

1 THE COURT: You do look young though.

2 THE WITNESS: Oh, even with my hair? Thank you. I'll
3 take it as a compliment then. Even though I know you're just
4 kidding.

5 BY MR. MAYERSON:

6 Q So when you were assigned to this case, it
7 wasn't because it was a class action, because it was not a
8 class action for very long and that was a very long time ago
9 and you were brought in more recently, right?

10 A That's right. I joined Nationwide four years
11 ago and this was one of the cases that I inherited, is the
12 short answer.

13 MR. MAYERSON: And I think that's all the questions I
14 have. Wait. Hold on.

15 (Brief pause.)

16 BY MR. MAYERSON:

17 Q We wanted updated fees -- that was one of the
18 things you were asked to bring in -- from April 2013. Did
19 you do that for us?

20 A I don't have any documents, for all the reasons
21 I explained about the various sources and reliability, but I
22 do have what I -- my understanding of the figure based on
23 further review, and if you would like that figure, I can
24 provide it.

25 Q Let's start with that.

1 A It's going to be approximate. I mean, it's not
2 going to be precise to the dollar, to the cent.
3 I believe it to be \$2.5 million in fees. And 100,000
4 -- slightly over \$100,000 in expenses.
5 THE COURT: The expenses, where would expert witnesses
6 be included? In the fees?
7 THE WITNESS: I believe they would be included within
8 the expense portion. So I think the expense portion is -- I
9 misspoke, about \$150,000. I don't know for certain. It's in
10 that range.
11 THE COURT: 150,000. And that includes experts?
12 THE WITNESS: I believe so.
13 THE COURT: Okay.
14 MR. MAYERSON: I'm confused now.
15 BY MR. MAYERSON:
16 Q The 2.5, is that a sum total or is that in
17 addition to what's in your interrogatories?
18 A That's a sum total for the life-span of the
19 case.
20 Q All right. Of legal fees?
21 A Right.
22 Q And the hundred thousand in expenses, is that
23 an increase or is that a sum total also?
24 A I believe that to be a sum total.
25 Q Because just adding up what your --

1 MR. MAYERSON: What will happen, Your Honor, is we
2 only had partial records and we came up with 922,000. And
3 then when they answered it they said it was 1.1 million,
4 which included post trial motions.

5 THE COURT: Okay. So that goes beyond 2004.

6 MR. MAYERSON: It does. It goes into 2005.

7 THE COURT: I don't know -- seems like a little bit of
8 apples and oranges. What are you asking this witness?

9 MR. MAYERSON: I'm asking him in his supplemental --
10 second supplemental answer to how much the attorney fees were
11 in 2004, and the answer was \$1,173,227.50. Does that account
12 somehow to this additional \$901,543 that was suddenly came to
13 light during this trial as Exhibit Number 76?

14 MR. KREKSTEIN: Objection, Your Honor. Calls for
15 speculation.

16 THE COURT: Let's see -- let's try the -- before he
17 gets more confused perhaps. Do you agree with that? Do you
18 understand the question?

19 THE WITNESS: Can I try answering it and then we'll
20 see if that --

21 THE COURT: Sure, if you understand the question. And
22 then you can tell us if -- I mean, don't give us speculation.
23 I mean, unless you think maybe that's the reason for the -- I
24 don't know. But you're not going to speculate on something
25 that you don't know. Try to answer it.

1 THE WITNESS: My answer is that the fees reflected in
2 supplemental response 2 of \$1.173 million is accurate. I
3 don't know -- and I don't know where the figures you were use
4 -- what your -- what the bookkeeper looked at or what was
5 considered. I know what I saw. I believe this number in
6 interrogatory response 2 to be correct through that time
7 period based on what I've seen.

8 BY MR. MAYERSON:

9 Q Are you aware that the bookkeeper, Jeanine
10 Snyder, who has testified in here, relied upon the billing
11 records that were produced to us from your attorney and that
12 have been authenticated by stipulation of counsel?

13 A I believe that to be the case but I don't know.

14 Q would you like to look at Exhibit 76? Have you
15 ever seen it?

16 A I have not seen -- I don't believe that I've
17 seen that before.

18 Q was this ever drawn to your attention between
19 the time it came to light in this courtroom and your
20 testimony today --

21 MR. KREKSTEIN: Objection to the extent that the
22 question calls for matters that are protected by the
23 attorney-client privilege.

24 THE COURT: Well, okay. Were you aware -- were you
25 somehow aware of this earth shaking -- I mean, major change

1 to the testimony? Were you aware of that? That's the
2 question.

3 THE WITNESS: Yes.

4 THE COURT: I would think you were.

5 BY MR. MAYERSON:

6 Q Did you take any measures to investigate
7 whether or not this -- do you have an explanation for why
8 this \$901,000 is popping off the page now?

9 A I don't. I don't know where that figure came
10 from or why the figure you originally supplied to the courts
11 below was miss -- was in your view understated by half. I
12 don't know.

13 Q Do you know whether or not Nationwide knew it
14 was understated by half during the time this case was going
15 through the appellate courts?

16 A I don't. All I know is what I see from the
17 billing records that we received and that I reviewed, which
18 reflect the figure that I verified in response to.

19 Q But if we had a calculator and added everything
20 up, you'll agree that the figures are going to be
21 substantially more by almost somewhere around 900,000 than
22 what's stated in your verified answer to interrogatory?

23 A I don't know.

24 Q All right. You weren't here for the testimony
25 of our bookkeeper.

1 A That's correct.

2 Q So she's got approximately 1.8 million through
3 2004, which is before post trial motions. And your answer is
4 1.1. So it's a pretty large discrepancy?

5 A That is a big difference.

6 Q All right. And you don't have an explanation
7 for it?

8 A I don't. I don't know what your bookkeeper
9 looked at or what the analytics were. I know what I looked
10 at, which was the billing records from counsel.

11 Q Well, what she looked at is the documents that
12 have been authenticated by stipulation that are marked as an
13 exhibit and are part of the evidence in this case.

14 A And I understand that. I don't know what was
15 authenticated, what's been deemed admissible. I don't know
16 what those records are, whether they reflect a -- only this
17 case or a series of cases under which Nelson Levine was
18 billing. I don't know. I have not reviewed those documents.
19 So it would be pure speculation on my part were I to offer an
20 opinion about what was contained --

21 Q You had an opportunity to look at them,
22 obviously, because you heard about the -- this discrepancy a
23 couple days ago, right?

24 MR. KREKSTEIN: Objection.

25 THE WITNESS: I heard about it.