, so I probably have requested stuff like
 24 what are you asking and I would definitely --

1 A You're not reading right. It's "so I would probably."
 2 You skipped "would".
 3 Q (Reading): So I would probably have requested stuff
 4 like what are you asking and I would definitely, I
 5 would have that as part of my routine now. Back when I
 6 started, having, you know, again, learning the job as
 7 well, coming out from the standpoint not a practicing
 8 attorney but sort of an insurance person, I have
 9 absolutely no recollection as to whether or not I asked
 10 that.
 11 Did I read that correctly?
 12 A Yes.
 13 MR. ZELLE: Would you finish reading.
 14 MR. GOLDMAN: You wish me to finish reading?
 15 Q (Reading): I may have asked though, you know, perhaps
 16 being too hard on myself. But I know as I sit here
 17 today, I know if I'm requesting stuff, I would say give
 18 me litigation stuff, give me insurance stuff, give me
 19 letters regarding coverage or coverage analysis, things
 20 like that.
 21 Have I read that correctly?
 22 A Yes.
 23 Q So you do not know whether back in 2003 and 2004 you
 24 asked for other insurance policies or not, do you?

1 A Please repeat your question?
 2 Q You testified yesterday I think that you never, during
 3 the time you worked on the claim, you never were able
 4 to make a determination, other than the Zurich policy,
 5 there was any other insurance for any of the defendants
 6 in this claim; is that correct?
 7 A I'm not understanding your question.
 8 Q Well, let me break it down. Did you ever learn, other
 9 than your policy and the Zurich policy, whether there
 10 was any additional insurance for GAF?
 11 A I don't believe there were other GAF policies out there
 12 or policies that named GAF specifically as an insured
 13 other than the business auto policy, the primary auto
 14 policy.
 15 Q And did you ever learn during the time you handled the
 16 claim whether Penske had additional coverage for this
 17 accident other than the Zurich policy?
 18 A I don't recollect. There probably was a primary policy
 19 for Penske.
 20 Q Okay. So you found about that.
 21 A No, I did not, because I stated that I did not have
 22 that information provided to me.
 23 Q Did anyone tell you there was another policy for
 24 Penske?

1 A My recollection is that I did.
 2 Q When you testified in your deposition, you had no
 3 recollection one way or the other, correct?
 4 A I know what I said, counsel, in my deposition and I
 5 admitted that's what I said. Now I'm answering your
 6 question.
 7 Q And when you testified in your deposition, you were
 8 under oath?
 9 A Yes.
 10 Q Same oath you're under here today?
 11 A Yes.
 12 Q And you were trying your best to tell the truth, right?
 13 A Counsel, I was telling the truth.
 14 Q Now, if I could ask you to look at Exhibit 66L
 15 I'm there.
 16 Q That's a report that you received during the time you
 17 worked on this claim; is that correct?
 18 A Say again?
 19 Q That's a report you that received sometime during the
 20 time you were working on this claim; is that correct?
 21 A Yes.
 22 Q And you testified earlier that you never determined
 23 whether there was any additional insurance for any of
 24 the defense; isn't that correct?

1 A That there was not a policy for Penske?
 2 Q No, that there was another policy for Penske other than
 3 the Zurich and AIG policies.
 4 A I don't recall. Perhaps Mr. Hohn, in some discussions
 5 that we had. I don't specifically recall.
 6 Q Now, with regard to DLS, you had no information whether
 7 DLS had any other available insurance other than the
 8 Zurich policy and your policy?
 9 A Again, same answer that I just gave you.
 10 Q Okay. Well, I'd like you to look at Exhibit 66L, which
 11 is a report of Mr. Chaney of Crawford, dated November
 12 13, 2003. And in the section under "summary," right on
 13 the first page there, that indicates, does it not, that
 14 -- I'm sorry. I was directing you to the first page.
 15 It's the second page of the report. I'm sorry.
 16 That indicates, does it not, that DLS has no
 17 coverage due to agency error; is that correct?
 18 A Where are you referring to, please
 19 Q In the paragraph right around the middle of the page,
 20 starting with "This report is presented as a
 21 reflection."
 22 A Yes, I'm there.
 23 Q Okay. So if we go down further in that paragraph, it
 24 says: DLS has no, we repeat, no coverage for this

1 accident due to an agency error. Is that correct?
 2 A What it says here, it says: Of note, we notice nowhere
 3 is it mentioned that it appears that DLS has no, we
 4 repeat, no coverage for this accident due to an agency
 5 error.

6 Then it goes on to state: This may be
 7 actionable by them under the agent's E&O coverage, if
 8 such exists. This information comes via phone
 9 conversation last December between Tim Corrigan and
 10 DLS's personal counsel.

11 Q Right. And you don't know whether Mr. Corrigan or
 12 DLS's personal counsel communicated that to Mr. Chaney,
 13 do you?

14 A I know nothing other than what's printed on this paper
 15 here.

16 Q But what's printed on the page is an indication from
 17 Crawford that DLS has no available insurance other than
 18 the policies that we're here about today; is that
 19 correct?

20 A Again, it's another conclusion by Crawford contained
 21 within their report.

22 Q And would it be fair to say, sir, that if no policy
 23 existed, no one could provide you with such a policy?

24 MR. ZELLE: I'll stipulate to that one.

1 materials you thought were necessary for you to
 2 complete your investigation in the case?

3 Answer: Probably. I mean, it was always
 4 evolving. There was always more. I think -- the other
 5 part of that discussion was whether or not to proceed
 6 without -- I don't believe we had taken Mrs. Rhodes'
 7 deposition at that point, and there was a conversation
 8 as to whether or not one should proceed to mediation
 9 with or without the deposition.

10 So, you know, I mean, there had to be some
 11 more stuff or current medicals and things like that,
 12 that is, the specials were climbing, you know, by the
 13 week, obviously we wanted to review any current
 14 information generated from plaintiffs.

15 Was that your testimony in deposition?
 16 A Yes.

17 Q And then by the time of the March 2004 meeting, you
 18 felt sufficiently comfortable with the facts of the
 19 case so that you were able to make a reasonable
 20 determination as to what the best strategy was to
 21 follow; is that correct?

22 A Is that a question or is that in the deposition?

23 Q That's a question.

24 A Repeat the question, please.

1 (By Mr. Goldman)

2 Q Now, let's go to your level of comfort or discomfort
 3 with what you were provided with after Zurich reached
 4 up to AIG in November of 2003.

5 During the teleconference, you asked for the
 6 documentation that the others on the call had; is that
 7 right?

8 A Yes.

9 Q And they sent that to you; isn't that correct?

10 A I received information, I testified, from Mr.
 11 Deschenes, and I may have received some information
 12 from Mr. Penick. So your answer, your question would
 13 not be correct that "they sent me," no. That's the
 14 information that I received.

15 Q Do you recall testifying in your deposition that as of
 16 February you had probably reviewed all the material you
 17 thought was necessary to complete your investigation?

18 A Again, if it's in my deposition, please point it out
 19 and I'll refer to it.

20 Q Okay. Let's look at page 148 of your deposition.

21 A I'm there.

22 Q Line 4, do you recall being asked these questions and
 23 giving this answer:

24 As of February 2004, had you reviewed all the

1 Q Yes. By March of 2004, did you feel sufficiently
 2 comfortable with the facts of the case so that you felt
 3 that you had all the information you needed to make a
 4 reasonable determination as to what the best strategy
 5 was to follow?

6 A Well, your question presupposes two things. I mean,
 7 one, if there was a need for more information; and,
 8 two, if what was identified as the best strategy going
 9 forward.

10 Number one, there was not enough information,
 11 there was not sufficient information and information
 12 remained.

13 Number two is, yes, the goal that was a
 14 product of that meeting was that we were going to plot
 15 a strategy forward to respond to Mr. Pritzker.

16 Q Well, what you decided at the March meeting was there
 17 was some discussion as to whether to take Mrs. Rhodes'
 18 deposition, right?

19 A Yes.

20 Q And Mr. Conroy was at the meeting, right?

21 A Yes, he was.

22 Q And Mr. Deschenes was at the meeting, right?

23 A Yes.

24 Q And the jury was out as to whether Mr. Conroy thought

1 you should take Mrs. Rhodes' deposition; isn't that
 2 right?
 3 A No.
 4 Q No?
 5 MR. MASELEK: Objection.
 6 THE COURT: It's overruled.
 7 A Mr. Conroy -- well, we were discussing the need for the
 8 deposition and our requirements with respect to
 9 depositions.
 10 (By Mr. Goldman)
 11 Q And was the jury out as to whether Mr. Conroy thought
 12 you ought to take Mrs. Rhodes' deposition?
 13 A Mr. Conroy was --
 14 THE COURT: I'm not sure if the term "the
 15 jury was out" is going to be the most helpful. So why
 16 don't you --
 17 (By Mr. Goldman)
 18 Q Had Mr. Conroy expressed a strong opinion as to whether
 19 Mrs. Rhodes' deposition ought to be taken?
 20 A Yes.
 21 Q Okay. Had he expressed a strong opinion as to whether
 22 Mrs. Rhodes' deposition ought to be taken before any
 23 mediation?
 24 A Yes.

1 Q Do you recall testifying to this?
 2 Who indicated putting up a \$5 million offer
 3 on the table to jumpstart mediation?
 4 Answer: As I recall this meeting, it
 5 probably, you know, it probably was suggested by
 6 everybody but me because it was more my \$3 million. So
 7 I thought that, there again, recognizing in that \$2
 8 million is a lot money, it wasn't something, I mean
 9 much less 5 million, that we were going to say Mr.
 10 Pritzker, notwithstanding his reputation -- I certainly
 11 didn't think we needed to give him \$5 million to come
 12 to a table and mediate a case which he had an interest
 13 in mediating, at least I felt that way, so I was
 14 against it.
 15 So I would have said that we were -- probably
 16 everybody in that room, except for Bill and myself
 17 probably, I wouldn't say advocated because that's a
 18 pretty strong word, but I probably suggested that that
 19 be the position that we take.
 20 Oh, the other difference of opinion was with
 21 respect to whether we proceed without taking her
 22 deposition.
 23 Question: Well, tell me about that.
 24 That was really up in the air. I mean, that

1 Q Do you recall testifying in your deposition that the
 2 jury was out with respect to whether Mr. Conroy thought
 3 it was a good idea to take the deposition before the
 4 mediation?
 5 A Counsel, again, if it's in my deposition testimony,
 6 then that's what I said.
 7 Q Well, let's see now. You had your deposition, and that
 8 was more closer in time to the March 2004 meeting than
 9 today, right?
 10 A Yes.
 11 Q And if I could ask you to turn to page 180 of your
 12 transcript.
 13 A What page?
 14 Q 180, 1-8-0.
 15 A Okay.
 16 Q Now, I'm not going to read all of this out loud. I'd
 17 just ask you to read from pages 180, line 7 through the
 18 end of 181 and then I'll just read aloud the relevant
 19 parts, but I don't want to be misleading if I ask you
 20 about parts of it without you understanding the
 21 contents of it.
 22 A I need a moment.
 23 Okay. What lines would you like me to refer
 24 to?

1 exclusively. I reserved that decision. I was going to
 2 get a lot of input from Bill on that and quote,
 3 unquote, the jury was out with respect to whether Bill
 4 thought that was a good idea.
 5 Have I read that correctly?
 6 A Yes. Why do you stop?
 7 THE COURT: I think he can stop when he wants
 8 to.
 9 MR. GOLDMAN: I'll read the rest for the
 10 court, your Honor. Actually, it might be helpful.
 11 (By Mr. Goldman)
 12 Q (Reading): The lawyers, you know, the lawyers in the
 13 trenches would make the decision. I would not take
 14 that away from them. Whatever my counsel would have
 15 suggested to me is probably what I would have
 16 recommended anyhow. But they were discussing the pros
 17 and cons of doing it with or without Mrs. Rhodes. So
 18 those were the two differences of opinion that we
 19 talked about.
 20 Have I read that complete answer now?
 21 A Yes.
 22 Q Just going back to something. You said that you
 23 believed -- that you asked Ms. Fuell for a copy of the
 24 Zurich policy?

1 A Yes.

2 Q Let me just ask you to look at page 129 of your
3 deposition

4 At line 8. Do you recall being asked this
5 question and giving this answer?

6 Did you ask Ms. Fuell for a copy of any of
7 the documents that contained her analysis of the Rhodes
8 claim?

9 Answer: I'm sorry, I don't recall. I don't
10 think so.

11 Question: Why would you have asked for the
12 primary policy?

13 Sometimes just to have it in my file.

14 Question: Do you have a recollection of
15 making a request in the Rhodes claim?

16 Answer: No.

17 Is that your testimony?

18 A I don't have a recollection.

19 Q Now, sir, when you first started working on the Rhodes
20 claim, that was in June of 2003?

21 A Yes.

22 Q And that was when you first started working at AIG,
23 right?

24 A Yes.

1 were very upset with Mr. Deschenes during the November
2 2003 teleconference; is that correct?

3 A Yes.

4 Q But by the time of the March meeting, that is, March of
5 '04, you were comfortable with Mr. Deschenes, weren't
6 you?

7 A What do you mean by "comfortable"?

8 Q You thought he was doing a good job.

9 A I wouldn't go that far, no.

10 Q Well, do you think he was serving everybody involved
11 well?

12 A I, I -- how could I answer that question?

13 Q Well, let me ask a different question then, if you
14 can't answer that one.

15 Is it true that you were not dissatisfied
16 with the work that Mr. Deschenes had done?

17 A I was personally dissatisfied. As I explained before,
18 I was personally dissatisfied that the first
19 opportunity that I had spoken with primary defense
20 counsel there was a request for money. There
21 previously had not been any status reports or any
22 contact. I also clarified and stated that, again,
23 globally, considering what we were trying to do at that
24 meeting and since Zurich had reached up to me, what I

1 Q And you had never been employed by an insurance company
2 before that; is that correct?

3 A No. I mean, yes, it is. I'm sorry.

4 Q Just to be clear. Is it correct that you have not
5 previously worked for an insurance company?

6 A No. I had been in private practice and we represented
7 insurance companies, but I have never been employed
8 prior to that by an insurance company.

9 Q And you graduated from law school in 1989?

10 A I did.

11 Q And that was Hofstra University Law School?

12 A Yes.

13 Q And you worked for, what, about six years or so in the
14 District Attorney's Office; is that correct?

15 A Yes.

16 Q And among the other things you did, you worked as a
17 solo practitioner for two or three years; is that
18 correct?

19 A Yes.

20 Q And during the time you were a solo practitioner, the
21 only involvement you had with insurance cases was just
22 covering cases for other lawyers from time to time?

23 A No, insurance defense cases.

24 Q Now, you said during your direct examination that you

1 was attempting to do was to bring the camp together, to
2 move forward with a strategy. And I also expressed
3 that it was not productive for me to singularly attack
4 or discredit Mr. Deschenes in front of any of the
5 members of the group.

6 Q Do you recall testifying in your deposition that
7 bringing in Mr. Conroy should not be interpreted as
8 your dissatisfaction with the handling of the case.
9 That quite to the contrary, everyone knew what they
10 were talking about and everyone was well served about
11 this case.

12 A Yes. I recall stating that in my deposition.

13 Q Now, I'd just like to go through a few -- you said that
14 you never authorized -- well, I don't know if you said
15 that. But, in fact, you never authorized any
16 settlement offer in this case; is that correct?

17 A That's correct.

18 Q And would it be correct that you never sought authority
19 within AIG before, to make a settlement offer?

20 A Yes.

21 Q And you had no authority yourself to make a settlement
22 offer, is that correct, without getting authority from
23 someone senior to you; is that correct?

24 A Yes.

1 Q All right. Now, I just want to go through the
 2 communications. You said in January 23, 2004, Kathleen
 3 Fuell told you that the Zurich policy limits were
 4 available to AIG, should AIG wish to make an offer to
 5 settle the case. In other words, that a settlement
 6 offer could include \$2 million from Zurich, and if it
 7 was accepted, Zurich would pay.

8 A What I recall is that Kathleen Fuell offered up the \$2
 9 million, yes.

10 Q And then that was confirmed in an e-mail on February
 11 13, 2004; is that correct?

12 A Yes.

13 Q Now, sir, are you familiar with any case law of any
 14 sort, or any other authority, to say that e-mail
 15 correspondence is not binding on the party that sends
 16 it?

17 A No.

18 THE COURT: Let me just be clear. Did you
 19 understand, once Fuell spoke with you, that you had the
 20 Zurich \$2 million to work with in making any offer of
 21 settlement?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: So as of that date, you knew that
 24 you had the Zurich 2 million and whatever you offered

1 Q November, right. And following that you really
 2 mobilized. Is that a fair characterization of what you
 3 did?

4 A Not in my present world, but, yes, I became involved.

5 Q In the world of an excess insurance claims person,
 6 would that be a fair characterization?

7 A Yes.

8 Q Okay. And you did everything that you could to learn
 9 about the facts of the case; is that correct?

10 A Yes.

11 Q And you did everything you could to try to evaluate the
 12 case; is that right?

13 A Well, that was the ultimate goal for which I was
 14 becoming involved in; so, yes, we were taking steps to
 15 move forward to the place we needed to be.

16 Q And you did everything you could to develop what you
 17 thought was the best tactful strategy to move the case
 18 towards resolution; is that correct?

19 A Yes.

20 Q And you did all those things, in fact, right? You
 21 developed the best strategy you could during the time
 22 that you were still working on the claim, right?

23 A But for the interruption as a result of my deployment,
 24 I did what I felt was appropriate and what I felt that

1 you could rely upon the 2 million having been done.

2 THE WITNESS: Yes, your Honor.

3 THE COURT: All right. And you had that
 4 based on her oral representation to you.

5 THE WITNESS: Yes, your Honor.

6 THE COURT: As of January 23, then, when she
 7 spoke with you, you knew that you had the Zurich 2
 8 million effectively in AIG's pocket with regard to a
 9 settlement offer?

10 THE WITNESS: Yes, sir. The only decision
 11 that was unresolved was the duty to defend.

12 (By Mr. Goldman)

13 Q But if you thought a settlement offer was appropriate,
 14 you would have gone ahead and made the settlement
 15 offer; isn't that correct?

16 A No.

17 Q Now, November 19, before the \$2 million were available
 18 to you -- I'm sorry. And you had no authority to make
 19 the settlement offer; is that correct?

20 A Yes.

21 Q Now, the November 2003 meeting, you felt that Zurich
 22 and the broker and the insured were reaching up to you
 23 to ask for your involvement, right?

24 A November, yes.

1 we needed to begin doing. It certainly wasn't
 2 accomplished.

3 Q And the decision at the time, shortly before your
 4 deployment, which was still in place at the time of
 5 your deployment, was to try to get the case in
 6 mediation without making any settlement offer first; is
 7 that correct?

8 A Partially correct. I mean, again, the case was to --
 9 the goal was to respond to Mr. Pritzker. The mediation
 10 issue was unresolved; but, yes, I did not want to pay
 11 him to come to mediation.

12 MR. GOLDMAN: No further questions.

13 THE COURT: Ms. Pinkham?

14 REDIRECT EXAMINATION BY MS. PINKHAM:

15 Q Mr. Satriano, could you turn back to the deposition
 16 testimony that was shown via video that's contained in
 17 Plaintiffs' Trial Exhibit Volume No. 3 at 83A, please?

18 A I don't think I have 83A. I have 83A, but it says the
 19 videotape deposition. That's what we were looking for
 20 before.

21 MR. ZELLE: Your Honor, I think, in fairness,
 22 that if she's going to be questioning him about his
 23 video testimony, it shouldn't be the excerpt version
 24 that was offered. He should have an opportunity, at

1 least on cross-examination, to be confronted with his
2 entire answers.

3 THE COURT: If there's any issue as to the
4 rule of completeness, we can deal with it, but you may
5 proceed.

6 (By Ms. Pinkham)

7 Q Mr. Satriano, in response to Attorney Goldman's
8 questions, you testified that if something is in your
9 deposition transcript, then that's what you said; isn't
10 that true?

11 A Yes.

12 Q And in response to some of Mr. Zelle's questions, he
13 was asking you to explain what you meant, not what you
14 said; isn't that true?

15 A I don't recall. I guess so.

16 Q In any event, you testified that you were telling the
17 truth in your deposition, correct?

18 A Yes.

19 Q And in the interest of putting everything in context,
20 let's look again at the testimony that is on page 177
21 of your transcript.

22 MR. ZELLE: Is he looking at his transcript
23 or is he looking at the excerpts?

24 MS. PINKHAM: The excerpts that were marked

1 A Answer: Same thing. General discussion about,
2 obviously, the -- excuse me, the jury verdict value
3 would be higher if it were to go to verdict. And that
4 would be probably what some individuals felt it would
5 come up to be if it went to a verdict.

6 Q And the next question I asked you was: Did you express
7 your opinion if the case, what the value would be, if
8 the case went to a verdict? And your answer was?

9 A (Reading): I may have. We were -- I mean, we were
10 starting to talk numbers here. I don't recall. I
11 didn't ever disagree with where they were. It was a
12 question of we had to agree on the way to get there
13 basically. And that is what was most important. It
14 was pretty obvious that these ranges are not -- you
15 know, are not unreasonable ranges, given the facts and
16 circumstances. But it was just a question of how best
17 to proceed.

18 Q And that was your complete answer to the question that
19 I had asked you, Mr. Satriano?

20 A Well, that's where it stops. Hold on.

21 Q And you're now looking at the full copy of your
22 transcript on page 178 to confirm that that was the
23 complete answer that you gave in response to my
24 question?

1 as Exhibit 83A.

2 (By Ms. Pinkham)

3 Q I just handed those to you Mr. Satriano?

4 A Yeah, but you just referred to the transcript.

5 Q Have you found page 177, Mr. Satriano?

6 MR. ZELLE: One moment.

7 (By Ms. Pinkham)

8 Q You're looking through the completed document
9 transcript right now?

10 A I'd like to have both out. Okay.

11 Q Okay. On page 177, at line 3, I asked you a question.
12 The question was: The \$6 million figure that was
13 identified as a settlement range, where did that number
14 come from?

15 And your complete answer was? Could you read
16 that, please, Mr. Satriano?

17 A The answer was: I have no clue. As I sit here,
18 probably it was discussed by the principals there in
19 terms of it may be in the Massachusetts in that
20 particular venue of -- certainly not a number that I
21 had picked out of -- out of a specific number.

22 Q And the next question that I asked you was: Same
23 question for the \$9.696 million jury verdict. And your
24 answer was?

1 A Yes. And it was, to that question, yes.

2 Q All right. And so the range that you were referencing
3 in response to my question was the 6 million and the
4 \$9.6 million range; was it not, Mr. Satriano?

5 A It wasn't a range, Ms. Pinkham. It wasn't a range.
6 There were two numbers.

7 Q And the two numbers that you were referencing in your
8 testimony at page 178 was the \$6 million and the \$9
9 million verdict value that Mr. Deschenes had provided;
10 isn't that so?

11 A Yes, these two numbers.

12 Q Okay. Could you turn to the next page of 83A for me,
13 Mr. Satriano? If you like, you can stick with the full
14 copy of the transcript on page 182.

15 A Okay. Where would you like me to go?

16 Q Are you on page 182?

17 A Okay.

18 Q At line 10, I started to ask you a question and then I
19 struck it. Do you see that?

20 A Yes.

21 Q And then I asked you this question: Did any of the
22 representatives from GAF express their opinion on the
23 value of the case and what strategy should be followed?
24 Could you read your complete answer for me,

1 Mr. Satriano?
 2 A (Reading) I don't specifically recall. I don't think
 3 people -- again, we really weren't -- there was -- I
 4 don't believe there was any colloquy about these
 5 numbers. The numbers that -- the six and this nine
 6 thing, I think it was just, sort of, you know, it's a
 7 pretty accurate range, or at least a range not to
 8 disagree with. Obviously you want north of that and I
 9 want south of that, but still it's a range from
 10 anywhere, say, from eight on that we were discussing
 11 this case. But I don't recall a colloquy about it.

12 It is really more -- once we get to the meat
 13 of the matter, it was these two issues about how best
 14 to proceed in mediating the deposition that we were
 15 going to do.

16 I also -- I believe as a collateral issue,
 17 they were kind of comfortable by now, especially with
 18 Mr. Bartell sitting there, Bill's relationship to the
 19 file, having brought him in and understanding that, you
 20 know, I guess, sometimes lawyers will get a little
 21 territorial, and I have seen this before when I bring
 22 in excess counsel. A lot of them don't understand how
 23 to interpret that. And by bringing in Bill, it was no
 24 way to be interpreted as my dissatisfaction with the

1 the court was going to be of influence with respect to
 2 that, it could have simply been settled by saying,
 3 "Gone to the pretrial and say, look, we recognize we
 4 have a settlement demand out there. We also recognize
 5 that." Or, "Judge, we have not formally responded to
 6 this."

7 But, frankly, that could have been obviated
 8 by just saying to the judge and Mr. Pritzker standing
 9 there and saying, "Hey guys, do you want to go to
 10 mediation? Are you interested in mediation?"

11 I don't think the judge would have given two
 12 cents about the letter at that point, you know, so
 13 there were a lot of different ways to handle it. The
 14 demand was so high, so it was -- sometimes it's --
 15 well, it's ridiculous. It's way too high, you know.
 16 Maybe the evaluation was 8 to 10, or 8 to 12, but
 17 certainly not 16. So I don't care if we don't answer
 18 it at 16. I don't care if it goes to 50.

19 And that's the answer.

20 Q Okay. And you were telling the truth at the time that
 21 you gave that testimony in your deposition?

22 A Yes.

23 Q Mr. Satriano, you testified that it would have been
 24 helpful to you to have Mrs. Rhodes' deposition in order

1 handling of the case. Quite the contrary, everyone
 2 knew that they were -- what they were talking about.
 3 And everybody was well served about this case.
 4 However, Bill was brought in to augment the team. And
 5 as I have indicated, I think it was important for Bill
 6 to be there to speak to Greg and to meet the client,
 7 and so on and so forth.

8 Q And that was your complete answer to that question?

9 A Yes, it was.

10 Q Could you turn to the transcript, page 186, please?

11 A Okay.

12 Q All right. And at line 9 -- are you ready?

13 A Yes.

14 Q And at line 9, I asked you this question: Who said
 15 what about the fact that no one had responded to the
 16 August 13, 2003 settlement demand?

17 And your full answer, could you read that
 18 into the record, please?

19 A (Reading): I don't recall specifically. Maybe it was
 20 Mr. Deschenes. I mean, I don't recall specifically.
 21 It was just a question of -- again, the onus was
 22 getting Mr. Pritzker to come to the table.

23 If there was going to be a benefit to
 24 mediating this case, we had a pretrial coming up. If

1 to determine whether she had potential jury appeal. Do
 2 you remember that testimony?

3 A Yes.

4 Q And, Mr. Satriano, you had some expectation, did you
 5 not, that Mrs. Rhodes, given the fact that she was
 6 rear-ended by an 80,000 pound truck and paralyzed, was
 7 going to present as a sympathetic witness to the jury?

8 A I understand that the facts and circumstances would
 9 have -- you could certainly draw that conclusion, yes,
 10 but I didn't know Mrs. Rhodes.

11 Q But nonetheless, you didn't have to meet her in order
 12 to understand that a woman who had been paralyzed in a
 13 rear-ender was going to be sympathetic to a jury.

14 A Sure. Sure.

15 Q And you also had the opportunity to review Jane
 16 Mattson's life-care report, or life-care plan; did you
 17 not?

18 A Yes.

19 Q And could you turn to Exhibit 11 for me, Mr. Satriano?
 20 It's in plaintiffs' binder number 1.

21 A Yes.

22 Q Could you turn to page 6 of Jane Mattson's life-care
 23 plan for me.

24 A And the first line indicates that Jane Mattson, Ph.D.,

1 met with Marcia Rhodes at her home in Milford,
 2 Massachusetts, on September 24, 2003, correct?
 3 A Yes.
 4 Q So when you reviewed this report, you understood that
 5 your own expert had already met with the plaintiff?
 6 MR. ZELLE: Objection. The defense expert.
 7 (By Ms. Pinkham)
 8 Q The defense expert had already met with the plaintiff?
 9 A Yes.
 10 Q Did you ever call Ms. Mattson and ask her how she
 11 thought Mrs. Rhodes would present to the jury and
 12 whether she had jury appeal?
 13 A No.
 14 Q Could you turn to the next exhibit for me, please, Mr.
 15 Satriano, Exhibit No. 12.
 16 Are you there?
 17 A Yes.
 18 Q Mr. Satriano, this document, an October 9, 2003 letter
 19 from the law firm of Morris & Mahoney to Jody Mills,
 20 was included on AIG's supplemental privilege log. Do
 21 you recall reviewing this letter?
 22 MR. ZELLE: Your Honor, I can't find it in
 23 the binder here.
 24 MS. PINKHAM: It's Exhibit 84.

1 Did you ever contact the lawyers at Morris,
 2 Mahoney & Miller and ask them how they thought Mrs.
 3 Rhodes would present to the jury?
 4 A No.
 5 Q In fact, on the second page of Exhibit 12, there's a
 6 reference to Mr. Rhodes' deposition. Do you see that?
 7 A Yes.
 8 Q And the paragraph entitled "Appearance and Demeanor"
 9 has been redacted; has it not?
 10 A Yes.
 11 Q Could you turn to Exhibit 84 for me, please, Mr.
 12 Satriano. It's a Plaintiffs' Trial Exhibit Volume No.
 13 3.
 14 A 83?
 15 Q I'm sorry, 84. I apologize.
 16 A That's the privilege log.
 17 Q Yes.
 18 A Okay.
 19 Q Could you turn to page 24 for me.
 20 A What page?
 21 Q 24.
 22 A Okay.
 23 Q Are you there?
 24 A Yes.

1 THE COURT: I'm sorry, is Exhibit 12 or
 2 Exhibit 84?
 3 MS. PINKHAM: The privilege log is Exhibit 84
 4 and the letter is Exhibit 12.
 5 THE COURT: But the privilege log is not his
 6 problem; that's counsels' problem. So why don't you
 7 ask this witness.
 8 (By Ms. Pinkham)
 9 Q Do you recall seeing this letter, Mr. Satriano?
 10 A I don't recall.
 11 Q Did you have an understanding of who Morris, Mahoney &
 12 Miller represented?
 13 A No.
 14 Q You did not have an understanding that Morris, Mahoney
 15 & Miller represented Mr. Zalewski and his employer,
 16 Driver Logistics Services?
 17 A Oh. Okay, yes. That's fine.
 18 Q And you'll see in the first sentence of Exhibit 12
 19 indicates that since our last status report, we have
 20 attended the interview, the plaintiff, with our life-
 21 care planner. Jane Mattson.
 22 While we were at the plaintiffs' residence,
 23 we were able to speak with both the plaintiff and her
 24 husband.

1 Q Starting with the document that's been numbered 175.
 2 On the privilege log, do you see that's an August 11,
 3 2003 letter from Lawrence Boyle of Morrison, Mahoney &
 4 Miller?
 5 A Yes.
 6 Q And that apparently was a 6-page document summarizes
 7 defense strategy, damages and liability analysis?
 8 A That's what the log says.
 9 Q And all of the rest of the items on page 24 are
 10 communications from either Morris, Mahoney & Miller or
 11 Corrigan, Johnson & Tutor to Crawford & Company. Do
 12 you see that?
 13 A Not number 52.
 14 Q You're right. All the rest of the ones underneath 175,
 15 which is the first one you looked at?
 16 A From 175 down to 199.
 17 Q Did you have an understanding, when you became involved
 18 in the case after Zurich reached up to you, that
 19 Corrigan, Johnson & Tutor represented Penske?
 20 A Yes.
 21 Q Could you focus on Item No. 180 for me, please.
 22 A Okay.
 23 Q This is a transmittal from Lawrence Boyle at Morris,
 24 Mahoney & Miller to Crawford & Company, correct?

1 A Okay.

2 Q And the subject matter is identified as "Defense
3 Strategy, Damages and Liability Analysis," correct?

4 A Yes.

5 Q And in the first column it indicates, in parentheses,
6 "Jury Verdict Research attached." Do you see that
7 reference?

8 A Yes.

9 Q And so apparently, based on AIG's privilege log,
10 Attorney Boyle provided 26 pages of jury verdict
11 research to Crawford & Company. Is that how you would
12 interpret this document?

13 A The log or the actual letter?

14 Q The log. I don't have the letter, so I can only go by
15 what it says on the log.

16 A I don't know what this log is. What its purpose was,
17 was way after I left.

18 Q But nonetheless, you would agree with me, would you
19 not, that based on AIG's supplemental privilege log,
20 that AIG had possession of 26 pages of jury verdict
21 research prepared by Lawrence Boyle of Morris, Mahoney
22 & Miller?

23 MR. ZELLE: Objection, your Honor. The real
24 issue here is when. There's no question that AIG had

1 I'm just an ATM, which is what you want me to be. I
2 mean, I have to do my own research. I've explained
3 that. Merely because research was undertaken by any of
4 these defense attorneys does not correlate to the fact
5 that I am going to all of a sudden adopt this research.
6 I don't think, Ms. Pinkham, you have an appreciation
7 for just how difficult my job is. I have to look at
8 information --

9 MS. PINKHAM: Your Honor --

10 Q Mr. Satriano, the questions that I ask --

11 A -- and I have to take that information --

12 THE COURT: Allow him to answer why he's not
13 an ATM. Go ahead.

14 A I have a responsibility not only to the insured, but I
15 have a responsibility to you and Mr. Pritzker. And
16 most importantly, I have a responsibility to the
17 Rhodeses. We're talking about not making them whole
18 again, because I can't do that. But we're talking
19 about giving them something and maybe that's the
20 freedom of decision as a result of the money. I don't
21 take that responsibility lightly. I take my time.
22 Maybe that sounds corny to you, but I take my job
23 seriously. Because we cannot bring Mrs. Rhodes back to
24 the position she was in before that accident. You

1 it. The question is whether it was during the time Mr.
2 Satriano was involved.

3 THE COURT: She may ask him.

4 A That's exactly what I want to say to you; yes, that
5 there's no indication of when this was received.

6 Q Nonetheless, you can tell from the privilege log that
7 by September 16, 2003, before there had even been a
8 reach-up to AIG as the excess carrier, that defense
9 counsel were involved in doing jury verdict research,
10 correct?

11 A I guess, sure.

12 Q And that was well before the time when you said it
13 wasn't even useful to do jury verdict research as of
14 March of 2004, correct?

15 A Merely because -- counsel, because these attorneys
16 thought it useful to do their jury research verdict
17 [sic] does not necessarily mean that I thought it was
18 useful. I mean, that's like saying you were prepared
19 to give an opening statement and you didn't even work
20 on it.

21 I mean, I had the opportunity to review my
22 own material, to develop my own information, and to
23 make a call on what jury verdict research or anything
24 else that I had gotten. I mean, that presupposes that

1 laugh and you snicker, but that's what my job is. And
2 I consider that a very important job, and I take my
3 time with that and I research and I bring individuals
4 in that can assist me.

5 Merely because this work was done by other
6 attorneys does not necessarily mean that my opinion in
7 saying that it was too soon should be adopted or that
8 I'm lying. Frankly, I resent that.

9 Q Are you done with your answer, Mr. Satriano?

10 A Yes, and I hope you've listened.

11 MS. PINKHAM: Your Honor, I would move to
12 strike everything after the first sentence.

13 THE WITNESS: Because it's the truth?

14 THE COURT: Denied. Mr. Satriano, I've given
15 you some leeway, but you've used it up.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: The last comment will be
18 stricken, but his explanation, which I allowed before,
19 I will allow. You may proceed.

20 (By Ms. Pinkham)

21 Q Mr. Satriano, you just explained that you took your
22 time on the Rhodes case; isn't that true?

23 A No, Mrs. Pinkham. I take my time to carefully
24 investigate the case as it should be done as a

1 professional.

2 Q Okay. And you took the time to become fully informed

3 of the facts in the documents while you were involved

4 in the claim, correct?

5 A Yes.

6 Q And throughout your involvement in the claim from April

7 of 2003 to mid-March of 2004, you had never gotten to

8 the position where you sought settlement authority for

9 any figure for the Rhodes claim; isn't that true?

10 A Yes, that's correct.

11 Q And prior to you leaving in mid-March of 2004, you

12 denied the insured's request for any contribution to a

13 settlement offer to the Rhodes family; isn't that true?

14 A It's not as nefarious as you put it. The decision was

15 not to contribute because it wasn't appropriate to pay

16 Mr. Pritzker to mediation.

17 Q But Mr. Satriano, you've referenced the payment to Mr.

18 Pritzker a number of times. Wasn't it your

19 understanding that the discussion of the March 5, 2004

20 meeting was that the insured wanted to make an offer to

21 the plaintiffs?

22 A No, and that's an important distinction. To me it was

23 always paying Mr. Pritzker, as Mr. Deschenes indicated,

24 an admission fee to coming to mediation.

1 offer; oh, Mr. Pritzker needs a good-faith offer.

2 Perhaps it got lost in the translation, but

3 that was not my understanding. It was a payment. We

4 heard Mr. Deschenes described it at that. That is

5 consistent with what my understanding was and is as I

6 sit here today.

7 THE COURT: So you're telling me that you

8 understood that the attorneys were proposing that you

9 basically give a check for \$5 million to Ms. Rhodes, to

10 Mr. Pritzker, on the first day of mediation as the

11 price in order to continue to have further discussions?

12 That's what you understood the attorneys were asking?

13 THE WITNESS: Yes, your Honor, completely.

14 THE COURT: And did you have any discussion

15 about your understanding of this?

16 THE WITNESS: Mr. Pritzker never contacted me

17 directly, nor did I --

18 THE COURT: Try my question. Did you have

19 any discussion with anyone from GAF or anyone else at

20 that meeting as to ask them to corroborate your

21 understanding of what they were saying as to this \$5

22 million offer?

23 THE WITNESS: Yes. I wanted Mr. Conroy to

24 set up a channel of communication and contact Mr.

1 THE COURT: You understood that the \$5

2 million was to be paid to Mr. Pritzker as the price of

3 mediation?

4 THE WITNESS: Your Honor, as I sit here

5 today, yes. As I said, back then, yes.

6 THE COURT: Meaning that you understood that

7 the attorneys were asking you to pay him \$5 million

8 just for the ability to mediate?

9 THE WITNESS: It was confusing. It was told

10 to me that Mr. Pritzker would not come to mediation

11 without a \$5 million payment. Now, no, do I think he

12 was going --

13 THE COURT: I'm sorry. A \$5 million payment

14 or a \$5 million offer?

15 THE WITNESS: Therein lied [sic] the

16 conflict. I was told that Mr. Pritzker would not come

17 to mediation unless he was paid \$5 million. Of course

18 I did not think he was depositing that money into his

19 personal account, but the bottom line was he wanted a

20 payment to show up at a mediation. That's how and what

21 was explained to me. And that is why I felt that to be

22 an improper strategy and something that would have

23 absolutely no benefit to GAF and would not be a good

24 starting point. It was not discussed to me as an

1 Pritzker.

2 THE COURT: Again, try my question. Did you

3 ever say to Mr. Deschenes, to the effect: Mr.

4 Deschenes, you're saying you want me to give a check

5 for \$5 million to Ms. Rhodes in order for us to

6 commence mediation as opposed to making a \$5 million

7 offer as the first offer to commence mediation?

8 THE WITNESS: I'm sorry. Yes, your Honor, I

9 did.

10 THE COURT: All right. In all your years as

11 a defense attorney and involved in insurance before the

12 March meeting, had you ever heard of anybody paying a

13 sum of that amount up front before even mediation

14 begins?

15 THE WITNESS: Your Honor, yes. As despicable

16 as a practice it is, in excess, you deal with very

17 high-level cases and some very high-level attorneys

18 that will do that. And in each case, my answer is

19 vehemently I will not.

20 THE COURT: All right. You may proceed.

21 (By Ms. Pinkham)

22 Q Mr. Satriano, could you turn to page 179 of your

23 deposition transcript for me. You should refer to the

24 full one for me, please.

1 A Yes, go ahead.

2 Q On line 2 of page 179, I asked you: What was the
3 difference of opinion on how to respond to the
4 plaintiffs' demand?

5 Could you please read your answer into the
6 record.

7 A Sure. (Reading): What I alluded to before regarding
8 the mediation, there was a difference of opinion on how
9 we were going to get Mr. Pritzker to come to the
10 mediation table. And the thought process was, we were
11 going to basically offer him \$5 million as an incentive
12 to come; and basically recognizing the fact that this
13 was a serious case, and we, therefore, we wanted his
14 participation, as well as Mr. Rhodes and Mrs. Rhodes,
15 of course, and the difference of opinion was that I
16 felt that that was not a correct approach to take.

17 Q Could I interrupt you for a minute, Mr. Satriano. You
18 used the word "offer" in that answer; did you not?

19 A What line?

20 Q At line 9: And the thought process was, we were going
21 to basically offer him \$5 million as an incentive to
22 come.

23 A That's my word, yes, in there.

24 Q Could you then complete the rest of your answer. It

1 yesterday. I think you testified that this is a
2 narrative summary that is a common type of memo at AIG?

3 A It's called a narrative memo, essentially.

4 Q And this is the narrative memo that one of your
5 successors on the Rhodes claim prepared. Is that your
6 understanding?

7 A Yes. It was prepared by Mr. Warren Nitti.

8 Q And the date of the narrative memo that's been marked
9 as Exhibit 45 is August 3, 2004?

10 A Yes, that's correct.

11 Q Could you turn to page 4 of Exhibit 45 for me, please.

12 A Okay.

13 Q And under "Witness Testimony, Fact Witness" it reads:
14 Marcia Rhodes Plaintiff. Plaintiff Marcia Rhodes will
15 be deposed on August 4, 2004.

16 Do you see that reference?

17 A Yes.

18 Q And can you look through the rest of the fact witness
19 testimony and see if there's any reference to Rebecca
20 Rhodes' deposition in this document.

21 A No, there's not.

22 Q Could you turn to page 7 for me, please.

23 A Okay.

24 Q And under "Expert Witnesses" item number 3 references

1 starts on line 17.

2 A (Reading): I certainly felt that, you know, other than
3 our word to come to mediation, Mr. Pritzker would need
4 no further sort of incentive. And I was against
5 bringing any sort of precondition to the mediation
6 table before he would come. I don't recall whether or
7 not Mr. Pritzker ever wanted that or not. I'm not sure
8 to be honest with you, but I certainly was not in
9 agreement that it should be done at all. And that was
10 the difference of opinion. The difference of opinion
11 was in the tactical approach to how we were going to
12 get this case to go to mediation.

13 That was it.

14 Q All right. And in that answer, you testified that you
15 weren't even sure whether Mr. Pritzker had made that
16 demand for \$5 million; isn't that true?

17 A As you asked me the question, yes. Of course.

18 Q Mr. Satriano, could you turn to Exhibit 45 for me,
19 please.

20 THE COURT: Exhibit 45?

21 MS. PINKHAM: Yes.

22 A Okay.

23 (By Ms. Pinkham)

24 Q Mr. Satriano, we looked at this document briefly

1 physiatrist. Doctor Joseph Hanak. Dr. Hanak is from
2 Tufts University. He will examine Rhodes and opine on
3 her capability to achieve a higher level of function
4 and independence, supporting Dr. Mattson's testimony.

5 Did I read that correctly?

6 A Yes, you did.

7 Q Mr. Satriano, are you aware that this narrative memo
8 was prepared by Mr. Nitti before he obtained settlement
9 authority to go to mediation?

10 A I'm not aware of that. No, I don't know what occurred.
11 I wasn't here.

12 MS. PINKHAM: I have nothing further, your
13 Honor.

14 THE COURT: Any further questions of counsel?

15 MR. ZELLE: A couple, your Honor.

16 THE COURT: Okay. Within the scope.

17 MR. ZELLE: Pardon me?

18 THE COURT: Within the scope.

19 RE-CROSS-EXAMINATION BY MR. ZELLE:

20 Q Do you know -- you looked at Exhibit 12 that was a
21 letter from Morris, Mahoney & Miller. Do you know
22 whether that was among material sent to you while you
23 were working on the case?

24 A No, I do not.

1 Q Can you explain why -- you indicated you understood in
 2 the end of January 2004, that you had Zurich's money in
 3 your pocket, so to speak. Can you explain to the court
 4 why you wouldn't spend that money before you had a firm
 5 understanding as to what Zurich's position was
 6 concerning the continuing defense obligation?
 7 A Again, it's simply not done. If the issue on the duty
 8 to defend and the responsibility to defend was not
 9 resolved, essentially we could be buying a defense.
 10 And again, that issue needed to be resolved.
 11 Q There was testimony --
 12 THE COURT: I'm sorry. I've now lost you
 13 again.
 14 Are you saying that you did not consider
 15 yourself free to include the \$2 million in a settlement
 16 offer as of January 23?
 17 THE WITNESS: Yes, your Honor, in that those
 18 two obligations go hand in hand. You want to secure
 19 not only an understanding of the fact that the money is
 20 available for settlement purposes, but in hand and
 21 hand, you have to ensure that the duty to defend is
 22 either going to remain with the primary carrier or if
 23 you're prepared to accept that defense.
 24 It can get extremely muddled if you start

1 you can always come up with a number to put on a claim,
 2 based on the information you have, in contrast to the
 3 process that you seek to accomplish by getting all
 4 available information before you put up a number?
 5 MS. PINKHAM: Objection.
 6 THE COURT: Sustained as to the form.
 7 (By Mr. Zelle)
 8 Q Let me put it this way: Is it possible to put up a
 9 number on a claim -- in your practice, are you ever
 10 required to put up a number on a claim before you have
 11 all of the information you would like to have?
 12 A Yes.
 13 Q Did you perceive that necessary in this case?
 14 A No, it was not.
 15 Q Why not?
 16 A It was not because trial was not imminent. To answer
 17 your question in the other extreme, sometimes we're
 18 notified that trial is the next day.
 19 Q Did you believe that you had enough information in
 20 March that the damages were clear enough in your mind,
 21 particularly the future damages, to put a number on it?
 22 A No.
 23 Q Now, you talked, in response to some of Mr. Goldman's
 24 questions, about needing the deposition for mediation,

1 making offers with money; then all of a sudden they'll
 2 say, "Well, wait a minute, we're not going to continue
 3 to defend. You guys have offered a million of our 2
 4 million and now, guess, what, you're the primary payers
 5 of the defense."
 6 And that's why it's excellent practice, and
 7 you have be crystal clear on both obligations before
 8 you can undertake a negotiation, as what's being
 9 suggested with that \$2 million.
 10 THE COURT: Then why did you go to the March
 11 4 or 5 meeting without Zurich being present?
 12 THE WITNESS: Without Zurich being present?
 13 Your Honor, I had no idea Zurich wasn't coming. I was
 14 surprised --
 15 THE COURT: When you got there, you realized
 16 they weren't.
 17 THE WITNESS: But it was not enough to,
 18 again, stop the meeting and not go forward with the
 19 meeting. Again, the process of the meeting -- the
 20 point of the meeting was to introduce Mr. Conroy and
 21 also to discuss this situation about the mediation.
 22 (By Mr. Zelle)
 23 Q Can you explain, Mr. Satriano, whether it is -- let me
 24 put it this way. Why don't you explain why it is that

1 and I would like you to explain why it would be helpful
 2 -- we previously talked about why it would be helpful
 3 to have in assessing the settlement value. Can you
 4 explain why you would want to have that before
 5 mediation?
 6 A Sure. You'd want that information before mediation as
 7 well because you're going and entering the mediation
 8 knowing that particular person as best as possible.
 9 It's my practice to request that at the mediation
 10 family members be present. Certainly, Mr. and Mrs.
 11 Rhodes or their daughter have been present. But you'd
 12 know this information ahead of time because you would
 13 have had discussed it in depth with your counsel. You
 14 have an opportunity to review the information
 15 beforehand.
 16 Q You used the term in your deposition, "the jury is
 17 out." Did that mean you were undecided when you used
 18 that term?
 19 A Yes.
 20 Q All right. At the time of the March meeting, were you
 21 undecided as to whether you would condition going to
 22 mediation on the completion of the plaintiffs'
 23 deposition?
 24 A Yes.

1 Q You wanted to have the deposition completed, but you
 2 didn't -- did you ever say that you wouldn't go to
 3 mediation without having the deposition completed?
 4 A No.
 5 MR. ZELLE: That's all I have.
 6 THE COURT: Mr. Goldman?
 7 MR. GOLDMAN: Yes.
 8 RECROSS-EXAMINATION BY MR. GOLDMAN:
 9 Q Mr. Satriano, is there anything in your insurance
 10 policy that says that you will be responsible for
 11 defense costs if you make an offer that includes AIG
 12 money?
 13 A I don't believe so.
 14 Q And --
 15 MR. ZELLE: I think you said AIG money. You
 16 meant Zurich's money?
 17 MR. GOLDMAN: No. I meant AIG's money.
 18 A No. Wait a minute. That's different. AIG's money
 19 would not be offered without first an exhaustion of the
 20 primary numbers.
 21 (By Mr. Goldman)
 22 Q Right. But often in a case which requires a settlement
 23 offer in excess of the primary, the offer needs to be
 24 made as a package, right? With the primary money and

1 know, by making this offer, could we have an
 2 understanding that I don't waive any rights with regard
 3 to who's got the obligation to defend? You could have
 4 done that, right?
 5 A Counsel, it's not done that way. It's not that
 6 informal. Ms. Fuell and I enjoyed a fine working
 7 relationship with one another, but it's not done like
 8 that, saying, "Okay, hey, by the way, if I do this."
 9 It's got to be done more formally.
 10 Q And you knew that from your six months of experience
 11 working at AIG, right?
 12 A I knew that, based upon my experience and also the
 13 experience of my supervisor, who, incidentally, was at
 14 AIG a lot longer than me as well.
 15 Q But there was nothing stopping you from doing that
 16 other than that you, from your experience and your
 17 supervisor, it wasn't done that way, right?
 18 A Well, my experience and my supervisor was of sufficient
 19 motivation enough for me.
 20 MR. GOLDMAN: No further questions.
 21 THE COURT: Any further questions of counsel?
 22 MS. PINKHAM: No.
 23 THE COURT: All right. I've got a few.
 24 What is the relationship between AIG and

1 the excess money combined, you make that total offer to
 2 the plaintiff.
 3 A Right, that's what I'm saying. The primary money is
 4 exhausted.
 5 Q Right. So, now, is there anything in your insurance
 6 policy that says that if that happens, if we have a
 7 case such as this one, where it's fairly clear at some
 8 point in time that the exposure exceeds the primary
 9 limit and an offer is made, a combined offer with the
 10 primary money and excess money is made, AIG now has an
 11 obligation to defend the insured.
 12 A No, I don't believe there's anything like that in the
 13 policy.
 14 Q Now, did anyone from Zurich ever tell you that if you
 15 made an offer, just by virtue of making the offer, that
 16 that would cause AIG to have an obligation to defend?
 17 A No.
 18 Q Did you ask at any time anybody from Zurich, gee, if I
 19 go make an offer in excess of the Zurich limits, does
 20 that mean you're going to try to stick me with the
 21 defense? Did you ever ask anybody that?
 22 A Of course not.
 23 Q All right. Now, if you had wanted to make an offer,
 24 you could have acted on it and asked Ms. Fuell, you

1 National Union?
 2 THE WITNESS: My understanding, your Honor,
 3 is that National Union is an AIG company.
 4 THE COURT: So for all practical purposes,
 5 AIG, when you worked there, you deemed yourself the
 6 insurer?
 7 THE WITNESS: The insurer, yes, your Honor.
 8 THE COURT: So you were not a third-party
 9 administrator?
 10 THE WITNESS: No, your Honor.
 11 THE COURT: Now, when the meeting on March 5
 12 ended, was there any discussion as to what had been
 13 decided?
 14 THE WITNESS: It was -- yes. It was pretty
 15 clear to me that Mr. Conroy, as far as I was concerned,
 16 was now going forward. And Mr. Conroy, I believe, was
 17 going to continue to work with Mr. Deschenes, to accept
 18 the transfer of information from Mr. Deschenes, file
 19 materials, so on and so forth.
 20 THE COURT: So you're saying that all that
 21 had been decided at the end of the meeting was that
 22 Conroy would be serving as associate counsel?
 23 THE WITNESS: Well, essentially, yes. But, I
 24 mean, I believe it was a good meeting, because again it

1 gave us the opportunity for all of us to get together
2 and continue to talk and sort of put a face to the
3 voice on the telephone. It was clear that all those
4 parties, with the exception of me, were going to
5 continue to have a relationship in going forward.

6 THE COURT: Okay. At the time of that
7 meeting, did you know that you were headed for Iraq?

8 THE WITNESS: Yes.

9 THE COURT: So you knew that you were going
10 to be a short-timer there?

11 THE WITNESS: Yes, your Honor. And that was
12 one of the reasons, too, why I wanted to go in there
13 and certainly explain to them in person and to assure
14 them that there would be a transition.

15 THE COURT: Okay. What was decided, if
16 anything, with regard to what was to be told to Mr.
17 Pritzker with regard to his demand?

18 THE WITNESS: Again, that was still going to
19 be decided, because we wanted -- I wanted Mr. Conroy to
20 speak directly to Mr. Pritzker, but we were still
21 receiving pushback on that.

22 THE COURT: Was there any discussion as to
23 what anyone would say to Mr. Pritzker with regard to
24 his demand?

1 meeting was it agreed that somebody should seek to
2 obtain mediation with Mr. Pritzker without having to
3 pay or offer any money?

4 THE WITNESS: Well, yes. That was my
5 suggestion. My suggestion was to have Mr. Conroy
6 directly contact Mr. Pritzker and indicate just that,
7 we want to go to mediation, let's get this thing going.

8 THE COURT: All right. So you were prepared
9 to go to mediation.

10 THE WITNESS: Well, no. I mean, we still
11 were developing information. It was working hand-in-
12 hand. We were not adverse to going to mediation with
13 Mr. Pritzker. It wasn't like, you know, okay, let's go
14 next week. We were working with information to develop
15 to go to mediation; i.e., the deposition; i.e., the IME
16 from the physiatrist, that type of information. That's
17 what we were doing.

18 THE COURT: All right. Was there any
19 decision made at this meeting that you would not
20 proceed to mediation, or that you were going to proceed
21 to obtain the depo of Marcia Rhodes?

22 THE WITNESS: There was rancor at the
23 meeting, there was frustration at the meeting again
24 because of the different level of information and

1 THE WITNESS: Yes.

2 THE COURT: What was agreed at the meeting
3 that would be said to Mr. Pritzker with regard to the
4 demand?

5 THE WITNESS: I think that what would have
6 been said to Mr. Conroy would have indicated that the
7 demand was high, but, yet, that the parties were
8 meaningfully willing to negotiate the case and to come
9 up with a good response to a demand, and hopefully that
10 demand package was going to be answered in the future.

11 THE COURT: And was there any discussion as
12 to mediation apart from the unwillingness to pay Mr.
13 Pritzker \$5 million to enter into mediation?

14 THE WITNESS: Yes. As far as I'm concerned,
15 mediation was always a good alternative, because it got
16 the parties together. Often, in the excess world you
17 will have a mediation and the case won't be resolved,
18 but you'll have a follow-up date which then would
19 result with the case being resolved. So to me,
20 mediation was always a win-win opportunity, because
21 again you have the opportunity to view the parties and
22 to seek their resolve in trying to work to get the case
23 settled.

24 THE COURT: All right. But at the end of the

1 opinion that was going on. That type of decision could
2 not have been reached at that time. We weren't going
3 to say we weren't going. We weren't going to say that
4 we were, because it was a productive meeting. It was a
5 first-start meeting, your Honor. We all expressed,
6 everyone expressed the need to resolve through
7 mediation to make some step here.

8 THE COURT: All right. We've been at this
9 for a while. At the end of the meeting did you
10 understand that Mrs. Rhodes was going to be deposed?

11 THE WITNESS: Yes.

12 THE COURT: And was that expressed at the
13 meeting?

14 THE WITNESS: It was expressed at the
15 meeting. My feeling was that she should be deposed.
16 Mr. Conroy had indicated that. It was indicated --
17 again, there were people there at the meeting that felt
18 nothing more needed to be done because time was of the
19 essence and we needed to go approach Mr. Pritzker. Our
20 side, myself and Mr. Conroy, with our experience, or
21 certainly Mr. Conroy's experience as an experienced
22 trial litigator, always realized the need to go further
23 with some investigation.

24 The Campbell firm is a trial firm. They're

1 not afraid to try difficult cases. But we certainly
 2 couldn't come in as gangbusters and say we're trying
 3 this case, because again that would have even further
 4 fractionalized the people that were there.
 5 But to answer your question specifically,
 6 yes, the desire to have Mrs. Rhodes deposed, yes.
 7 THE COURT: Yes, it was decided that you
 8 would depose Mrs. Rhodes? Or yes, you wanted to depose
 9 Mrs. Rhodes.
 10 THE WITNESS: The latter, your Honor, that we
 11 were more comfortable proceeding with her deposition.
 12 THE COURT: Was it your understanding that
 13 you were in charge of the defense?
 14 THE WITNESS: At that point, no, not in
 15 charge of the defense, no.
 16 THE COURT: Who had the ability to determine
 17 what the defense would do?
 18 THE WITNESS: No one really had the --
 19 THE COURT: Well, let me ask you. You or
 20 GAF?
 21 THE WITNESS: It would have been more -- GAF
 22 had any -- GAF, sir.
 23 THE COURT: Try my question. Who was in
 24 charge of the defense? Was it you or was it GAF or was

1 decision on any particular approach. It was just
 2 opinions discussed regarding what would possibly be our
 3 approaches in going forward.
 4 THE COURT: So at the end of the meeting, in
 5 terms of what was accomplished by way of decision,
 6 you're telling me essentially nothing was accomplished
 7 by way of decision.
 8 THE WITNESS: The best way to put it is that
 9 a lot of work needed to occur.
 10 THE COURT: Was there any decision as to what
 11 work needed to occur?
 12 THE WITNESS: Yes.
 13 THE COURT: And what decision was made as to
 14 what work needed to occur?
 15 THE WITNESS: Number one, that we needed to
 16 respond to Mr. Pritzker pretty quickly; and, number
 17 two, the IME. And Mr. Conroy clearly said I would like
 18 a psychiatrist IME. And also this issue of the
 19 deposition. And also I recall my conversation with Mr.
 20 Conroy regarding, again, the primary policies. That's
 21 what I expected him to do.
 22 THE COURT: Okay. So was the decision made
 23 at that meeting to proceed with an IME?
 24 THE WITNESS: It was not unanimous. I

1 it both you and GAF?
 2 THE WITNESS: No. I'm sorry, your Honor. I
 3 misunderstood you. GAF.
 4 THE COURT: Okay. So it was not your call.
 5 THE WITNESS: Correct, sir.
 6 THE COURT: And did GAF agree to proceed to
 7 depose Mrs. Rhodes?
 8 THE WITNESS: I don't recall specifically. I
 9 know it was discussed. Again, GAF wanted -- there was
 10 an urgency to approach Mr. Pritzker and respond to the
 11 settlement demand.
 12 THE COURT: By saying what?
 13 THE WITNESS: By saying let's go get a
 14 deposition, let's go to mediation, something like that.
 15 THE COURT: So you're saying at the end of
 16 the meeting there was direction given to GAF's counsel
 17 to go speak with Mr. Pritzker and say we will proceed
 18 to mediation as long as you don't insist upon any
 19 precondition?
 20 THE WITNESS: Not exactly, because Mr.
 21 Deschenes felt that we needed to, again, give Mr.
 22 Pritzker that money and pay that money. So there were
 23 different opinions on how best to proceed.
 24 The meeting did not result in one clear-cut

1 remember Anne Peri and Jane Gordon-- you know, the
 2 conversation would have been do we need this, and Bill
 3 would have said yes, I want this to go forward. And no
 4 one really responded. It was just a question of we
 5 were explaining that we felt now that we were fully
 6 involved and we had reached up to us that this is how
 7 we would like to proceed, with an IME.
 8 MR. ZELLE: Mr. Satriano, the Judge has heard
 9 all this before. If you can just confine your answers,
 10 whether decisions had been made or not. I think that's
 11 all he's driving at here. Were decisions made? If so,
 12 on what subjects? If they weren't, then tell him they
 13 weren't.
 14 THE WITNESS: They were not.
 15 THE COURT: Before you left for Iraq, did you
 16 sit down with Mr. Mastronardo?
 17 THE WITNESS: Yes.
 18 THE COURT: And did you discuss this case?
 19 THE WITNESS: Yes, Judge.
 20 THE COURT: And what did you tell him needed
 21 to be done with regard to this case?
 22 THE WITNESS: I told him specifically that we
 23 needed to take Marcia Rhodes' deposition; specifically
 24 that we needed to have the IME performed by the

1 physiatrist; specifically we needed to continue to look
2 into the issues of other available insurance. And I
3 also told him that there was a pretrial conference
4 pending, I believe that was in April. And I also
5 understood that there was a hearing regarding a third-
6 party defendant's motion, I believe, and that was going
7 to take place in March. Essentially, I gave him a
8 status update as to what was going on with the case.

9 THE COURT: All right. So was it your
10 understanding that by the time you had left for Iraq, a
11 decision was made to obtain an IME and to get the
12 Marcia Rhodes deposition?

13 THE WITNESS: No, your Honor. After I spoke
14 to Mr. Mastronardo and told him, I mean, I fell off.
15 That was it. --

16 THE COURT: So when you said we need to do
17 this --

18 THE WITNESS: What Rich would agree -- Rich
19 agreed that that would be the route that we would
20 proceed. He did not disagree, certainly, with my
21 suggestion that we have the IME and the deposition. He
22 said okay. It was just that work needed to be done.

23 THE COURT: And was it your understanding
24 that no offer could be provided until the IME and the

1 deposition had been done?

2 THE WITNESS: Yes. Again -- yes.

3 THE COURT: But it was also your
4 understanding that GAF was in charge of its own
5 defense.

6 THE WITNESS: Yes.

7 THE COURT: And did you have any
8 understanding as to what would happen if GAF said we
9 don't wish to proceed with an IME or a deposition?

10 THE WITNESS: Sure.

11 THE COURT: What would happen in that
12 instance, if GAF said that it does not wish to proceed
13 to have those done?

14 THE WITNESS: GAF could have done anything
15 they wanted to do, including give their \$2 million. I
16 mean, I had no power over that. We were hoping that it
17 would be more of a sort of bilateral decision on how to
18 proceed with the defense of the litigation. But GAF
19 was certainly free to do whatever they wanted to do. I
20 could not prevent them from doing anything, whether
21 it's an IME, give their money, or no deposition, for
22 that matter.

23 THE COURT: So are you saying that if GAF had
24 not agreed to proceed with the IME, with the Marcia

1 Rhodes deposition, you would have considered that to be
2 a breach of its duty of cooperation?

3 THE WITNESS: I felt very strongly that the
4 IME should take place and the deposition should take
5 place.

6 THE COURT: Why don't you try my question.
7 Did you understand that it would be a breach of the
8 duty of cooperation of an insured if it had failed to
9 follow your request to get an IME and the deposition of
10 Marcia Rhodes?

11 THE WITNESS: Yes, sir.

12 THE COURT: Was that communicated at the
13 meeting?

14 THE WITNESS: Not in the language that you've
15 selected, no. I mean, it was -- well, we wanted it,
16 yes.

17 THE COURT: Was it communicated in any other
18 way?

19 THE WITNESS: Yes, Judge.

20 THE COURT: How was it communicated to them
21 that you would -- strike that.

22 How was it communicated to them?

23 THE WITNESS: I suggested to them that this
24 would be a better approach to take. Again, there was a

1 motion out there. Trial was not imminent. We had a
2 pretrial conference coming up, so I would have said,
3 "Hey, we have plenty of time to do this, and I think we
4 should do this."

5 I would have cajoled them into certainly
6 saying this is a good idea for the purposes of the
7 defense, and certainly we owed a duty to the insured to
8 fully defend it. And that included IMEs and
9 depositions.

10 THE COURT: Okay. I've got no further
11 questions. Any questions of counsel within the scope
12 of my questions?

13 EXAMINATION BY MS. PINKHAM:

14 Q Mr. Satriano, when you responded to Mr. Bartell's
15 questions about AIG taking a stance as to coverage, did
16 you reference the assistance and cooperation clause?

17 A Yes.

18 Q Do you recognize this document?

19 A Yes.

20 Q What do you recognize the document that I just handed
21 you to be?

22 A That was my letter to Mr. Bartell.

23 MS. PINKHAM: Your Honor, I move to offer
24 this into evidence.

1 For the record, I'm referencing a February
2 13, 2004 letter bearing the Bates stamp ZA0525.
3 THE COURT: Any objection?
4 MR. ZELLE: I need to look at it.
5 MR. GOLDMAN: Let me see it for a second.
6 MR. ZELLE: I don't think so. That is an
7 exhibit already, your Honor. It's 215.
8 MS. PINKHAM: I'm sorry.
9 MR. ZELLE: It's in the 200 series, but our
10 tabs don't have "twos" on them yet.
11 THE COURT: Okay. It's 215?
12 MR. ZELLE: Right.
13 THE COURT: All right.
14 MS. PINKHAM: Thank you, Mr. Zelle.
15 THE COURT: Any further questions of counsel?
16 MS. PINKHAM: No.
17 THE COURT: Mr. Zelle, any further questions
18 that you may have?
19 MR. ZELLE: No, your Honor.
20 THE COURT: Mr. Goldman?
21 MR. GOLDMAN: No, your Honor.
22 THE COURT: All right. Thank you, you may
23 step down.
24 THE WITNESS: Thank you, your Honor.

1 A Just about a year.
2 Q Did you go to college?
3 A Yes.
4 Q Before college, where did you grow up?
5 A I'm from Indianapolis. I grew up in Indiana.
6 Q Where did you go to college?
7 A I went to Indiana University.
8 Q Did you graduate?
9 A Yes, I did.
10 Q In what year?
11 A Graduated from Indiana University in 1975.
12 Q With what degree?
13 A A bachelor's degree in economics.
14 Q Did you go on to any higher education?
15 A Yes, I did.
16 Q Where did you go?
17 A To the Harvard Business School
18 Q Did you graduate?
19 A Yes, I did.
20 Q With what degree?
21 A A master's in business administration, with a
22 concentration in finance and marketing.
23 Q Now, on January 9, 2002, what was your occupation?
24 A Acting vice president of marketing, but in a consulting

1 THE COURT: We'll take our morning break.
2 It's 11:35.
3 (A recess was taken at 11:35 a.m.)
4 THE COURT: All right. Let's call your next
5 witness. Mr. Pritzker, you're back to work?
6 MR. PRITZKER: I am, after a brief hiatus.
7 Harold Rhodes.
8 HAROLD RHODES, Sworn.
9 THE COURT: Good morning, Mr. Rhodes. It's
10 barely still morning, but still morning. If you would
11 please state your full name and spell your last name
12 for the court reporter.
13 THE WITNESS: May name is Harold Rhodes.
14 That's R-h-o-d-e-s.
15 THE COURT: Okay. Mr. Pritzker, please
16 proceed.
17 DIRECT EXAMINATION BY MR. PRITZKER:
18 Q Where do you live, Mr. Rhodes?
19 A My address is 11 Jannock Road in Milford,
20 Massachusetts.
21 Q What is your present occupation?
22 A I am the vice president of marketing for a company
23 called New River, Incorporated.
24 Q How long have you been with New River?

1 capacity, for a company called Visibility.
2 Q Where were they located?
3 A In Chicago, Illinois.
4 Q Did you commute prior to January 9, 2002?
5 A Yes.
6 Q On what kind of a basis?
7 A One or two or three days a week, depending on the --
8 you know, the needs, you know, that were going on at
9 the company.
10 Q And when you weren't at the company -- the company was
11 where?
12 A In Chicago.
13 Q When you weren't at the company, where did you work?
14 A I have a basement office.
15 Q At the house?
16 A At our house, yes, sir.
17 Q Now, you know, obviously, of Marcia's terrible accident
18 on January 9, '02, and I'm not going to go into any
19 detail about your reaction to that, but it is important
20 that you describe to the court generally how you felt
21 directly after the accident.
22 A Well, you know, certainly shock. I mean, that's the
23 first thing that happens, is, you know, it's just
24 unbelievable that such a thing should happen. You

1 know, there's a sadness that comes over that you're
 2 never going to be able to relieve Marcia's plate.
 3 There's, you know, frustration because there's so much
 4 to know, to learn, to deal with this. And, you know,
 5 just generally I was overwhelmed by everything.
 6 Q When was counsel retained?
 7 A In January 2002.
 8 Q Did you sign a fee agreement with counsel?
 9 A Yes, I did.
 10 Q Did you understand the costs would have to be paid?
 11 A Yes, I did.
 12 Q When was suit filed?
 13 A In July of 2002.
 14 Q When was Zalewski's criminal hearing, if you remember?
 15 A I believe it was in October or November of 2002.
 16 Q Were you generally kept apprised of the demands for
 17 settlement that occurred on behalf of the Rhodes
 18 family?
 19 A Yes.
 20 Q When was the first demand?
 21 A I believe it was July 2003.
 22 Q Was that verbal or written?
 23 A I think that that one was a verbal demand.
 24 Q And do you know when the first written demand occurred?

1 2003. This is, you know, nearly two years since
 2 Marcia's crash and we hadn't heard anything from any of
 3 the defendants. And I believe what we wanted to do is
 4 to get a wake-up call to say pay attention to us, talk
 5 to us. You know, this has gone on an awfully long time
 6 now.
 7 Q Well, was there ever a response to the nineteen and a
 8 half million dollar demand?
 9 A Not that I recall.
 10 Q At some time did you receive an indication that some
 11 money had been offered to the family?
 12 A Yes, I remember that.
 13 Q Do you remember when that was?
 14 A As I recall, that was in March of 2004.
 15 Q How much was it?
 16 A That was for \$2 million.
 17 Q Did the plaintiffs ever respond to that demand?
 18 A Yes. Yes, we did.
 19 Q In what way?
 20 A It was not accepted.
 21 Q Did the plaintiffs ever counteroffer?
 22 A No, we didn't.
 23 Q Why not?
 24 A Well, you know, it's now two years -- it's now 26

1 A In August of 2003.
 2 Q How much was the first written demand for?
 3 A As I recall, it was for sixteen and a half million
 4 dollars.
 5 Q Did you on behalf of the family authorize that demand
 6 to be made?
 7 A Yes.
 8 Q Was it ever responded to?
 9 A Not that I ever recall.
 10 Q Was there a second demand?
 11 A Yes.
 12 Q When was the second demand?
 13 A As I recall, this one was in December of 2003.
 14 Q How much was that demand for?
 15 A It was increased to nineteen and a half million
 16 dollars.
 17 Q Did you on behalf of the family authorize that?
 18 A Yes, I did.
 19 Q Why was the demand increased, from your vantage point,
 20 from sixteen and a half million to nineteen and a half
 21 million some four months later?
 22 MR. COHEN: Objection.
 23 THE COURT: Overruled. I'll allow it.
 24 A Well, it's now December of -- it's now December of

1 months past Marcia's injury or crash. I mean, it's
 2 been a long time now and we've been through an awful
 3 lot.
 4 Q My question to you, Mr. Rhodes, was why didn't you
 5 respond to this particular \$2 million demand?
 6 A I was insulted and I was very angry.
 7 Q Did you have any feelings about what the demand
 8 constituted?
 9 A I don't know, but I do know what a good-faith offer
 10 should have been.
 11 Q So you didn't believe this was a good-faith offer?
 12 A No, certainly.
 13 Q Did the defendants make any other offer?
 14 A I don't believe until the time of mediation.
 15 Q And that was when?
 16 A That was in August of 2004.
 17 Q Were you at the mediation?
 18 A Yes, I was.
 19 Q And what was the first offer that the defendants
 20 communicated to you at the mediation?
 21 A 2.7 or 2.75 million dollars.
 22 Q What was your reaction to that offer?
 23 A I was outraged. It just wasn't a good-faith -- it just
 24 wasn't a good-faith offer.

1 Q Why didn't you think it was a good-faith offer?

2 A Well, you know, it didn't cover -- it didn't even cover

3 Marcia's medicals or her related expenses, let alone

4 any monies for Marcia's incredibly long, you know, pain

5 and suffering and even, you know, a loss of consortium.

6 I mean, it was just ridiculous.

7 Q Do you remember what the defendants' final offer was on

8 the date of the mediation?

9 A As I recall, \$3.5 million.

10 Q What was the reaction to that?

11 A Equally outraged. I mean, it was good that they raised

12 it, but still, you know, this now barely covered

13 Marcia's economic and medicals, past and present. It,

14 you know, just gave a little bit of money for Marcia's

15 long-term pain and suffering. And by now I'm -- you

16 know, I'm realizing the concept of interest on this

17 amount of money, and knowing what a discounted amount

18 would have been back when the accident would have been,

19 so it's even lower.

20 Q You said 3.5. Did you understand approximately how

21 much interest had accrued from the date that suit was

22 brought?

23 MR. COHEN: Objection, your Honor.

24 THE COURT: Well, sustained. I mean, I think

1 know, weren't willing to do that.

2 MR. COHEN: Motion to strike. As to what the

3 defendants would have been willing to do. There's no

4 evidence that was ever communicated.

5 THE COURT: All right. Well, I will allow in

6 what he said he was willing to move, but beyond that,

7 it's stricken.

8 (By Mr. Pritzker)

9 Q Do you know whether or not the defendants were willing

10 to negotiate in that range?

11 MR. COHEN: Objection.

12 THE COURT: I'm sorry. Willing to negotiate

13 the net range?

14 (By Mr. Pritzker)

15 Q Do you know whether or not the defendants were willing

16 to negotiate in the range that you said you were

17 willing to negotiate; namely, 6 to \$10 million?

18 MR. COHEN: Objection. Lack of foundation as

19 to how he would know.

20 THE COURT: Yes. You'll have to tell me how

21 he would know that, so why don't you go straight to

22 that question.

23 (By Mr. Pritzker)

24 Q How do you know what the defendants' position was

1 we all know it's 12 percent common, so I don't need him

2 to tell me that.

3 (By Mr. Pritzker)

4 Q Do you remember what the plaintiffs' first offer was or

5 first demand was at the mediation?

6 A Ours? We said fifteen and a half million dollars,

7 including assurances for continued healthcare for

8 Marcia.

9 Q Including or in addition to?

10 A In addition to. I'm sorry. In addition to.

11 Q Why was healthcare a part of the demand package?

12 A Well, it began to occur to me that, you know, when and

13 if we got this settled and United Healthcare had

14 expended an enormous amount of money on our behalf, you

15 know, as a single policyholder, that they might drop

16 us. And that's really scary, you know. So I wanted to

17 be sure that we were -- that, you know, Marcia and I

18 we're taken care of.

19 Q What was the ending offer that was in the demand that

20 was made at that mediation?

21 A I think we came down to \$15 million.

22 Q Were you willing to move from there?

23 A Yes. We were willing to negotiate within a range of 6

24 to \$10 million, but apparently the defendants, you

1 concerning continued negotiations?

2 MR. COHEN: Objection. Mediation privilege.

3 MR. PRITZKER: I don't think it is.

4 MR. COHEN: If he's going to testify as to

5 something that the mediator told him.

6 MR. PRITZKER: I not asking him --

7 THE COURT: Why don't you lead him a little

8 bit so we know what the source of it is so I can

9 evaluate.

10 (By Mr. Pritzker)

11 Q Mr. Rhodes, do you understand that you are not to

12 testify as to anything that the mediator said to you or

13 -- that the mediator said to you?

14 A Yes, sir.

15 Q And, in fact, how do you know that the defendants were

16 not willing to negotiate in the range of 6 to \$10

17 million?

18 A They got up and left.

19 Q And what was the last offer that the defendants

20 communicated to you or to the plaintiffs, to you on

21 behalf of the plaintiffs, before leaving?

22 A Three and a half million dollars.

23 Q Before the mediation --

24 THE COURT: I'm sorry. How long after that

1 offer was communicated to you did they leave?

2 THE WITNESS: I think somewhere between, you

3 know, an hour, an hour and a half.

4 Q Before the mediation started, had you and your wife

5 authorized counsel to settle for any particular amount?

6 A Yes, we did, sir.

7 Q How much was that?

8 A For \$8 million.

9 Q Had you ever authorized any sum for settlement prior to

10 mediation?

11 A No, we hadn't.

12 Q We know that you authorized the demands to be made.

13 A Yes.

14 Q And you understand the difference between a demand and

15 an actual authorization for settlement.

16 A Yes.

17 Q During the mediation, did you ever vary the \$8

18 authorization?

19 A No. We stayed at \$8 million because there was never a

20 good-faith offer in which to consider, you know, having

21 a discussion that varied from \$8 million, so we stayed

22 at \$8 million.

23 MR. COHEN: Motion to strike.

24 THE COURT: Overruled.

1 A I believe right at the beginning of the trial.

2 Q And there was a jury verdict, right?

3 A Yes, there was.

4 Q How much was the jury verdict for?

5 A Nearly 12 -- or \$9.4 million.

6 Q Was interest tacked onto that verdict?

7 A Yes, it was.

8 Q And what was the total of the jury verdict, plus the

9 prejudgment interest?

10 A It was nearly 12 million, like \$11.9 million.

11 Q Jumping back for a minute, at the very end of

12 mediation, was there a settlement between the

13 plaintiffs and Professional Tree?

14 A Yes.

15 Q For how much?

16 A For \$550,000.

17 Q Did the plaintiffs receive any of that money

18 immediately when Professional Tree settled?

19 A Well, Marcia and I didn't, no.

20 Q Why not?

21 A As I recall, there was a lien, there was a lien from

22 United Healthcare on the verdict for all the medicals,

23 which I think was like \$400,000. And before we could

24 get any money, that lien had to be, as I remember, that

1 (By Mr. Pritzker)

2 Q Did you have an understanding of how much a good-faith

3 offer would be?

4 A Yes.

5 MR. COHEN: Overruled. I'll hear it.

6 A Well, I knew -- well, let me say the opposite. I knew

7 what a good-faith offer would not be, okay. Let me put

8 it that way. I knew a good-faith offer would not be

9 one that didn't cover Marcia's -- or didn't cover

10 Marcia's medical and related expenditures, past and

11 future. I knew if it didn't include something for

12 Marcia's extensive pain and suffering, her life-long

13 pain and suffering, and I knew if it didn't include

14 something for, you know, the loss of consortium, it

15 wouldn't be a good-faith offer.

16 Q Were there any further offers between then and the time

17 the trial started?

18 A No.

19 Q Was there an offer during the trial?

20 A Yes, I believe so.

21 Q What was the first offer during the trial?

22 A As I recall, it was the same \$3.5 million made at the

23 end of mediation.

24 Q And that was made when?

1 lien had to be taken care of.

2 Q When you say there was a lien on the verdict, did you

3 mean the verdict or just the proceeds?

4 A Proceeds, yeah. Proceeds.

5 Q Did the plaintiffs ultimately settle with United

6 Healthcare to release the lien?

7 A Yes, we did.

8 Q How much money?

9 A As I recall, around \$165,000.

10 Q Aside from the money that was received from

11 Professional Tree, when was the next money received

12 from the defendants?

13 A It was a couple of months after trial. It was, yes, it

14 was in December 2004.

15 Q And for whom did that money come?

16 A That money came from Zurich.

17 Q How much was it?

18 A Approximately \$2.3 million.

19 Q Did AIG pay at the same time?

20 A No. No, they didn't.

21 Q Did you understand that they had taken any action?

22 A They filed an appeal instead of paying money.

23 Q Did AIG ever pay?

24 A Yes, eventually.

1 Q When?

2 A They paid in three installments, as I recall, in 2005:

3 in July, August and September, or it could have been

4 August, September and October, in that time period.

5 Q And those three installments amounted to how much?

6 A Just under \$9 million.

7 Q So between the money that the plaintiffs received from

8 Professional Tree and the money from Zurich and the

9 money that was ultimately paid by AIG, how much totally

10 did the plaintiffs receive, approximately?

11 A About \$11.8 million.

12 Q And do you know what the total judgment was, plus the

13 interest on the unpaid balances?

14 A Yes, I do.

15 Q How much money?

16 A That was \$12.6 million.

17 Q In order to settle with AIG, the plaintiffs gave up

18 roughly \$700,000?

19 MR. COHEN: Objection.

20 THE COURT: Overruled.

21 A Yes. We had to give up 7 or \$800,000 to settle.

22 (By Mr. Pritzker)

23 Q Now, I think you mentioned earlier that the fee

24 agreement between the plaintiffs and Brown Rudnick

1 the time that the plaintiffs received the last of the

2 monies in September of 2005, how much in costs the

3 plaintiffs paid?

4 A We paid around \$140,000.

5 Q And how was that payment made?

6 A Brown Rudnick would deduct those costs from the

7 proceeds and send us the remaining amount.

8 Q Now, you've already told us a little bit about how you

9 felt right after Marcia's injuries. Have any of those

10 feelings gone away?

11 A You know, certainly I'm no longer overwhelmed and

12 certainly the shock has certainly dissipated to some

13 extent. The frustration and sadness, you know, remain.

14 They'll always be there.

15 Q At some time did you notice those feelings getting

16 less?

17 A Certainly. You know, Marcia, Rebecca and I have all

18 adjusted to our new life.

19 Q When would you say, if you could put a time frame on

20 it, when you started to feel less sorrowful about

21 Marcia's condition?

22 A Well, certainly after the renovation was completed and

23 Marcia no longer had to be in a living room out in the

24 middle of our house. Now that she had, you know, some

1 required costs to be paid; is that true?

2 A Yes, sir.

3 Q And can you tell me your understanding of the costs

4 that were to be paid and how they were to be paid?

5 A Well, when we signed the agreement, you know, you

6 explained or I understood the costs would cover direct

7 costs associated with the case, you know, I'll call

8 them indirect costs associated with the case. The

9 direct costs might be travel, the indirect costs might

10 be telephone or fax; and that the direct costs would be

11 charged at cost, whatever it was, and that the indirect

12 costs would be charged whatever the rate was for, you

13 know, Brown Rudnick, you know, for a large firm in the

14 Boston area.

15 Q And was the obligation to pay costs part of the

16 contingent fee agreement between the plaintiffs and

17 Brown Rudnick?

18 A Yes, it was.

19 Q In addition to that, was there a percentage that Brown

20 Rudnick was to receive from any recovery on the matter?

21 A Yes, there was.

22 Q Do you remember how much the percentage was?

23 A Thirty-three percent.

24 Q Could you tell me, between the time of the accident and

1 privacy, I felt a great deal better that, you know, she

2 could now get on and have a regular life without being

3 intruded upon. I think that that's probably when it

4 began. I could see that.

5 I would certainly go on to say the first time

6 Marcia took driving lessons and Mr. Whitehouse, the

7 driving instructor, told me, we discussed it

8 afterwards, and when I asked him does he think that

9 Marcia is going to be able to learn to drive, I

10 understood that she was going to be able to drive, and

11 that certainly made me feel much better.

12 Q Why?

13 A Well, between having, you know, new, larger space that

14 afforded her the opportunity to have friends over, that

15 we could have dinner at, that she could have her

16 privacy, and having the independence of being able to

17 drive for herself or with Rebecca, these are two good

18 steps in the course of a person's, you know,

19 occupational rehabilitation. And these were important,

20 big steps to making Marcia feel better and making me

21 feel better.

22 Q Prior to the renovations that you completed, where was

23 Marcia staying?

24 A Our house is a regular, you know, four-bedroom, two-

1 story Colonial house where there's four rooms, four or
 2 five rooms on the first floor and four bedrooms on the
 3 second floor. And so since Marcia couldn't up the
 4 stairs, we moved the piano out of the living room and
 5 we moved a medical bed into the living room, and that's
 6 where Marcia stayed. There were no doors or anything.
 7 But that's where Marcia stayed, slept, lived.
 8 Q Now, at some point, did the legal case begin to concern
 9 you?
 10 A Yes.
 11 Q Can you tell me when you started to feel some concern
 12 about the case?
 13 A Well, I remember I didn't think much about the legal
 14 case in the first half of 2002, because Marcia was in
 15 the hospitals and that was the major thing thinking
 16 about. But by July, you know, this is when I began to
 17 ask you how things were going, and, you know, knowing
 18 that really had proceeded and really having an
 19 expectation that things would proceed along, made me
 20 anxious. By November, October, when Mr. Zalewski was
 21 found guilty and expecting now that liability was
 22 perfectly clear, that nothing was happening, really,
 23 really made me anxious about what was going on with the
 24 case.

1 how would you describe what you were feeling as
 2 it related to the litigation process?
 3 A Oh, by the end of 2003 I was just -- I was
 4 angry. I was just completely, completely
 5 mortified. I mean, we were two years, we hadn't
 6 heard from anybody. We had used up a
 7 significant amount of monies to support this.
 8 You know, liability was clear, but yet nothing
 9 was happening.
 10 Q How did it make you feel?
 11 A I mean, I think Marcia said it best the other
 12 day. It was a no-brainer. And I was just angry
 13 that we just, you know, didn't just solve this
 14 think and, you know, just resolve it and let
 15 Marcia and me and Rebecca move on with our
 16 lives. Your Honor, I mean, it was just there.
 17 Q You'd mentioned the anger. Was there other
 18 feelings that you can describe as this process
 19 wore on during 2003?
 20 A Well, I mean, it was just a very, very difficult
 21 time. I mean, I'm sure towards the latter --
 22 I'm sure that by the latter part of 2003, you
 23 know, I was growing even more concerned about
 24 where we were with money and, you know, I'm sure

1 MR. COHEN: Your Honor, move to strike any
 2 conversations he had with his counsel.
 3 THE COURT: I will. I'm not sure that they
 4 form the substance of his answer, but I haven't focused
 5 on that. So go ahead.
 6 (By Mr. Pritzker)
 7 Q You understand, Mr. Rhodes, that you should not be
 8 disclosing conversations of you and I?
 9 A Yes, sir.
 10 Q Directing your attention to the date of the 2003;
 11 can you tell me whether or not the anxiety was
 12 increasing?
 13 A Well, now I was becoming increasingly concerned
 14 about money. Since the expenses, you know, were
 15 exceeding income we were beginning to suddenly
 16 use up our liquid assets, and this was really
 17 quite concerning because, you know, I'm a
 18 Harvard MBA and I can see the direction where we
 19 were going with, you know, our assets and, you
 20 know, this really began to concern me a great
 21 deal, especially having no -- now, no
 22 understanding of how long the whole trial, you
 23 know, this whole process was going to take.
 24 Q Directing your attention to the whole of 2003;

1 I was waking up at night worried about what we
 2 were going to do for money.
 3 Q Did that abate during the first half of 2004?
 4 A No, it just grew worse. You know, the anger
 5 just turned to outrage.
 6 Q If you tried to calculate or have you calculated
 7 how your net assets, the liquid assets, your
 8 assets were being reduced during the period from
 9 time of the accident until August of 2004?
 10 MR. VARGA: Objection. Your Honor, we
 11 have an objection certainly to testimony on this
 12 subject, predominantly because we still have not
 13 received a full disclosure of financial asset
 14 information. What we received are spreadsheets,
 15 which do not provide any source documentation
 16 for the defendants to examine it, to understand
 17 what was happening with the accounts at various
 18 times, what all the investments were, how they
 19 would be completed.
 20 As a result of that, all we have are
 21 summaries prepared by counsel which are not
 22 sufficient and able for meaningful cross-
 23 examination on this subject. This material was
 24 requested during discovery. All we received

1 were two pages of Quick and Reilly reports and
2 some other materials such as the tax returns and
3 something about a line of credit that was taken
4 out.

5 But in terms of the full disclosure of
6 that sort of information that hasn't been
7 complied with, it would be inappropriate for the
8 witness to now be able to explain the extent to
9 which he claims assets were being depleted
10 during this process and any effects that that
11 had, where there hasn't been a full and fair
12 opportunity on the part of the defense to
13 examine those records and to contest the
14 witness's credibility.

15 MR. PRITZKER: Your Honor, I would like
16 at least to, if the court wishes to hear
17 dialogue in this, to show the court what was
18 disclosed to counsel.

19 THE COURT: I think it makes more sense
20 to show me what you have disclosed as opposed to
21 describing it.

22 MR. PRITZKER: Let me make sure that
23 it's complete. And by the way, this was not
24 prepared by counsel. It was prepared by Mr.

1 important as his perception and the emotional strain
2 that that caused him.

3 THE COURT: We can mark this for I.D., but I
4 will allow the questioning, limited to the issue of
5 emotional distress and not to the issue of lost income
6 or lost opportunity to earn.

7 MR. COHEN: Your Honor, can I add one thing
8 to Mr. Varga's objection, and that is in the trial of
9 the underlying case, there was also testimony about Mr.
10 Rhodes' concern about the depletion of his assets.
11 Our position is that that's something he's already been
12 compensated for by the other jury.

13 THE COURT: I don't know how he would be
14 compensated for that as part of a loss of consortium,
15 so I don't consider that to be duplicative.

16 MR. PRITZKER: I can leave that with the
17 court, your Honor.

18 THE COURT: Okay, it should be marked for
19 I.D.

21 (Exhibit G for I.D., marked; Harold Rhodes
22 Asset Spreadsheet.)

23
24 MR. VARGA: Your Honor, I just want to make

1 Rhodes.

2 I'll hand it to the court.

3 And again, this was pursuant to the
4 court's order to disclose the financial
5 information, which made up the assets which were
6 being depleted.

7 MR. COHEN: Could we get a copy of
8 that? Is that what this is you provided us?

9 MR. PRITZKER: Yes.

10 MR. COHEN: Just for the record, I'd like
11 to join in the same objection..

12 MR. PRITZKER: If I may, your Honor, just to
13 clarify?

14 THE COURT: You may.

15 MR. PRITZKER: This was the dialogue, was all
16 about the disclosure, was as a result of the
17 plaintiffs' intent to seek lost wages as part of our
18 damages in this case. The defendants have been duly
19 notified that we are not seeking lost wages, that we
20 are only seeking damages for Mr. Rhodes' emotional
21 state because his assets were being depleted.

22 Mr. Rhodes can walk through these schedules
23 to show what the depletion of the liquid net worth was
24 and how they were arranged. The dollars aren't as

1 sure I understand the scope of the court's ruling on
2 it. It will allow testimony regarding the effect that
3 the alleged depletion of assets had on Mr. Rhodes. Is
4 that what your Honor said? I want to make sure --

5 THE COURT: He is able to testify to the
6 emotional distress suffered by the financial
7 circumstances which he contends were caused by the
8 failure to settle. So to the extent that that
9 emotional distress was, in part, derived from his
10 financial concerns, I'll allow him to testify as to
11 that.

12 MR. VARGA: Thank you.

13 (By Mr. Pritzker)

14 Q Mr. Rhodes, before we broke for that colloquy, I think
15 I had asked you whether you knew how your net liquid
16 assets were being depleted between January 2, '02 --
17 I'm sorry January 9, '02 and August of '04?
18 A I'm wondering if I could look at that schedule because
19 then I would give perfect answers, otherwise I'm just
20 going to try to remember as best I can.

21 MR. PRITZKER: May I hand this to the
22 witness, your Honor?

23 THE COURT: You may.

24 THE WITNESS: Thank you.

1 THE COURT: Since we always strive for
2 perfection.
3 A I keep very detailed reports of our financial situation
4 ever since we were married. So these come from, you
5 know, reports or files, computer files that I've kept
6 for a long time. On January 31st we had a liquid net
7 worth of about \$630,000. So liquid net worth would --
8 MR. VARGA: I'm sorry, I don't mean to
9 interrupt, the witness is reading from a document that
10 is not in evidence. It's marked as G for
11 identification so --
12 THE COURT: If anybody wishes to offer it,
13 they may, I mean, it's being --
14 MR. PRITZKER: I'll ask a simpler question,
15 Your Honor.
16 THE COURT: Okay. I mean, it's being used.
17 It's a document which he prepared, I gather, with the
18 numbers in front of him and is being used to refresh
19 their memory or as recorded recollection, but I don't
20 really see it to be a problem.
21 MR. VARGA: My only objection, your Honor, is
22 it's a summary prepared by the witness in anticipation
23 of this lawsuit and this trial, but we don't have the
24 backup for it. That's the basis for our objection.

1 MR. COHEN: I think objection. Your Honor
2 has already ruled that the retirement investment should
3 be included in the liquid assets, is my understanding.
4 THE COURT: Well, with regard to disclosure,
5 yes. But he can define it however he wishes to define
6 it. You can cross-examine him and speak to him as to
7 whether or not that may have played a role in his
8 experience with regard to his financial situation. So
9 you may proceed.
10 (By Mr. Pritzker)
11 Q By August of '04, Mr. Rhodes, without looking at that,
12 just listen to my question. By August of '04, do you
13 remember approximately how much remained in net liquid
14 assets?
15 A \$167,000.
16 Q And how did that make you feel?
17 A I was scared to death. I mean, at the present rate
18 that we were using up our liquid assets, soon I would
19 have to, you know, start using our retirement assets,
20 which would have been -- had a penalty on it, as well
21 as been taxed, so it's not exactly the amount shown.
22 You know, we may have to take out a mortgage on our
23 home, even though our mortgage was very low. And
24 although I didn't segregate money for Rebecca's college

1 THE COURT: All right.
2 MR. VARGA: To the extent he's going to read
3 it or it's otherwise going to be offered, we definitely
4 object to that.
5 THE COURT: Okay. I understand that and I've
6 overruled that to the extent that I will allow him to
7 be testifying generally about the change in his
8 financial circumstances. I don't need to hear about
9 each particular transaction, but I will allow him to
10 describe what the family's financial circumstances were
11 and how that changed prior to receiving the money from
12 settlement.
13 A Could you ask the question again, please?
14 (By Mr. Pritzker)
15 Q Yes. Generally, how much had your net liquid assets
16 depleted between January 9, '02 and August of '04?
17 A About \$470,000, our liquid assets.
18 Q And how do you define "liquid assets"?
19 A By convention, we include any cash on hand, any
20 brokerage monies, but not retirement, not the non-
21 tradable, not the home value, not personal property.
22 It's deducted then from any taxes that are payable, any
23 credit cards that are payable, the home renovation that
24 was due, but, you know, not the auto, not the mortgage.

1 fund, I really came to worry whether we would have
2 money for Rebecca's college fund. So, you know,
3 whether -- you know, I was scared to death.
4 THE COURT: I'm sorry. The money for her
5 college fund is not part of this.
6 THE WITNESS: No. No, that's included in our
7 assets. It's not separated, but I knew that as the
8 money went down, I wasn't going to have money for
9 Becca's college fund.
10 THE COURT: Okay. But did you have any money
11 for her put aside in a --
12 THE WITNESS: No.
13 THE COURT: -- separate account?
14 THE WITNESS: No, sir.
15 THE COURT: Okay.
16 (By Mr. Pritzker)
17 Q When again did the plaintiffs received the first demand
18 from the defendants?
19 A The plaintiffs' first demand, the --
20 Q The first offer from them.
21 A I'm sorry. Could you repeat the question, please?
22 Q When did the plaintiffs received -- you already
23 testified that there was a \$2 million demand in March?
24 A A \$2 million --

1 Q A \$2 million offer. Excuse me.
 2 A -- in March, yes.
 3 Q And then there was no offer between then and mediation?
 4 A That's correct.
 5 Q When you received -- strike that.
 6 When you went to mediation, do you remember
 7 the day?
 8 A I remember it was in August.
 9 Q Do you remember how you felt going into the mediation?
 10 A Oh, I was just as glad as glad can be that, you know,
 11 we were going to actually sit down and work this
 12 through and not have to go to trial. I mean, that was
 13 just great, that, you know, we had finally gotten to a
 14 point where we're going to have, you know, a discussion
 15 that we could, you know, finalize this whole thing on.
 16 Q Do you remember your first impression when you walked
 17 into the mediation room?
 18 A Oh, I was excited and as happy as I could possibly be.
 19 I mean, there were 20 or 30 people besides the --
 20 besides us, you know, from the defendants. And, you
 21 know, in my business world, if you had this large of a
 22 meeting, you'd call it the big-bang meeting. And
 23 that's where everybody got in a room and you made up
 24 your mind and, you know, you didn't leave until it was

1 -- the whole thing is just overwhelming, you know, as
 2 to what was going to happen now.
 3 Q Does anything stand out in your mind during trial that
 4 set you off on different emotions?
 5 A I sat there and I listened to the defendants' life-care
 6 planner, and I suppose I had never been more angry in
 7 my entire life. She said -- she said that it would be
 8 okay for Marcia to live -- she said that there wasn't
 9 any need for renovations and that Marcia could
 10 comfortably live in a living room on a hospital bed for
 11 the rest of her life, and I just was really angry. And
 12 then she said that Marcia only needed a certain amount
 13 of care, just in the mornings, because I would be there
 14 and Becca would be there to take care of her, to mean
 15 that we would be the personal care attendants for
 16 Marcia. And, you know, when I was listening to the
 17 life-care planner say these two things, I just realized
 18 that they just didn't want to -- they just didn't want
 19 to provide a fair amount of Marcia and me.
 20 Q Were there other times during the trial -- before
 21 I get there -- did you display any kind of --
 22 the feelings that you've just described did it
 23 come out in any physical manifestation at the
 24 trial?

1 done because that was the goal of everybody. So, you
 2 know, I looked at everybody and I said to myself, you
 3 know, they wouldn't send all these people unless they
 4 were absolutely committed to getting this thing done,
 5 so that was great.
 6 Q How did you feel when you heard the first offer of the
 7 2.75 million?
 8 A Hopeless, depressed. I knew right then that it just
 9 wasn't going to happen.
 10 Q Why? What made you feel that way?
 11 A I mean their opening offer wasn't even a good-faith
 12 offer. It didn't even cover -- it didn't even cover,
 13 you know, Marcia's past and future medical-related
 14 expenses. I mean, they knew at that point where we
 15 were. I mean, they knew everything. They had the
 16 medical, I mean they had the expense -- they had
 17 everything and they started off at \$2.75 million, and I
 18 am shocked, that -- this is not a good-faith effort on
 19 their part.
 20 Q Did your feelings change by the end of the day?
 21 A No.
 22 Q Did they change by the beginning of trial?
 23 A Yeah. I just -- you know, I just -- you know, I'm now
 24 really worried about trial and, you know, now it's just

1 A Yes, I'm sure it did.
 2 Q How?
 3 A I'm sure I cried. Especially, you know, there
 4 is that other point that they made my wife
 5 testify. For goodness sake, it wasn't her
 6 fault. That's what I kept thinking. She was
 7 rear-ended into and they are making her now go
 8 through trial. They knew everything. Why were
 9 they doing that?
 10 Then the worst came, the worst came
 11 when they made my daughter testify. I mean,
 12 here's this 16-year-old girl and I was causing
 13 her to go to this trial and it's something she
 14 was going to have to carry with her for the rest
 15 of her life and that's something I don't think
 16 any father would want to do to his daughter.
 17 Q How did you feel when the jury came back with
 18 the verdict?
 19 A Oh, God. Extremely relieved. Extremely.
 20 Q Happy?
 21 A Very happy. Very satisfied.
 22 Q Then what?
 23 A Well, I mean we thought it was over. I mean,
 24 the jury returned a verdict and a judgment and

1 they calculated what the interest on it was and,
 2 you know, we thought it was over and we'd be
 3 getting our money soon. But that didn't happen
 4 and it just like -- this rollercoaster, we felt
 5 really good and now it was like back to the
 6 bottom again.
 7 Q Do you remember what your thoughts were when you
 8 first learned that AIG had filed a notice of
 9 appeal?
 10 A Well, there's two things. The first was, I
 11 mean, I just couldn't believe it. I mean, what
 12 in God's name are they doing? The jury said,
 13 what the jury said, please pay us the money so
 14 we can get on with our lives. But more than
 15 that, more than that, this is when I realized
 16 that if they can delay this for two more years,
 17 we would be in dire financial straits. And I
 18 was just absolutely afraid that we wouldn't be
 19 able to withstand two more years and then we
 20 would just have to take whatever they offered.
 21 MR. PRITZKER: I have no further
 22 questions, your Honor.
 23 THE COURT: Okay. Any cross-
 24 examination?

1 A That's what I said in my interrogatory. Later
 2 on, a similar question was asked in the
 3 deposition where I further clarified that.
 4 Q Well, Mr. Rhodes, I don't care what you said in
 5 your deposition. My question is, do you stand
 6 by this answer or don't you?
 7 A Well, I -- yes, I stand by that answer --
 8 Q Okay. And you did not file any supplemental
 9 answers to interrogatories to that question
 10 giving any other answer, did you?
 11 A No, I didn't.
 12 Q Now, in fact at your deposition you testified,
 13 did you not, that at the time of the mediation
 14 you drew a line in the sand at \$8 million, and
 15 you wouldn't accept at the mediation anything
 16 less than that. Do you recall that testimony?
 17 A I said that in the deposition, but later on in
 18 the deposition I clarified that statement. And
 19 if you put the clarification into the context
 20 what I said was, since no good-faith offer was
 21 ever made that we could discuss, I never felt
 22 the need to move from \$8 million. I mean, had
 23 you made a good-faith offer and the lawyers and
 24 the mediator and my brother Steve all said that

1 MR. COHEN: Yes, your Honor.
 2 THE COURT: Okay, Mr. Cohen.
 3 CROSS-EXAMINATION BY MR. COHEN:
 4 Q Mr. Rhodes, I'd like to read you one of your
 5 answers to an interrogatory that was propounded
 6 by my claim, AIGDC, and it's your answer to
 7 interrogatory number nine. The question was:
 8 please state what offers of settlement
 9 you would have accepted from January 2002 until
 10 the resolution of the underlying matter. If the
 11 amount you would have accepted changed at any
 12 time, please indicate for what periods of time
 13 each amount is applicable.
 14 And your answer is:
 15 I believe the family was willing to
 16 accept \$8 million to resolve the underlying
 17 matter up through the mediation. Stating what
 18 the family would have agreed to between the time
 19 of the mediation and the jury announcing its
 20 verdict would be speculative. After the jury
 21 verdict, I was willing to accept the full amount
 22 of the jury verdict, plus all accrued interest,
 23 to resolve the underlying matter.
 24 Is that still your testimony, sir?

1 it was the right thing to do, you know, I don't
 2 know what I would have done then.
 3 MR. COHEN: Your Honor, I move to
 4 strike everything after "I said that at the
 5 deposition."
 6 THE COURT: Overruled.
 7 (BY MR. COHEN)
 8 Q Specifically, Mr. Rhodes, at the deposition you
 9 said:
 10 question: So you are saying that if you
 11 had an offer of \$8 million --
 12 MS. PINKHAM: Can I have a page
 13 reference, please?
 14 MR. COHEN: I'm sorry, it's page 93,
 15 line 5.
 16 (BY MR. COHEN)
 17 Q So you are saying that if you had an offer of \$8
 18 million, you didn't care who it was from. You
 19 would have settled the case on the day of the
 20 mediation?
 21 Your answer was: Yes.
 22 Then my question was: Okay. Now is it
 23 fair to say, though, 8 million was the line in
 24 the sand that you were drawing in your mind as

1 to you wouldn't accept anything less than that?

2 Answer: Yes.

3 So if you were offered \$7 million at
4 the mediation, you wouldn't have accepted that?

5 Answer: That is correct.

6 Certainly if you were offered \$6
7 million at the mediation, you wouldn't have
8 accepted that, you would have tried the case,
9 right?

10 Answer: That's correct.

11 Do you stand by that testimony, sir?

12 A I stand by that, in the context of the further
13 testimony that was given just after that
14 discussion.

15 Q I guess your attorney will have a chance to get
16 into that on redirect, Mr. Rhodes.

17 MR. PRITZKER: We could have it read
18 right now, your Honor, and save some time.

19 MR. COHEN: I'd be happy to read
20 anything that they want me to read.

21 THE COURT: He's described it. Let Mr.
22 Cohen do his questioning and then I'll hear from
23 you again.

24 (BY MR. COHEN)

1 Q Now, at all times during the time the accident
2 was going on, I'm going to refer to the case
3 that you tried in Norfolk Superior Court as the
4 accident case on occasion throughout my
5 questioning of you so you understand that's what
6 that means?

7 A Okay.

8 Q At all times during that case, you were only
9 willing to settle this case as a package deal.
10 In other words, you had to settle, Mrs. Rhodes
11 had to settle, Rebecca all had to settle, or
12 there would be no settlement, right ?

13 A That's true.

14 Q And in fact, every settlement demand that was
15 made in the accident case was made on behalf of
16 the whole family and not on behalf of any of the
17 three individual plaintiffs, correct?

18 A That's true, sir.

19 Q And in addition to that, Mrs. Rhodes wanted you
20 to make all of the decisions as to settlement,
21 correct? She wanted to be left out of that?

22 A Yes, that's true, sir.

23 Q And you were also making the decisions as to
24 settlement on behalf of Rebecca, who was a minor

1 at that time the accident case was going on,
2 correct?

3 A Yes, that's true.

4 Q Now, when you talked about what you felt a good-
5 faith or fair offer would or wouldn't have been
6 in response to Mr. Pritzker's testimony, you
7 were talking again about the package deal of all
8 three plaintiffs combined, correct?

9 A Yes, sir.

10 Q And you never gave any thought to what a fair
11 settlement offer would be to settle your loss of
12 consortium case, correct?

13 A That's correct, sir.

14 Q And you never gave any thought to what would be
15 a fair offer with respect to Rebecca's loss of
16 parental-society case either, correct?

17 A That's correct, sir.

18 Q It's true, is it not, that prior to and during
19 the trial of the accident case, you thought that
20 there was a possibility that the jury would come
21 back and award you less than \$6 million, right?

22 A I had no idea, you know, what the jury would
23 offer, but, you know, anything was possible.

24 Q Well, let's turn to page 103 of your deposition,

1 Mr. Rhodes. Actually, I guess we're going to
2 start on page 102, line 12. Let me read you
3 your testimony.

4 Question: Prior to the trial, did you
5 have any expectations as to what range of jury
6 verdict might be returned?

7 No.

8 You had no guesses or estimates as to
9 what the jury might do?

10 Answer: No.

11 Question: Did you think there was a
12 possibility that they would award less than \$8
13 million?

14 Your answer was: Yes.

15 Question: Did you think there was a
16 possibility that they may award less than \$6
17 million?

18 Your answer was: Yes.

19 Question: Did you think there was a
20 possibility that they might award less than \$4
21 million?

22 Answer: I don't -- I don't believe
23 that would have happened.

24 Question: Did you think there was a

1 possibility that they would award less than \$5
 2 million?
 3 Answer: I don't know. I don't know.
 4 One more question: But you were
 5 concerned about what they would come back with,
 6 right?
 7 Answer: Yes.
 8 And that's still your testimony today,
 9 Mr. Rhodes?
 10 A Yes, sir.
 11 Q Okay. And you understood, did you not, that a
 12 large component of the damages that your counsel
 13 was asking the jury to award you consisted of
 14 pain and suffering and loss of consortium,
 15 right?
 16 A Yes, sir.
 17 Q And in fact, that was the major amount of the
 18 damages you were seeking, correct?
 19 A Yes, sir.
 20 Q Because the future medical costs were, by your
 21 own expert's testimony, was going to range from
 22 \$1.4 million to \$1.9 million, correct?
 23 A I believe that's true, sir.
 24 Q And you also were seeking some past costs,

1 Q I'll get to that in a second.
 2 Do you agree that pain and suffering
 3 and loss of consortium damages are difficult for
 4 anybody to quantify?
 5 A Yes.
 6 Q And that's because it's very difficult to put a
 7 number of somebody's pain and suffering and
 8 emotional distress because you can't see a
 9 medical bill or lost wage bill. It's not as
 10 easy to put a number on that as it is what your
 11 future lost wages are going to be or what your
 12 future medical bills are going to be, right?
 13 A That's correct, sir.
 14 Q Now, with respect to the independent medical
 15 examination, you viewed it as reasonable for the
 16 defense attorneys or the insurance companies to
 17 seek to perform an IME, correct?
 18 A Well, yes, but not in the way that -- not in the
 19 way the defendants went about it. So yes to the
 20 answer that it is reasonable.
 21 Q The IME itself, though, I understand you have
 22 issues with regard to the timing of the IME and
 23 there was a male doctor versus a female doctor,
 24 but the fact that they wanted to have your wife

1 including the past medicals and the cost of
 2 renovating your home and the cost of the van and
 3 the cost of the healthcare aid, and that all
 4 amounted to something in the range of \$900,000,
 5 right?
 6 A Yes, I believe so.
 7 Q So the vast majority of the demands that you
 8 made, whether it was the \$18.5 million demand,
 9 the \$19.5 million demand, the 15.5 plus the
 10 health insurance demand, that consisted of pain
 11 and suffering, right?
 12 A Pain and suffering and the loss of consortiums.
 13 Q And you understood, did you not, that pain and
 14 suffering is a very subjective thing for a jury
 15 to consider as to what it's worth and what it's
 16 not worth, right?
 17 A I guess.
 18 Q And would you agree that such damages, pain and
 19 suffering and loss of consortium, are difficult
 20 to quantify for a jury.
 21 A I guess.
 22 Q Well, you testified to that at your deposition;
 23 did you not?
 24 A I can't remember.

1 examined wasn't unreasonable in your view,
 2 correct?
 3 A No, it wasn't unreasonable.
 4 Q And that's because they wanted to determine what
 5 future level of rehabilitation your wife could
 6 accomplish in terms of being able to participate
 7 in the various activities of daily living that
 8 she wasn't able to participate in at the time,
 9 correct?
 10 A Yes.
 11 THE COURT: We're going to have to call
 12 it a day. It is 1 o'clock. We shall reconvene
 13 tomorrow at nine. It is the last day before our
 14 break. What shall I expect? Am I going to hear
 15 from Mr. Kiriakos tomorrow?
 16 Mr. Pritzker: Yes, your Honor.
 17 THE COURT: And before we leave, just
 18 so -- as the jury verdict, I don't know that I
 19 know what share of it was loss of consortium and
 20 what share was from Ms. Rhodes.
 21 MR. PRITZKER: It is, I believe, part
 22 of the docket, your Honor. It was \$500,000 for
 23 Rebecca; 1.5 million for Harold.
 24 THE COURT: And the rest was?

1 Mr. Pritzker: 7.412 was Marcia's.
2 THE COURT: Okay. We shall reconvene
3 tomorrow.
4 (Hearing adjourned.)

5 Q

6 Q

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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 141, is a complete, true and accurate transcription of the above-referenced case.

Paula Pietrella

Faye LeRoux

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 157, is a complete, true and accurate transcription of the above-referenced case.

Paula Pietrella

Faye LeRoux